



Australian Government
Attorney-General's Department
Office of Corporate Counsel

13/7500

1 July 2013

Mr Brendan Molloy
Secretary
Pirate Party

By e-mail only: foi+request-107-c473e8e3@righttoknow.org.au

Dear Mr Molloy

Freedom of Information Request No: FOI 13/051

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982* (the FOI Act).

SUMMARY

I, Frances Brown, Director, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests. On 10 May 2013, you first requested copies of the following departmental files:

- 1) 12/17985 CJD - BILB - TPP - E-commerce chapter - privacy issues
- 2) 12/12277 BILB - Trans-Pacific Partnership negotiations - Leesburg Round (September 2012)
- 3) 12/16402 BILB - Trans-Pacific Partnership negotiations - Auckland Round (December 2012)
- 4) 12/16722 Trans Pacific Partnership - Intellectual Property
- 5) 12/17275 Trans Pacific Partnership 15th round general file

Then on 17 May 2013, you lodged a new request for documents relating to the Intellectual Property or E-Commerce chapters of the Trans-Pacific Partnership Agreement, from within the following departmental files:

- 1) 12/17985 CJD - BILB - TPP - E-commerce chapter - privacy issues
- 2) 12/12277 BILB - Trans-Pacific Partnership negotiations - Leesburg Round (September 2012)
- 3) 12/16402 BILB - Trans-Pacific Partnership negotiations - Auckland Round (December 2012)
- 4) 12/16722 Trans Pacific Partnership - Intellectual Property
- 5) 12/17275 Trans Pacific Partnership 15th round general file

I have identified 80 documents which fell within the scope of your request. I did this by examining the electronic records of the files nominated in your request.

The attached schedule of documents (**Attachment A**) provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

I have decided to grant partial access to 22 documents (subject to deletions) and to release 1 document in full. More information, including the reasons for my decision, is set out below.

On 17 June 2013, this Department contacted you by e-mail and requested an extension of time to process your request until 21 June 2013 due to staff shortages within the Department and the need to consult other agencies. You were only willing to agree to an extension until 19 June 2013, but we were unable to obtain a response from the agency with which we were required to consult until 21 June 2013. As we did not make a decision within the statutory timeframe, there was a deemed access refusal decision for your request.

We applied for an extension of time under section 15AC of the FOI Act to process your request. On 27 June 2013, the Office of the Australian Information Commissioner (the OAIC) granted this request. The OAIC granted an extension until 1 July 2013 to make a decision on your request and you were advised of this on 27 June 2013. As I have made my decision within the extended timeframe and complied with the OAIC's condition, the deemed access refusal decision on your request is taken to never have occurred (s15AC(7)).

DECISION AND REASONS FOR DECISION

With regard to the documents in question, I have decided

- to grant access in part to document 4
- to grant access in part to document 7
- to grant access in part to document 8
- to grant access in part to document 11
- to grant access in full to document 12
- to grant access in part to document 15
- to grant access in part to document 22
- to grant access in part to document 28
- to grant access in part to document 29
- to grant access in part to document 32
- to grant access in part to document 33
- to grant access in part to document 35
- to grant access in part to document 60
- to grant access in part to document 61
- to grant access in part to document 62
- to grant access in part to document 63
- to grant access in part to document 64
- to grant access in part to document 66
- to grant access in part to document 75
- to grant access in part to document 76
- to grant access in part to document 78
- to grant access in part to document 79

- to grant access in part to document 80

Material taken into account

I have taken the following material into account in making my decision:

- the content of the documents that fall within the scope of your request;
- the FOI Act (specifically sections 11A, 33(a)(iii), 33(b), 47C(1) and 47F)
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act and
- the views of other Commonwealth agencies

Documents affecting international relations (subsections 33(a)(iii) and 33(b))

Some material within Documents 1-10, 13-30, 33, 35-59, 62, 66-68, 71-74, 76 and 76, 78-79 is conditionally exempt under both subsections 33(a)(iii) and 33(b) of the FOI Act, which state respectively that:

A document is an exempt document if disclosure of the document under this Act would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth.

A document is an exempt document if disclosure of the document under this Act would divulge any information or matter communicated in confidence by or on behalf of a foreign Government ...

