



## Attachment A

### DECISION RECORD

#### Request Details

FOI Request FA 17/02/00349  
File Number ADF2017/19544

#### Original scope of request

1. On 1 February 2017 you requested:

*Documents showing the cost of litigation in relation to the song 'I am Australian',  
Pocketful of Tunes Pty Ltd etc (e.g. [2015] ACopyT 1 handed down 3 March 2015).  
This request includes the Department's own costs and any costs paid to other parties.*

#### Documents in scope

2. I have identified four documents which are relevant to your request. These documents are detailed at Attachment B – Schedule of Documents.

#### Authority to make decision

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

#### Information considered

4. In reaching my decision, I have considered the following:
  - The *Freedom of Information Act 1982*;
  - The documents as released in Attachment C;
  - Consultations with relevant business areas; and
  - The Australian Information Commissioner's guidelines relating to access to documents held by government.

#### Decision

5. I have decided to release three of the documents (2, 3 and 4) to you in full. I have decided to exempt the remaining document (1) in full.

#### Reasons for decision

6. The Schedule of Documents – Attachment B details the exemptions that have been applied. Exemptions were applied on the following grounds:

#### ***Section 45 - Documents containing material obtained in confidence***

7. Following advice provided by the relevant business area, I have decided that Document 1 is exempt in full under s.45(1) of the FOI Act.

8. I am satisfied that the exempted document is one to which s.45(2) does not apply.

9. The Australian Information Commissioner's Guidelines state:

*5.159 To found an action for breach of confidence (which means s 45 would apply), the following five criteria must be satisfied in relation to the information:*

- it must be specifically identified*
- it must have the necessary quality of confidentiality*
- it must have been communicated and received on the basis of a mutual understanding of confidence*
- it must have been disclosed or threatened to be disclosed, without authority*
- unauthorised disclosure of the information has or will cause detriment*

10. The exempted document was prepared by the parties with a clear and mutual understanding that the details of the document were to remain confidential and only be communicated to those third parties involved in the document. The document specifically identifies that the document is both confidential and to remain confidential.

11. The document has retained its confidential nature, in that it is known only to the limited group, being the parties involved in the document. I am satisfied that it is not common knowledge and has not entered the public domain, or been used in such a way that the confidential nature of the document has been waived.

12. The document was signed by all parties with a clear understanding that the details of the document were to remain confidential to the parties involved. Release of the document would breach the Department's commitment to the parties involved to keep the document confidential.

13. The document clearly identifies that unauthorised disclosure or threatened disclosure would be without authority in respect of this request. As such, release of the document would breach the Department's commitment to keep the document confidential.

14. Consultation with the relevant business area has confirmed that release of the document would or could reasonably be expected to damage the Department's relationship with the parties involved. Further, release of the document could potentially lead to legal action being taken against the Department for breach of confidence which could lead to exposure not only to financial detriment but also to public criticism.

15. This assessment is made considering the nature of the information and current advice from the relevant business area regarding the Department's relationship with the concerned third parties.

16. Accordingly, I have reached the view that the document meets the criteria in the Australian Information Commissioner's Guidelines and have exempted the document in full under s45(1) of the FOI Act.

*(signed electronically)*

  
Authorised decision maker  
Department of Immigration and Border Protection  
Email: [foi@border.gov.au](mailto:foi@border.gov.au)

23 March 2017



**Attachment B**

**SCHEDULE OF DOCUMENTS TO DECISION RECORD**

FOI Request FA 17/02/00349  
File Number ADF2017/19544

No.	Date of document	Folio	Description	Relevant legislation (FOI Act)	
1.	29/07/2016	-	Document	Exempt in full	s.45(1)
2.	20/09/2016	1	Tax invoice	Released in full	
3.	9/02/2017	2	Detailed invoice	Released in full	
4.	9/02/2017	3	Detailed invoice	Released in full	