



4 March 2019

In reply please quote:

FOI Request: FA 18/11/01255

File Number: ADF2018/233271

Dear [REDACTED]

Freedom of Information (FOI) request - Access Decision

On 23 November 2018, the Department of Home Affairs (the Department) received a request for access to document 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 document:

- 1) *All ABF investigation division reports recommending prosecution for the alleged illegal importation of asbestos since January 2015.*
- 2) *A list of infringement notices issued by the investigation division for alleged illegal importation of asbestos since January 2015.*

On 12 December 2018 you agreed to revise the scope of your request to the following:

limiting the scope of part 2 of this request to a list of Infringement Notices.

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 document 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 issued by the Information Commissioner under section 93A of the FOI Act
- advice from Departmental officers with responsibility for matters relating to the documents to which you sought access

4 Document in scope of request

The Department has identified two documents as falling within the scope of your request. These documents were in the possession of the Department on 23 November 2018 when your request was received.

5 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
- Exempt one document in full from disclosure

6 Reasons for Decision

Detailed reasons for my decision are set out below.

My findings of fact and reasons for deciding that the exemption provision applies are set out below.

6.1 Section 42 of the FOI Act – Legal Professional Privilege

Section 42 of the FOI Act provided that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

I am satisfied that the document falling within scope for part 1 of your request comprise confidential communications passing between the Australian Border Forces and the legal advisers of the Department of Home Affairs, for the dominant purpose of receiving legal advice.

In determining that the communication is privileged, I have taken into the consideration the following:

- there is a legal adviser-client relationship;
- the communication was for the purpose of giving and/or receiving legal advice;
- the advice given was independent; and
- the advice was given on a legal-in-confidence basis and was therefore confidential.

The content of the document is not part of the rules, guidelines, practices or precedents relating to the decisions and recommendations of the Department. The document does not fall within the definition of operational information and remains subject to legal professional privilege.

I have therefore decided that document is exempt from disclosure under section 42 of the FOI Act.

7 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.

8 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: foi.reviews@homeaffairs.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>.

9 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.

10 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.

Yours sincerely



Authorised Decision Maker
Department of Home Affairs