



In reply please quote:

FOI Request: FA 17/01/00996

File Number: ADF2017/8263

9 March 2017



Dear 

I refer to your email dated 22 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:

'all documents relating to the request for revocation of TCO 1647286 by Visy.'

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;
- 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

The Department has identified 10 documents that fall within the scope of your request. These documents were in the possession of Department on 22 January 2017 when your FOI request was received.

A schedule of these documents is at **ATTACHMENT A** 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 as follows:

- Release one document in full;
- Release six documents in part with deletions, and
- Exempt three documents in full from disclosure.

The reasons for the decision are set out below.

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 10 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 23 January 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.

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 47 of the FOI Act – Trade Secrets

Section 47 provides that a document is an exempt document if its disclosure would disclose:

- (a) trade secrets; or
- (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

Document 3 consists of a technical drawing, being the Illustrative Descriptive Material provided to the Department in support of the request for revocation of Tariff Concession Order 1647282.

In considering whether this document would disclose Trade Secrets, I have taken the following factors into consideration:

- the extent to which the information is known outside the business of the owner of that information
- the extent to which the information is known by persons engaged in the owner's business
- measures taken by the owner to guard the secrecy of the information
- the value of the information to the owner and to his or her competitors
- the effort and money spent by the owner in developing the information
- the ease of difficulty with which others might acquire or duplicate the secret.

I have consulted with an affected third party, being the company owns the technical drawing, and I have taken into consideration the submissions that they have made that this information is confidential in nature

I have decided that document 3 contains trade secrets and as such is exempt from disclosure under section 47 of the FOI Act.

Documents 4 and 5 consist of invoices and a work sheet that contain financial details. Part of document 2 also contains costing details for the substitutable goods.

In considering whether these documents would disclose commercially valuable information, I have taken the following factors into consideration:

- whether the information is known only to the person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value
- whether the information confers a competitive advantage on the person to whom it relates – for example, if it lowers the cost of production or allows access to markets not available to competitors
- whether a genuine "arm's-length" buyer would be prepared to pay to obtain that information
- whether the information is still current or out of date (noting that out of date information may no longer have any value)
- whether disclosing the information would reduce the value of a business operation or commercial activity, reflected perhaps in a lower share price.

I have consulted with an affected third party, being the company that owns the commercially valuable information. I have taken into consideration the submissions that they have made that this information is commercially valuable and would be, or could reasonably be expected to, be destroyed or diminished if the information were disclosed.

I have decided that documents 4 and 5 and part of document 2 contain commercially valuable information and as such are exempt from disclosure under section 47 of the FOI Act.

7 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 the revocation of a 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 third parties.

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.

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 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.

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 17/01/00996

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No	Date of document	No. of pages	Description	Decision on release	
1.	6/12/2016 1346	3	Email from Broker to TARCON Subject: TCO Objection – TCO 1647286	Release in part	s22(1)(a)(ii) s47F
2.	5/12/2016	7	Request for Revocation of a Tariff Concession Order (TCO) or Commercial Tariff Concession Order (CTCO)	Release in part	s47 s47F
3.	3/12/2015	1	Illustrative Descriptive Material	Exempt in full	s47
4.	Oct & Nov 2016	2	Invoices	Exempt in full	s47
5.	Undated	1	Working Sheet	Exempt in full	s47
6.	7/12/2016 0957	3	Email from TARCON to Broker Subject: RE: TCO objection	Release in part	s22(1)(a)(ii) s47F
7.	5/1/2017	1	Nu-Pure Health Services Range	Release in full	
8.	6/1/2017	7	Request for Revocation of Tariff Concession Order – Reasons for Decision – TC 1647286	Release in part	s22(1)(a)(ii)
9.	6/1/2017	2	Letter from the Department to Broker Subject: Tariff Concession System – Revocation Application Successful	Release in part	s22(1)(a)(ii) s47F
10.	2/3/2017	1	Letter from the Department to Broker Subject: Tariff Concession System – Revocation application acknowledgement	Release in part	s22(1)(a)(ii) s47F