



26 August 2024

Tyler

By email: foi+request-11801-d8cfb29f@righttoknow.org.au

Dear Tyler

Re: Freedom of Information Request

I refer to your request received by the Department of Foreign Affairs and Trade (the department) on 30 July 2024 and revised on 5 August 2024, for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

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 refuse access to the documents because the documents are exempt in full under the FOI Act.

Your request

In your revised scope, you requested access to:

... MOUs between Australia and the Philippines:

- MOU on Enhanced Maritime Cooperation to strengthen existing civil and defence maritime commitments (2024)*
- MOU on Cyber and critical technology to harden our resilience against cyber attacks and encourage cooperation on the digital economy (2024)*

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 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. Where I refer to parts of the FOI Guidelines, these are available at www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines.

Damage to international relations (section 33(a)(iii) of the FOI Act)

Under section 33(a)(iii) of the FOI Act, a document is exempt if its disclosure would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth.

The phrase ‘international relations’ has been interpreted to mean the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them (FOI Guidelines, paragraph 5.39).

This applies to documents, the disclosure of which may diminish the confidence which another country has in Australia as a reliable recipient of confidential information, making that country or its agencies less willing to cooperate with Australian agencies in future (FOI Guidelines, paragraph 5.42).

The expression ‘damage’ can include intangible damage, including inhibiting future negotiations between the Australian Government and a foreign government, or the future flow of confidential information from a foreign government or agency (FOI Guidelines, paragraph 5.25).

I consider the expectation of damage to international relations is reasonable in all the circumstances, having had regard to the nature of the information, the circumstances in which it was communicated and the relationship between the Commonwealth and the foreign country (FOI Guidelines, paragraph 5.40).

The documents you have requested were, in their entirety, agreed to between Australia and a foreign country in confidence.

I consider that the disclosure of the documents would be reasonably likely to cause damage to the international relations of the Commonwealth, and would diminish the confidence which other countries would have in Australia as a reliable recipient of confidential information. This information is therefore exempt under section 33(a)(iii) of the FOI Act.

Material obtained in confidence (section 33(b) of the FOI Act)

Under section 33(b) of the FOI Act, a document is exempt if disclosure would divulge any matter communicated in confidence to the Australian Government by or on behalf of a foreign government, an authority of a foreign government or an international organisation.

Information is communicated in confidence by or on behalf of another government or international organisation if it was communicated under an express or implied understanding that the communication would be kept confidential (FOI Guidelines, paragraph 5.46).

Confidentiality need not be formal. A general understanding that communications of a particular nature will be treated in confidence will suffice. The understanding of confidentiality may be inferred from the circumstances in which the communications occurred, including the relationship between the parties and the nature of the information communicated (FOI Guidelines, paragraph 5.48).

The documents you have requested were, in their entirety, agreed to between Australia and a foreign country in confidence. I consider that disclosure of these documents would divulge information which was communicated in confidence by a foreign government to the Commonwealth and it is therefore exempt under section 33(b) of the FOI Act.

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

Clare Duffield
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.