



30 July 2015

In reply please quote:

FOI Request FA 15/02/00568
File Number ADF2015/5383

CD
Right to Know

Sent by email to: foi+request-921-f99df21a@righttoknow.org.au

Dear CD

Freedom of Information request – decision on request

This letter refers to your request received on 11 February 2015 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to the following documents:

I write to you under the Freedom of Information Act 1982 seeking any and all written documentation such as, but not limited to; letters, emails, notes, press releases, statements and faxes held by the "Department of Immigration and Border Protection" that refer to "Freedom" branded food items and/or "Muesli Bars" between the dates of 1/6/14 and 10/2/15.

I note in this ABC news article

<http://www.abc.net.au/news/2015-01-30/freedom-muesli-bars-rejected-by-manus-island-detention-centre/6057430> dated 30/1/15

Following extensive consultation under s.24AB of the FOI Act, the scope of your request was revised on 21 April 2015 to the following:

... any emails held by the Department of Immigration and Border Protection that refer to 'Freedom' branded food items and/or 'Muesli Bars' between the date range of 23/1/15 and 31/1/15.

Decision

My decision is to release, in part, the documents within the scope of your request. Please see the attached Decision Record and Schedule of Documents. Read together these form my reasons for decision as required under s.26 of the FOI Act.

Outstanding payment

On 1 June 2015 you agreed to pay the charge of \$622.12 for the processing of your request. The Department is not required to release documents to you until the charges have been paid in full. I note that you have paid a deposit of \$155.53. Therefore, you are required to pay the remainder of the charge, being **\$466.59** before the Department can provide you with the documents listed in the schedule of documents.

Details on how to make a payment were contained in the charges notice. I have reattached a credit card authorisation form for your convenience.

Review rights

Internal review

If you disagree with my decision, you have the right to apply for an internal review by the department of my 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 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
Department of Immigration and Border Protection
PO Box 25
BELCONNEN ACT 2617

Or by email to: foi@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 my decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a review request to the OAIC, please see FOI fact sheet 12 'Freedom of information – Your review rights', available online at www.oaic.gov.au.

How to make a complaint about the handling of this FOI request

You may complain to the Australian Information Commissioner if you have concerns about how the department has handled your request under the FOI Act. Information about how to submit a complaint is also available at www.oaic.gov.au.

Contacting the FOI Section

If you wish to discuss this matter, please contact the FOI contact officer for this matter, Marianne Nolte-Crimp, on (02) 6264 1757.

Yours sincerely



Ben Wright
Authorised decision maker
Department of Immigration and Border Protection
Email foi@border.gov.au

Attachments

- ✓ Attachment A - Decision Record
- ✓ Attachment B - Schedule of Documents
- ✓ Attachment C – Extract of relevant legislation
- ✓ Attachment D – Credit Card Authorisation Form



Attachment A

DECISION RECORD

Request Details

FOI Request FA 15/02/00568
File Number ADF2015/5383

Scope of request

... any emails held by the Department of Immigration and Border Protection that refer to 'Freedom' branded food items and/or 'Muesli Bars' between the date range of 23/1/15 and 31/1/15.

Documents in scope

Departmental documents (emails and email trails) – containing 77 folios.

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 documents or to amend or annotate Departmental records.

Information considered

In reaching my decision, I have considered the following:

- The *Freedom of Information Act 1982*;
- Departmental documents (identified above); and
- The Australian Information Commissioner's guidelines relating to access to documents held by government.

Reasons for decision

I have considered the files within the scope of your request and applied exemptions in part or in full to documents as detailed in the Schedule of Documents. You should read the schedule in conjunction with the exemptions below.

Deletion of exempt or irrelevant material under s.22 of the Act

Section 22(2) of the Act provides that, where an agency reaches the view that a document contains exempt information or material that is irrelevant to the request **and** it is possible for the agency to prepare an edited copy of the document with the irrelevant or exempt material deleted, then the agency must prepare such a copy.

This edited copy must be provided to the applicant. Further, the decision maker must advise the applicant in writing that the edited copy of the document has been prepared and of the reason(s) for each of the deletions in the document (s.22(3) of the Act).

