



## **ATTACHMENT A**

### **DECISION RECORD**

#### **1 Request Details**

FOI Request: FA 16/10/01801  
File Number: ADF2016/45908

#### **2 Scope of Request**

You have requested access to the following documents:

*'All correspondence directly between the Department of Immigration and border Protection and Safework SA from June 2015 [until 21 October 2016] relating to imported building products containing asbestos, excluding:*

- 1. any attachments to emails;*
- 2. any correspondence with third parties, including any such correspondence included within email chains, and*
- 3. any emails of an administrative nature including meeting requests and acceptance notifications.'*

#### **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;
- Guidelines published by the Office of the Australian Information Commissioner under s 93A of the FOI Act;
- consultation responses from a third party consulted in accordance with 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 42 documents that fall within the scope of your request. These documents were in the possession of Department on 21 October 2016 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 36 documents in part with deletions, and
- Exempt six documents in full from disclosure.

The reasons for the decision are set out below.

A schedule of these documents is at **ATTACHMENT B** 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 42 documents that fall within the scope of your request 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 21 October 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.

You also agreed as part of the scope of your request that any attachments to emails; correspondence with third parties, including any such correspondence included within email chains, and any emails of an administrative nature including meeting requests and acceptance notifications should be regarded as outside the scope of your request. Some of the documents contain email correspondence with third parties.

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. That information has been marked 's22(1)(a)(ii)' in the documents, and has been marked 'third party correspondence'.

The remainder of the documents have been considered for release to you as they are relevant to your request.

## **6.2 Section 37 of the FOI Act - Documents Affecting Enforcement of Law and Protection of Public Safety**

**Section 37(1)(a)** of the FOI Act provides that a document is an exempt document if its disclosure would, or could reasonably be expected to prejudice the conduct of an investigation of a breach, or possible breach, of the law, or prejudice the enforcement or proper administration of the law in a particular instance.

The information marked 's37(1)(a)' in the documents relates to an ongoing investigation of a breach, or possible breach, of the law, and if disclosed would, or could reasonably be expected to prejudice the conduct of that investigation.

I have decided that this information is exempt from disclosure under section 37(1)(a) of the FOI Act

**Section 37(1)(b)** of the FOI Act provided that a document is an exempt document if its disclosure would, or could reasonably be expected to disclose, or enable a person to ascertain, the existence or identify of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law.

I have decided that the information marked 's37(1)(b)' would, or could reasonably be expected to disclose, or enable a person to ascertain, the existence or identify of a confidential source of information and as such, is exempt from disclosure under Sections 37(1)(b) of the FOI Act.

## **6.3 Section 47B of the FOI Act – Commonwealth-State relations**

On 18 November 2016, the Department notified you that it intended to consult a State Authority prior to making a decision on access to the documents under section 26A of the FOI Act as it appeared that the State may reasonably wish to contend that the documents that fell within the scope of this request are conditionally exempt under section 47B and that access to that document would, on balance, be contrary to the public interest (section 11A of the FOI Act).

The Department has consulted SafeWork SA in relation to the release of the documents that fall within the scope of your request. SafeWork SA has made submissions to the effect that the disclosure of the information would, or could reasonably be expected to, cause damage to relations between the Commonwealth and the State and that such a disclosure would divulge information communication in confidence by or on behalf of a State to the Commonwealth.

**Section 47B(a)** of the FOI Act provides that a document is conditionally exempt if disclosure of the document would, or could reasonably be expected to, cause damage to relations between the Commonwealth and a State.

The documents that fall within the scope of your request consist of correspondence between the Department, being a Commonwealth law enforcement agency, and a State authority, being SafeWork SA.

The Australian Border Force (ABF), which forms part of this Department, is responsible for the protection of Australia's border in partnership with a range of law enforcement and other agencies. I consider that disclosure of the information marked 's47B(b)' in the documents would adversely affect the continued level of trust and cooperation between the Department, including the ABF, and these agencies.

As a result I am satisfied that this would impair or prejudice the flow of information between the Department, the ABF and its Federal, State and Territory partners agencies and could reasonably be expected to damage the working relationships between the those partner agencies.