The material which I have decided to exempt is information relating to the subject-matter of the Trans-Pacific Partnership Agreement negotiations. At the start of the TPP process it was agreed that ... all participants would maintain the confidentiality of ... *the negotiating texts, proposals of each Government, accompanying explanatory material, emails related to the substance of the negotiations, and other information exchanged in the context of the negotiations* in order to facilitate candid and productive negotiations. Australia has signed a letter to this effect and this is consistent with normal negotiating practice. The release of this information would therefore divulge information communicated in confidence by foreign Governments and I am satisfied that it is exempt under the Act.

Public interest conditional exemption – personal privacy (s47F)

Some material within documents 4, 11, 13-15, 18, 22, 28-29, 32-33, 35, 60-61, 63-64, 66, 75-76, 78-80 is conditionally exempt under subsection 47F(1) of the FOI Act. Subsection 47(1) states that:

A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

The material which I have decided to exempt is personal information (names, mobile telephone numbers and private e-mail addresses) of Departmental officers and a journalist. In my view, releasing this material would involve the unreasonable disclosure of the individuals' personal information and I am satisfied that this material falls within the scope of the conditional exemption for personal information. I have not exempted the names of senior Departmental officers, as I am satisfied that this is not an unreasonable disclosure of the individuals' personal information.

Under section 11A(5) of the FOI Act, access to a conditionally exempt document must be given unless it would be contrary to the public interest. Under the Australian Information Commissioner's Guidelines (Part 6), I have identified the following factors as relevant in determining whether the disclosure of this personal information would cause specific harm.

In favour of disclosure is the requirement to provide *the Australian community [with] access to information held by the Commonwealth Government*. A factor against disclosure is the requirement not to release information which could *reasonably be expected to prejudice the protection of an individual's right to privacy*.

As required by subsection 11B(4) of the FOI Act, I have ensured that no irrelevant factors have been considered in reaching this decision. In my view, the factors against disclosure, in particular the importance of maintaining an individual's right to privacy, outweigh any factors in favour of disclosure (such as the right to access Government-held information). I am therefore satisfied that the material noted is conditionally exempt under subsection 47F(1) of the Act and that disclosure would be contrary to the public interest.

Public interest conditional exemption – deliberative processes (s47C(1))

Some material within documents 61 and 63 is conditionally exempt under subsection 47C(1) of the FOI Act. Subsection 47C(1) states that:

A document is conditionally exempt if its disclosure under this Act would disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency.

In my view, releasing this material would disclose opinions, advice and recommendations which were recorded for the purposes of the deliberative processes of the agency concerned.

Under section 11A(5), access to a conditionally exempt document must be given unless it would be contrary to the public interest. Under the Australian Information Commissioner's Guidelines (Part 6), I have identified the following factors as relevant in determining whether the disclosure of this deliberative process information would cause specific harm. In favour of disclosure is the requirement to *reveal the reason for a Government decision and any background or contextual information that informed the decision*. A factor against disclosure is the requirement not to release information which could *reasonably be expected to prejudice the management function of an agency*.

As required by subsection 11B(4) of the FOI Act, I have ensured that no irrelevant factors have been considered in reaching this decision. In my view, factors against disclosure, in particular the importance of maintaining an agency's ability to conduct deliberative processes and prejudice to the management function of an agency outweigh the factors in favour of disclosure, in particular the right to access Government-held information. I am therefore satisfied that some material within the documents is conditionally exempt under subsection 47C(1) of the FOI Act and that disclosure would be contrary to the public interest.

Your review rights

If you are dissatisfied with my decision, you may apply for an internal review of my decision or a review by the Information Commissioner. We encourage you to first seek an internal review as it

may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the Act, you may apply in writing to the Freedom of Information and Privacy Section of the Attorney-General's Department for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter. Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the Act, you may apply to the Australian Information Commissioner for a review of my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

Online: <https://forms.australia.gov.au/forms/oaic/foi-review/>

E-mail: enquiries@oaic.gov.au

Post: GPO Box 2999, Canberra ACT 2601

In person: Level 3, 175 Pitt Street, Sydney NSW

More information about reviews by the Information Commissioner is available on the Office of the Australian Information Commissioner website at http://www.oaic.gov.au/foi-portal/review_complaints.html#foi_merit_reviews.

Questions about this decision

If you wish to discuss this decision, please contact me on (02) 6141 2735 or e-mail foi@ag.gov.au.