Exempt material is deleted pursuant to s.22(1)(a)(i) and irrelevant material is deleted pursuant to s.22(1)(a)(ii) of the Act.

Deletion of irrelevant material as applied to your FOI request

The documents contain information which is considered irrelevant to your request. Irrelevant information includes the names and direct contact details of Departmental staff below senior executive level and has accordingly been deleted pursuant to s.22(1)(a)(ii) of the Act.

Conditionally exempt documents

The documents I have considered fall under a range of 'conditional' exemptions in the FOI Act. Therefore, I will explain what a 'conditionally exempt' document is before discussing the individual exemptions I have applied.

The FOI Act was amended in November 2010 to impose a new public interest test on all 'conditionally exempt' information, including personal information. The FOI Act now provides that 'conditionally exempt' information must be released unless the decision maker reaches the view that release of the information would be 'contrary' to the public interest.

The public interest test

Factors weighing in favour of release

In weighing up the public interest test, s.11B(3) of the FOI Act states that a decision maker **must** consider whether disclosure of the information would:

- (a) *promote the objects of the Act; or*
- (b) *inform debate on a matter of public importance; or*
- (c) *promote effective oversight of public expenditure; or*
- (d) *allow a person to access his or her personal information.*

The objects of the FOI Act, set out in s.3(1), are to give the Australian community access to information held by the Government of the Commonwealth by providing, amongst other things, for a right of access to documents. The intention of Parliament is to promote Australia's representative democracy by increasing public participation in Government processes, with a view to promoting better-informed decision-making and increasing scrutiny, discussion, comment and review of the Government's activities

Factors weighing against release

The FOI Act does not contain any factors 'against' disclosure. However, the FOI Act states that, if the Australian Information Commissioner has issued Guidelines (IC Guidelines) that set out factors weighing against disclosure, then the decision maker must also consider those factors when weighing the public interest (s.11B(5) of the FOI Act).

The Information Commissioner has since issued Guidelines that contain a **non-exhaustive** list of factors that a decision maker **must** consider when weighing whether it is contrary to the public interest to release 'conditionally exempt' information (paragraph 6.29 of the IC Guidelines).

The elements that weigh against disclosure are:

Whether disclosure of the personal information could reasonably be expected to:

- (a) *prejudice the protection of an individual's right to privacy, including where:*
 - i. *the personal information is that of a child, where the applicant is the child's parent, and disclosure of the information is reasonably considered not to be in the child's best interests*

- ii. the personal information is that of a deceased individual where the applicant is a close family member (a close family member is generally a spouse or partner, adult child or parent of the deceased, or other person who was ordinarily a member of the person's household) and the disclosure of the information could reasonably be expected to affect the deceased person's privacy if that person were alive.*
- (b) prejudice the fair treatment of individuals and the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct*
 - (c) prejudice security, law enforcement, public health or public safety*
 - (d) impede the administration of justice generally, including procedural fairness*
 - (e) impede the administration of justice for an individual*
 - (f) impede the protection of the environment*
 - (g) impede the flow of information to the police or another law enforcement or regulatory agency*
 - (h) prejudice an agency's ability to obtain confidential information*
 - (i) prejudice an agency's ability to obtain similar information in the future*
 - (j) prejudice the competitive commercial activities of an agency*
 - (k) harm the interests of an individual or group of individuals*
 - (l) prejudice the conduct of investigations, audits or reviews by the Ombudsman or Auditor-General*
 - (m) prejudice the management function of an agency*
 - (n) prejudice the effectiveness of testing or auditing procedures*

I will now consider each conditional exemption that I have applied in my decision.

Conditional Exemptions as applied to your request

Public interest conditional exemption- personal information- s.47F(1)

A document is 'conditionally exempt' under s.47F(1) of the FOI Act if its release would involve the '*unreasonable disclosure of personal information about any person, including a deceased person*'.

For information or documents to be exempt under this provision, the information in the documents must meet the definition of 'personal information' in s.4(1) of the FOI Act and I must be satisfied that the release of the information is 'unreasonable'.

The test of unreasonableness implies a need to balance the public interest in disclosure of government-held information and private interests of individuals.

