



**Australian Government**  
**Department of Foreign Affairs and Trade**

FOI Ref: 1306-F594  
File No: 13/10648  
Date: 13 August 2013

Mr Ben Garrett  
[foi+request-251-70c6f9cc@righttoknow.org.au](mailto:foi+request-251-70c6f9cc@righttoknow.org.au)

Dear Mr Garrett,

**Re: Freedom of Information Request**

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

*Existing diplomatic cable documents concerning that of the Principality of Hutt River, excluding those that are within the open access period as defined in the Archives Act 1983 and those which have already been released under the FOI Act.*

I am authorised under section 23 of the FOI Act to make access decisions, and have been appointed to be the decision-maker on your request as required by departmental procedures. I have been provided with the documents identified in searches within the Department as relevant to your request.

**Decision**

After careful consideration of the material and the terms and context of your request, I have identified 113 documents as being relevant to your request. I have decided to release 60 documents in full, some with irrelevant material deleted, and to release 53 documents in part.

Some 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. 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 FOI 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;
- the Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act; and
- consultations with relevant third parties.

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

The reasons for my decision are set out below.

Some material has been deleted under section 22(1)(a)(ii) of the FOI Act, which allows material that is either irrelevant to the request or exempt from release to be deleted, to enable the remaining material in the document to be released.

I have decided to delete material which I consider to be outside the scope of the FOI request, and therefore irrelevant. This includes material from cables such as various Posts' routine priorities reports and reports on local media coverage of Australia, the bulk of which does not contain any reference to 'Hutt River Province' or the activities of its representatives.

I have also decided to exempt the personal information (names and contact details) of non-SES employees of the Department. I note that where there is no need for contact with a particular public servant in the future, disclosure of the public servant's name may be unreasonable and I have therefore deleted the names of junior staff.

Some material is exempt from disclosure under section 33(a)(iii) of the Act, which provides as follows:

*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.*

The material in question is exempt from disclosure as its release could reasonably be expected to cause damage to Australia's international relations. This material relates primarily to the names of foreign government officials. While foreign officials expect to be named in official reporting, this does not extend to an expectation that their names will be made public. The public disclosure of this information would adversely affect working relationships between Australia and other countries as it could raise doubts about Australia's ability to protect information, and thereby reduce the willingness of representatives of foreign governments to share information with Australian officials in future. This in turn would have a substantial adverse impact on DFAT's ability to conduct its core business of advancing Australia's international interests.

Some material is exempt from disclosure under section 42 of the FOI Act, which provides that:

*A document is an exempt document if it is of such nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.*

I have decided to exempt some information under section 42 of the FOI Act as it fulfils the criteria set out in OAIC Guidelines 5.118-5.119 that: privileged communications require the existence of a legal adviser-client relationship, that the communication was for the purpose of giving or receiving legal advice, that the advice was independent, and that the advice was confidential. Further, the Department, as the client, has not waived legal professional privilege with regard to these documents (OAIC Guidelines 5.126-5.129).

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 (including the names) and other details relating to 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. 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.

However, section 11A of the FOI 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 this particular case, 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.

Much of this information pertains to representatives of the 'Hutt River Province'. It would be impractical and resource intensive to consult with these individuals to seek their consent to the release of their names. With the exception of Mr Casley and other persons named on the 'Hutt River Province' website, I have therefore redacted the names of these individuals on the grounds of personal privacy. I have also taken into account the fact that many of the documents report on criminal investigations.

Further, 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. 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 decision. Your request in writing within 30 days of the date of this letter should be directed 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

*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

Should you have any queries regarding this matter please contact your FOI case officer, Ada Cheung, on (02) 6261 3470.

Yours sincerely



Amanda Gorely  
Assistant Secretary  
Domestic Legal Branch