



Australian Government
Attorney-General's Department

Our ref: FOI24/184; CM24/7540

30 May 2025

Rex Patrick
Transparency Warrior
By email: rex@transparencywarrior.com.au

Dear Mr Patrick

Freedom of Information Request FOI24/184 – Decision letter

The purpose of this letter is to give you a decision about your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) which you submitted to the Attorney-General's Department (the department).

Your request

On 5 April 2024, you requested access to:

(1) Ministerial submissions, briefings or other records provided by AGD to the Attorney-General since 18 October 2023 that relate to conflict between Israel and Hamas; and/or

(2) Records created within the Attorney-General's Department since 7 October 2023 that relate to Australian citizens serving in the Israeli Defence Force.

Where a record in part contains information relating to the above matters, I seek access to the entirety of the document.

I do not seek access to the names and personal information of Australian citizens serving in the IDF.

I do not seek access to duplicates of any document captured within the scope of this application 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.

I do ask that junior officials' positions or titles be left unredacted, along with email domains that provide useful information as to the origin and destination of communication e.g. '[redacted]@ag.gov.au'.

On 8 April 2024, the department acknowledged your request and sought a 30 day extension under section 15AA of the FOI Act.

On 16 April 2024, you agreed to a 15 day extension on the condition that no third party consultations were required.

On 1 May 2024, the department wrote to you to advise that the department will not conduct third party consultations and that the 15 day extension had been applied.

On 17 May 2024, the department wrote to you seeking a 15 day extension under section 15AA of the FOI Act. You agreed to an 8 day extension.

On 12 August 2024, the department wrote to you seeking your agreement to exclude draft or unfinalised documents. You agreed to those exclusions.

A decision in relation to your request was due on 28 May 2024. The decision is deemed pursuant to subsection 15AC(3).

Paragraph 3.161 of the FOI Guidelines issued by the OAIC provides that where an access refusal decision is deemed to have been made before a substantive decision is made, the agency or minister continues to have an obligation to provide a statement of reasons on the FOI request. This obligation to provide a statement of reasons on the FOI request continues until any IC review of the deemed decision is finalised.

My decision

I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to freedom of information requests made to the department.

I am now providing you with a statement of reasons in response to your FOI request and apologise for the delay in doing so.

I have identified 14 documents that fall within the scope of your request. I did this by making inquiries of staff likely to be able to identify relevant documents and arranging for comprehensive searches of relevant departmental electronic and hard copy holdings.

In making my decision regarding access to the relevant documents, I have taken the following material into account:

- the terms of your request,
- the content of the documents identified as within scope of your request,
- the provisions of the FOI Act,
- the views of third parties consulted by the department under section 27A of the FOI Act during the processing of a similar FOI request which related to the same documents, and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

I have decided to:

- Grant access to 4 documents in full
- Grant access to 7 documents in part with deletion of material which:
 - is exempt from the operation of the FOI Act under subsection 7(2);
 - may be regarded as irrelevant to your request under subsection 22(1) of the FOI Act; or
 - is exempt pursuant to subparagraph 33(a)(iii), subsections 42(1), 47C(1) and 47F(1) of the FOI Act.
- Refuse access to 3 documents in full on the basis that the material they contain is variously:
 - may be regarded as irrelevant to your request under subsection 22(1) of the FOI Act; or
 - exempt pursuant to subparagraph 33(a)(iii), paragraphs 33(b) and 34(1)(c), and subsection 42(1) of the FOI Act.

Additional information

Your review rights under the FOI Act are set out at **Attachment A** to this letter.

The schedule of documents at **Attachment B** sets out brief information about each document within the scope of your request and my decision in relation to access to each of those documents.

The statement of reasons at **Attachment C** sets out the reasons for my decision to refuse access to certain material to which you have requested access.

The documents to which I have decided to grant full or partial access under the FOI Act are at **Attachment D**.

Questions about this decision

If you wish to discuss this decision, the FOI case officer for this matter is Claire, who can be reached on (02) 6141 6666 or by email to foi@ag.gov.au.

Yours sincerely



Luke Muffett
Assistant Secretary
Security Law and Policy Branch

Attachments

Attachment A:	Review rights
Attachment B:	Schedule of documents
Attachment C:	Statement of reasons
Attachment D:	Documents



Australian Government
Attorney-General's Department

Attachment A – Your review rights

If you disagree with my statement of reasons, you may ask for an Information Commissioner review of the deemed decision.

