



21 March 2017



In reply please quote:

FOI Request: FA 17/01/00250

File Number: ADF2017/3349

Dear 

I refer to your email dated 6 January 2017 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 relating to the application for the acceptance by the Australian Border Force of Tariff Concession Order 1647043, including:

- 1. any correspondence, file notes and memos relating to the proposed wording for the TCO;*
- 2. proposed and finalised tariff classification for the TCO, and*
- 3. proposed usage and Illustrative Descriptive Material (IDM) of the goods subject to the TCO application.'*

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

2 Charges

On 23 February 2017, the Department notified you of the estimated charges associated with processing this request in the amount of . On 28 February 2017, you paid the charges in full.

3 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.

4 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;
- consultations with affected third parties;
- 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.

5 Decision on access

The Department has identified 16 documents that fall within the scope of your request. These documents were in the possession of Department on 6 January 2017 when your FOI request was received.

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 one document in full, and
- Release 15 documents in part with deletions.

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 16 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 9 January 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 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 FOI 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 an 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.

7 Section 47G(1)(a) of the FOI Act – Business Affairs

Section 47G(1)(a) of the FOI Act permits conditional exemption of documents containing business information where disclosure of that information would, or could reasonably be expected to, unreasonably affect the organisation adversely in respect of its lawful business, commercial or financial affairs.

I consider that information contained within the documents concerns the business, commercial or financial affairs of an organisation. The information is in the nature of technical specifications of goods being imported by a commercial organisation.

In determining whether disclosure of the information within the documents would or could reasonably be expected to adversely affect the lawful business, commercial or financial affairs of an organisation, I have had regard to the following factors:

- (a) The extent to which the information is well known;
- (b) Whether the organisation or undertaking is known to be associated with the matters dealt with in the documents;
- (c) The availability of the information from publicly accessible sources; and
- (d) Any other matters that the Department considers relevant.

The information contained within these documents that I have marked 's47G' is not in the public domain and the information is not available from publicly accessible sources, such as the organisation's website. Whilst information relating to some of the goods can be located on the company's website, the information I have marked 's47G' is not, and as such the organisation may not generally be known to be associated with the matters referred to in these particular parts of the documents.

I am therefore satisfied that the disclosure of the information marked 's47G' would, or could reasonably be expected to, unreasonably affect that organisation in respect of its lawful business, commercial or financial affairs.

I have consulted with the affected third parties in relation to the release of this information under the FOI Act, and they have indicated that they do not consent for it to be released, and object to its disclosure under the FOI Act.

As such, I have decided that the parts of the documents are conditionally exempt under section 47G 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

8 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 consider 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 activities of third party organisations. 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:

- 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.

9 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.

10 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>.

11 Making a Complaint

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

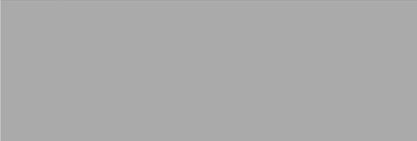
Your enquiries to the Australian Information Commissioner can be directed to:

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.

12 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 17/01/00250

File Number: ADF2017/3349

No.	Date of document	No. of pages	Description	Decision on release
1.	30/8/2016	9	Application for Tariff Concession Order	Release in part s47F
2.	30/8/2016	3	Letter from Broker attaching TCO application, IDM, LMS and statement from TCO applicant	Release in part s47F
3.	Undated	12	Illustrative Descriptive Material: <ul style="list-style-type: none"> • Product data sheet PVSNVC3000 • Context RL single-phase grid-tie inverter • Product data sheet PVSNVC4000 • Product data sheet PVSNVC5000 • Product data sheet PVSNVC20000 • Conext CL three-phase grid-tieinverters 	Release in part s47G
4.	29/8/2016	4	Local Manufacturer Searches	Release in full
5.	26/8/2016	2	Letter from Schneider Electric Subject: TCO application for Grid Tie Inverters	Release in part s47F
6.	2/9/2016	1	Email from Tariff Classification to Broker Subject: ADF2016/47043	Release in part s22(1)(a)(ii) s47F
7.	3/9/2016	2	Email from Broker to Tariff Classification Subject: RE: ADF2016/47043	Release in part s22(1)(a)(ii) s47F
8.	5/9/2016 1525	3	Email from Tariff Classification to Broker Subject: RE: ADF2016/47043	Release in part s22(1)(a)(ii) s47F s47G
9.	20/9/2016	2	Letter from DIBP to Broker Subject: Tariff Concession System Application Acceptance	Release in part s22(1)(a)(ii) s47F
10.	20/9/2016	1	File note	Release in part s22(1)(a)(ii) s47F
11.	20/9/2016	2	Email from Tariff Concessions Administration to Broker Subject: Proposed Wording Agreement – additional information TC 1647043	Release in part s22(1)(a)(ii) s47F

No	Date of document	No. of pages	Description	Decision on release
12.	20/9/2016	2	Email from Broker to Tariff Concessions Subject: RE: Proposed Wording Agreement TC 1647043	Release in part s22(1)(a)(ii) s47F
13.	21/9/2016	1	Statement of Reasons – Acceptance as a valid application – TC 1647043	Release in part s22(1)(a)(ii)
14.	21/11/2016	1	Statement of Reasons – Making of a Tariff Concession Order TC 1647043	Release in part s22(1)(a)(ii)
15.	21/11/2016	2	Letter from DIBP to Broker Subject: Tariff Concession System – Application Successful	Release in part s22(1)(a)(ii) s47F
16.	31/8/2016	2	Tariff Advice	Release in part s22(1)(a)(ii) s47G