



4 August 2017

In reply please quote:

FOI Request: FA 17/05/00456

File Number: ADF2017/47448

Dear [REDACTED]

Freedom of Information – Decision on Access

I refer to your email dated 8 May 2017 in which you requested access to documents held by the Department of Immigration and Border Protection (the Department) under the *Freedom of Information Act 1982* (the FOI Act).

This letter is to notify you of the Department's decision on access to the documents subject to your request.

1 Scope of Request

You have requested access to the following documents held by the Department:

'all documents relating to the below Tariff Concession Orders:

- 1. Mattresses Inflatable TCO 8341055, and*
- 2. Mattresses Inflatable TCOs 8341133 and 8531986.'*

On 4 August 2017, you agreed to withdraw part 1 of the request, being documents relating to TCO 8341055.

2 Authority to make decision

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

3 Relevant material

In reaching my decision, I have considered the following:

- the terms of your request;
- the documents relevant to your request;
- the FOI Act;
- Guidelines published by the Office of the Australian Information Commissioner under s 93A of the FOI Act, and
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access.

4 Documents in scope of your request

Tariff Concession Order 8341133 was revoked and reissued as TCO 0614179. I have reviewed the Department's file in relation to TCO 0614179 and have identified 25 documents relating to that particular Tariff Concession Order.

Tariff Concession Order 8531986 was revoked and reissued as TCO 0614180, which has also subsequently been revoked. I have reviewed the file in relation to TCO 0614180 and have identified 9 documents relating to that particular Tariff Concession Order. I note that there is a record amongst those documents indicating that the file relating to TCO 8531986 has been destroyed. I have searched for that file in the Department's electronic records management system. I can confirm that the file relating to TCO 8531986 is recorded as having been destroyed in accordance with the appropriate Records Disposal Authority on 24 February 1993.

The Department has therefore identified a total of 34 documents that fall within the scope of your request. These documents were in the possession of Department on 8 May 2017 when your FOI request was received.

A schedule of these documents is attached for your reference.

5 Decision on access

The decision in relation to the documents in the possession of the Department which come within the scope of your request is to:

- Release 8 documents in full and
- Release 26 documents in part with deletions.

The reasons for the decision are set out below.

6 Reasons for Decision

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 9 May 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 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 released 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 relating to Tariff Concession Orders 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

Internal Review

If you disagree with this decision, you have the right to apply for an internal review by the Department of this 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 a 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 Section
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 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

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.



**FOI Officer | Freedom of Information Section
FOI, Privacy and Records Management Branch
Corporate Services Division
Department of Immigration and Border Protection**

ATTACHMENT A
SCHEDULE OF DOCUMENTS

No	Date of document	No. of pages	Description	Decision on release	
TCO 8341133 reissued 0614179					
1.	3/5/1971	2	Application for By-Law Item, with covering letter	Release in part	47F
2.	18/11/1971	1	Determination	Release in full	
3.	10/1/1972	1	Minute – Rubberised Air Mattresses	Release in part	22(1)(a)(ii)
4.	20/6/1972	1	Consolidated By-Law reference	Release in full	
5.	19/7/1972	1	Letter from Gairs Proprietary Limited	Release in part	47F
6.	15/12/1972	2	Letter from Myer to Prowse Kelen Pty Ltd	Release in part	47F 22(1)(a)(ii)
7.	18/12/1972	3	Aide-Memoire	Release in part	47F
8.	19/12/1972	1	Letter from MOD and Disposals Store to Prowse Kelen	Release in part	22(1)(a)(ii) 47F
9.	19/12/1972	1	Letter from Paddy Pallin to Customs	Release in part	22(1)(a)(ii) 47F
10.	21/12/1972	1	Letter from Grace Bros to Noel Prowse	Release in part	47F
11.	19/2/1973	3	File note	Release in part	22(1)(a)(ii)
12.	04/03/1975	1	Consolidated By-Law reference	Release in full	
13.	08/05/1973	1	Consolidated By-Law reference	Release in full	
14.	18/4/1975	2	Letter from Consulate-General of the Hungarian People's Republic to Department of Customs and Excise	Release in part	22(1)(a)(ii) 47F
15.	09/05/1975	1	Minute	Release in part	22(1)(a)(ii)
16.	14/5/1975	1	Minute	Release in part	22(1)(a)(ii)
17.	21/5/1975	1	Letter to Consulate-General of the Hungarian People's Republic from Customs	Release in part	22(1)(a)(ii) 47F
18.	1/4/1983	2	Declaration under Section 269 Customs Act	Release in part	22(1)(a)(ii)
19.	1/11/1983	2	Tariff Concession Order 8341133	Release in part	22(1)(a)(ii)
20.	15/5/1985	1	TCO Harmonization Check List	Release in part	22(1)(a)(ii)
21.	17/8/2006	1	Tariff Concession 8341133 data	Release in full	
22.	1/1/2007	1	WCO Tariff Changes TCO old 834113 TCO new 0614179	Release in part	22(1)(a)(ii)
23.	1/1/2007	2	Tariff Concession Revocation 8341133 Tariff Concession Order 0614179	Release in part	22(1)(a)(ii)

No	Date of document	No. of pages	Description	Decision on release	
24.	2/9/2014	1	Minute – duplicate TCO 0614180 and 0614179	Release in part	22(1)(a)(ii)
25.	3/9/2014	1	Intention to Revoke Tariff Concession Orders 0614180 (retain 0614179)	Release in part	22(1)(a)(ii)
TCO 8531986 reissued 0610180 (revoked)					
26.	17/8/2006	1	Tariff Concession 8531986 data	Release in full	
27.	1/1/2007	1	WCO Tariff Changes TCO old 8531986 TCO new 0614180	Release in part	22(1)(a)(ii)
28.	20/06/2007	2	Tariff Concession Revocation 8531986 Tariff Concession Order 0614180	Release in part	22(1)(a)(ii)
29.	2/9/2014	1	Minute paper – Duplicate TCO 0614180 reissued from 8531986 and 0614179 reissued from 8341133	Release in part	22(1)(a)(ii)
30.	3/9/2014	1	Intention to Revoke Tariff Concession Orders 0614180 (retain 0614179)	Release in full	
31.	8/10/2014	1	Tariff Concession Order Revocation at the Initiative of Customs	Release in full	
32.	2/10/2014	1	Tariff Concession Revocation Order 0614180	Release in part	22(1)(a)(ii)
33.	3/10/2014	1	Minute – Duplicate TCO 0614180 – Nil submission received	Release in part	22(1)(a)(ii)
34.	8/10/2014	1	Minute Paper – File Destruction Order	Release in part	22(1)(a)(ii)