Yours sincerely



Frances Brown
Director
Freedom of Information & Privacy Section
Office of Corporate Counsel
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600
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Attachments

- A. Schedule of documents
- B. R - 4 - TPP copyright meetings
- C. R - 7 TPP exceptions article

- C. R - 8 - Media Talking Points – TMO – TPP IP Limitations and Exceptions 6 August 2012
- D. R - 11 - TPP US provisions analysis
- E. R - 12 - TPP copyright analysis - K Wetherall
- F. R - 15 - TPP questions for Leesburg
- G. R - 18 - TPP questions for Leesburg
- H. R - 22 - TPP questions for Leesburg
- I. R - 28 - IP suggested text
- J. R – 29 – TPP enquiry – draft response
- K. R – 32 – Attachment – Media Inquiry
- L. R – 33 – Questions for Leesburg
- M. R – 60 – Advising FAQs are OK
- N. R – 61 – Attaching revised FAQs
- O. R – 62 – TPP FAQ
- P. R – 63 – FAQs can be retained
- Q. R – 64 – Suggested changes to draft FAQs
- R. R – 66 – Auckland round
- S. R – 75 – Travel completion report
- T. R – 76 – Travel completion report
- U. R – 76 – Tasks arising from 15th round
- V. R – 79 – Signed Travel Minute
- W. R – 80 – Travel minute Auckland

Attachment A

Schedule of documents – Freedom of information request no. FOI 13/051

DEPRATMENTAL ACRONYMS

- AGD = Attorney-General's Department
 - BILB = Business and Information Law Branch
 - CJD/CrJD = Criminal Law Division
 - CLLEB = Criminal Law and Law Enforcement Branch
 - OIL = Office of International Law
 - ILHRD = International Law & Human Rights Division
- DFAT = Department of Foreign Affairs and Trade

Doc .no.	Date and time	Description of document	Access decision	Exemption
12/17985 CJD - BILB - TPP - E-commerce chapter - privacy issues				
1	8/5/2013 at 4:22pm	BILB - draft brief - May 2013 - BILB comments Business and Information Law Branch – CLD	Access refused	33(a)(iii) 33(b)
2	30/11/2012 at 12:58pm	BILB - TPP - revised US text - November 2012 Business and Information Law Branch - CLD		
3	21/11/2012 at 4:35pm	Australian delegation e-commerce chapter brief for Auckland December 2012 - BILB comments Business and Information Law Branch - CLD	Access refused	33(a)(iii) 33(b)
12/12277 BILB - Trans-Pacific Partnership negotiations - Leesburg Round (September 2012)				
4	10/10/2012 at 6:35pm	AGD to DFAT - TPP copyright meetings - USTR meeting with AGD Business and Information Law Branch - CLD	Access in part	33(a)(iii) 33(b) 47F

Doc .no.	Date and time	Description of document	Access decision	Exemption
5	4/10/2012 at 6:29pm	TPP post Leesberg text with AGD comments Business and Information Law Branch - CLD	Access refused	33(a)(iii) 33(b)
6	4/10/2012 at 6:29 pm	TPP post Leesberg text with AGD comments Business and Information Law Branch - CLD	Access refused	33(a)(iii) 33(b)
7	7/8/2012 at 5:01pm	TPP exceptions article - TMO Briefs - August 2012 Business and Information Law Branch - CLD PP	Access in part	33(a)(iii) 33(b) 47F
8	6/8/2012	Attachment – Media Talking points	Access in part	33(a)(iii) 33(b) 47F
9	6/8/2012	Attachment - Australia's position v2 – TMO – TPP 6 August 2012	Access refused	33(a)(iii) 33(b)
10	5/7/2012 at 12:06pm	Email (DFAT) RE: Peru proposal Business and Information Law Branch - CLD		
11	22/8/2012 at 2:34pm	Email DFAT - FW: TPP US provisions analysis - Feb 2012 Business and Information Law Branch - CLD		47F
12	July 2011	Attachment – An Australian Analysis of the February 2011 Leaked US TPPA IP Chapter Text – copyright and enforcement – Kate Weatherall	Access in full	
13	20/8/2012 at 7:30pm	Email DFAT - TPP: IP Leesburg: Brief Business and Information Law Branch - CLD	Access refused	33(a)(iii) 33(b) 47F
14		Attachment - TPP Draft Brief		
15	27/8/2012 at 1:52pm	Email DFAT - TPP: Questions for Leesburg Business and Information Law Branch – CLD	Access in part	33(a)(iii) 33(b) 47F
16		Attachment - TPP Draft Brief	Access refused	33(a)(iii) 33(b)
17		Attachment – TPP Request for advice	Access refused	33(a)(iii) 33(b)
18	27/8/2012 at 7:23pm	Email DFAT - TPP: Questions for Leesburg Business and Information Law Branch - CLD	Access in part	33(a)(iii) 33(b) 47F

