



Mr Elias Ross

By email: foi+request.6751.9adad8ae@righttoknow.org.au

Dear Mr Ross

Re: Freedom of Information Request – Internal Review into LEX2698

The purpose of this letter is to provide you with information in response to a request you made to the Department of Foreign Affairs and Trade (the Department) for an internal review of LEX2698.

The Department apologises for the delay in finalising this matter.

Original Decision

On 24 September 2020, you requested:

"Provide all communications, documents, email correspondences and minutes of discussions used to compile the 'treatment of returnees' section of the latest 2019 Sri Lankan country report. This may include materials used to produce previous iterations of the report back to 2013."

On 14 October 2020 the Department advised you that the scope of your request was too voluminous, and you were invited to revise the scope of your request. On 18 October 2020, you agreed to a revised scope seeking access to:

"Please provide all communications, email correspondence and minutes of discussions between DFAT and the Sri Lankan Government (including from the Sri Lankan Attorney General's Department, the Sri Lankan Navy, Department of Immigration and Emigration, the State Intelligence Service, the Criminal Investigation Department or the Terrorism Investigation Division), and between DFAT and the International Organisation for Migration, used to compile the 'treatment of returnees' section of the latest 2019 Sri Lankan country report. This may include communications used to produce previous iterations of the report back to 2013."

On 30 November 2020, you were provided with a decision by an authorised officer of the Department in relation to your request, refusing access to the documents sought. The decision maker decided that, based on the complexity and voluminous nature of your revised request, processing the request would substantially and unreasonably divert the resources of the Department from its other operations.

Internal Review

On 30 November 2020, you requested an internal review of the decision. You stated that you were not given an indication of how many documents the revised request captured, so could not determine if section 24(1)(b) of the FOI was correctly applied.

Under the FOI Act, the statutory period for notifying you of the outcome of your request for internal review expired on 30 December 2020. You were not notified of an outcome within the statutory period.

Pursuant to section 54D of the FOI Act, the Department is taken to have made a decision affirming the original decision to refuse access on 30 December 2020.

I have nevertheless considered your request for internal review and provide the following information to assist you. Had a decision been made within the statutory timeframe, I would have decided to **vary the original decision** and process your request. I would have **released in part** the documents relevant to the scope of your revised request for the reasons outlined below.

Statement of Reasons

I had no part in the original decision-making process. I have been provided with the material that is relevant to your request.

Irrelevant material

Section 22(1)(a)(ii) of the FOI Act allows an agency to delete irrelevant material from a document that would reasonably be regarded as irrelevant to the request for access.

In determining what is relevant to your request, I have taken note of your revised request in which you limited the scope of documents to communications between the Department and the Sri Lankan Government and the Department and the International Organisation for Migration (IOM) used to compile the 'Treatment of Returnees' section of the 2019 DFAT Country Information Report on Sri Lanka.

Damage to international relations

Section 33(a)(iii) of the FOI Act exempts documents that would, or could reasonably be expected to, cause damage to Australia's international relations.

Consistent with paragraphs 5.16-5.18 and paragraph 5.25 of the FOI Guidelines, I have examined the documents relevant to the scope of your request and assessed the likelihood of potential damage resulting from disclosure. I am satisfied that the documents would have been exempt on the basis that disclosure would, or could reasonably be expected to, cause damage to Australia's international relations.

Material communicated in confidence

Under section 33(b) of the FOI Act, a document is exempt if disclosure would divulge any matter communicated in confidence to the Australian Government by, or on behalf of, a foreign government, an authority of a foreign government or an international organisation. As noted in paragraph 5.44 of the FOI Guidelines, an understanding of confidentiality need not be formal and may be inferred from the circumstances in which the communications occurred.

I am satisfied that this material would have been exempt on the basis that it was communicated in confidence by the Sri Lankan Government or the IOM.

Substantial adverse effect on the operations of an agency

Under section 47E(d) of the FOI Act, a document is conditionally exempt if disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

I am satisfied that material contained within the documents would have been conditionally exempt under section 47E(d), as its release could have a substantial adverse effect on the operations of the agency. Specifically, disclosure of this material could reasonably be expected to prejudice the department's processes for compiling DFAT Country Information Reports and engaging with foreign governments and international organisations.

Conditional exemptions public interest considerations

As section 47E(d) of the FOI Act is a conditional exemption, I am satisfied that providing access to the conditionally exempt material would have, on balance, been contrary to the public interest (section 11A of the FOI Act).

In assessing the public interest, I have considered the factors favouring disclosure, including promoting the objects of the FOI Act and informing debate on a matter of public importance.

I have also considered the factors against disclosure, including prejudicing the diplomatic functions of the Department and its ability to produce DFAT Country Information Reports.

I have not taken into account any of the irrelevant factors specified in section 11B(4) of the FOI Act.

On balance, I am satisfied that the public interest is weighed against disclosure. I find that this would have been the case for the conditional exemption under section 47E(d) of the FOI Act.

Review

Your review rights are set out in the [Attachment](#) for your reference.

Contact

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

Yours sincerely

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

Mary Ellen Miller
A/g First Assistant Secretary
Multilateral Policy Division

Your review rights

Australian Information Commissioner

The period for seeking an Information Commissioner review expires 60 days after the day you were taken to be notified of the decision, being 60 days after 30 December 2020 (section 54L of the FOI Act). You can apply to the Information Commissioner for an extension of time to make an Information Commissioner review application (section 54T of the FOI Act).

You may also make a complaint to the Australian Information Commissioner about the Department's actions in relation to this decision (section 70 of the FOI Act). Making such a complaint about the way the Department has handled your FOI request is a separate process to seeking review of my decision.

Further information on applying for an Australian Information Commissioner review is available at: <https://www.oaic.gov.au/freedom-of-information/foi-review-process>

Further information about how to make a complaint is available at: <http://www.oaic.gov.au/freedom-of-information/foi-complaints>