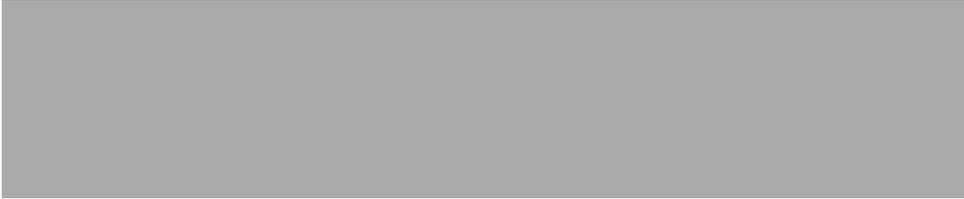




27 March 2017



In reply please quote:

FOI Request: FA 16/09/00074
File Number: ADF2016/47703

Dear 

I refer to your email dated 1 September 2016 in which you request access to documents held by the Department of Immigration and Border Protection (the Department) under the *Freedom of Information Act 1982* (the FOI Act).

1 Scope of Request

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

"documents related to the Department of Immigration and Border Protection Review of Customs Licensing Regimes (the Review), the Terms of Reference which were released 2 November 2015.

The request for access relates to:

- 1. All submissions received in respect to the Review;*
- 2. All related DIBP briefing documents, internal reports and similar related documents in respect to the Review, and*
- 3. All emails and any other correspondence related to items 1 and 2."*

On 15 September 2016, the Department issued you with a notice under section 24AB of the FOI Act, advising you that it believed that the work involved in processing your request in its original form would substantially and unreasonably divert the resources of the Department from its other operations due to its broad nature, size and complexity.

You were provided with an opportunity to revise the scope of your request to enable it to proceed.

On 26 September 2016, you agreed to modify the scope of your request as follows:

- "1. All submissions received in respect of the Review that relate only to the licensing of customs brokers.*
- 2. Related DIBP briefing documents, internal reports and similar related documents in relation to the licensing of customs brokers."*

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

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 and the revision to the scope 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

The Department has identified 11 documents that fall within the scope of your request. These documents were in the possession of the Department on 1 September 2016 when your FOI request was received.

Part 1 of your revised request is for submissions received by the Department as part of the *Review of Customs Licensing Regimes* relating specifically to the licensing of Customs Brokers.

A number of these submissions have been published on the Department's website since the receipt of your FOI request, and as such, have not been considered for release to you under the FOI Act, given that they are publicly available. These submissions can be found here: <http://www.border.gov.au/licensing-review>

Six confidential submissions were received that specifically related to the licensing of Customs Brokers and have not been published. I have considered these six submissions as part of your formal FOI request, and have considered whether access to these submissions can be granted to you under the FOI Act.

I further note that a large number of documents regarding the review of all customs licensing arrangements have been published on the Department's website since the receipt of your FOI request. As such, the following information is also available on the Department's website:

- Terms of reference for the review
- Details of the consultation process
- Timeframes for the review
- Review of customs Licensing Regimes Discussion Paper
- Review of Customs Licensing Regimes Issues Paper
- A number of submissions received by the Department
- Various updates regarding the Review of Customs Licensing Regimes

In relation to part 2 of your request, the terms of reference for the review relates to the licensing of three separate regimes; customs brokers, depots and warehouses. Briefing documents held by the Department that fall within the scope of your request relate to the *Review of Customs Licensing Regimes* generally, and not just the licensing of Customs Brokers.

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 as follows:

- Release four documents in part with deletions, and
- Exempt seven documents in full from disclosure.

The reasons for the decision are set out below.

A schedule of these documents is at **ATTACHMENT A** for your reference.

6 **Reasons for Decision**

I am satisfied that I have been provided with all the documents that are relevant to your request. The schedule of the 11 documents that fall within the scope of your request 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 2 September 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.

Document 7 contains references to parts of the Licensing Review that do not relate to Customs Broker licensing, but rather relate specifically to the licensing of Depots and Warehouses. This information is not relevant to your request as you are specifically seeking access to documents relating to the licensing of Customs Brokers.

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 45 of the FOI Act – Documents containing material obtained in confidence

Section 45 of the FOI Act provides that a document is an exempt document if its disclosure under this Act would found an action, by a person, for breach of confidence.

As indicated above, as part of the Review, the Department received a number of submissions in relation to Customs Broker licensing that were provided on an in-confidence basis. Each party who provided submissions was consulted in relation to the publication of their submissions on the Department's website as part of the broader review process. The six submissions that have not been published have been provided to the Department on a confidential basis, and the entities that have submitted them have not provided any subsequent consent for the publication of this information.