I have decided that this information is conditionally exempt under section 47B(a) of the FOI Act.

**Section 47B(b)** of the FOI Act provides that a document is conditionally exempt if disclosure of the document would divulge information or matter communicated in confidence by or on behalf of the Government of a State or an authority of a State, to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

Section 271 of the *Work Health and Safety Act 2012* [South Australia] (the WHS Act) provides that information or documents obtained in exercising any power or function under the WHS Act must not be disclosed and is regarded as confidential information. An exception to this is where the use of the information or document is necessary for administering, or monitoring or enforcement compliance with the WHS Act, or is necessary to lessen or prevent a serious risk to public health or safety.

The information provided to this Department by SafeWork SA relates to investigations into allegations regarding the importation of asbestos. The information was gathered by Safework SA in the exercise of its powers and functions under the WHS, including the administration, monitoring and enforcement compliance with the WHS Act. As such, I am satisfied that the disclosure of this information would divulge information communicated in confidence by or on behalf of the Government of a State to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

I have decided that this information is conditionally exempt under section 47B(b) 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 at paragraph 6.7 below.

#### **6.4 Section 47E of the FOI Act – Operations of Agencies**

Section 47E(d) of the FOI Act provides that documents are conditionally exempt if disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

The information marked 's47E(d)' in the documents consists of operational email addresses used by this Department. These email addresses are not otherwise publicly available, and disclosure of this information could reasonably be expected to result in potential vexatious communication and public inquiries which these operational areas are not resourced to manage. Given the operational focus of those business areas, such a diversion of the resources could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of this Department.

As such, I have decided that these parts of the documents are conditionally exempt under section 47E(d) of the FOI Act. 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 at paragraph 6.7 below

## **6.5 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 parts of documents marked 's47F' would disclose personal information relating to third parties. The information within these 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 third parties' information is not well known and would only be known to a limited group of people with a business need to know. As the third parties' 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 public sources.

I do not consider that the third parties' information would be relevant to the broader scope of your request, as you are seeking access to documents concerning the importation of building products containing asbestos, rather than information that relates to other individuals.

I am satisfied that the disclosure of the information within these 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. 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 at paragraph 6.7 below.

## **6.6 Section 47G of the FOI Act – Business Affairs**

Section 47G(1)(b) of the FOI Act provides that a document is conditionally exempt if its disclosure would disclose information concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information could reasonably be expected to prejudice the future supply of information to the Commonwealth for the purpose of the administration of a law of the Commonwealth.

I considered that parts of the documents marked 's47G(1)(b)' contain information concerning the business, commercial or financial affairs of an organisation or undertaking.

I also consider that the disclosure of that information could reasonably be expected to prejudice the future supply of information to the Commonwealth for the purpose of the administration of a law of the Commonwealth.

The information is directly connected to the investigation of a breach, or possible breach, of the law or the enforcement or proper administration of the law.

As such, I have decided that the parts of the documents marked 's47G(1)(b)' are conditionally exempt under section 47G of the FOI Act. 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 at paragraph 6.7 below

