



22 June 2022

Angela

BY EMAIL: foi+request-8985-3a595d75@righttoknow.org.au

In reply please quote:

FOI Request: FA 22/06/00416

File Number: OBJ2022/14663

Dear Angela

Freedom of Information (FOI) request – Access Decision

On 5 June 2022, 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. Who has imported AEONMED medical equipment into Australia since 2019 to present?

2. What are the arrival dates for imports of AEONMED medical equipment into Australia from 2019?

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 FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from Departmental officers with responsibility for matters relating to the document to which you sought access

4 Document in scope of request

The Department has identified one document as falling within the scope of your request. This document was in the possession of the Department on 5 June 2022 when your request was received.

5 Decision

The decision in relation to the document in the possession of the Department which fall within the scope of your request is as follows:

- 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 to that information are set out below.

6.1 Section 45 of the FOI Act – Documents containing material obtained in confidence

Section 45 of the FOI Act provides that a document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.

I have decided that the document contains material that, if disclosed, would found an action by a person for breach of confidence.

The document contains confidential submissions provided by the importing party. The information was provided by the importing party to the Department in circumstances giving rise to the obligation of confidence.

The Integrated Cargo System (ICS) is the Department's electronic clearance and reporting system for imports and exports and links the Department with owners of goods or their agents and automates procedures for the reporting of imports and exports.

The role of the Department in the import and export of goods is to:

- ensure that all goods being imported and exported from Australia are reported as required;
- administer controls on behalf of permit issuing agencies on the import and export of restricted or prohibited goods; and
- gather information regarding the nature and volume of imports and exports to assist government and industry in policy and decision-making.

Therefore, the information entered into the ICS system is a mandatory legislative requirement completed by owners to ensure compliance with the Customs Act.

The majority of declarations are submitted electronically in the ICS and the authentication process associated with that procedure makes the data being transferred as part of that transaction implicitly secure and confidential.

I further note that:

- the data within the document specifically outlines particular importation data that is commercially sensitive including the importers' details, volume and value of commodities;
- the data within the document is sufficiently secret in that only the importer itself (or those acting on their behalf) would be aware of the data relating to their importation activities. The information is not common knowledge or in the public domain;
- the importer views their data as valuable commercial information that has been given to the Department in confidence for the limited purposes of assessing Customs duties and clearing import/export processes;
- an importer/exporter would not be aware, and is certainly not advised, that the Department may disclose the sensitive commercial information they provide to the Department to applicants under the FOI Act. Further, the importer has not consented to the Department providing their importation data to the FOI applicant, and
- release of information could reasonably be expected to prejudice the competitive commercial activities of the importer. Any public release of this information would lead to a commercial disadvantage or impairment for the importer referred to within the data.

I am satisfied that the nature of the information is inherently confidential as:

- The information is specifically identified as being confidential;
- The information has the necessary quality of confidentiality as it contains information that is not common knowledge or in the public domain;
- The information was provided to the Department and received on the basis of a mutual understanding of confidence;
- If the information was disclosed, it would be without the authority of the importing party and/or their agent; and
- Disclosure of the information will likely cause detriment to the importing party.

I am satisfied that the disclosure of the information within the document would found an action by the importer for breach of confidence and as such I have decided that these documents are exempt from disclosure under section 45 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:

OR

By email to: foi.reviews@homeaffairs.gov.au

By mail to:
Freedom of Information Section
Department of Home Affairs
PO Box 25
BELCONNEN ACT 2617

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 <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

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.

Elaine – position 60097486
Authorised Decision Maker
Department of Home Affairs