



Australian Government
Department of Foreign Affairs and Trade

FOI Ref: 1302-F501
File No: 12/16568
Date: 15 April 2013

Mr Brendan Molloy
Secretary
Pirate Party

Dear Mr Molloy

Re: Freedom of Information Request

I refer to your current request for access under the *Freedom of Information Act 1982* (FOI Act) to documents relating to:

The most recent and most comprehensive PPQs and Senate Estimates Briefings, and briefings prepared for meetings with various stakeholders on the Australian Government's position on the current negotiating text of the Trans-Pacific Partnership Agreement - Intellectual Property chapter.

I am authorised under section 23 of the FOI Act to make access decisions, and have been appointed to be the decision-maker on your request as required by departmental procedures. I have been provided with the documents identified in searches within the Department as relevant to your request.

Decision

After careful consideration of the material and the terms and context of your request, I have identified 13 documents as being relevant to your request. I have decided to release five documents in full, some with irrelevant material deleted, and to release eight documents in part.

Some material in the enclosed documents has been deleted under section 22 of the FOI Act, which allows material that is either irrelevant or exempt from release to be deleted, to enable the remaining material in the document to be released. Where I have deleted material in a document because it is irrelevant, I have noted on that part of the document that material has been deleted under section 22 of the FOI Act. In my view, disclosing this material would disclose information that is reasonably regarded as irrelevant to your request.

Section 26 of the FOI Act provides that where access to a document has been denied in full or in part, a statement must be provided to the applicant setting out findings on material questions of fact, the material on which those findings were based, and the reasons for the decision. Please find this information below.

Material considered

The material on which my decision is based includes:

- the request and the documents within the scope of the request;
- the FOI Act;
- the Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act; and
- the views of third parties consulted.

Reasons for my decision, including any material findings of fact

The reasons for my decision are set out below.

Some material has been deleted under section 22(1)(a)(ii) of the FOI Act, which allows material that is either irrelevant to the request or exempt from release to be deleted, to enable the remaining material in the document to be released.

I have decided to delete material which I consider to be outside the scope of the FOI request, and therefore irrelevant. This includes material concerning other chapters of the Trans-Pacific Partnership (TPP), and other international agreements. I have also decided to exempt the personal information (names and contact details) of non-SES employees of the Department. I note that where there is no need for contact with a particular public servant in the future, disclosure of the public servant's name may be unreasonable and so I have redacted the personal details of non-SES staff.

Some material is exempt from disclosure under section 33(a)(iii) of the Act, which provides as follows:

"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".

The material in question is exempt from disclosure as its release could reasonably be expected to cause damage to Australia's international relations by prejudicing our negotiating position within the TPP. For example, as negotiations have progressed since some of the exempted material was created, public disclosure of this material now would adversely affect Australia's position in future rounds of negotiations. Further, the disclosure of some exempted material could reasonably be expected to damage Australia's working relations with other TPP negotiating partners.

Some material is exempt from release under section 33(b) of the FOI Act, which provides that:

"A document is an exempt document if disclosure of the document under this Act:

(b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization 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 to delete material which was communicated in confidence within the context of formal TPP negotiations. Such communications are subject to the confidentiality agreement between TPP parties. This material includes comment by Australian officials on confidential negotiating text.

Your review rights

Internal review

Under the provisions of section 54 of the FOI Act, you are entitled to request a review of my access refusal decision. Your request should be directed to:

Director
Freedom of Information and Privacy Law Section
Department of Foreign Affairs and Trade
R G Casey Building
John McEwen Crescent
BARTON ACT 0221

Australian Information Commissioner

Under the provisions of section 54 of the FOI Act, you are entitled to request a review by the Australian Information Commissioner of my access decision. You may also make a complaint to the Australian Information Commissioner under section 70 on the Department's performance of its functions or the exercise of power under the FOI Act.

Your request for review or complaint should be directed to:

GPO Box 2999, Canberra ACT 2601
Telephone: 1300 363 992
Fax: (02) 9284 9666
Email: enquiries@oaic.gov.au

Complaints to the Commonwealth Ombudsman

You may complain to the Ombudsman concerning actions taken by an agency in the exercise of its powers or, more specifically, the performance of its functions under the FOI Act. There is no fee for making a complaint. The Ombudsman will conduct an independent investigation of your complaint.

You may complain to the Ombudsman by calling or writing to:

Commonwealth Ombudsman
GPO Box 442
Canberra ACT 2601

Telephone: 1300 362 072
Fax: (02) 6249 7829

Should you have any queries regarding this matter please contact your FOI case officer, Claudia Hernandez, on (02) 6261 3135.

Yours sincerely



Peter Hussin
Senior FOI Adviser
Domestic Legal Branch