## **6.7 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:

- I consider that disclosure of the parts of the documents that are conditionally exempt under **section 47B** of the FOI Act could reasonably be expected to prejudice the Department's ability to work with and obtain confidential information from both Federal and State law enforcement partners.
- Managing the security and integrity of Australia's borders is integral to the operations of the Department. The Department works closely with other agencies as part of those operations, and any prejudice to the effectiveness of those partnerships in undertaking that role would result in a substantial adverse effect on the operations of the Department.
- The information provided by SafeWork SA to this Department is inherently confidential in nature by virtue of the provisions of the WHS Act, and any breach of that understanding of confidentiality would result in damage to the relationships between this Department and its partner law enforcement agencies.
- I consider there to be strong public interest in the Department's ability to effectively protect the borders of Australia and any prejudice to that role would be contrary to any public interest that may exist in this information being disclosed.
- I consider that the disclosure of the parts of the documents that are conditionally exempt under **section 47E(d)** of the FOI Act could reasonably be expected to prejudice the operations of the Department. Any diversion of the resources from operationally focused business areas could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of this Department, and, as a result, the ability of the Department to protect Australia's borders.
- I consider there to be a strong public interest in ensuring that the ability of the Department to conduct its operational functions is not compromised or prejudiced in any way. I consider that this factor weighs heavily against disclosure.
- I consider that 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 future supply of information to the Commonwealth for the purpose of the administration of a law of the Commonwealth. The information provided to this Department by certain organisations and undertakings has been provided on a voluntary basis.
- Any precedent of disclosure of such information, or the placing of such information by the Department in the public domain would undermine the level of trust that the Department has been bestowed by these organisations and undertakings in their dealings with the Department. This could reasonably be expected to prejudice the supply of similar information to the Department in future law enforcement investigations.
- There is a strong public interest in the Department being able to work effectively with such organisations and undertakings in the pursuit of its role in protecting Australia's borders. I consider that the disclosure of this information would be contrary to any public interest that may exist in disclosing this information, and as such, 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.



**Authorised Decision Maker**  
**Department of Immigration and Border Protection**

**13 January 2017**



## ATTACHMENT B

### Schedule of Documents

FOI request: FA 16/10/01801

File Number: ADF2016/45908

No.	Date of document	No. of pages	Description	Decision on release	
1.	13/11/2015 1423	5	Email from DIBP to SafeWork SA	Release in part	22(1)(a)(ii) 47B(a) 47B(b) 47E(d) 47G(1)(a) 47G(1)(b)
2.	3/12/2015 1604	1	Email from SafeWork SA to DIBP	Release in part	22(1)(a)(ii)
3.	13/5/2016 0858	7	Email from SafeWork SA to DIBP	Release in part	22(1)(a)(ii) 37(1)(a) 37(1)(b) 47B(b)
4.	13/5/2016 0955	8	Email from DIBP to SafeWork SA	Exempt in full	22(1)(a)(ii) 37(1)(a) 37(1)(b) 47B(b)
5.	19/5/2016 0948	2	Email from SafeWork SA to DIBP	Exempt in full	22(1)(a)(ii) 37(1)(a) 47B(b)
6.	20/5/2016 1627	4	Email from DIBP to SafeWork SA	Exempt in full	22(1)(a)(ii) 37(1)(a) 47B(a) 47B(b) 47E(d)
7.	26/05/2016 1643	2	Email from DIBP to SafeWork SA	Release in part	22(1)(a)(ii) 37(1)(a) 47B(a)
8.	27/5/2016 1031	4	Email from SafeWork SA to DIBP	Release in part	22(1)(a)(ii) 37(1)(a) 47B(b) 47B(a)
9.	1/6/2016 1502	1	Email from SafeWork SA to DIBP	Exempt in full	22(1)(a)(ii) 37(1)(a) 37(1)(b) 47B(b)
10.	6/6/2016 0926	1	Email from DIBP to SafeWork SA	Release in part	22(1)(a)(ii) 37(1)(a) 47B(b)
11.	6/6/2016 1015	2	Email from SafeWork SA to DIBP	Release in part	22(1)(a)(ii) 37(1)(a) 47B(b) 47B(a)