In deciding whether the information contained within these documents is inherently confidential I have taken into consideration the following factors:

- The information is specifically identified by the entity that has submitted the submission to the Department 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 Department and received on the basis of a mutual understanding of confidence;
- If the information was disclosed, it would be without the authority of the entity that made the submission to the Department; and
- Disclosure of the information will likely cause detriment to relevant parties who have made the submissions.

I am of the view that the disclosure of the information within documents 1-6 in the schedule of documents would found an action by the relevant party for breach of confidence. As such I have decided that these documents are exempt from disclosure under section 45 of the FOI Act.

6.3 Section 47C of the FOI Act – Deliberative Processes

Section 47C of the FOI Act permits conditional exemption of a document if its disclosure would disclose 'deliberative matter'. Deliberative matter includes opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the deliberative processes of an agency. 'Deliberative processes' have previously been described as 'the process of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.'¹

Document 7 consists of a number of observations and summaries of the key themes from the submissions to the Licensing Review.

However, this information consists of opinions, advice and recommendations prepared and/or recorded as part of the review process, being a deliberative process of the Department. This information particularly falls within the category of being part of a process of reflection on the themes of the submissions made, what would be required to achieve the outcome sought, the benefits that may flow to industry and the benefits to Government. The information has all the characteristics of weighing up or evaluating the competing arguments or considerations that may have a bearing on the Department's course of action.

The *Review of Customs Licensing Regimes* remains ongoing and the matters being considered by the review team are actively under consideration. As such, this information does not reflect the decision or conclusion reached at the end of the deliberative process.

¹ See *JE Waterford and Department of Treasury (No 2)* [1984] AATA 67.

The information does not fall within any of the exclusions in subsections 47C(2) and (3) of the FOI Act.

I have decided that the part of document 7 marked 's47C' is conditionally exempt under section 47C 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.

6.4 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:

- Disclosure of the conditionally exempt information under section 47C could reasonably be expected to prejudice the ability of the Department to manage future review processes. I consider that the disclosure of this type of deliberative material may hinder future deliberations by inhibiting full and frank advice within the Department and as a result, full consideration by the relevant officers of matters that are subject to any such formal Review. I am of the view that there is a strong public interest in officers within the Department providing full and frank advice in such Reviews without fear of public disclosure of that advice. A precedent of such public disclosure would result in those concerns existing, which may then hinder future deliberations and decision making processes for the Department and the Government as a whole. I consider that the public interest in protecting the process of providing free and frank advice and recommendations has, on balance, more weight than the public interest that might exist in disclosing those actual deliberations.

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

- 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 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
Information Management Branch
Corporate Services Division
Department of Immigration and Border Protection**

ATTACHMENT A

Schedule of Documents

FOI request: FA 16/09/00074

File Number: ADF2016/47703

No.	Date of document	No. of pages	Description	Decision on release	
1.	23/12/2015	4	Submission to the <i>Review of Customs Licensing Regimes</i>	Exempt in full	Section 45
2.	31/12/2015	6	Submission to the <i>Review of Customs Licensing Regimes</i>	Exempt in full	Section 45
3.	22/12/2015	2	Submission to the <i>Review of Customs Licensing Regimes</i>	Exempt in full	Section 45
4.	18/12/2015	4	Submission to the <i>Review of Customs Licensing Regimes</i>	Exempt in full	Section 45
5.	10/11/2015	3	Submission to the <i>Review of Customs Licensing Regimes</i>	Exempt in full	Section 45
6.	15/01/2016	3	Submission to the <i>Review of Customs Licensing Regimes</i>	Exempt in full	Section 45
7.	18/02/2016	2	Key themes from submissions to the Licensing Review	Exempt in full	Section 22(1)(a)(ii) Section 47C
8.	Feb 2016	2	FAS Traveller, Customs and Industry Back pocket briefs – Customs Licensing Review	Release in part	Section 22(1)(a)(ii)
9.	2/05/2016	4	FAS Traveller, Customs and Industry Back pocket brief – Customs Licensing Review	Release in part	Section 22(1)(a)(ii)
10.	22/09/2016	8	Strategic Issues Brief – Customs Broker integrity vulnerabilities	Release in part	Section 22(1)(a)(ii)
11.	20/12/2016	4	Meeting Brief Customs Brokers and Forwarders Council of Australia (CBFCA) meeting.	Release in part	Section 22(1)(a)(ii)