



August 2024

Rex Patrick
Transparency Warrior

By email: rex@transparencywarrior.com

Dear Mr Patrick

Re: Freedom of Information Request

I refer to your request received by the Department of Foreign Affairs and Trade (the department) on 8 July 2024, revised on 17 July 2024, to access to documents under the *Freedom of Information Act 1982* (the FOI Act).

I am writing to provide you with a decision about your request.

I have identified documents relevant to your request. After careful consideration, I have decided to grant you access to an edited copy of the documents with irrelevant and exempt material removed.

Your request

You requested access to the following documents:

DFAT briefings to the Foreign Minister, in the month of June 2024, that relate to the humanitarian situation in Gaza, including, but not limited to, casualties, hospitals and medical resources, disease outbreaks, water supply, food security and famine. The scope of this request is limited to substantive reporting and discussion of the above matters and does not include brief and/or incidental references to the humanitarian crisis in Gaza. In respect of the request, I do NOT seek access to duplicates of any document captured within the scope of the request; nor the mobile numbers or full email addresses of government officials, nor the names and contact details of government officials not in the Senior Executive Service or equivalent.

Reasons

I am an officer authorised under section 23 of the FOI Act to make decisions in relation to FOI requests.

In making my decision I have taken into account:

- the terms of your request;

- the documents within the scope of your request;
- the FOI Act; and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines).

The reasons for my decision and for the application of exemptions under the FOI Act to the document are set out below. Where I refer to sections of the FOI Act, these are available at www.legislation.gov.au. Where I refer to parts of the FOI Guidelines, these are available at www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines.

Damage to international relations (section 33(a)(iii) of the FOI Act)

Under section 33(a)(iii) of the FOI Act, a document is exempt if its disclosure would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth.

The phrase ‘international relations’ has been interpreted to mean the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them (FOI Guidelines, paragraph 5.39).

This applies to documents, the disclosure of which may diminish the confidence which another country has in Australia as a reliable recipient of confidential information, making that country or its agencies less willing to cooperate with Australian agencies in future (FOI Guidelines, paragraph 5.42).

The expression ‘damage’ can include intangible damage, including inhibiting future negotiations between the Australian Government and a foreign government, or the future flow of confidential information from a foreign government or agency (FOI Guidelines, paragraph 5.25).

I consider the expectation of damage to international relations is reasonable in all the circumstances, having had regard to the nature of the information, the circumstances in which it was communicated, and the nature and extent of the relationship of the damage to international relations which could reasonably occur in the event of disclosure (FOI Guidelines, paragraph 5.40).

I consider that the disclosure of the relevant information marked up in the documents would be reasonably likely to cause damage to the international relations of the Commonwealth, and that this information is exempt under section 33(a)(iii) of the FOI Act.

Cabinet documents (Section 34(1)(a) of the FOI Act)

Under section 34(1)(a) of the FOI Act, a document is exempt if both *it has been brought into existence for the dominant purpose of submission for consideration of the Cabinet and it has been submitted to the Cabinet for its consideration*.

The Department of the Prime Minister and Cabinet has confirmed that one of the documents within the scope of your request meets both these requirements and consequently meets the definition of a Cabinet document under section 34(1)(a) of the FOI Act.

On this basis, I am satisfied that the relevant brief is exempt under section 34(1)(a) of the FOI Act.

Substantial adverse effect on an agency's proper and efficient conduct of operations (section 47E(d) of the FOI Act)

Under section 47E(d) of the FOI Act, a document is conditionally exempt if disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of an agency's operations. A substantial adverse effect may be indirect (FOI Guidelines, paragraph 6.82).

The predicted effect must bear on the department's 'proper and efficient' operations, that is, the department is undertaking its operations in an expected manner (FOI Guidelines, paragraph 6.115).

The documents in scope include content which concerns confidential international communications, the disclosure of which, could damage Australia's international relations.

I am satisfied that disclosure of this material within the scope of your request would prejudice the relevant international relationship and negatively impact prejudice other foreign relationships. This would, or could reasonably be expected to, have a substantial adverse effect on the department's ability to effectively and efficiently undertake its foreign policy operational activities.

I have therefore decided that this material is conditionally exempt under section 47E(d) of the FOI Act.

Conditional exemptions - public interest considerations (section 11A(5) of the FOI Act)

As section 47E(d) of the FOI Act is a conditional exemption, I must grant you access to this material unless providing access would, on balance, be contrary to the public interest (section 11A(5) of the FOI Act).

In assessing the public interest, I have considered the FOI Guidelines referred to above and the public interest factors listed in section 11B of the FOI Act as favouring access, including whether granting access to the documents would:

- promote the objects of the FOI Act; and
- inform debate on a matter of public importance.

I have also considered, as a factor weighing against disclosure, the prejudice that disclosure could reasonably be expected to cause to the department's operations.

On balance, I am of the view that the public interest is weighted against the disclosure of this material. In forming this view, I have not taken into account any of the irrelevant factors specified in section 11B(4) of the FOI Act.

Irrelevant material (section 22(1)(a)(ii) of the FOI Act)

Some of the material excluded from the documents released to you is outside the scope or could reasonably be regarded as irrelevant to your request (section 22(1)(a)(ii) of the FOI Act).

Furthermore, in your request you stated that:

... I do NOT seek access to ... the mobile numbers or full email addresses of government officials, nor the names and contact details of government officials not in the Senior Executive Service or equivalent.

We have therefore redacted this information under section 22(1)(a) of the FOI Act as out of the scope of your request.

Declassifying documents

The department has declassified some documents being released to you. This process involves redacting the original security classification on the relevant documents and the redaction appears as a black rectangle at the top of the document. For further information regarding sensitive and classified information please see the Protective Security Policy Framework - <https://www.protectivesecurity.gov.au/system/files/2022-11/protective-security-guidance-for-executives.pdf>.

Review rights

Information about your review rights is set out in the **Attachment** for your reference.

Contact

Should you have any queries regarding this matter please contact the Freedom of Information Section by email (foi@dfat.gov.au).

Yours sincerely

Lloyd Brodrick
Assistant Secretary
Department of Foreign Affairs and Trade

Your review rights

Internal review

You may apply for internal review of the decision (section 54 of the FOI Act). The internal review application must be made within 30 calendar days from the day you receive this notice.

Where possible, please attach reasons why you believe review of the decision is necessary.

The internal review will be carried out by another officer within 30 days.

Any request for internal review should be directed via email to foi@dfat.gov.au or addressed to:

Freedom of Information Section
Department of Foreign Affairs and Trade
R G Casey Building
John McEwen Crescent
Barton ACT 0221
Australia

Australian Information Commissioner

You may apply to the Australian Information Commissioner to review my decision (section 54L of the FOI Act). To do this, you must contact the Australian Information Commissioner within 60 calendar days from the day you receive this notice.

You may also make a complaint to the Australian Information Commissioner about the Department's actions in relation to this decision (section 70 of the FOI Act). Making such a complaint about the way the Department has handled your FOI request is a separate process to seeking review of my decision.

Further information on applying for an Australian Information Commissioner review is available at: www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews.

Further information about how to make a complaint is available at: www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints.