



29 June 2017

In reply please quote:

FOI Request FA 17/03/00254

File Number ADF2017/26170



Dear 

Freedom of Information request – decision on request

This letter refers to your request received on 7 March 2017 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following:

'All safety testing performed by DIBP on the following weapons since January 2015:

- Adler 12G lever action 20" 7 shot
- Adler 12G lever action 26" 4 shot'

Authority to make decision

I am an officer authorised under section 23 of the *Freedom of Information Act 1982* (FOI Act) 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 (the Oaic guidelines)
- Departmental files identified in Schedule of Documents
- Consultations with the relevant business areas in the Department

Legislation

A copy of the FOI Act is available for your reference from www.legislation.gov.au/Browse/ByTitle/Acts/InForce/0/0/Principal

Documents in scope

The Department has identified 10 documents that fall within the scope of your request. A Schedule of Documents is located at **Attachment A**.

Decision

I have decided to exempt ten documents in part from disclosure under the FOI Act. The reasons for my decision are set out below.

Reasons for decision

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.

This edited copy must be provided to the applicant. Further, the decision maker must advise the applicant in writing that the edited copy of the document has been prepared and of the reason(s) for each of the deletions in the document (section 22(3) of the FOI Act).

Exempt material has been deleted pursuant to section 22(1)(a)(i), and irrelevant material deleted pursuant to section 22(1)(a)(ii) of the FOI Act.

Deletion of irrelevant material

On 7 March 2017, 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 the documents that fall within scope of a FOI request. I am satisfied that to give access to this information would reasonably be regarded as irrelevant to your request.

The Schedule of Documents identifies documents where material has either been deleted as exempt information under the FOI Act or deleted as irrelevant to the scope of the request.

Exemptions

I have considered the documents within the scope of your request and applied exemptions in part.

Section 47F: Personal Privacy

Section 47F of the FOI Act conditionally exempts a document where its disclosure would involve an unreasonable disclosure of personal information about any person. Section 4 of the FOI Act provides that personal information has the same meaning as in the *Privacy Act 1988* (Privacy Act). Personal information is defined in section 6 of the Privacy Act as information or an opinion about an identified individual, or an individual who is reasonably identifiable.

I note that disclosure of the information marked section 47F in the documents would disclose personal information relating to third parties. This information would reasonably identify a person, either through name, position or contact details of their role or employment circumstance.

Section 47F(2) of the FOI Act outlines the factors I must have regard to in determining whether the disclosure of the personal information would be *unreasonable*. These are as follows:

- 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 safety testing performed by the Department.

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

Accordingly, I am satisfied that the information referred to above is conditionally exempt under section 47F of the FOI Act.

Section 47G(1): Business affairs information

Section 47G(1)(a) of the FOI Act provides that a document is conditionally exempt if its disclosure under the Act would, or could reasonably be expected to, unreasonably affect a person adversely in respect of their lawful business, commercial or financial affairs.

I note that disclosure of the information marked section 47G in the documents would disclose the names and contact details of businesses importing and/or involved in the lawful importation of Adler A110 firearms into Australia. This information would enable the identification of supply chains and enable competitors to gain a further understanding of the size and scale of the importing businesses. This would, or could reasonably be expected to, unreasonably affect the lawful business, commercial or financial affairs of the businesses concerned.

Given these reasons, I am satisfied that disclosure of the information could reasonably be expected to have an unreasonable adverse effect on the commercial affairs of the businesses in question.

I am therefore satisfied that the material is conditionally exempt under s.47G(1)(a) of the FOI Act.

Section 11A: Public Interest Test

While I have found that the above conditional exemptions apply to the information outlined above, I am required under section 11A(5) of the FOI 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 note the objects of the FOI Act and the importance of the other factors outlined under section 11B(3) of the FOI Act, being whether access to the document would do any of the following:

- *whether release would promote the objects of the FOI Act;*
- *whether release would inform debate on a matter of public importance;*
- *whether release would promote effective oversight of public expenditure; and*
- *whether release would allow a person to access his or her own personal information.*

Having regard to the above factors, I consider that disclosure of the conditionally exempt information would not inform debate on a matter of public importance or promote the objects of the FOI Act. The business names and their employees are not the principal subject of your request. Release of this information would make a negligible further contribution to public debate.

I do not consider that release of the information would allow you to access your own information, nor does it relate to public expenditure.

I have also considered the factors that weigh against the release of the documents. I am satisfied that the release of business name and their employees could reasonably be expected to affect the commercial affairs and interests of the businesses, and compromise the privacy of several individuals.

I further note that disclosure of the personal information 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 this factor to weigh heavily against disclosure.

I have also had regard to 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 do not consider any of these factors are relevant in this matter and 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 material is not in the public interest and therefore is exempt from disclosure under the FOI Act.

Review rights

Internal review

If you disagree with my decision, you have the right to apply for an internal review by the Department of my decision. Any request for internal review must be provided to the Department within 30 days of you being notified of the decision. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by an officer other than the original decision-maker and the Department must make a review decision within 30 days.

Applications for review should be sent to:

Freedom of Information
Department of Immigration and Border Protection
PO Box 25
BELCONNEN ACT 2617

Or by email to: foi.reviews@border.gov.au

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 my decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a review request to the OAIC, please see FOI fact sheet 12 '*Freedom of information – Your review rights*', available online at www.oaic.gov.au.

How to make a complaint about the handling of your FOI request

You may complain to the Australian Information Commissioner if you have concerns about how the department has handled your request under the FOI Act. Information about how to submit a complaint is also available at www.oaic.gov.au.

Contacting the FOI Section

If you wish to discuss this matter, you may contact me using the details provided below.

Yours sincerely



Authorised Decision Maker
Queensland Regional Command
Department of Immigration and Border Protection
Email: foi@border.gov.au

Attachments

- Attachment A – Schedule of Documents
- Attachment B – Documents released

Attachment A

SCHEDULE OF DOCUMENTS TO DECISION RECORD

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 File Number ADF2017/26170

No.	Date of document	No. of pages	Description	Decision on release
1.	21 April 2016	1	Cargo Examination Form	Exempt in part S 22(1)(a)(ii) S 47F(1) S 47G(1)(A)
2.	20 April 2016	1	Firearm Safety Testing Results Form	Exempt in part S 22(1)(a)(ii) S 47G(1)(A)
3.	21 April 2016	1	Commercial Firearms Record	Exempt in part S 47F(1) S 47G(1)(A)
4.	15 April 2016	2	Email: RE: Exam #2117724 MAWB# 17612554721	Exempt in part S 22(1)(a)(ii) S 47G(1)(A)
5.	20 April 2016	1	Firearm Safety Testing Results Form For Commercial Consignments	Exempt in part S 22(1)(a)(ii) S 47F(1) S 47G(1)(A)
6.	30 April 2015	6	Email: RE ADLER 001	Exempt in part S 22(1)(a)(ii) S 47F(1) S 47G(1)(A)
7.	27 April 2015	2	QLD Firearms Cell – Examination Record	Exempt in part S 22(1)(a)(ii) S 47G(1)(A)
8.	27 April 2015	1	Firearm Safety Testing Results Form	Exempt in part S 22(1)(a)(ii) S 47G(1)(A)
9.	26 August 2015	1	Firearm Safety Testing Results Form	Exempt in part S 22(1)(a)(ii) S 47G(1)(A)
10.	26 July 2016	1	Firearm Safety Testing Results Form	Exempt in part S 22(1)(a)(ii) S 47G(1)(A)