Information Commissioner review

Information Commissioner review requests must be submitted within 60 days of the relevant decision, unless an extension of time is granted. Your request should include your contact details, a copy of my decision, and the reasons why you disagree with my decision. You can apply in one of the following ways:

Online: [OAIC Web Form](#)

Email: foidr@oaic.gov.au

Mail: Director of FOI Dispute Resolution, GPO Box 5288, Sydney NSW 2001.

More information about Information Commissioner review is available at:

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

FOI Complaints

If you are concerned about how we handled your FOI request, please let us know what we could have done better, as we may be able to rectify the situation. If you are not satisfied with our response, you can make a complaint to the Information Commissioner. Your complaint must be in writing, and can be lodged in one of the following ways:

Online: [OAIC Web Form](#)

Email: foidr@oaic.gov.au

Mail: Director of FOI Dispute Resolution, GPO Box 5288, Sydney NSW 2001.

More information about Freedom of Information complaints is available at:

<https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints>



Attachment B - Schedule of documents - Freedom of Information Request FOI24/184

Doc no.	Date	No. pgs	Description	Access decision	Exemption/s applied
1	10 October 2023	8	Email from journalist to the Department of Home Affairs and Department of Foreign Affairs and Trade	Grant access in part	Section 22(1): Irrelevant material Section 47C(1): Deliberative processes Section 47F(1): Personal Privacy
2	19 October 2023	9	Document	Refuse access	Section 33(a)(iii): Documents affecting national security, defence or international relations Section 34(1)(c): Cabinet documents Section 42(1): Documents subject to legal professional privilege
3	23 October 2023	4	Hot Topic Brief – Hamas-Israel conflict	Grant access in part	Section 22(1): Irrelevant material
4	31 October 2023	18	Document	Refuse access	Section 22(1): Irrelevant material Section 33(a)(iii), 33(b): Documents affecting national security, defence or international relations
5	20 November 2023	4	Attorney-General's Department (AGD) Ministerial Submission – Ministerial Direction on Hamas and Hizballah	Grant access in part	Section 7(2): Exemption of certain persons and bodies Section 22(1): Irrelevant material Section 33(a)(iii): Documents affecting national security, defence or international relations Section 47C(1): Deliberative processes Section 47E(d): Public interest conditional exemption - Certain operations of agencies Section 42(1): Documents subject to legal professional privilege
6	2021	2	Commonwealth of Australia – Gazette – Director of Public Prosecutions (Terrorist Organisation Prosecutions) Ministerial Direction 2021	Grant access in full	N/A
7	2022	1	Commonwealth of Australia – Gazette – Director of Public Prosecutions (Terrorist Organisation Prosecutions) Ministerial Direction 2022	Grant access in full	N/A
8	November 2023	3	Attorney-General Michaelia Cash – Policy guideline (Hizballah)	Grant access in full	N/A

Doc no.	Date	No. pgs	Description	Access decision	Exemption/s applied
9	November 2023	3	Attorney-General Michaelia Cash – Policy guideline (Hamas)	Grant access in full	N/A
10	21 December 2023	3	AGD Talking Points – Australian citizens serving with the IDF	Grant access in part	Section 22(1): Irrelevant material
11	21 December 2023	5	AGD internal email – OIL input – Australians in the IDF	Grant access in part	Section 22(1): Irrelevant material Section 47F(1): Personal Privacy
12	20 December 2023	5	Australian Centre for International Justice Letter to the Attorney-General	Grant access in part	Section 47F(1): Personal Privacy
13	14 January 2024	4	Document	Refuse access	Section 33(a)(iii), 33(b): Documents affecting national security, defence or international relations Section 34(1)(c): Cabinet documents Section 42(1): Documents subject to legal professional privilege
14	25 March 2024	6	AGD internal email – Prevent Australian citizens from serving in the Israel Defence Forces	Grant access in part	Section 22(1): Irrelevant material Section 47C(1): Deliberative processes



Attachment C - Statement of reasons - FOI24/184

This document, when read in conjunction with the schedule of documents at **Attachment B**, provides information about the reasons I have decided not to disclose certain material to you in response to your request for documents under the *Freedom of Information Act 1982* (FOI Act).

Section 7 - Exemption of certain persons and bodies

Section 7 of the FOI Act provides that certain persons, bodies and departments are exempt from the operation of the Act in relation to particular types of documents. Relevantly, under subsection 7(2), the department is exempt from the operation of the FOI Act in relation to documents in respect of activities undertaken by the Australian Government Solicitor.

I can confirm that particular parts of the documents subject to your request contain information in respect of the activities of the Australian Government Solicitor. I am therefore satisfied that this information is exempt from the operation of the FOI Act, and I have excluded it pursuant to subsection 7(2).

