



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

File No: 23/27688

14 November 2023

CR
Right to Know

By email: foi+request-10781-c93d56c5@righttoknow.org.au

Dear CR

Thank you for your FOI request dated 22 October 2023 (LEX 9321) in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

1. *All internal briefings, memorandums, emails, reports or other documents that were consulted by or provided to Foreign Minister Penny Wong which informed her determination regarding responsibility for the hospital explosion in Gaza.*
2. *Any documents, including diplomatic cables, intelligence reports, meeting notes or other correspondence within the Department of Foreign Affairs and Trade or exchanged with other government departments/agencies relating to, mentioning, referencing or analysing the hospital explosion in Gaza.*

Notice of intended practical refusal and notice that your requests have been combined

In accordance with section 24AB(2) of the FOI Act, I am providing you notice of my intention to refuse to grant access to the documents captured by your request.

Under section 24AA(a)(i) of the FOI Act, for the purposes of section 24 of the FOI Act, a practical refusal reason exists in relation to a request for a document if the work involved in processing the request, in the case of the agency, would substantially and unreasonably divert the resources of an agency from its other operations.

Under section 24(2)(b) of the FOI Act, the agency may treat two or more requests as a single request if satisfied that the request relates to documents, the subject matter of which is substantially the same.

Combining your request

Between 9 October 2023 and 3 November 2023, the department received 13 FOI requests relating to the Hamas-Israel Conflict, seeking documents within the date range of 1 October 2023 to 3 November 2023.

Paragraph 3.123 of the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act provides:

“The most common circumstance in which requests may be combined under s 24(2) is likely to be multiple requests from a single applicant. However, s 24(2) can also apply to two or more requests from different applicants... Multiple requests can only be combined as a single request under s 24(2) if there is a clear connection between the subject matter of the requested documents.”

I have considered the scope and date range of all 13 requests received by the department and have decided to treat the requests as a single request. In accordance with section 24(2)(b) of the FOI Act, I am satisfied that the requests relate to documents, the subject matter of which is substantially the same, being the Hamas-Israel Conflict.

Further, I am of the view that processing the request, would constitute a substantial and unreasonable diversion of the department's resources, for the reasons set out below.

However, you are welcome to revise the scope of your request in line with section 24AB(2)(e) of the FOI Act so that your request might be processed.

Notice of intended practical refusal

In accordance with section 24AB(2) of the FOI Act, I am providing you notice of my intention to refuse to grant access to the documents captured by your request.

The reason for the proposed practical refusal is that the department currently holds thousands of documents that are potentially relevant to your request and the work involved in processing the request, as it currently stands, would substantially and unreasonably divert the department's resources from its other operations.

In making this assessment, I have considered how the department could process your request and the time and resources that would be involved in doing so. To date, over ten percent of the workforce has been diverted to respond to the Hamas-Israel Conflict, with shifts operating 24/7. Relevant officers working within the department's crisis response centre have been unable to undertake searches or provide advice on sensitivities as a priority.

Accordingly, I engaged and have been assisted in this request by in the Business Solutions Branch (BSB) who have assisted in estimating resource demands of your request.

Searches for potentially relevant documents have been undertaken by BSB. BSB were engaged to undertake searches for emails and were provided with the following search parameters:

- a date range of 1 October 2023 to 3 November 2023,
- 14 key word search combinations, being:
 1. "Aid" and "Gaza"
 2. "Gaza"
 3. "Collective punishment"
 4. "Ceasefire"
 5. "Hospital explosion"/"hospital bombing"
 6. "Al-Ahli" and "Hospital"
 7. "Baptist"
 8. "De-escalation"
 9. "War crimes"
 10. "UNGA vote"/"UNGA abstention"/"A/ES-10/L.25"
 11. "Ed Husic", "Anne Aly" and "Tony Burke"
 12. "US assessment"
 13. "intelligence"
 14. "export permits" and "Israel"
- 77 email addresses that had been identified as holding documents.
 - This included officers working in the department's Crisis Centre, Humanitarian Division and a group inbox administered by the Media and Communications Delivery Branch.

Searches completed by BSB have identified 72,367 items. This estimate is considered to be conservative as the searches were confined to the 77 email addresses and do not capture multiple areas within the department, both in Australia and overseas, that have been identified as potentially holding relevant documents.

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

- 8 key word search combinations, being:
 1. "Gaza"
 2. "Collective punishment"
 3. "Ceasefire"
 4. "Hospital explosion"/"hospital bombing"
 5. "Al-Ahli hospital"
 6. "De-escalation"
 7. "War crimes"

8. "UNGA vote"/"UNGA abstention"/"A/ES-10/L.25"

- 10 potential to/from locations, including:
 1. Canberra
 2. Tel Aviv
 3. Ramallah
 4. Beirut
 5. Cairo
 6. Amman
 7. Kuwait City
 8. New York UN
 9. Geneva UN
 10. Vienna UN

The results returned 494 cables within the date range 7 October 2023 to 3 November 2023.

I have considered the factors outlined in paragraph 3.116 and 3.117 of the FOI Guidelines including, but not limited to:

- Identifying, locating or collating documents.
- Examining the documents, deciding whether to grant, refuse or defer access.
- Consulting with other parties.
- Redacting exempt material from the document, making copies of documents.
- Notifying an interim or final decision to applicants.
- The staffing resources available to an agency for FOI processing.
- The impact that processing the request may have on other work in the agency, including FOI.
- The significant public interest in the documents requested.

I am of the opinion that processing your request in its current form would be a substantial and unreasonable diversion of the department's resources under section 24AA(1) of the FOI Act.

Consultation to revise the scope of the request

In accordance with paragraph 3.125 of the FOI Guidelines, agencies are obliged to deal individually with each request that is not withdrawn or revised before the end of the consultation period.

Pursuant to section 24AB(2)(e) of the FOI Act, each applicant has fourteen days from the date of receipt of this notice to:

- (a) withdraw your request;
- (b) revise the scope of your request; or
- (c) notify the department that you do not wish to revise the scope of your request.

I invite you to contact me by email to foi@dfat.gov.au, should you wish to revise the request in order that it can be processed.

To support your consideration of a revised scope, it may be useful to:

- limit the type of documents sought, and
- reduce the date range for your request.

Please note that under section 24AB(7) of the FOI Act, if you do not take an opportunity to consult with the department within 14 days, your request will be considered to have been withdrawn.

Please also be aware that during this period of consultation, the statutory timeframe under section 15(5) of the Act for the processing of your request is on hold (see section 24AB(8) of the FOI Act for details).

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.

Yours sincerely

Brooke King

Brooke King
A/g Director
Freedom of Information Section