Personal Information

I am satisfied that the information contained in the documents which I am exempting is the 'personal information' of the individuals concerned. The 'personal information' includes the names and direct contact details of *Transfield Services* and other third party business' staff members.

Unreasonable disclosure

Section 47F(2) of the FOI Act sets out the factors that may be considered when determining whether release is 'unreasonable'. They are:

- the extent to which the information is well known;
- whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt within the document;
- the availability of the information from publically accessible sources; and
- any other matters that the department considers relevant.

I have considered each of these factors below.

The extent to which the information is well known

The third parties' personal information is not well known and would only be known to a limited group of officers with a business need-to-know. The information would not be known outside the Department. On balance, I believe that this factor weighs against the release being reasonable.

Whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt within the document

The third parties' personal information, in the context of the documents, is only known to those with a business need-to-know. Therefore, the individuals concerned are not generally known to be associated with the matters discussed in the document. On balance, I believe that this factor weighs against the release being reasonable.

The availability of the information from publically accessible sources

This personal information is not available from publically available sources and does not appear to be in the public forum. The information is contained in internal Departmental documents (i.e. email correspondence), created for an administrative process. On balance, I believe that this factor weighs against the release being reasonable.

Any other matters that the department considers relevant

I have considered the following factors:

- The information is not your personal information. This weighs against the release being reasonable.
- Every person has the right to expect that their personal information will be securely maintained by the Department. This weighs against the release being reasonable.
- No purpose would be achieved by releasing the third party personal information. This weighs against the release being reasonable.
- The degree to which release would contribute to a public purpose being achieved and/or shed light on the working of government. This weighs in favour of the release being reasonable.
- The current relevance of the information. This weighs against the release being reasonable.

On balance I am satisfied that the release of the third party personal information would be 'unreasonable' in the context of the request.

Therefore, I am satisfied that the conditional exemption in s.47F(1) applies to the documents. I must now consider the application of the public interest test in s.11B of the FOI Act to determine whether the release of the information in the documents would be 'contrary to the public interest'.

Factors weighing in favour of release

I am satisfied that the release of the documents would promote the objects of the FOI Act as it would provide access to information held by Government and that this factor weighs in favour of the release not being 'contrary to the public interest'.

However, I am satisfied that the release of the third parties' personal information contained in the relevant documents would not have any bearing on or relevance to any matter of public debate. Therefore this factor does not weigh in favour of release.

I am also satisfied that the release of the personal information is irrelevant to the effective oversight of public expenditure. Therefore, this factor does not weigh in favour of release.

Finally, the release of the documents containing the third parties' personal information would not allow you to access your own information. This factor does not weigh in favour of release.

Therefore, only the first public interest factor weighs in favour of release.

Factors weighing against release

As set out above, the Information Commissioner has issued Guidelines that contain a list of factors weighing against disclosure which must be considered under s.11B(5) of the FOI Act.

I consider that these factors are relevant to the personal information in the identified documents:

- disclosure of the personal information could reasonably be expected to prejudice the protection of an individual's right to privacy;
- it is a core Government concern to maintain the integrity of the information it holds and to maintain an individual's privacy;
- no purpose would be achieved/served by releasing the third party personal information;
- the degree to which release would contribute to a public purpose being achieved and/or shed light on the working of government; and
- the current relevance of the information.

On balance, I am satisfied that release of the third parties' personal information would be 'contrary to the public interest' and is therefore exempt under s.47F(1) of the FOI Act. The factor against disclosure relating to the protection of an individual's right to privacy was given the most weight. The benefit to the public resulting from disclosure is outweighed by the benefit of withholding this information.

Public interest conditional exemption- business information- s.47G

A document is conditionally exempt under s.47G(1)(a) of the FOI Act if its release would, amongst other things, disclose information concerning a person's business affairs and the disclosure could be expected to affect the person adversely in those business affairs.

I have identified information in the documents that I consider to be information concerning third parties' business affairs, where the disclosure of the business information would or could reasonably be expected to adversely affect those people and their business affairs. Disclosure would therefore be 'unreasonable'.

As discussed above, a conditionally exempt document must be released under the Act unless the release would be 'contrary to the public interest'. Therefore, I must now consider the application of the public interest test to that information.

