



How To Find Out What Is In The Canada Border Services Agency Files About You

By Cyndee Todgham Cherniak on December 31st, 2015

Posted in Border Security, Canada's Federal Government, Cross-border litigation, Cross-border trade, Customs Law, Export Controls & Economic Sanctions, NEXUS, origin, tariff classification, valuation



Yesterday, we wrote about “How To Find Out What Is In The Canada Revenue Agency’s Files About Your Audit“. Today, we are writing about your Canada Border Services Agency (“CBSA”) file. Would you like to know why the CBSA is not approving your NEXUS application? Would you like to know what the CBSA officer wrote about your secondary inspection? Would you like to know what is in your CBSA verification file?

This information is very valuable in finding out where the CBSA made a mistake or what is the basis for the misunderstanding about your dealings at the border. The information in your CBSA file may help you prepare a request for a redetermination or request for a decision or appeal to the Canadian International Trade Tribunal. The information in your CBSA files may also be very useful during an examination for discovery in the context of an action before the Federal Court of Canada.

Basically, having what is in your file provides you with information that you may use to your advantage. For example, if the CBSA classifies a good under one H.S. category, but has test results that would support your classification, you would want to know that. If the CBSA has denied a NEXUS membership due to a mistake in identity, you would want to correct the error in their files. If the CBSA has denied a NEXUS membership based on a failure to declare goods or currency, you would like to know what the CBSA officer has written and correct any errors in the facts. If the CBSA has detained your goods on export thinking that you have previously sold goods to Iran (and you have not), you would want to correct the information in the CBSA’s files.

You or your company (or partnership or trust) may obtain information in your CRA files by filing an Access to Information and Privacy (ATIP) request. The ATIP requester must complete an ATIP (Access to Information and Privacy) Request form. If a representative is assisting with the ATIP request, you will have to provide authorization in the form of a Authority to Release Personal Information to a Designated Representative form. Where you may need the assistance of a customs lawyer is to ensure you are asking for the correct information.

The CRA posts limited information on the CBSA web-site about making an ATIP request – see How to make a request under the Access to Information Act. You will have to pay a \$5.00 filing fee and pay for copies once the access request in processed.

Normally, you can receive volumes of information if you travel frequently. In connection with a NEXUS membership application denial and export seizures, some information may not be released due to reasons of national security. Whether the national security claim is valid is something that can be disputed. There is the right of appeal should the CBSA withhold certain information. What to do if the CBSA does not disclose certain information will be addressed in a subsequent blog post. The CBSA cannot withhold information just because it does not help them take an action against you or your company.

If you would like to find out what is contained in the U.S. Department of Homeland Security Files, there is a different form that can be filed.

If you require assistance, please contact Cyndee Todgham Cherniak at 416-307-4168 or cyndee@lexsage.com. We offer flat rates to file ATIP requests.

Tags: Access to information, Access to Information and Privacy, appeal, ATIP, Canada Border Services Agency, Canadian International Trade Tribunal, CBSA, CITT, NEXUS, request for decision, request for redetermination

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