



**Australian Government**  

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**Department of Foreign Affairs and Trade**

FOI Ref: 1212-F474  
File No: 12/17836

7 March 2013

Mr David Reid  
c/o Right To Know

Transmitted by e mail to [foi+request-23-f813bf81@righttoknow.org.au](mailto:foi+request-23-f813bf81@righttoknow.org.au)

Dear Mr Reid

**Re: Freedom of Information Request**

I refer to your current request for access under the *Freedom of Information Act 1982* (the FOI Act) to:

*“documents (cables between DFAT and the Australian Office Taipei, ministerial submissions, briefings/reports) pertaining to the detention and trial of former president Chen Shui-bian and the detention and trial of DPP officials on corruption related charges.*

*I also seek documents which illustrate the range of human rights issues monitored by DFAT and the Australian Office Taipei over the period May 2008 to the present. These would most likely be in the form of annual reports or regular briefings.”*

**Decision**

After careful consideration of the material and the terms and context of your request, I have identified 24 documents as being relevant to your request. My decisions on the documents are as follows:

I have decided to release to you 16 documents in full and 7 documents in part. I have decided one document is exempt from release in full. A schedule of the documents detailing my decision in respect of each document is attached. The reasons for my decision are set out below.

A significant amount of material in the enclosed documents has been deleted under section 22 of the FOI Act, which allows material that is either irrelevant or exempt from release to be deleted, to enable the remaining material in the document to be released. Where I have deleted material in a document because it is irrelevant, I have noted on that part of the document that material has been deleted under section 22 of the FOI Act. In my view, disclosing this material would disclose information that is reasonably regarded as irrelevant to your request.

Section 26 of the Act provides that where access to a document has been denied in full or in part, a statement must be provided to the applicant setting out findings on material questions of fact, the material on which those findings were based, and the reasons for the decision. Please find this information below.

### **Material considered**

The material on which my decision is based includes:

- the request and the documents within the scope of the request;
- the FOI Act; and
- the Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act.

### **Reasons for my decision, including any material findings of fact**

a) I have exempted some material under section 33(a)(iii) of the FOI Act, which provides that:

*"A document is an exempt document if disclosure of the document under this Act would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth".*

I have decided that some material in documents 8 and 21 is exempt from disclosure pursuant to section 33(a)(iii) as its release would, or could reasonably be expected to, cause damage to Australia's international relations with other countries. It is important that the good relations enjoyed by the Australian Government and its officials with the Taiwan and Chinese Governments are maintained to ensure their willingness to work with Australia in future. Release of redacted information pursuant to this section could contribute to a loss of trust and confidence in the Australian Government and its officials and contribute to Taiwan and China being less willing to cooperate with Australia. In my opinion, release of such material could reasonably be expected to damage Australia's international relations.

b) Some material is exempt from release under section 33(b) of the FOI Act which states that:

*"A document is an exempt document if disclosure of the document under this Act would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organization to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth".*

I have decided that some material in documents 4 and 10 is exempt from disclosure pursuant to section 33(b) as its release would reveal information communicated in confidence by a foreign

government. This information includes confidential comments made by senior representatives of the Taiwan government. Release of this material would reveal the views of a foreign government which was provided to the Commonwealth of Australia on the mutual understanding that it was being communicated in confidence and on the basis that it would not be divulged. Release of this information could damage the bilateral relationship by inhibiting future exchanges of a confidential nature between Australia and Taiwan.

(c) I have decided to exempt some material under section 47E(d) of the FOI Act , which provides that:

*A document is conditionally exempt if its disclosure would, or could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.*

I have decided to conditionally exempt some material relating to meetings between the Australian Office in Taipei and senior representatives of Taiwan's Opposition and other non-government bodies the release of which could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the Department. An essential part of the Department's operations requires meetings to be conducted between the Australian Office in Taipei and senior representatives of Taiwan's Opposition and other non-government bodies. In my view there is a strong operational need in maintaining the Australian Government's ability to collect information reliably in Taiwan, which would be jeopardised by the disclosure of this information

Section 11A requires that access must be provided unless that access would, on balance, be contrary to the public interest.

In assessing the public interest in this matter, I have had regard to the Guidelines issued by the Australian Information Commissioner. I consider the release of the material covered by this conditional exemption would be against the public interest because it would impact negatively on the Department's operations if it were not able to conduct discussions with relevant stakeholders in a confidential manner. It would reduce the willingness of important Taiwan individuals and organisations to share information with us if it became known that those communications were unable to be protected from disclosure. There are no clear public interest factors favouring release of the information.

Some material is exempt from disclosure under section 47F(1) of the FOI Act, which provides that:

*"A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person)".*

I have decided to exempt the personal identifying information (that is the name and position) and records of discussions of individuals which fall under the definition of 'personal information' in the FOI Act. In my view, releasing this material would involve the unreasonable disclosure of those individuals' personal information, as the discussions were undertaken on the basis of confidentiality and the understanding that their assessments and opinions would be protected. The public interest factors in favour of release, including the right of the public to access Government-held documents, are outweighed by the importance of the individuals' rights to privacy.

I note that section 47F of the FOI Act is a conditional exemption and that section 11A of the Act requires that access to conditionally exempt material must be provided unless that access would, on balance, be contrary to the public interest. The FOI Guidelines provide a set of public interest

factors favouring disclosure and factors against disclosure in such circumstances. In my consideration of the material in question, I have found that factors against disclosure outweigh those in favour.

The disclosure of the material in question into the public domain could have a substantial adverse impact on the department's ability to perform its functions by undermining the confidence of individuals that DFAT would appropriately handle personal information, and prejudice their willingness to provide information to DFAT in future.

Disclosure could prejudice the interests of some of the individuals by revealing how they might interpret the particulars of individual cases and would likely undermine their willingness to provide frank advice to DFAT in future. This in turn could limit DFAT's access to information and impact adversely on its ability to most effectively fulfil its consular and other responsibilities – a core part of the role DFAT plays in serving the public interest. As such, I consider it would be contrary to the public interest to disclose such information.

Weighing up all factors, I have concluded that the release of parts of material contained in some documents would be both an unreasonable disclosure of personal information and contrary to the public interest. Such documents have, therefore, been partly exempted, having regard to section 47F and 11(A)(5) of the FOI Act.

### **Your review rights**

#### *Internal review*

Under the provisions of section 54 of the FOI Act, you are entitled to request a review of my access refusal decision. Your request must be made in writing and sent within 30 days of receipt of this letter addressed to:

Director  
Freedom of Information and Privacy Law Section  
Department of Foreign Affairs and Trade  
R G Casey Building  
John McEwen Crescent  
BARTON ACT 0221

#### *Australian Information Commissioner*

Under the provisions of section 54 of the FOI Act, you are entitled to request a review by the Australian Information Commissioner of my access decision. You may also make a complaint to the Australian Information Commissioner under section 70 on the Department's performance of its functions or the exercise of power under the FOI Act.

Your request for review or complaint should be directed to:

GPO Box 2999, Canberra ACT 2601  
Telephone: 1300 363 992  
Fax: (02) 9284 9666  
Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

### *Complaints to the Commonwealth Ombudsman*

You may complain to the Ombudsman concerning actions taken by an agency in the exercise of its powers or, more specifically, the performance of its functions under the FOI Act. There is no fee for making a complaint. The Ombudsman will conduct an independent investigation of your complaint.

You may complain to the Ombudsman by calling or writing to:

Commonwealth Ombudsman  
GPO Box 442  
Canberra ACT 2601  
Telephone: 1300 362 072  
Fax: (02) 6249 7829

### **Charges**

I note that you have paid a deposit of \$31.90 against the estimated charge of \$127.66 for processing your request. The final charge has been assessed as \$127.66.

I would be grateful if you could send the balance of \$95.76, payable by cheque or money order to 'National Cashier – DFAT' to the address below. If you prefer to pay by credit card (Visa or Mastercard), a credit card payment authorisation form has been enclosed for your convenience. Once the FOI Section has received your payment, the documents will be sent to you by ExpressPost.

Should you have any queries regarding this matter please contact your FOI case officer John Scott on (02) 6261 3212.

Yours sincerely



Graeme Meehan  
Assistant Secretary  
East Asia Branch