



Australian Government
Department of Foreign Affairs and Trade

FOI Reference: LEX 9736
File Reference: 23/31465

February 2024

Oliver Smith
Right to Know
By email: foi+request-10960-05670f19@righttoknow.org.au

Dear Mr Smith

RE: Freedom of Information Request

I refer to your request received by the Department of Foreign Affairs and Trade (the department) on 12 December 2023, for access under the *Freedom of Information Act 1982* (the FOI Act) to:

[A]ll communication between His Excellency The Honourable Stephen Francis Smith Australian High Commissioner to the United Kingdom and his office and the Department of Foreign Affairs and Trade in relation to the treatment of Australia Day while Mr Smith is High Commissioner.

This covers the period 26, January 2023 to present [12 December 2023].

On 13 December 2023, the department sought your consent under section 15AA of the FOI Act to provide the department with an extension of time of 30 calendar days to process your request.

On 18 December 2023, you consented to the 30-day extension of time.

In accordance with the department's obligations, the department subsequently notified the Office of the Australian Information Commissioner (OAIC) of the extension.

I am writing to provide you with a decision about your request.

I have identified documents relevant to your request. After careful consideration, I have decided to grant you access to an edited copy of the documents with irrelevant and exempt information removed.

Reasons

I am an officer authorised under section 23 of the FOI Act to make decisions in relation to FOI requests.

In making my decision I have taken into account:

- the terms of your request;
- the documents that fall within the scope of your request;
- the FOI Act; and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines).

The reasons for my decision and for the application of exemptions under the FOI Act to the document are set out below. 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.

Substantial adverse effect on the department's proper and efficient conduct of operations (section 47E(d) of the FOI Act)

Under section 47E(d) of the FOI Act, a document is conditionally exempt if disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the department's operations.

The predicted effect must bear on the department's 'proper and efficient' operations, that is, the department is undertaking its expected activities in an expected manner (FOI Guidelines, paragraph 6.123).

I am satisfied that the information marked up in the documents is conditionally exempt under section 47E(d) of the FOI Act, as its release could have a substantial adverse effect on the proper and efficient conduct of the operations of the department. Specifically, disclosure of this information could reasonably be expected to prejudice the Australian High Commission to the United Kingdom's (London Post) ability to manage events.

Conditional exemptions - public interest considerations (section 11A(5) of the FOI Act)

As section 47E(d) of the FOI Act is a conditional exemption, I must grant you access to this material unless providing access would, on balance, be contrary to the public interest (section 11A(5) of the FOI Act).

In assessing the public interest, I have considered the FOI Guidelines referred to above and the public interest factors listed in section 11B of the FOI Act as favoring access, including whether granting access to the documents would promote the objects of the FOI Act.

I have also considered public interest factors against disclosure, including that disclosure may reasonably be expected to prejudice the management functions of London Post.

I have not taken into account any of the irrelevant factors specified in section 11B(4) of the FOI Act.

I am satisfied that, on balance, the public interest is weighted against the disclosure of the conditionally exempt information.

Irrelevant material (section 22(1)(a)(ii) of the FOI Act)

Some of the material could reasonably be regarded as irrelevant to your request (section 22(1)(a)(ii) of the FOI Act). In determining what is relevant to your request, I have taken into account the terms of your request and the email which you received from the department on 12 December 2023, in which you were invited to respond if you required the names and contact details of government officials not in the Senior Executive Service (SES). As you have not stated that you require this information, I have decided to remove this information from the document being released to you.

Review rights

Information about your review rights is set out in the **Attachment** for your reference.

Contact

Should you have any queries regarding this matter please contact the Freedom of Information Section by email (foi@dfat.gov.au).

Yours sincerely



Julie Shams

Assistant Secretary

Department of Foreign Affairs and Trade

Your review rights

Internal review

You may apply for internal review of the decision (section 54 of the FOI Act). The internal review application must be made within 30 calendar days from the day you receive this notice.

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 to the Australian Information Commissioner to review my decision (section 54L of the FOI Act). To do this, you must contact the Australian Information Commissioner within 60 calendar days from the day you receive this notice.

You may also make a complaint to the Australian Information Commissioner about the Department's actions in relation to this decision (section 70 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: www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews.

Further information about how to make a complaint is available at: www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints.