



2 May 2017



**In reply please quote:**

FOI Request: FA 16/11/00582  
File Number: ADF2016/67495

Dear 

**Freedom of Information Act - Decision on Internal Review**

I refer to your correspondence dated 14 December 2016 in which you request that the Department of Immigration and Border Protection (the Department) review its decision on access to documents dated 28 November 2016 under the *Freedom of Information Act 1982* (the FOI Act).

I am authorised under section 23 the FOI Act to make decisions to release and to refuse access to exempt documents.

**1 Scope of original request**

On 7 November 2016, you sought access to the following documents:

*'the Illustrative Descriptive Material and the particulars of the goods which were the subject of the application for Tariff Concession Order 1107178.'*

**2 Original Decision on access dated 28 November 2016**

The Department identified one document as falling within the scope of your original request. This document consisted of the Illustrative Descriptive Material that was submitted with the application for Tariff Concession Order 1107178. This document was in the possession of Department on 7 November 2016 when your FOI request was received.

The original decision maker decided to release one document in full.

**3 Request for Internal Review**

On 14 December 2016, you requested Department to review its decision dated 28 November 2016. You indicated that in the past your FOI requests have been of the exact same wording and you were provided a copy of the TCO application. You therefore consider that the Department has not identified all the documents that are relevant to your request

#### **4 Documents in scope of request**

I have reviewed the file relating to Tariff Concession Order 1107178.

I have also considered the submissions made by you in relation to your reasons for requesting an Internal Review.

Having undertaken further searches for documents which may fall within the scope of your request, I have identified a further 12 documents that I consider are relevant to the scope of the original request.

These documents consist of the Application for Tariff Concession Order 1107178 and correspondence between the Department and the Broker in relation to the wording for the Tariff Concession Order.

Given that the Illustrative Descriptive Material has already been released to you in full, I have not given further consideration to the release of that particular document.

#### **5 Decision on Internal Review**

I have decided to:

- Release one document in full, and
- Release 11 documents in part with deletions.

#### **6 Reasons for Decision**

The schedule of the 12 documents that fall within the scope of your Internal Review at **ATTACHMENT A** sets out the decision on access and, where appropriate, refers to various sections of the FOI Act. My reasoning in relation to the application of each section to particular documents is set out below.

##### **6.1 Section 22 of the FOI Act – irrelevant to request**

Section 22 of the FOI Act provides that if giving access to a document would disclose information that would reasonably be regarded as irrelevant to the request, it is possible for the Department to prepare an edited copy of the document, modified by deletions, ensuring that the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request.

On 10 November 2016, the Department advised you that its policy is to exclude the personal details of officers not in the Senior Executive Service (SES), as well as the mobile and work telephone numbers of SES staff, contained in documents that fall within scope of an FOI request.

I have therefore decided that parts of documents would disclose information that could reasonably be regarded as irrelevant to your request, and have therefore prepared an edited copy of the documents, with the irrelevant material deleted pursuant to section 22(1)(a)(ii) of the FOI Act.

The remainder of the documents have been considered for release to you as they are relevant to your request.

## **6.2 Section 47F of the FOI Act – Personal Privacy**

Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information of any person. 'Personal information' means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not (see s 4 of the FOI Act and s 6 of the *Privacy Act 1988*).

I consider that disclosure of the information marked 's47F' in the documents would disclose personal information relating to third parties. The information within the documents would reasonably identify a person, either through names, positions or descriptions of their role or employment circumstance.

The FOI Act states that, when deciding whether the disclosure of the personal information would be 'unreasonable', I must have regard to four factors set out in s.47F(2) of the FOI Act. I have therefore considered each of these factors below:

- *the extent to which the information is well known;*
- *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;*
- *the availability of the information from publicly available resources;*
- *any other matters that I consider relevant.*

The information relating to the third parties is not well known and would only be known to a limited group of people with a business need to know. As this 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.

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

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

I have decided that the information referred to above is conditionally exempt under section 47F 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 below.

## **6.3 The public interest – section 11A of the FOI Act**

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

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.

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

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.

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.

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.

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

- The disclosure of the personal information which is conditionally exempt under section 47F of the FOI Act could reasonably be expected to prejudice the protection of those individuals' right to privacy. It is my view that it is firmly in the public interest to uphold the rights of individuals to their own privacy. I consider that this factor weighs heavily against disclosure.

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

- (a) *access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;*
- (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.*

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

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.

## **7 Legislation**

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>. If you are unable to access the legislation through this website, please contact our office for a copy.

## **8 Your Review Rights**

### *Review by the Office of the Australian Information Commissioner*

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of this decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a request for a review to the OAIC, please see Fact Sheet 12 "Freedom of information – Your review rights", available online at <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

## **9 Making a Complaint**

You may complain to the Australian Information Commissioner about action taken by the Department in relation to your request.

Your enquiries to the Australian Information Commissioner can be directed to:  
Phone 1300 363 992 (local call charge)  
Email [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

There is no particular form required to make a complaint to the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the Department of Immigration and Border Protection as the relevant agency.

## **10 Contact**

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at [foi@border.gov.au](mailto:foi@border.gov.au).



**Authorised Decision Maker**  
**Department of Immigration and Border Protection**

## ATTACHMENT A

### Schedule of Documents

**FOI request:** FA 16/11/00582

**File Number:** ADF2016/67495

No.	Date of document	No. of pages	Description	Decision on release	
				Release in part	47F
1.	23/02/2011	9	Application for TCO 1107178	Release in part	47F
2.	23/02/2011	6	Local Manufacturer Searches	Release in full	
3.	28/02/2011	1	Description of Goods including the Customs Tariff Classification	Release in part	22(1)(a)(ii)
4.	Undated	1	Tariff Classification Order: Auto Distributors	Release in part	22(1)(a)(ii)
5.	07/03/2011 0911	1	Email from ACBPS to Broker Subject: Query TCO 1107178 – Auto distributors	Release in part	22(1)(a)(ii) 47F
6.	07/03/2011 1648	3	Email from Broker to ACBPS Subject: FW: Tariff Concession Application Query – TCO 1107178 – Auto distributors	Release in part	22(1)(a)(ii) 47F
7.	09/03/2011	1	Description of Goods including the Customs Tariff Classification approved wording	Release in part	22(1)(a)(ii)
8.	09/03/2011 1204	1	Email from ACBPS to Broker Subject: Amended wording – TCO 1107178 – Auto distributors	Release in part	22(1)(a)(ii) 47F
9.	09/03/2011 1225	2	Email from Broker to ACBPS Subject: RE Amended Wording – TCO 1107178 – Auto distributors	Release in part	22(1)(a)(ii) 47F
10.	09/03/2011	2	Letter from ACBPS to Broker Tariff Concession System – Application Acceptance	Release in part	22(1)(a)(ii) 47F
11.	09/05/2011	1	Tariff Concession Order	Release in part	22(1)(a)(ii)
12.	09/05/2011	2	Letter from ACBPS to Broker Tariff Concession System – Application successful	Release in part	22(1)(a)(ii) 47F