



FOI References: LEX 9207, 9269, 9295, 9321, 9322, 9326, 9346,
9358, 9366, 9368, 9373, 9419 and 9428
File No: 23/27688

November 2023

Moe
Right to Know

By email: foi+request-10763-531840e8@righttoknow.org.au

Dear Moe

Freedom of Information Request – Refusal under section 24(1)(b) of the FOI Act

I refer to your request dated 17 October 2023 (LEX 9295) in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

“... all documents including reports, correspondence, file notes, talking points, meeting minutes or memos that relate to the Department of Foreign Affairs & Trade’s position on “De-escalation” or “Ceasefire” in the current Gaza war that began in October 2023.”

On 14 November 2023 I notified you of my intention under section 24AB(2) of the FOI Act to refuse to process your FOI request on the grounds that your request would constitute a substantial and unreasonable diversion of the department’s resources.

That same day I also notified you that your request had been combined with 12 other requests and would be treated as a single request (the request). Under section 24(2)(b) of the FOI Act, I was satisfied that all 13 requests related to documents, the subject matter of which is substantially the same, being the Hamas-Israel Conflict.

On 15 November 2023 you wrote to the department and sought the department’s assistance, stating:

“As per the FOI guidelines there is a requirement for agencies to assist the applicant to revise the scope of the request so that the request does not attract section 24AA too voluminous provision. Given that the timeframe I have requested for documents is exceptionally small (7th October 2023 - 17th October 2023).

My understanding is that you have taken multiple requests from different applicants, and assessed them all as too large. I only require documents regarding "Ceasefire" and "De-escalation" during this time period. I believe if you did not merge my requests with others, it would not attract the section 24AA provision.

Given this, can you please advise on how the request can be amended so that it is not too large?"

On 16 November 2023, after consulting Cyber Security and Networks Branch (CRB) and asking them to conduct targeted searches, the department advised you:

*"Our cyber team has re-run a search of the 77 inboxes based on your specified date range of 7 October 2023 to 17 October 2023 and using the search terms "ceasefire" or "de-escalation" and they have located **1,476** items.*

This is considered to be a conservative estimate as it only includes a sample of people's email addresses used to run the original searches, and does not include many other areas within the department, including overseas posts, that have also been identified as holding documents.

*Additionally this search is confined to **emails only**, and your request was for "all documents including reports, correspondence, file notes, talking points, meeting minutes or memos".*

On this basis, your request attracts a practical refusal reason, whether it is a standalone request or combined.

To reduce the size of your request you may consider limiting your request to a particular document type (such as a talking points or diplomatic cables)."

On 22 November 2023, you responded to the department and asked:

"Can we limit the scope to talking points, diplomatic cables and ministerial submissions?"

On 23 November 2023, the department responded to you and advised we would take your revised scope to be for:

"Talking points, diplomatic cables and ministerial submissions for the date range 7 October 2023 to 17 October 2023 that relate to the Department of Foreign Affairs & Trade's position on "De-escalation" or "Ceasefire" in the current Gaza war that began in October 2023."

On 27 November 2023, you advised:

"I am happy with this."

This was accepted as the revised scope for your part of the request.

Each applicant was consulted separately on the request and had fourteen days from the date of receipt of the consultation notice to:

- (a) withdraw their part of the request,
- (b) revise the scope of their part of the request, or
- (c) notify the department that they did not wish to revise the scope of their part of the request.

Decision

I have considered the terms of your revised request, along with the terms of the other revised requests. I am satisfied that the practical refusal reason still exists, and that processing the request would require a substantial and unreasonable diversion of the department's resources.

I am therefore notifying you of my decision to refuse the request, in accordance with section 24(1)(b) of the FOI Act. I have reached this decision based on the complexity and voluminous nature of the request.

In refusing the request, I have considered how the department could proceed to process the request, and the time and resources that would be involved in doing so.

Relevantly to the revised scope of your part of the request, I have also consulted colleagues in the Cabinet, Ministerial and Parliamentary Branch (CXB) and the Business Solutions Branch (BSB) who have assisted in estimating resource demands of your part of the request.

Searches for potentially relevant documents have been undertaken by CXB and BSB.

BSB were engaged to undertake searches for final talking points sent via the diplomatic cable system. As of 17 October 2023 (the date range specified in your revised request) these talking points were at version 28 (averaging 10 pages per document and an estimate of 280 pages to be examined to determine if any of the talking points are in scope).

BSB were also engaged to undertake searches for diplomatic cables more generally and were provided with the following parameters:

- a date range of 7 October 2023 to 17 October 2023, and
- key word search terms of:
 - “de-escalation”, and
 - “ceasefire”

Searches completed by BSB identified 35 items within the search parameters.

Additionally, CXB were engaged to undertake searches of the department's parliamentary document management systems for relevant ministerial submissions and did not find any documents relevant to your request.

A manual review of each document would be required to determine whether the documents are within the scope of your request, and whether each document contains material that would be exempt from release.

I am satisfied that the request constitutes a substantial and unreasonable diversion of the department's resources and refuse your request under section 24(1)(b) of the FOI Act.

Review

This decision is subject to review. Your review rights are set out in the Attachment for your reference.

Alternatively, you may wish to lodge a fresh FOI request, further revising the scope of your request.

It may be useful to revise your scope as follows:

Talking points sent via diplomatic cable and any other diplomatic cables for the date range 7 October 2023 to 17 October 2023 that contain the key words "De-escalation" or "Ceasefire" in relation to the current Gaza war that began in October 2023.

We trust this information assists.

Yours sincerely

Brooke King

Brooke King
A/g Director
Freedom of Information Section

Your review rights

Internal review

You may apply for internal review of the decision (s54 of the FOI Act). The internal review application must be made within 30 days of receipt of this letter.

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 within 60 days of receipt of this letter to the Australian Information Commissioner to review my decision (s54L of the FOI Act). You may also make a complaint to the Australian Information Commissioner about the Department's actions in relation to this decision (s70 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: <https://www.oaic.gov.au/freedom-of-information/foi-review-process>

Further information about how to make a complaint is available at: <http://www.oaic.gov.au/freedom-of-information/foi-complaints>