



Attachment A

DECISION RECORD

Request Details

FOI Request: FA 16/08/00696
File Number: ADF2016/41198

Scope of request

1. On 10 August 2016 you requested:
*“a copy of the IDM and any tariff advices that are on file for the above tariff concession..
Tariff Concession 0805577”*

Charges

2. On 26 August 2016, the Department notified you of the estimated charges associated with processing this request in the amount of [REDACTED]. On 5 September 2016, you paid the charges in full.

Documents in scope

3. Two documents have been identified as being within scope of your request. These are detailed at Attachment B – Schedule of Documents.

Authority to make decision

4. I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access documents or to amend or annotate Departmental records.

Information considered

5. In reaching my decision, I have considered the following:
 - The *Freedom of Information Act 1982*;
 - The Departmental documents identified above;
 - Consultations with relevant business areas within the Department;
 - Consultations with business organisations external to the Department; and
 - The Australian Information Commissioner’s guidelines relating to access to documents held by government.

Reasons for decision

6. Section 22(2) of the FOI Act provides that, where an agency reaches the view that a document contains exempt information or material that is irrelevant to the request and it

is possible for the agency to prepare an edited copy of the document with the irrelevant or exempt material deleted, then the agency must prepare such a copy.

Deletion of irrelevant material under s.22(1)(a)(ii)

7. The material deleted under section 22(1)(a)(ii) as irrelevant material includes:
- any information not relevant to the scope of your request;
 - the names and direct contact details of Departmental and contracted service provider staff (although the names of Departmental senior executive service staff have been retained, if applicable); and
 - any information relating to the forwarding or printing of documents, where such action was taken by the Department for the purpose of processing this FOI request. The deletions are recorded in the Documents Released – Attachment D.

Section 47F – Personal privacy

8. Section 47F of the Act provides:

A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

The relevant document contains ‘personal information’

9. I consider that disclosure of parts of documents, as identified in the schedule of documents, would disclose personal information relating to third parties. The information within these documents would reasonably identify a person, either through names, positions or descriptions of their role or employment circumstance.

Disclosure would involve the ‘unreasonable disclosure of personal information’

10. In assessing whether a particular disclosure would be ‘unreasonable’, section 47F(2) sets out a number of factors which the Department *must* consider.

11. These factors are:

- a) the extent to which the information is well known;
- b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- c) the availability of the information from publicly accessible sources; and
- d) any other matters that the agency or Minister considers relevant.

12. The third parties information is not well known and would only be known to a limited group of people with a business need to know. As the third parties information is only known to a limited group of people, the individuals concerned are not generally known to be associated with the matters discussed in the document. This information is not available from publicly accessible sources.

13. I do not consider that the third parties information would be relevant to the broader scope of your request, as you are seeking access to documents regarding a Tariff Concession Order or Tariff Advice, rather the information wholly relates to other individuals.

14. I am satisfied that the disclosure of the information within these documents would involve an unreasonable disclosure of personal information about a number of individuals.

Application of the 'public interest' test

Factors favouring access

15. I am satisfied that the release of the information would promote the objects of the FOI Act as it would provide access to information held by Government, as well as providing access to information about a Tariff Advice submission.
16. I do not consider release of the exempted information would promote effective oversight of public expenditure, or allow a person to access his or her own personal information.

Factors weighing against release

17. I consider that it is in the broader public interest for individuals to be able to entrust the Department with their personal details, and that the Department has a responsibility to safeguard the personal details with which it has been entrusted.
18. On balance, I consider that the public interest factors against release of the exempted information outweigh the public interest factors for release of the information. I therefore partially exempt the documents from release under s.47F(1) of the FOI Act.

Section 47G – Business Affairs

19. Section 47G(1)(a) of the FOI Act permits conditional exemption of documents containing business information where disclosure of that information would, or could reasonably be expected to, unreasonably affect the organisation adversely in respect of its lawful business, commercial or financial affairs.
20. I consider that disclosure of parts of document two, as identified in the schedule of documents, would disclose information concerning the business, commercial or financial affairs of organisations who were involved in the submission of the 'Tariff Advice' document.
21. In considering whether disclosure of this information would, or could reasonably be expected to, unreasonably affect an organisation in respect of its lawful business, commercial or financial affairs, I have had regard to the following:
 - (a) The extent to which the information is well known;
 - (b) Whether the organisation or undertaking is known to be associated with the matters dealt with in the documents;
 - (c) The availability of the information from publicly accessible sources; and
 - (d) Any other matters that the Department considers relevant.
22. I do not consider that the conditionally exempt information contained within these documents is well known. In particular the names of the organisations, who partook in creating the Tariff Advice request, would not appear to be generally well known outside the organisation from which it originated.
23. The relevant third party has been consulted in relation to the release of this information. It has contended that the relevant information should be exempt from disclosure, and has not provided its consent for the information to be disclosed under the FOI Act.
24. I am therefore satisfied that disclosure of this information would, or could reasonably be expected to, unreasonably affect that organisation in respect of its lawful business,

commercial or financial affairs.

