



22 June 2017

Mr B Smith

BY EMAIL: foi+request-2761-8d441d49@righttoknow.org.au

In reply please quote:

FOI Request: FA 16/11/01635

File Number: ADF2016/72474

Dear Mr Smith

I refer to your email dated 21 November 2016 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

The Department has interpreted your request as a request to access the following documents held by the Department:

'documents relating to relating to firearms that are deemed to be of "military appearance" but have an action that is legal on category A or B licences in Australia States and Territories. A specific example of this is the Troy Defence, TROY Pump Action Rifle that was banned due to features that "substantially duplicate a military firearm". Specifically:

- 1. documents relating the criteria for Customs to ban the importation of a firearm by a firearms dealer or other legal importer with the intent of legal distribution to the licensed civilian market;*
- 2. documents relating to what constitutes so called "military features" and why customs thinks it is appropriate to ban firearms on appearance but not action as this rifles action would deem it legal in all states and territories on a B licence;*
- 3. documents relating to whether there has been any discussion or movement on the TROY Pump Action Rifle's legal importation and if so what this is;*
- 4. any checklists for "military appearance" pistols, rifles and shotguns;*
- 5. documents that directly ban the TROY Pump Action Rifle from importation with justifiable reasons why it is the case, and*
- 6. documents relating to who determines if a firearm "substantially duplicates a military firearm", and what their qualification is to do so both in experience with firearms and knowledge with firearms and on an official level.'*

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 of request

In relation to paragraphs 1-4 of your request, the Department holds no discrete documents that fall within the scope of these parts of your request.

The importation of firearms into Australia is controlled under Regulation 4F of the Customs (Prohibited Imports) Regulations 1956 (the Regulations). The Regulations are published at <https://www.legislation.gov.au/Series/F1996B03651>.

The Regulations set out the criteria for the importation of firearms into Australia. These are contained in Part 1 of Schedule 6 of the Regulations.

The Regulations do not control the importation firearms that are of 'military appearance'. However, the Regulations do control the importation of firearms that are 'substantially the same in appearance as a fully automatic firearm'. The Troy pump action rifle is classified under item 12 of Part 2 of Schedule 6 to the Regulations.

In relation to part 4 of your request, there is no checklist for firearms of 'military appearance' or firearms that are 'substantially the same in appearance as a fully automatic firearm'.

In relation to paragraph 5, the Department has identified four documents that fall within the scope this part of your request. These documents consists of a email between the Department and the Attorney General's Department (AGD), an Explanatory Statement in relation to a 2008 Legislative Instrument, a Notice of Recent Amendments to Schedule 6 of the Customs (Prohibited Imports) Regulations 1956, and a letter from the Minister for Immigration and Border Protection.

In relation to paragraph 6, the Department has identified one document that falls within the scope of this part of your request. This document contains, in part, information relating to the Training and Qualification of Firearms Identification and Safety Testing Officers (FSTO), along with the Re-certification of those officers.

A schedule of these documents is at **ATTACHMENT A** for your reference.

These documents were in the possession of the Department on 21 November 2016 when your FOI request was received.

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 two documents in full, and
- release three documents in part so far as they are relevant to your request.

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 four documents that fall within the scope of your request 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 25 November 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. Document 1 contains such details, and I consider this information to be outside the scope of your request.

In addition, the scope of your request relates specifically to firearms. Document 4 is a letter from the Minister which contains information that is relevant to your request. However, given the scope of your request, I consider that the individual to whom the letter is addressed, and the individual who is named within that letter is not relevant to your request.

In relation to document 5, only part of this document relates to the training and qualifications of a firearms officer, being paragraphs 2.2 and 2.3.

As such, I have decided that parts of these 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 released to you as they are relevant to your request.

6.2 Section 24A – Requests may be refused if documents do not exist

Section 24 of the FOI Act provides that the Department may refuse a request for access to a document if all reasonable steps have been taken to find a document and the Department is satisfied that the document does not exist.

I am satisfied that the Department has conducted reasonable searches in relation to paragraphs 1-4 of your request, and that no documents were in the possession of the Department at the date of your request. As such, the Department has no documents to produce, and I am therefore refusing access to parts 1-4 of your request under section 24A of the FOI Act.

7 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.

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:

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>.

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 Immigration and Border Protection as the relevant agency.

10 Contact

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



Alison Smith
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 16/11/01635

File Number: ADF2016/72474

No.	Date of document	No. of pages	Description	Decision on release
1.	14/12/2016 1843	2	Email from Firearms Team AGD Subject: Classification of Troy Sporting Rifle	Relevant information released in full
2.	2008	7	Explanatory Statement – Select Legislative Instrument 2008 No. 255	Released in full
3.	16/12/2008	1	Notice of Recent Amendments – Schedule 6 – Customs (Prohibited Imports) Regulations 1956	Release in full
4.	30/08/2016	1	Letter from Minister for Immigration and Border Protection	Relevant information released in full
5.	June 2014	2	Instructions and Guideline (pages 6 and 7 only)	Relevant information released in full