



## Attachment A

## DECISION RECORD

### Request Details

FOI Request FA 16/10/00257

File Number ADF2016/57325

### Scope of request

- *Submission details and the scope of the products as advised in Tariff Concession 9102149.*

### Authority to make decision

I am an officer authorised under section 23 of the *Freedom of Information Act 1982* to make decisions with respect to requests to access documents or to amend or annotate Departmental records.

### Information considered

In reaching my decision, I have considered the following:

- The terms of your request
- The *Freedom of Information Act 1982*
- The Australian Information Commissioner's guidelines relating to access to documents held by government
- Departmental documents, identified in the Schedule of Documents; and
- Consultations with relevant business areas.

### Reasons for decision

I have considered the files within the scope of your request and applied exemptions in part to documents as detailed in the Schedule of Documents at Attachment B. Please refer to the Schedule of Documents in conjunction with the exemptions below.

#### **Section 22(1)(a): Access to edited copies with exempt or irrelevant matter deleted**

With respect to section 22(1)(a)(i) of the Act, I have deleted information where the below exemptions have been applied to the documents within the scope of your request.

I have also deleted information contained in the documents under section 22(1)(a)(ii) of the Act where the information is not directly related to the details of the submission and the scope of the products as advised in the specific Tariff Concession, and hence irrelevant to your request for access.

## **Section 45: Documents containing material in confidence**

Section 45 of the Act exempts a document where its disclosure would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island) for breach of confidence.

With respect to the deletions I have made under this exemption, the information was data extracted from the former Australian Customs and Border Protection Service's (ACBPS) TRACE import recording system.

TRACE was the ACBPS' electronic clearance and reporting system for imports and exports and linked the ACBPS with owners of goods or their agents and automates procedures for the reporting of imports and exports.

The role of the Department in the import and export of goods is to:

- Ensure that all goods being imported and exported from Australia are reported as required
- Administer controls on behalf of permit issuing agencies on the import and export of restricted or prohibited goods, and
- Gather information regarding the nature and volume of imports and exports to assist government and industry in policy and decision-making.

The information entered into TRACE was (and still is, through the Department's Integrated Cargo System) a mandatory legislative requirement completed by owners to ensure compliance with the Customs Act 1901.

The majority of declarations were submitted electronically in TRACE, with the authentication process associated with that procedure making the data transferred as part of that transaction impliedly secure and confidential.

I further note that:

- The data within the document specifically outlines particular importation data.
- The data within the document is sufficiently secret that only the importers themselves (or those acting on their behalf) would be aware of the data relating to their importation activities. The information is not common knowledge or in the public domain.
- The importers view their data as valuable commercial information that has been given to ACBPS in confidence for the limited purposes of assessing Customs duties and clearing import and export processes.
- An importer would not be aware, and is certainly not advised, that ACBPS may disclose the sensitive commercial information they provide to ACBPS to applicants under the FOI Act. Further, the importer has not consented to ACBPS providing their importation data to the FOI applicant.
- Release of this information could reasonably be expected to prejudice the competitive commercial activities of the importer. Any public release of this information would lead to a commercial disadvantage or impairment for the importer referred to within the data.

I am satisfied that the nature of the information is inherently confidential, as:

- The information is specifically identified by the importer as being confidential
- The information has the necessary quality of confidentiality as it contains information that is not common knowledge or in the public domain

- The information was provided to the former ACBPS and received on the basis of a mutual understanding of confidence
- If the information was disclosed, it would be without authority of the importer, and
- Disclosure of the information will likely cause detriment to the third parties.

On this basis, I am satisfied that the disclosure of this information would found an action by the importer for breach of confidence and as such exempted under section 45 on the basis of the line of reasoning outlined above.

### **Section 47G: Business Affairs**

Section 47G(1)(a) of the Act conditionally exempts a document where its disclosure would disclose, amongst other information, the business, commercial or financial affairs of an organisation.

With respect to the deletions I have made under this exemption, I am of the view that Document 8 (folio 10) contains information in the nature of specific manufacturing data generated for the purposes of analysing production trends and forecasting operational requirements of the business. I am of the view that this information is directly relevant to the profitability and viability of business operations that is of continuing relevance to a presently-operating business. On this analysis, I am of the view that the disclosure of this information would reasonably be expected to unreasonably affect, in an adverse manner, the lawful undertaking of the business, commercial and financial affairs of the business.

On this basis, I am satisfied that the documents which I have exempted under section 47G(1)(a) are exempted on the basis of the line of reasoning outlined above.

Access to a conditionally exempt document must generally be given unless it would be contrary to the public interest to do so. As such, I have also considered whether disclosure of the information I have deleted under this exemption would be contrary to the public interest, and have included my reasoning below.