Factors weighing in favour of release

I have considered the factors as set out in s.11B(3) of the Act and discussed previously.

While release would promote the objects of the Act, I do not consider that it would inform debate on a matter of public importance. In addition, the release of the information is irrelevant to the effective oversight of public expenditure and would not facilitate you accessing your own personal information.

Therefore, only the first public interest factor weighs in favour of release.

Factors weighing against release

I consider that the following factors listed in subsection 11B(5) of the Act are relevant to the documents in question:

- whether disclosure of the business information could reasonably be expected to harm the interests of an individual or group of individuals;
- it is a core Government concern to maintain the integrity of the information it holds including information relating to the business, commercial and financial affairs of an organisation;
- disclosure may affect the profitability of the business involved;
- the Department is obliged to take action to prevent the unreasonable disclosure of information that may be of commercial or financial value to an organisation; and
- the business concerned has objected to the release of its business information.

In my view the release of this information could be expected to damage or diminish the information of a commercial value and unreasonably adversely affect the lawful business of an organisation and, as such, is exempt under the provision of section 47G(1)(a) of the FOI Act.



Ben Wright
Authorised decision maker
Department of Immigration and Border Protection
Email foi@border.gov.au

30 July 2015



Attachment B

SCHEDULE OF DOCUMENTS TO DECISION RECORD

FOI Request FA 15/02/00568
File Number ADF2015/5383

Departmental Documents: Emails, email-trails with attachments

Folio	Description	Decision	Legislation
1-3	Correspondence between Media Operations and ABC regarding media enquiry from the ABC	Exempt in part	s.22(1)(a)(ii) s.47F(1)
4-6	Media Enquiry Talking Points – 29/01/2015	Exempt in part	s.22(1)(a)(ii) s.47F(1)
7-24	Departmental correspondence regarding media enquiry from the ABC	Exempt in part	s.22(1)(a)(ii) s.47F(1)
25-31	Correspondence regarding <i>Freedom</i> bars from Transfield Services and the Department	Exempt in part	s.22(1)(a)(ii) s.47F(1)
32-42	Departmental correspondence regarding news story and media enquiry	Exempt in part	s.22(1)(a)(ii) s.47F(1)
43-48	Correspondence regarding <i>Freedom</i> muesli and nut bars from Transfield Services and the Department	Exempt in part	s.22(1)(a)(ii) s.47F(1) s.47G(1)(a)
49-56	Departmental correspondence regarding media enquiry	Exempt in part	s.22(1)(a)(ii) s.47F(1)
57-70	Correspondence regarding <i>Freedom</i> muesli and nut bars from third party business, Transfield Services and the Department	Exempt in part	s.22(1)(a)(ii) s.47F(1) s.47G(1)(a)
71-72	Correspondence regarding the news story	Exempt in part	s.22(1)(a)(ii) s.47F(1)
73-	Correspondence regarding <i>Freedom</i> muesli and nut bars from third party business and Transfield Services	Exempt in part	s.22(1)(a)(ii) s.47F(1) s.47G(1)(a)

Attachment C

EXTRACT OF RELEVANT LEGISLATION

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:
 - (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an **edited copy**) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
 - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
 - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
 - (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and
 - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

47 Documents disclosing trade secrets or commercially valuable information

- (1) A document is an exempt document if its disclosure under this Act would disclose:
 - (a) trade secrets; or
 - (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
- (2) Subsection (1) does not have effect in relation to a request by a person for access to a document:
 - (a) by reason only of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
 - (b) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
 - (c) by reason only of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Commonwealth, Norfolk Island or a State or by a local government authority.

47C Public interest conditional exemptions—deliberative processes

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (***deliberative 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 purposes of, the deliberative processes involved in the functions of:
 - (a) an agency; or
 - (b) a Minister; or
 - (c) the Government of the Commonwealth; or
 - (d) the Government of Norfolk Island.

Exceptions

- (2) Deliberative matter does not include either of the following:
 - (a) operational information (see section 8A);
 - (b) purely factual material.

Note: An agency must publish its operational information (see section 8).

- (3) This section does not apply to any of the following:
 - (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
 - (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
 - (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).