



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-10798-e3f1298e@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 26 October 2023 (LEX 9366) in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

“On the 26th October 2023, it was reported by the Sky News that Foreign Minister Penny Wong disagreed that Palestinians were being collectively punished in Gaza.

...

INFORMATION I AM SEEKING:

I am seeking all documents, including but not limited to reports, meeting minutes, memos, ministerial submissions, correspondence, talking points held by the Department of Foreign Affairs and Trade that references, mentions or alludes to collective punishment in Gaza, from the 7th October 2023 to the date of this FOI request.”

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 revised the scope of your part of the request to:

“Instead of all documents held by the Department of Foreign Affairs and Trade, I would instead like the documents provided to the Foreign Minister Penny Wong, and/or those documents used to inform her assessment that Palestinians were not being collectively punished in Gaza.”

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 Crisis Centre, 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 the Crisis Centre, CXB and BSB.

BSB were engaged to undertake searches for talking points, within which the Foreign Minister's Office was a recipient. As of 26 October 2023 (the date of receipt your request) the talking points were at version 47 (averaging 10 pages per document and an estimate of 470 pages to be examined to determine if any of the talking points are in scope).

The Crisis Centre were engaged to undertake searches for documents and located 8 documents, totalling 73 pages, comprising Question Time Briefs and Senate Estimate Briefs.

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

A manual review of each document identified 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.

Additionally, I consider the documents obtained to date to be a conservative estimate as the Cyber Security and Networks Branch have not been re-engaged to undertake searches for potentially relevant emails.

I am satisfied that your 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.

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.

It may be useful to:

- limit to a specific type of document, and / or
- limit the date range for 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>