Section 22: Access to edited copies with exempt or irrelevant matter deleted

Section 22 of the FOI Act provides that if an agency decides to give access to a document that would disclose information that would reasonably be regarded as irrelevant to the request, and it is possible for the agency to prepare a copy (an *edited copy*) of the document, modified by deletions, the agency must prepare the edited copy and give the applicant access to it.

I note that when the department acknowledged your request by email on 8 April 2024, you were advised that the following information would be regarded as irrelevant to your request:

'The department's practice is to not disclose personal information of staff of the department and other government authorities, where that information is not publicly known or routinely disclosed (e.g. names of junior officers and contact information). The names of senior officers will generally be disclosed. In addition, duplicates and incomplete email chains, internal administrative email addresses and metadata within the scope of the FOI request will be excluded.'

Acknowledging your request expressly excludes these matters, I have decided to regard the above categories of information as irrelevant to your request and have deleted this material under section 22 of the FOI Act.

Exemptions

An agency or minister is not required to give access to a document or part of a document that is exempt from disclosure under Division 2 of Part IV of the FOI Act. Documents within the scope of your request which are exempt under Division 2 of Part IV relate to the following categories:

- documents affecting national security, defence or international relations (section 33)
- Cabinet documents (section 34)
- documents subject to legal professional privilege (section 42)

These exemptions are not subject to an overriding public interest test. Accordingly, where a document meets the criteria to establish a particular exemption, it is exempt and the decision-maker is not required to weigh competing public interest considerations to determine if the document should be released.

Brief information about each of the exemptions applied when making a decision about disclosure of each of the documents to which you have requested access is set out below. Additional information about each of these exemptions can be obtained from the Guidelines available at: <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-5-exemptions>.

Section 33: Documents affecting national security, defence or international relations

Section 33 of the FOI Act provides that a document is an exempt document if its disclosure:

- (a) *would, or could reasonably be expected to, cause damage to:*
 - (i) *the security of the Commonwealth;*
 - (ii) *the defence of the Commonwealth; or*
 - (iii) *the international relations of the Commonwealth; or*
- (b) *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.*

I note that paragraph 5.25 of the Guidelines provides that:

'Damage' for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible, such as inhibiting future negotiations between the Australian Government and a foreign government, or the future flow of confidential information from a foreign government or agency.

In determining whether release of a document would, or could, reasonably be expected to cause damage to international relations both the content and context of the document must be considered.

I am satisfied that there are real and substantial grounds that if the passages I have determined are exempt under subparagraph 33(a)(iii) and paragraph 33(b) are disclosed this would be likely to adversely impact Australia's international relations. I am not in a position to provide any further explanation in this decision. Subsection 26(2) of the FOI Act relevantly provides that a notice of decision is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.

Section 34: Cabinet documents

Subsection 34(1) of the FOI Act states that a document is an exempt document if:

- (a) *both of the following are satisfied:*
 - (i) *it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;*
 - (ii) *it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or*
- (b) *it is an official record of the Cabinet; or*

- (c) *it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or*
- (d) *it is a draft of a document to which paragraph (a), (b) or (c) applies.*

I have decided to variously apply paragraph 34(1)(c) of the FOI Act to documents within the scope of your request as I am satisfied that material was brought into existence for the dominant purpose of briefing a Minister on a document which was:

- submitted to the Cabinet for its consideration, or was proposed to be so submitted; and
- was brought into existence for the dominant purpose of submission for consideration by the Cabinet.

In forming this view I have considered advice from the Department of the Prime Minister and Cabinet, including in relation to documents which are within scope of both this request and other requests that have been considered by the department. Accordingly, I am satisfied that this material is exempt from disclosure under paragraph 34(1)(c) of the FOI Act.

Section 42: Documents subject to Legal Professional Privilege

Subsection 42(1) of the FOI Act provides that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

I am satisfied that, with respect to certain material within the scope of your request, that:

- a legal adviser-client relationship exists,
- the advice was provided independently,
- the communication was for the purpose of giving or receiving legal advice or for use in connection with actual or anticipated litigation, and
- the advice was provided on a confidential basis.

I am also satisfied that the legal professional privilege in relation to the material has not been, and should not be waived. Accordingly, I am satisfied that the relevant material is exempt from disclosure under subsection 42(1) of the FOI Act.

Public interest conditional exemptions

An agency or minister can refuse access to a document or part of a document that is conditionally exempt from disclosure under Division 3 of Part IV of the FOI Act. Documents within the scope of your request which are conditionally exempt under Division 3 relate to the following categories:

- deliberative processes (section 47C),
- certain operations of agencies (section 47E), and
- personal privacy (section 47F)

Brief information about each of the conditional exemptions applied to the documents to which you have requested access is set out below. Additional information about each of these conditional exemptions can be obtained from the Guidelines available at: <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-6-conditional-exemptions>.

