



Australian Government
Department of Foreign Affairs and Trade

FOI Ref: 1401-F737
File No: 14/1483
Date: February 2014

Mr Geordie Guy
Right to Know

Sent by email to: foi+request-505-bdee05c2@righttoknow.org.au

Dear Mr Guy

Re: Freedom of Information Request

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

"The most recent working draft of the Trans-Pacific Partnership Agreement".

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 document 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 one document as being relevant to your request. I have decided that this document is exempt from release.

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 document within the scope of the request;
- the FOI Act; and
- the Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act.

Reasons for my decision, including any material findings of fact

All parties to the Trans-Pacific Partnership ('TPP') Agreement negotiations, including the Australian Government, have agreed in writing to protect the confidentiality of the draft text of the TPP Agreement and documents relating to the substance of the negotiations.

The working draft of the TPP Agreement ('the document') is therefore exempt from disclosure under sections 33(b) and 33(a)(iii) of the FOI Act.

Section 33(b) provides:

"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, 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."

Section 33(a)(iii) provides:

"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".

Parties to the TPP Agreement negotiations have expressly undertaken to protect the confidentiality of the working draft of the Agreement. The working draft comprises text from all parties that has been provided on the basis that it will be treated confidentially. Therefore, the document is exempt under section 33(b) of the FOI Act.

If this document is disclosed, in contravention of the Australian Government's confidentiality undertaking, it could reasonably be expected to damage our international relations. In my view, the damage would be both substantial and adverse and would:

- damage our working relations with the other parties (foreign governments) to the negotiations;
- undermine the trust that other governments have in the Australian Government's ability to protect information provided to it in confidence; and
- prejudice the willingness of foreign governments to provide confidential information to the Australian Government in future.

I further consider that disclosure of the document would damage Australia's international relations by undermining candid and productive negotiations and impact negatively on Australia's negotiating position in the TPP Agreement negotiations.

For these reasons, this document is exempt from disclosure under section 33(a)(iii) of the FOI Act.

Although I have decided that the draft working text of the TPP Agreement is exempt, I would like to note that, consistent with Australia's treaty making practice, once the TPP Agreement text is finalised between the parties, it will be tabled in both Houses of Parliament for public consultation and scrutiny. In the meantime, negotiators are available to meet with stakeholders to discuss Australia's objectives in the negotiations and provide updates on progress. Many stakeholders have availed themselves of the opportunity to talk to negotiators about the TPP and make submissions on the opportunities and challenges

facing Australia. The Department also publishes up-to-date material relevant to the TPP negotiations on our website: <http://www.dfat.gov.au/fta/tpp>. Please contact tpp@dfat.gov.au if you would like more information, or to arrange a meeting.

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 decision. Your request in writing within 30 days of the date of this letter 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

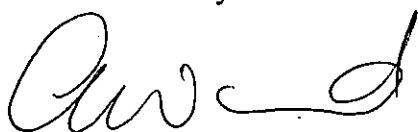
You may complain to the Ombudsman concerning actions taken by an agency in the exercise of its powers or, more specifically, the performance of its functions under the FOI Act. There is no fee for making a complaint. The Ombudsman will conduct an independent investigation of your complaint.

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 Ms Claudia Hernandez on (02) 6261 3135 or by email at foi@dfat.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Elizabeth Ward', with a stylized, cursive script.

Elizabeth Ward
Assistant Secretary
Goods & Investment Branch