



**DEFENCE FOI 352/23/24**

**STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982**

1. I refer to the request by ‘.Moe’ (the applicant), dated and received on 15 October 2023 by the Department of Defence (Defence), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

*“...all documents, reports & communication that relate to the legal advice the Defence Minister Richard Marles has received from the Department of Defence in regarding the fighting, bombing and blockade of Gaza in October 2023.”*

**FOI decision maker**

2. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

**Decision**

3. I have decided to refuse the request under section 24A [requests may be refused if documents cannot be found, do not exist or have not been received] of the FOI Act.

**Material taken into account**

4. In making my decision, I have had regard to:
  - a. the terms of the request;
  - b. relevant provisions of the FOI Act;
  - c. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and
  - d. advice received from personnel within Defence Legal, Strategy, Policy, & Industry Group, Headquarters Joint Operations Command and Military Strategic Commitments.

**REASONS FOR DECISION**

**Section 24A – Requests may be refused if documents cannot be found, do not exist or have not been received**

5. Section 24A(1) of the FOI Act states:
  - (1) *An agency or Minister may refuse a request for access to a document if:*
    - (a) *all reasonable steps have been taken to find the document; and*
    - (b) *the agency or Minister is satisfied that the document:*
      - (i) *is in the agency’s or Minister’s possession but cannot be found; or*
      - (ii) *does not exist.*
6. Paragraph 3.94 of the Guidelines advises the detail this statement of reasons should include to refuse a request under section 24A(1):

*...the statement of reasons given to the applicant should sufficiently identify the document, explain why it cannot be found or is known not to exist or to be in the agency's possession, describe the steps the agency took to search for the document, and note the limitations of any search...*

7. To ensure that all reasonable steps have been taken in relation to this request, every reasonable avenue of locating documents has been exhausted.
8. Searches were conducted for documents falling within scope of the request by personnel within Defence Legal, Strategy, Policy, & Industry Group, Headquarters Joint Operations Command and Military Strategic Commitments. No documents were located.
9. I am satisfied that all reasonable steps have been taken to locate the documents sought by the applicant. I am satisfied that the documents do not exist, and refuse the request under section 24A(1) of the FOI Act.

**Ryan Fairweather**  
Freedom of Information  
Associate Secretary Group  
Department of Defence