Section 47C: Public interest conditional exemption - deliberative processes

Section 47C of the FOI Act provides that 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 an agency.

In applying this exemption, paragraph 6.54 of the Guidelines provides that:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

I am satisfied that the relevant material is not purely factual and is deliberative matter within the meaning of subsection 47C(1), being in the nature of and relating to an opinion, advice or recommendation.

The deliberative matter described above was created for the purpose of, and in connection with, the internal deliberations relating to communication options and draft talking points. Accordingly, I am satisfied that this material is conditionally exempt under subsection 47C(1) of the FOI Act. I have turned my mind to whether disclosure of the information would be contrary to the public interest and have included my reasoning in this regard below.

Section 47E: Public interest conditional exemption - certain operations of agencies

Section 47E of the FOI Act provides that a document is conditionally exempt if its disclosure would, or could reasonably be expected to, do any of the following:

- (a) *prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;*
- (b) *prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;*
- (c) *have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;*
- (d) *have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.*

I have decided to apply paragraph 47E(d) to document 5. Disclosure of such information could reasonably be expected to have a substantial adverse effect on the proper and efficient management of the operations of the department. I have turned my mind to whether disclosure of the information would be contrary to the public interest and have included my reasoning in this regard below.

Section 47F: Public interest conditional exemption - personal privacy

Subsection 47F(1) of the FOI Act provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person). For the purposes of the FOI Act, personal information is defined as: information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is true or not; and whether the information or opinion is recorded in a material form or not.

I have identified the following personal information relating to private individuals in the relevant documents for your request: names, signatures and contact information, including email addresses and telephone numbers.

In deciding whether to conditionally exempt the personal information described above, I have had regard to the following factors set out in subsection 47F(2) of the FOI Act:

- (a) the extent to which the information is well known;*
- (b) whether the people to whom the information relates are known to be (or to have been) associated with the matters dealt with in the document;*
- (c) the availability of the information from publicly accessible sources;*
- (d) any other matters that the agency considers relevant.*

In my view the relevant personal information is not well known, nor are the persons concerned generally known to be (or to have been) associated with the particular matters dealt with in the documents. The information is known only to the persons whose information appears in the documents and departmental officers with responsibility for the matters concerned. I note that this document was considered as part of another FOI request and in response to consultation the third parties concerned objected to disclosure of their information.

Accordingly, I am satisfied that the personal information of certain individuals is conditionally exempt under subsection 47F(1) of the FOI Act. I have turned my mind to whether disclosure of the information would be contrary to the public interest and have included my reasoning in this regard below.

Public interest test

Where a document is assessed as conditionally exempt, it is only exempt from disclosure if disclosure would, on balance, be contrary to the public interest. The public interest test is weighted in favour of giving access to documents so that the public interest in disclosure remains at the forefront of decision making.

The Guidelines issued by the OAIC provide at paragraph 6.224 that the public interest test is considered to be:

- *something that is of serious concern or benefit to the public, not merely of individual interest,*
- *not something of interest to the public, but in the interest of the public,*
- *not a static concept, where it lies in a particular matter will often depend on a balancing of interests,*
- *necessarily broad and non-specific, and*
- *related to matters of common concern or relevance to all members of the public, or a substantial section of the public.*

A single public interest test applies to each of the conditional exemptions. This public interest test includes certain factors that *must* be taken into account where relevant, and other factors which *must not* be taken into account.

In deciding whether to disclose conditionally exempt material, I have considered the factors favouring access set out in subsection 11B(3) of the FOI Act. I have not taken into account the irrelevant factors listed under subsection 11B(4) of the FOI Act.

Of the factors favouring disclosure, I consider that release of the conditionally exempt material identified for your request would promote the objects of the FOI Act, including by:

- informing the community of the government's operations,
- inform debate on a matter of public importance,
- revealing the reason for a government decision, and
- enhancing the scrutiny of government decision making.

The FOI Act does not list any specific factors weighing against disclosure. However, I have considered the non-exhaustive list of factors against disclosure in the Guidelines as well as the particular circumstances relevant to the conditionally exempt material.

I consider the release of the conditionally exempt material could, as the case may be, reasonably be expected to prejudice:

- the protection of an individual's right to privacy, and
- the department's ability to deliberate regarding sensitive information.

On balance, I consider the factors against disclosure outweigh the factors favouring access and that providing access to the conditionally exempt material identified within the scope of your request would be contrary to the public interest.