



Office of Senator the Hon Penny Wong
Minister for Foreign Affairs

FOI Reference:
LEX 9262

Moe

By email: foi+request-10756-030863d4@righttoknow.org.au

Dear Moe

Re: Freedom of Information Request

I refer to your request received by the Department of Foreign Affairs and Trade (the department) on 15 October 2023, for access under the Freedom of Information Act 1982 (the FOI Act) to:

- *All documents, reports and communication that relate to the legal advice the Foreign Minister Penny Wong has received in regarding the fighting, bombing and blockade of Gaza in October 2023.*

Your request was transferred to the office of the Minister for Foreign Affairs (FMO) on 19 October 2023.

Decision

I am authorised to make decisions on behalf of the Foreign Minister in relation to requests under the FOI Act.¹

I have made inquiries with relevant staff who have knowledge of the matters related to your request, and who would have access to relevant records. These staff were asked to search for any documents which came within the terms of 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 exempt material removed.

Reasons

In making my decision I have taken into account:

- the terms of your request;

¹ FOI Guidelines [2 26]

- the documents that fall 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. Parts of the FOI Guidelines referenced can be found online at www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines.

The reasons for my decision are set out below.

Documents subject to deliberative processes (section 47C(1) of the FOI Act)

Under section 47C(1) of the FOI Act, a document is conditionally exempt if it contains deliberative matter. Deliberative matter is content that is in the nature of, or relates to:

- (a) an opinion, advice or recommendation that has been obtained, prepared or recorded, or
- (b) a consultation or deliberation that has taken place, in the course of, or for the purposes of, a deliberative process of the government, an agency or minister (section 47C(1) of the FOI Act).

The conditionally exempt material includes content which is in the nature of advice that has been obtained and prepared in the context of a deliberative process of the government or the agency.

I am satisfied that the material in question is not operational information (as defined by section 8A of the FOI Act) or purely factual material (section 47C(2) of the FOI Act). To the extent that the conditionally exempt material might be considered factual, it is inextricably intertwined with deliberative material and cannot be practically excised.

Material containing personal information (section 47F(1) of the FOI Act)

Some material within the documents is conditionally exempt under section 47F(1) of the FOI Act as its disclosure would involve the unreasonable disclosure of personal information.

The test of 'unreasonableness' implies a need to balance the public interest in disclosing the information and the relevant individuals' privacy interests (paragraph 6.138 of the FOI Guidelines).

I consider disclosure of the conditionally exempt material would constitute an unreasonable disclosure of a person's personal information.

Given this is a conditional exemption, section 11A(5) of the FOI Act requires access to be granted to a conditionally exempt document unless access would, on balance, be contrary to the public interest.

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 public interest factors against disclosure, including that disclosure may be reasonably be expected to prejudice:

- the personal privacy of third parties; and
- the ability to obtain similar information in the future.

On balance, I am of the view that the public interest is weighted against 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.

Substantial adverse effect on the operations of the department (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 the operations of an agency. A 'substantial adverse effect' may be indirect (FOI Guidelines, paragraph 6.92).

The conditionally exempt material includes content which, if disclosed, would have a substantial adverse effect on the proper and efficient conduct on the operations of the FMO.

Disclosure of this material would, or could reasonably be expected to, have a substantial adverse effect on the FMO's ability to manage the crisis, obtain, act, and respond to advice, as well as provide advice efficiently to a range of actors.

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

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 Foreign Minister's Office via foi.fmo@dfat.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'T Mooney', with a long horizontal line extending to the right.

Thomas Mooney
Chief of Staff
Senator the Hon Penny Wong
Minister for Foreign Affairs

12/01/24

Attachment

Your review rights

Australian Information Commissioner

You may apply within 60 days of the date of this letter to the Australian Information Commissioner to review this decision (section 54L of the FOI Act).

Further information on applying for an Australian Information Commissioner review is available at: <https://www.oaic.gov.au/freedom-of-information/foi-review-process>