



13 September 2017

Mr Asher Hirsch

Sent by email: foi+request-4020-e0ea2633@righttoknow.org.au

In reply please quote:

FOI Request: FA 17/08/00642
File Number: ADF2017/87711

Dear Mr Hirsch

Freedom of Information – Decision on Access

I refer to your email dated 12 August 2017, sent in the first instance to the Department of Foreign Affairs and Trade. The subject matter of your request is most closely connected with the functions of this Department, and as such the Department of Immigration and Border Protection accepted transfer of your request under section 16(1)(b) of the *Freedom of Information Act 1982* (the FOI Act).

You have requested access to the following documents held by the Department:

'Correspondence between Australia and Indonesia, and between Australia and the International Organisation for Migration (IOM), regarding the establishment of the Regional Cooperation Agreement (RCA). Correspondence may include letters, emails, phone call logs or transcripts or any other form of communication. Please limit this request to correspondence in 2000 and 2001.'

This letter is to notify you of the Department's decision regarding your request.

1 Authority to make decision

I am an officer authorised under section 23 of the FOI Act to make decisions to in respect of requests to access documents or to amend or annotate Departmental records.

2 Relevant material

In reaching my decision, I have considered the following:

- The *Freedom of Information Act 1982*;
- The documents as listed in the Schedule of Documents;
- Consultations with relevant business areas; and
- The Australian Information Commissioner's guidelines relating to access to documents held by government.

3 Documents in scope of request

The Department has identified two documents that fall within the scope of your request.

4 Decision on access

I have decided to exempt these document in full.

5 Reasons for Decision

Exemptions were applied on the following grounds.

6 *Section 33 of the FOI Act – Documents affecting National Security, Defence or International Relations*

Section 33(a)(iii) of the FOI Act permits exemption of a document if disclosure of the document would, or could reasonably be expected to cause damage to the international relations of the Commonwealth.

The phrase 'international relations' has been interpreted as meaning 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. The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship. There must be real and substantial grounds for the conclusion that are supported by evidence.

I consider that the release of these documents would, or could reasonably be expected to cause damage and significant harm to the bilateral relationship between Australia and Indonesia.

The release of the information contained within the documents could diminish the trust placed in the Department's officials by the Indonesian Government

The documents to which you have sought access have had a very limited circulation and are only available to a select number of people on a strict needs-to-know-basis.

This assessment is made considering the material contained within the documents and the current nature and extent of the Department's relationship with Indonesia.

I have therefore decided that the information contained within the documents is exempt from disclosure under section 33(a)(iii) of the FOI Act.

7 *Section 47 of the FOI Act – Documents disclosing commercially valuable information*

Section 47 provides that a document is an exempt document if its disclosure under this Act would disclose any information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

In determining whether the information within the documents is commercially valuable, I have had regard to the following factors:

- whether the information is known only to the person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value

- whether the information confers a competitive advantage on the person to whom it relates – for example, if it lowers the cost of production or allows access to markets not available to competitors
- whether a genuine "arm's-length" buyer would be prepared to pay to obtain that information
- whether the information is still current or out of date (noting that out of date information may no longer have any value)
- whether disclosing the information would reduce the value of a business operation or commercial activity, reflected perhaps in a lower share price.

I consider that the documents in scope of the request contain information of a commercial value and that there is a reasonable likelihood that value would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

The information contained within the documents is valuable for the purpose of carrying on the commercial activities in which the entity is engaged. The information is relevant to the profitability or viability of a continuing business operation. If the information were to be released, it could enable a competitor to obtain a commercial advantage over the entity.

The documents to which you have sought access have had a very limited circulation and are only available to a select number of people on a strict needs-to-know basis.

I have therefore decided that the documents are exempt in full from disclosure under section 47 of the FOI Act.

8 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Series/C2004A02562>.

9 Your Review Rights

Internal Review

If you disagree with this decision, you have the right to apply for an internal review by the Department of this decision. Any request for internal review must be provided to the Department within 30 days of you being notified of the decision. Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by an officer other than the original decision maker and the Department is required to make a review decision within 30 days. Applications for review should be sent to:

Freedom of Information Section
Department of Immigration and Border Protection
PO Box 25
BELCONNEN ACT 2617

OR

By email to: foi.reviews@border.gov.au

Review by the Office of the Australian Information Commissioner

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of this decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a request for a review to the OAIC, please see Fact Sheet 12 "Freedom of information – Your review rights", available online at <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

10 Making a Complaint

You may complain to the Australian Information Commissioner about action taken by the Department in relation to your request.

Your enquiries to the Australian Information Commissioner can be directed to:

Phone 1300 363 992 (local call charge)

Email enquiries@oaic.gov.au

There is no particular form required to make a complaint to the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the Department of Immigration and Border Protection as the relevant agency.

11 Contact

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at foi@border.gov.au.

A handwritten signature in blue ink, appearing to read 'Alexandra', with a long horizontal flourish extending to the right.

Alexandra Stevenson
Authorised Decision Maker
Department of Immigration and Border Protection
Email: foi@border.gov.au