Doc no.	Date and time	Description of document	Access decision	Exemption
19		Attachment - TPP Draft Brief	Access refused	33(a)(iii) 33(b)
20		Attachment – TPP request for advice	Access refused	33(a)(iii) 33(b)
21		Attachment – TPP Draft Brief	Access refused	33(a)(iii) 33(b)
22	27/8/2012 at 7:47pm	Email DFAT - Questions for Leesburg Business and Information Law Branch - CLD	Access in part	33(a)(iii) 33(b) 47F
23		Attachment - TPP Draft Brief	Access refused	33(a)(iii) 33(b)
24		Attachment – TPP request for advice	Access refused	33(a)(iii) 33(b)
25	11/9/2012 at 2:36pm	Email (DFAT) Leesburg– issue 4 Business and Information Law Branch - CLD	Access refused	33(a)(iii) 33(b)
26	7/9/2012 at 3:51pm	Email (DFAT) Leesburg - issue 3 Business and Information Law Branch - CLD	Access refused	33(a)(iii) 33(b)
27	23/8/2012 at 1:45pm	Compiled document reflecting redlined text (not including comments) Business and Information Law Branch - CLD	Access refused	33(a)(iii) 33(b)
28	6/8/2012 at 1:58pm	AGD - DFAT - RE: TPP: IP Business and Information Law Branch - CLD	Access in part	33(a)(iii) 33(b) 47F
29		Attachment – Talking points – version 1	Access in part	33(a)(iii) 33(b) 47F
30	6/8/2012 at 1:44am	AGD - DFAT - RE: TPP: IP Business and Information Law Branch - CLD	Duplicate	
31		Attachment – Talking points version 1		
32		Attachment – Media inquiry	Access in part	47F

Doc no.	Date and time	Description of document	Access decision	Exemption
33	3/8/2012 at 9:12 am	DFAT- AGD FW: Statement on proposal Business and Information Law Branch - CLD	Access in part	33(a)(iii) 33(b) 47F
34	3/8/2012 at 9:09am	DFAT- AGD FW: Statement on US proposal Business and Information Law Branch - CLD	Duplicate	
35	1/8/2012 at 7:04pm	DFAT- AGD TPP: Questions for Leesburg Business and Information Law Branch - CLD	Access in part	33(a)(iii) 33(b) 47F
36		Attachment – TPP Draft Brief	Access refused	33(a)(iii) 33(b)
37		Attachment – Advice	Access refused	33(a)(iii) 33(b)
38	31/7/2012 at 9:00am	DFAT- AGD FW: Request for advice Business and Information Law Branch - CLD	Access refused	33(a)(iii) 33(b)
39	23/7/2012 at 3:22pm	DFAT- AGD - FW: Request for advice Business and Information Law Branch – CLD	Access refused	33(a)(iii) 33(b)
12/16402 - BILB - Trans-Pacific Partnership negotiations - Auckland Round (December 2012)				
40	21/12/2012 at 1:38pm	BILB to CLLEB attaching TPP Business and Information Law Branch - CLD	Access refused	33(a)(iii) 33(b)
41		Attachment – AGD comments on DFAT consolidated draft text	Access refused	33(a)(iii) 33(b)
42	18/1/2013 at 1:56pm	TPP AGD response to DFAT questions - post Auckland Dec 2012 round Business and Information Law Branch - CLD	Access refused	33(a)(iii) 33(b)
43	6/12/2012 at 9:01am	BILB and OIL advising on - NZ alt text Business and Information Law Branch - CLD		
44		Attachment - TPP Draft Brief		
45	2/12/2012 at 10:52am	DFAT to BILB attaching final brief for Auckland round Business and Information Law Branch - CLD		
46		Attachment – TPP Final Brief		

