



Australian Government
Department of Foreign Affairs and Trade

FOI Ref: 1307-F597
File No: 13/11735
Date: 29 August 2013

Mr Christopher Wilson
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Dear Mr Wilson

Re: Freedom of Information Request

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

- a) a copy of the report and findings of the internal investigation of the gas explosion on 26 April 2012 in which 2 female embassy staff were injured; and*
- b) a summary of or the titles of the annexes to the Report.*

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 two documents as being relevant to your request. I have decided to exempt these documents in full.

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

I have decided that the documents relevant to your request are exempt under both section 37 1(1) subsections (a) and (b), which provide:

A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

- a) Prejudice the conduct of an investigation of a breach, or possible breach, of the law...;*
- b) Disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law; and*

section 37 (2)(a), which provides:

A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

- a) Prejudice the fair trial of a person or the impartial adjudication of a particular case.*

Comcare is investigating the Kabul explosion, and that investigation is on-going. Therefore, public disclosure of the DFAT internal report which was provided to Comcare could reasonably be expected to prejudice its investigation. Similarly, disclosure of the list of annexes would disclose the existence of confidential sources of information for that report.

I have taken note of OAIC Guideline 5.78 on the application of section 37, which states that:

The exemption is concerned with the conduct of an investigation. For example, it would apply where disclosure would forewarn the applicant about the direction of the investigation, as well as the evidence and resources available to the investigating body – putting the investigation in jeopardy.

and OAIC Guideline 5.80, which states that:

Whether prejudice will occur is a question of fact to be determined on the evidence. The fact that a document is relevant to an investigation is not, however, sufficient. If the information in the document indicated a breach of the law and was prepared in the course of, or for the purposes of, an investigation, this would be sufficient.

In my view, disclosure of the documents relevant to your request would fulfil the criteria set out in these Guidelines, and they are therefore exempt.

Moreover, should Comcare's investigation lead to a prosecution, disclosure of the DFAT Report could reasonably be expected to prejudice a fair trial. The trial of individuals (or entities) named in the DFAT Report would be prejudiced by the disclosure of any adverse preliminary findings contained therein.

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

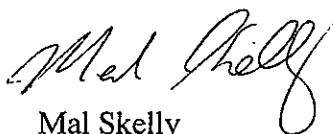
You may complain to the Ombudsman concerning actions taken by an agency in the exercise of its powers or, more specifically, the performance of its functions under the FOI Act. There is no fee for making a complaint. The Ombudsman will conduct an independent investigation of your complaint.

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

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

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

Yours sincerely



Mal Skelly
Assistant Secretary
Remuneration & Post Management Branch