



Australian Government
Department of Foreign Affairs and Trade

FOI Ref: 1707-F1727

File No: 17/19238

17 August 2017

Mr Asher Hirsch

Right to Know

By email to: foi+request-3709-72f7223d@righttoknow.org.au

Dear Mr Hirsch

Re: Freedom of Information (FOI) Request

Thank you for your email of 4 July 2017 seeking access under the *Freedom of Information Act 1982* (the FOI Act) to:

“documents and correspondence between the Department and the Government of Indonesia (and its agencies) regarding Indonesian minors who were jailed in adult prisons in Sydney, Melbourne, Brisbane and Perth between 2008 and 2012 for crewing asylum seeker boats”.

In your email of 18 July, you requested a waiver of the charges associated with the processing of your FOI request. I am the decision-maker with respect to charges authorised in accordance with the provisions of section 23(1) of the FOI Act. I am writing to inform you that I have decided not to reduce or waive the processing charges.

Please note that at this stage in the FOI process, no decision has been made as to whether the information you seek will be released or exempt under the provisions of the FOI Act. My decision relates only to the processing charges.

Reasons for my decision – Public Interest Grounds

In your email seeking a waiver of the processing charges, you assert that the documents are in the public interest and that Australia’s border protection laws and policies have received significant public attention. You also state that the jailing of Indonesian minors charged with people smuggling is of interest to the public and the issue has received recent media attention. You state that for these reasons, the issue is in the public interest and the fees should be waived.

In considering your application to waive charges on public interest grounds in accordance with section 29 of the FOI Act, I have taken into account whether the giving of access to the documents is *in* the public interest, as opposed to being *of* public interest.

I have considered the general question as to whether the benefit from the release of the information contained in the documents will flow to the public at large, or a substantial section of the public.

In my view, while the issue may be "of" public interest, the release of the documents is not "in" the public interest (or in the interests of a substantial section of the public).

In particular, I do not consider the release of the documents would advance or serve the interests of a substantial section of the general public. In my opinion, there is a risk that releasing government-to-government communications would damage Australia's bilateral relations with the Indonesian government. Furthermore, given that this matter is the subject of overseas legal proceedings and there is a general public interest in the Commonwealth properly protecting its ability to advance its interests regarding current foreign legal proceedings, I consider that release of the material is not in the public interest or in the interests of a substantial section of the public.

Charges in the FOI Act are a vital component of the FOI regime which makes it sustainable and appropriately balanced from a public policy perspective. Significant time and cost to the Australian community is attributable to processing FOI requests. The processing charges are designed to ensure that the Australian community recoups a fair proportion of the costs of processing non-personal FOI requests, given that processing such requests diverts significant community resources away from other key community priorities.

Therefore, in accordance with section 29 of the FOI Act I have decided that the original charge of \$127.20 should stand in relation to your request. Accordingly, and as previously advised, a deposit of 25% of the revised charge is to be paid before processing commences where the preliminary assessment of the charge exceeds \$100. I calculate the required deposit for your request to be **\$31.80**.

If you agree to pay the charge you may lodge payment by cheque, or money order made payable to 'The National Cashier – DFAT' to

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

If you do not pay the deposit or seek review of my decision within 30 days of your receipt of this notification, your request will be deemed to be withdrawn, in accordance with section 29 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 decision. Your request should be directed to:

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 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

Should you have any queries regarding this matter please contact the Department's FOI and Privacy Law Section by email to: foi@dfat.gov.au.

Yours sincerely



Helen Horsington
Director
Freedom of Information and Privacy Law Section



Department of Foreign Affairs and Trade

☐ Payment of Charges: (Deposit / In Full)

For the sum of \$ _____ as detailed in the FOI Estimate of Charges letter dated _____ (FOI ref: 1707-F1727)

Credit Card Payment for Freedom of Information (FOI) Charges

Name _____
Address _____

I authorise the National Cashier of the Department of Foreign Affairs and Trade to debit my

☐ VISA ☐ MASTER CARD

☐☐☐☐ - ☐☐☐☐ - ☐☐☐☐ - ☐☐☐☐ Expiry: ____/____

Name appearing on card _____

Signature: _____

Payment by Direct Debit

Account Name: Department of Foreign Affairs and Trade
BSB No.: 092-009
Account No.: 110329

Please include your surname and 'FOI' in the reference field.