



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

November 2023

CR
Right to Know

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

Dear CR

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

I refer to your 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.*

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 advised you were considering revising the scope (first possible revision) of your FOI request as follows:

- 1. Internal briefings, memorandums, emails, reports or other documents consulted by or provided to Minister Wong from 17-19 October 2023 which formed her*

determination regarding responsibility for the Al-Ahli Arab Hospital explosion in Gaza.

2. Diplomatic cables, intelligence reports, meeting notes or other correspondence within DFAT or exchanged with other agencies from 17 October-15 November 2023 relating to the Al-Ahli Arab Hospital explosion in Gaza.

You asked the department to advise if the revised request would still substantially and unreasonably divert departmental resources.

That same day the department wrote to you and advised:

The right of access applies to documents that exist at the time the FOI request was made (paragraph 2.34 of the FOI Guidelines). Your request was made at 11:43pm on 22 October 2023. This means the date range for part 2 of your request will be 17 October to 22 October 2023. Should you wish to withdraw this request and make a new FOI request for a larger date range it is open to you to do so.

The department also advised you of certain agencies that were exempt from the operation of the FOI Act and advised you that:

If there are any intelligence documents relevant to the scope of your revised request and the above applies, these documents will be exempt from the operation of the FOI Act. Accordingly you may also wish to consider excluding intelligence reports from the revised request.

You responded again and advised you were now considering revising the scope (second possible revision) of your request to:

1. Internal briefings, memorandums, emails, reports or other documents consulted by or provided to Minister Wong from 17-19 October 2023 which formed her determination regarding responsibility for the Al-Ahli Arab Hospital explosion in Gaza.

2. Diplomatic cables, meeting notes or other correspondence within DFAT or exchanged with other agencies from 17-22 October relating to the Al-Ahli Arab Hospital explosion in Gaza.

You also sought the department's advice on limiting documents, sought insight as to what type of documents were identified as voluminous in the preliminary search and sought the department's suggestions as to what was reasonable in the circumstances.

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 department wide search for **emails** based on your revised search and containing the search terms "Ali-Ahli Arab Hospital" and "Hospital Explosion" and "Hospital Bombing" and "Ali-Ahli" AND "Hospital" for the date range 17 October 2023 to 19 October 2023 and identified **37,939 items**.*

The retention of emails in your revised scope will not resolve the practical refusal reason. You may instead consider limiting your correspondence to a particular Branch or Division within the department. Or if you were to focus on a document type then to diplomatic cables or briefs sent to the Foreign Minister/or her office only.

Notwithstanding this your request has been combined with 12 other requests, so it is also dependant on the replies of the rest of the cohort. We are working with each applicant to reasonably reduce the scope of the request."

That same day you responded and asked:

If I all excluded all emails without attachments would this help? I presume the most important correspondence regarding the hospital explosion would be of document form (such as pdf or word document, or images of meeting notes, etc.)

On 17 November 2023, after re-engaging CRB in relation to your request, the department advised you:

We have run further searches for you and confirm that excluding emails without attachments reduces the number of results from 37939 to 8112 items and would not resolve the practical refusal reason

That same day you responded and asked:

Might I suggest excluding duplicate emails as well as early parts of email threads that are fully contained within later emails in the thread? I would expect this approach to substantially reduce the number of emails.

To which the department advised:

This would require manual examination and comparison of each email to determine what is in and out of scope and would not resolve the practical refusal reason.

As previously advised and as supported by the three searches undertaken by cyber, the retention of [department wide] emails in your revised scope will not resolve the practical refusal reason. You may instead consider limiting your correspondence to a particular officer, Branch or Division within the department.

Or focus on a particular document type, such as diplomatic cables.

You then responded and asked:

Could you please provide details on the roles and responsibilities of each branch within the department? I am seeking information pertaining to the investigation of or communications regarding the hospital explosion. Is there a specific branch that handled either the investigation into or dissemination of information about the hospital explosion?

The department then provided you with access to publicly available links on the department's website, including the department's organisational structure and information on the department's Crisis Hub, including the department's response to the Hamas-Israel conflict.

That same day you responded and advised you were considering another revision (third possible revision):

- 1. Internal briefings, memorandums, emails, reports or other documents consulted by or provided to Minister Wong from 17-19 October 2023 which formed her determination regarding responsibility for the Al-Ahli Arab Hospital explosion in Gaza.*
- 2. Diplomatic cables dated between 17-22 October relating to the Al-Ahli Arab Hospital explosion in Gaza.*
- 3. Meeting notes and minutes produced within DFAT between 17-22 October relating to the Al-Ahli Arab Hospital explosion in Gaza.*
- 4. Correspondence exchanged between DFAT and other government agencies dated between 17-22 October relating to the Al-Ahli Arab Hospital explosion in Gaza.*
- 5. Internal correspondence and communications within DFAT's International Security, Legal and Consular Group dated between 17-22 October relating to the Al-Ahli Arab Hospital explosion in Gaza.*

You also asked the department to advise if the third possible revision would still substantially and unreasonably divert departmental resources.

That same day the department advised:

Part 4 and 5 of your suggested revised request, for example, adds an additional 3 days to the timeframe. Accordingly it is unlikely this will resolve the practical refusal reason.

Without undertaking further searches, it appears that only part 2 of your request would be processable. Notwithstanding this your request has been combined with 12 other requests, so it is also dependant on the replies of the rest of the cohort. We note we are actively working with each applicant to reasonably reduce the scope of the request.

If you would like to proceed with part 2 of your request, you may wish to consider withdrawing your current request and putting in a new request for part 2 only.

Otherwise, we will undertake fresh searches once your and all other revised scopes have been received.

That same day you responded and advised that you were satisfied that a practical refusal reason no longer exists for the below-revised request:

- 1. Internal briefings, memorandums, emails, reports or other documents consulted by or provided to Minister Wong from 17-19 October 2023 which formed her determination regarding responsibility for the Al-Ahli Arab Hospital explosion in Gaza.*
- 2. Diplomatic cables dated between 17-22 October relating to the Al-Ahli Arab Hospital explosion in Gaza.*
- 3. Meeting notes and minutes produced within DFAT between 17-22 October relating to the Al-Ahli Arab Hospital explosion in Gaza.*
- 4. Correspondence exchanged between DFAT and other government agencies dated between 17-22 October relating to the Al-Ahli Arab Hospital explosion in Gaza.*
- 5. Internal correspondence and communications within DFAT's International Security, Legal and Consular Group dated between 17-22 October relating to the Al-Ahli Arab Hospital explosion in Gaza.*

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 Business Solutions Branch (BSB) and 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.

As noted in the department's email to you on 17 November 2023, your revised scope adds an additional 3 days to the timeframe already searched. In addition to adding 3 days to the search parameters, a manual review of each document would be required to determine whether the documents are within the scope of your each part of your request, and whether each document contains material that would be exempt from release.

Given you have requests emails sent to the Foreign Minister, correspondence exchanged between DFAT and other government agencies and internal correspondence within the International Security, Legal and Consular Group (where the Crisis Centre is located within), I consider a significant portion of the 37,939 items from the two days already searched would be relevant to the scope of your request.

I consider this estimate to be conservative estimate as areas of the department who may hold documents, including the team with responsibility for the department's parliamentary document management system.

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>