Doc no.	Date and time	Description of document	Access decision	Exemption
47	26/11/2012 at 4:25pm	BILB to DFAT attaching AGD comments on the draft brief Provisions Business and Information Law Branch - CLLD		
48		TPP Draft Brief		
49	30/11/2012 at 4:00pm	BILB to DFAT attaching draft brief with AGD comments - noting subject to views from CrJD Business and Information Law Branch - CLLD		
50		AGD comments on DFAT consolidated draft text		
51	30/11/2012 at 2:20pm	AGD comments on DFAT consolidated draft text - TPP Auckland November 2012 Business and Information Law Branch - CLLD		
52	30/11/2012 at 1:14pm	AGD comments - DFAT consolidated briefing - Auckland Round TPP - Nov 2012 Business and Information Law Branch - CLLD		
53	20/11/2012 at 11:36am	BILB to DFAT advising of preference for NZ option Business and Information Law Branch - CLLD		
54	19/11/2012 at 2:20pm	DFAT to BILB forwarding NZ comments re: concerns with AU proposal Business and Information Law Branch - CLLD		
55		Attachment - Incorporation into text		
56	15/11/2012 at 7:28am	DFAT to BILB forwarding NZ proposal Business and Information Law Branch - CLLD		
57		Attachment - Incorporation into text		
58	2/11/2012 at 6:21am	DFAT to BILB requesting comments for Auckland Business and Information Law Branch - CLLD		
59		Attachment - TPP Draft Brief		
60	12/11/2012 at 4:53pm	OIL to BILB advising that the FAQs are OK Business and Information Law Branch - CLLD	Access in part	47F
61	12/11/2012 at 6:57pm	DFAT to BILB attaching revised FAQs for comment Business and Information Law Branch - CLLD	Access in part	47C 47F
62		Attachment - TPP FAQ - Draft 2	Access in part	33(a)(iii) 33(b)
63	13/11/2012 at 9:21am	BILB to DFAT advising that FAQs can be retained if necessary Business and Information Law Branch - CLLD	Access in part	47C 47F

Doc no.	Date and time	Description of document	Access decision	Exemption
64	12/11/2012 at 5:13pm	BILB to DFAT providing suggested changes to draft FAQs Business and Information Law Branch - CLD	Access in part	47F
65		Attachment – TPP FAQ - Draft 2	Duplicate	
66	22/10/2012 at 6:20pm	DFAT to BILB providing update from the Leesburg round and details for upcoming Auckland round Business and Information Law Branch - CLD	Access in part	33(a)(iii) 33(b) 47F
12/16722 - Trans Pacific Partnership - Intellectual Property				
67	29/11/2012 at 3:30pm	RE: IP: Request for views on provisions for Auckland International Law Trade and Security Branch – ILHRD	Access refused	33(a)(iii) 33(b)
68	29/11/2012 at 3:01pm	RE: IP: Request for views on provisions for Auckland International Law Trade and Security Branch - ILHRD	Duplicate	
69	12/11/2012 at 1:23pm	FW: IP: draft FAQs - response requested COB today International Law Trade and Security Branch - ILHRD	Duplicate	
70		Attachment – TPP FAQs	Duplicate	
71	24/10/2012 at 4:11pm	FW: TRIM: TPP: text post Leesburg International Law Trade and Security Branch - ILHRD	Access refused	33(a)(iii) 33(b)
72		Attachment – TPP consolidated text		
73	24/10/2012 at 4:13pm	FW: TRIM: FW: Leesburg: Request for views International Law Trade and Security Branch – ILHRD		
74		Attachment - TPP Questions for OIL with references		
12/17275 Trans Pacific Partnership 15th round general file				
75	8/2/2013 at 11:10am	TPP 15th round: Travel Completion Report International Law Trade and Security Branch – ILHRD	Access in part	47F
76	7/2/2013	Attachment – Travel completion report	Access in part	33(a)(iii) 33(b) 47F

Doc .no.	Date and time	Description of document	Access decision	Exemption
77	8/2/2013 at 10:09 am	TPP 15th round: Travel Completion Report International Law Trade and Security Branch - ILHRD	Duplicate	
78	17/12/2012 at 2:50pm	TPP - tasks arising from 15th round International Law Trade and Security Branch – ILHRD	Access in part	33(a)(iii) 33(b) 47F
79	8/11/2012	Signed Travel Minute International Law Trade and Security Branch – ILHRD		
80	7/11/2012 at 3:09 pm	Travel Minute Auckland 15th round International Law Trade and Security Branch - ILHRD	Access in part	47F