



30 November 2018



In reply please quote:

FOI Request: FA 18/10/00336

File Number: ADF2018/205496

Dear 

Freedom of Information (FOI) request - Access Decision

On 24 September 2018, the Department of Home Affairs (the Department) received a request for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

1 Scope of request

You have requested access to the following documents:

For each of the following Tariff Concession Orders:

- 1789961 beverage tanks
- 17102106 autoclave vessels
- 1618988 storage tanks
- 1545049 pickling tanks

the following documents: *Applications*

- 1) *Identification material—accompanying applications or provided later*
- 2) *Questions to potential local producers—whether included in the applications or later*
- 3) *Potential local producers responses to those questions—whether to the applicant or ABF*
- 4) *Applicant responses to ABF or those potential local producers responses*
- 5) *ABF internal records (including correspondence with applicant or potential local producers) on:*
 - a. *tariff classification of the products*
 - b. *extent to which the products capable of production in Australia and*
 - c. *whether or not to make this application into a Tariff Concession Order.*

2 Authority to make decision

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 records.

3 Relevant material

In reaching my decision I referred to the following:

- the terms of your request
- the documents relevant to the request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access.

4 Staged decision

I note that you have sought access to documents in relation to four distinct Tariff Concession Orders (TCO). In order to finalise each distinct part of your request, I have advised that you I will be issuing staged decisions in this request, each decision addressing each TCO.

This is the second of the staged decisions and is in relation to TCO 1789961 beverage tanks.

5 Documents in scope of request

The Department has identified 15 documents as falling within the scope of your request. These documents were in the possession of the Department on 24 September 2018 when your request was received.

Attachment A is a schedule which describes the relevant documents and sets out my decision in relation to each of them.

6 Decision

The decision in relation to the documents in the possession of the Department which fall within the scope of your request is as follows:

- Release one document in full
- Release 14 documents in part with deletions

7 Reasons for Decision

Detailed reasons for my decision are set out below.

Where the schedule of documents indicates an exemption claim has been applied to a document or part of document, my findings of fact and reasons for deciding that the exemption provision applies to that information are set out below.

7.1 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 8 October 2018, 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 marked 's22(1)(a)(ii)' 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.

7.2 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 the FOI Act 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 documents concerning 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 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.

7.3 Section 47G 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 am satisfied that documents 3 and 4 contain information concerning the business, commercial or financial affairs of an organization.

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 is not in the public domain, the organisation concerned is not generally known to be associated with the matters referred to in these documents, and the information is not available from publicly accessible sources, such as the organisation's website. I am therefore satisfied that the disclosure of the information would, or could reasonably be expected to, unreasonably affect that organisation in respect of its lawful business, commercial or financial affairs.

In making my decision, I have taken into consideration submissions received from the affected third party organisation concerned. The affected third party has made submissions that this information consists of internal information shared only with employees and customers who have executed non-disclosure agreements. The document contains sensitive technical information, together with Intellectual Property, which, if disclosed, could put it at a commercial disadvantage. They have also submitted that disclosure of the information contained within the document would put at risk an exclusive distribution agreement that they are a party to.

I have decided that the information marked 's47G' in the documents is 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.

7.4 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 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 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 following factors that weigh against the release of the conditionally exempt information in the documents:

- 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.
- The Department is committed to complying with its obligations under the *Privacy Act 1988*, which sets out standards and obligations that regulate how the Department must handle and manage personal information. It is firmly in the public interest that the Department uphold the rights of individuals to their own privacy and meets its obligations under the Privacy Act. I consider that this factor weighs heavily against disclosure of the personal information contained within these documents.
- 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 a third party organisation. 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.

8 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Details/C2017C00251>. If you are unable to access the legislation through this website, please contact our office for a copy.

9 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:

By email to: foi.reviews@homeaffairs.gov.au

OR

By mail to:
Freedom of Information Section
Department of Home Affairs
PO Box 25
BELCONNEN ACT 2617

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>.

10 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 Home Affairs as the relevant agency.

11 Contacting the FOI Section

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at foi@homeaffairs.gov.au.



Authorised Decision Maker
Department of Home Affairs

ATTACHMENT A

SCHEDULE OF DOCUMENTS REQUEST UNDER *FREEDOM OF INFORMATION ACT 1982*

FOI request: FA 18/10/00336

	Date of document	No. of pages	Description	Decision on release	
1.	17/08/2017	1	Email from applicant attaching application	Release in part	s22(1)(a)(ii) 47F
2.	18/08/2017	9	Application for Tariff Concession Order	Release in part	47F
3.	Various	29	Local Manufacturer Searches	Release in part	47F 47G
4.	Undated	24	Illustrative Descriptive Material / Product Information Sheets	Release in part	47G
5.	23/08/2017	2	Email to Broker Subject: RE: New Tariff Concession application - Beverage tanks	Release in part	s22(1)(a)(ii) 47F
6.	23/08/2017	4	Email to Tariff Classification Subject: New TCO Application Attachments: <ul style="list-style-type: none">TANKS 2 WordingTariff Class Sheet 1789961	Release in part	s22(1)(a)(ii)
7.	Undated	2	Description of Goods including the Customs Tariff Classification	Release in full	
8.	30/08/2017	3	Email Tariff Classification Subject: RE: Completed Tariff Classification Sheet - TC 1789961 Attachments: <ul style="list-style-type: none">Completed Tariff Class Sheet TC1789961	Release in part	s22(1)(a)(ii)
9.	13/09/2017	2	Email from Broker Subject: RE: TC 1789967, 1789961 and 1789954	Release in part	s22(1)(a)(ii) 47F
10.	14/09/2017	2	Letter to Broker Tariff Concession System Application Acceptance Attachment: Draft wording of gazette notice	Release in part	s22(1)(a)(ii) 47F
11.	13/09/2017	1	Statement of reasons – Acceptance as a valid application – TC 1789961	Release in part	s22(1)(a)(ii)
12.	14/09/2017	2	Letter to potential Local Manufacturer Tariff Concession System – Application Acceptance Attachment: wording and classifications	Release in part	s22(1)(a)(ii) 47F
13.	22/11/2017	1	Tariff Concession Order TC 1789961	Release in part	s22(1)(a)(ii)
14.	22/11/2017	1	Statement of Reasons – Making of a Tariff Concession Order – TC 1789961	Release in part	s22(1)(a)(ii)
15.	22/11/2017	2	Letter to Broker Tariff Concession System – Application Successful	Release in part	s22(1)(a)(ii) 47F