



FOI References: LEX 9207, 9269, 9295, 9321, 9322, 9326, 9346,
9358, 9366, 9368, 9373, 9419 and 9428

File No: 23/27688

November 2023

Foifoi Mcgee
Right to Know

By email: foi+request-10779-b101ab1f@righttoknow.org.au

Dear Foifoi Mcgee

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

I refer to your request dated 21 October 2023 (LEX 9322) in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

"On the 19th October 2023, it was reported by news.com.au that Foreign Minister Penny Wong said "Our current assessment is that Israel is not responsible for the explosion in a hospital in Gaza."...

INFORMATION I AM SEEKING:

1. I am seeking all documents, including but not limited to investigation reports, other reports, meeting minutes, correspondence, records of conversation & file notes held by the Department of Foreign Affairs that were used by the Foreign Minister in making the assessment

2. I also require all the draft versions of all these documents."

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.

That same day you wrote to the department and revised the scope of your part of the request to:

"1. I only need the documents requested from 17th October 2023 - 19th October 2023

2. I only require those documents about the Al- Ahli Arab Hospital bombing that occurred on the 17th October 2023. I do not require documents about any other hospital bombing."

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 Business Solutions Branch (BSB) and Cyber Security and Networks Branch (CRB) who have assisted in estimating resource demands of your part of the request. Searches for potentially relevant documents have been undertaken by BSB and CRB.

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

- a date range of 17 October 2023 to 19 October 2023, and
- key word search terms of:
 - "Al- Ahli Arab Hospital"
 - "Hospital explosion"/"hospital bombing"
 - "Al-Ahli" and "Hospital".

Searches completed by BSB identified 12 items within the search parameters.

Additionally, CRB were engaged to undertake department wide searches for emails and were provided with the following search parameters:

- a date range of 17 October 2023 to 19 October 2023, and
- key word search terms of:
 - "Al-Ahli Arab Hospital"
 - "Hospital explosion"
 - "hospital bombing"
 - "Al-Ahli" AND "Hospital".

Searches completed by CRB identified 37,939 items within the search parameters.

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 even if your request was not combined with the 12 other requests, your request would still constitute a substantial and unreasonable diversion of the department's resources and refuse your request under section 24(1)(b) of the FOI Act.

Note that, even if a manual review of each document was undertaken, the department would not be able to identify documents that were used by the Foreign Minister. Only documents that were provided to the Foreign Minister.

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.

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>