### **Section 11A: Public Interest Test**

In relation to the documents which I have decided have satisfied the statutory requirements of the following exemptions:

- Section 47G: Business Affairs

I am required under section 11A of the Act to consider whether access to the conditionally exempt information would be contrary to the public interest. In considering this, I must be satisfied that access to the conditionally exempt document would be, on balance, contrary to the public interest (emphasis added).

In my application of the public interest test, I have noted the objects of the Act and the importance of the other factors outlined under section 11B(3) of the Act, being whether access to the document would do any of the following:

- Promote the objects of this Act (including all the matters set out in sections 3 and 3A)
- Inform debate on a matter of public importance
- Promote effective oversight of public expenditure
- Allow a person to access his or her own personal information.

Having regard to the above factors, I have provided you with access to documents where the disclosure of the documents would promote the fundamental objects of the Act. However, I have considered the fact that the disclosure of documents would not inform debate on a

matter of public importance, nor would it promote the effective oversight of public expenditure of provide access to your own personal information.

I have also considered the factors that weigh against the release of the conditionally exempt information in the documents. I am of the view 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 interests of third party organisations. I am of the view that this factor weighs heavily against disclosure.

I have also considered the provisions under section 11B(4) outlining the factors that are irrelevant to my decision. These are as follows:

- Access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government
- Access to the document could result in any person misinterpreting or misunderstanding the document
- 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
- Access to the document could result in confusion or unnecessary debate.

I have not taken into account any of these factors in my decision.

Upon balancing all of the above relevant public interest criterion, I am satisfied and have decided that the disclosure of the conditionally exempt documents is not in the public interest and therefore exempt from disclosure under the Act.

## Legislation

I have attached an extract of the exemption provisions of the FOI Act and the public interest test for your information at **Attachment C**.



Authorised Decision Maker  
Freedom of Information Section Section  
Department of Immigration and Border Protection

10 January 2017



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 16/10/00254  
File Number ADF2016/57321

No.	Date of document	No. of pages	Description	Decision on release	
1.	12/03/1991	1	Tariff Concession 0334-91: File Part Coversheet	Release in full	
2.	12/03/1991	1	Commercial Tariff Concession Order Application:	Release in full	
3.	No date	2	Ryobi Line Trimmers: Illustrative Descriptive Material	Release in full	
4.	No date	1	Correspondence from Patrick McIntosh relating to Black & Decker Factory Closure	Release in full	
5.	29/01/1991	1	Newspaper Clipping (Peter Roberts): <i>Black &amp; Decker's efficiency fails to save Australian production</i>	Release in full	
6.	07/03/1991	1	Market Statement from Ryobi Australia Pty Ltd to Tariff Concession and Quota Branch, Australian Customs Service	Release in full	
7.	11/03/1991 – 14/03/1991	2	Correspondence between Trade Consultant and Tariff Concession and Quota Branch, Australian Customs service relating to Tariff Concession Application	Release in full	
8.	01/03/1991	1	Assembly Build Schedule	Exempt in full	s 47G(1)(a)
9.	21/12/1989 – 25/01/1991	5	Correspondence from Black & Decker Management to Black & Decker Factory Staff relating to the manufacturing of goods at the Croydon facility.	Release in full	
10.	19/03/1991	3	Correspondence from Black and Decker to Australian Customs Service relating to the ceasing of production of several items.	Release in full	

No.	Date of document	No. of pages	Description	Decision on release	
11.	28/03/1991	1	Application Summary	Release in full	
12.	26/03/1991	1	Australian Customs Service: Internal File Note	Release in full	
13.	28/03/1991	1	Australian Customs Service: Tariff Concession Word Processing Request	Release in full	
14.	15/05/1991	1	Tariff Concession Order: Draft Proof	Release in full	
15.	27/03/1991	1	Commercial Tariff Concession Order: Declaration	Release in full	
16.	04/06/1991	1	Publications Check List	Release in full	
17.	17/06/1991	1	Schedule of Concessional Instruments: Part 1 – Tariff Concession Orders	Release in full	
18.	26/03/1997	3	Extractions from TRACE	Refused in full	s 45
19.	01/04/1997	1	Tariff Concession Order 9102149 Check List	Release in full	
20.	01/01/2002	1	WCO Tariff Changes	Release in full	
21.	02/01/2002	3	Commercial Tariff Revocation Order	Release in full	

## **Attachment C – Extract of relevant legislation**

### **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.

### **45 Documents containing material obtained in confidence**

- (1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency or the Commonwealth), for breach of confidence.
- (2) Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3)), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an

agency, in the course of his or her duties, or by a prescribed authority or Norfolk Island authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:

- (a) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or
- (b) an agency or the Commonwealth.

#### **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
  - (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.
- (2) Subsection (1) does not apply to trade secrets or other information to which section 47 applies.
- (3) Subsection (1) does not have effect in relation to a request by a person for access to a document:
  - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
  - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
  - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (4) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.
- (5) For the purposes of subsection (1), information is not taken to concern a person in respect of the person's professional affairs merely because it is information concerning the person's status as a member of a profession.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).