25. Document two is conditionally exempt under section 47G of the FOI Act. Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. I have turned my mind to whether disclosure of the information would be contrary to the public interest, and have included my reasoning in that regard at paragraph 26 below

Application of the 'public interest' test

26. As I have decided that parts of the documents are conditionally exempt, I am now required to consider whether access the conditionally exempt information would be contrary to the public interest (section 11A of the FOI Act).

27. A part of a document which is conditionally exempt must also meet the public interest test in section 11A(5) before an exemption may be claimed in respect of that part.

28. In summary, the test is whether access to the conditionally exempt part of the document would be, on balance, contrary to the public interest.

29. In applying this test, I have noted the objects of the FOI Act and the importance of the other factors listed in section 11B(3) of the FOI Act, being whether access to the document would do any of the following:

- (a) *promote the objects of this Act (including all the matters set out in sections 3 and 3A);*
- (b) *inform debate on a matter of public importance;*
- (c) *promote effective oversight of public expenditure;*
- (d) *allow a person to access his or her own personal information.*

30. Having regard to the above:

- I am satisfied that access to the documents would promote the objects of the FOI Act.
- I consider that the subject matter of the documents does not, in itself, seem to have the character of public importance. The matter has a very limited scope and, in my view, would be of interest to a very narrow section of the public.
- I consider that no insights into public expenditure will be provided through examination of the documents.
- I am satisfied that you do not require access to the documents in order to access your own personal information.

31. Disclosure of all aspects of the documents would not provide a person with sufficient information to assess the rigour or efficiencies of internal decision making processes within the Department, promote scrutiny of government decision making or reveal the reasoning for a government decision. I consider these considerations as neutral.

32. I have also considered the factors that weigh against the release of the conditionally exempt information in the documents:

- I consider that the disclosure of the parts of the documents that are conditionally exempt under section 47G of the FOI Act could reasonably be expected to

prejudice the competitive commercial activities of third party organisations. I consider that this factor weighs heavily against disclosure.

33. I have also had regard to section 11B(4) which sets out the factors which are irrelevant to my decision, which are:

- (e) *access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;*
- (f) *access to the document could result in any person misinterpreting or misunderstanding the document;*
- (g) *the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;*
- (h) *access to the document could result in confusion or unnecessary debate.*

34. I have not taken into account any of those factors in this decision.

35. Upon balancing all of the above relevant public interest considerations, I have concluded that the disclosure of the conditionally exempt information in the documents is not in the public interest and therefore exempt from disclosure under the FOI Act.

Yours sincerely

(signed electronically)

[REDACTED]
Freedom of Information Section
Department of Immigration and Border Protection
Email [REDACTED]
Telephone [REDACTED]

Attachment(s)

- Attachment A – Decision Record
- Attachment B – Schedule of Documents
- Attachment C – Extract of relevant legislation (FOI Act)
- Attachment D – Documents released



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request: FA 16/08/00696
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No.	Date of document	Folio No	Description	Decision on release	
1.	N/A	1-6	Illustrative Descriptive Material	Release in full	N/A
2.	07/04/2008	7-9	Tariff Advice	Released with irrelevant information deleted Released in part Released in part	s.22(1)(a)(ii) s.47F(1) s.47G

Attachment C – Extract of relevant legislation (FOI Act)

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:
 - (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an **edited copy**) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
 - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
 - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
 - (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and
 - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

47F Public interest conditional exemptions—personal privacy

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:

- (a) the extent to which the information is well known;
 - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
 - (c) the availability of the information from publicly accessible sources;
 - (d) any other matters that the agency or Minister considers relevant.
- (3) Subject to subsection (5), subsection (1) does not have effect in relation to a request by a person for access to a document by reason only of the inclusion in the document of matter relating to that person.

Section 47G - Public interest conditional exemptions—business

- (1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:
- (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
- (2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.

11B - Public interest exemptions—factors

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

Factors favouring access

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
 - (b) inform debate on a matter of public importance;
 - (c) promote effective oversight of public expenditure;
 - (d) allow a person to access his or her own personal information.

Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;

- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
- (d) access to the document could result in confusion or unnecessary debate.

Guidelines

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.