No.	Date of document	No. of pages	Description	Decision on release	
12.	6/6/2016 1558	1	Email from SafeWork SA to DIBP	Release in part	22(1)(a)(ii)
13.	8/6/2016 1917	2	Email from SafeWork SA to DIBP	Release in part	22(1)(a)(ii) 47B(a)
14.	14/7/2016 1249	1	Email from SafeWork SA to DIBP	Release in part	22(1)(a)(ii) 37(1)(a)
15.	15/7/2016 1153	2	Email from DIBP to SafeWork SA	Release in part	22(1)(a)(ii) 37(1)(a)
16.	15/7/2016 1333	2	Email from SafeWork SA to DIBP	Release in part	22(1)(a)(ii) 47B(b) 37(1)(a)
17.	15/7/2016 1540	3	Email from SafeWork SA to DIBP	Release in part	22(1)(a)(ii) 47B(b) 37(1)(a)
18.	15/7/2016 1545	3	Email from DIBP to SafeWork SA	Release in part	22(1)(a)(ii) 47B(b) 37(1)(a)
19.	17/8/2016 1504	1	Email from SafeWork SA to Workplace Health and Safety Queensland and DIBP	Release in part	22(1)(a)(ii) 47B(b) 47G(1)(b)
20.	17/8/2016 1511	2	Email from DIBP to SafeWork SA and Workplace Health and Safety Queensland	Release in part	22(1)(a)(ii) 47B(b) 47G(1)(b)
21.	17/8/2016 1537	2	Email from SafeWork SA to DIBP	Release in part	22(1)(a)(ii) 47B(b) 47G(1)(b)
22.	17/8/2016 1638	3	Email from SafeWork SA to DIBP	Release in part	22(1)(a)(ii) 47B(b) 47G(1)(b)
23.	17/8/2016 1708	2	Email from SafeWork SA to DIBP	Release in part	22(1)(a)(ii) 47B(b) 47G(1)(b)
24.	18/8/2016 1111	3	Email from DIBP to Workplace Health and Safety Queensland and SafeWork SA	Release in part	22(1)(a)(ii) 47B(b) 47G(1)(b)
25.	18/8/2016 1224	5	Email from SafeWork SA to DIBP	Release in part	22(1)(a)(ii) 47B(b) 47G(1)(b)
26.	25/8/2016 1149	1	Email from DIBP to SafeWork SA	Release in part	22(1)(a)(ii) 37(1)(a) 47G(1)(b)
27.	25/8/2016 1449	2	Email from SafeWork SA to DIBP	Release in part	22(1)(a)(ii) 37(1)(a) 47G(1)(b)

No.	Date of document	No. of pages	Description	Decision on release	
28.	25/8/2016 1716	2	Email from DIBP to SafeWork SA	Release in part	22(1)(a)(ii) 37(1)(a) 47G(1)(b)
29.	13/9/2016 0916	1	Email from SafeWork SA to DIBP	Exempt in full	22(1)(a)(ii) 47B(b) 47G(1)(b)
30.	13/9/2016 1003	1	Email from SafeWork SA to DIBP	Release in part	22(1)(a)(ii) 47G(1)(b)
31.	14/9/2016 1243	1	Email from SafeWork SA to DIBP	Exempt in full	22(1)(a)(ii) 37(1)(a) 47B(a)
32.	19/9/2016 0952	2	Email from SafeWork SA to DIBP	Release in part	22(1)(a)(ii) 47B(b) 47G(1)(b)
33.	19/9/2016 0958	2	Email from DIBP to SafeWork SA	Release in part	22(1)(a)(ii) 37(1)(a) 47B(a)
34.	19/9/2016 1358	2	Email from DIBP to RedlineSA	Release in part	22(1)(a)(ii) 47B(b) 47G(1)(b)
35.	19/9/2016 1514	2	Email from SafeWork SA to DIBP	Release in part	22(1)(a)(ii) 47B(b) 47G(1)(b)
36.	21/9/2016 1642	2	Email from DIBP to SafeWork SA	Release in part	22(1)(a)(ii) 47B(b) 47G(1)(b)
37.	22/9/2016 1454	4	Email from SafeWork SA to DIBP	Release in part	22(1)(a)(ii) 47B(b) 47G(1)(b)
38.	29/9/2016 1636	2	Email from SafeWork SA to DIBP	Release in part	22(1)(a)(ii)
39.	4/10/2016 1637	2	Email from DIBP to SafeWork SA	Release in part	22(1)(a)(ii) 37(1)(a)
40.	14/10/2016 1303	1	Email from DIBP to SafeWork SA	Release in part	22(1)(a)(ii) 37(1)(a)
41.	19/10/2016 1056	2	Email from SafeWork SA to DIBP	Release in part	22(1)(a)(ii) 47G(1)(b)
42.	10/11/2016 1507	4	Email from SafeWork SA to DIBP	Release in part	22(1)(a)(ii) 47B(b) 47F 47G(1)(b)