



FOI Reference: LEX3983

File No: 21/23772

13 April 2022

Mr Elias Ross

By email: foi+request-7533-b9cc625b@righttoknow.org.au

Dear Mr Ross

Re: Freedom of Information Request

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) under the *Freedom of Information Act 1982 (Cth) (FOI Act)*.

The department apologises for the delay in finalising this matter.

Request

On 13 July 2021, you requested access to:

"...email correspondences that were generated by the Department in the processing and refusal of my previous request 'Treatment of returnees' sections Sri Lanka 2019 country report

...

in LEX2698, LEX3056 and LEX3057."

On 11 August 2021, the department advised you that a practical refusal reason existed due to the large volume of documents captured by your request and invited you to revise the scope of your request.

On 13 August 2021, you revised the scope of your request to exclude all attachments:

"I only request the email correspondences that were generated by the Department in the processing and refusal of my previous request 'Treatment of returnees' sections Sri Lanka 2019 country report in LEX2698, LEX3056 and LEX3057, not the attachments that accompany them."

Under the FOI Act, the statutory period for notifying you of a decision on your request expired on 16 September 2021. You were not notified of a decision within the statutory period.

Pursuant to section 15AC of the FOI Act, the department is taken to have made a decision refusing to give you access to the requested documents on 16 September 2021.

Statement of reasons

Searches conducted by the department identified documents within the scope of your revised request. Following consideration of the documents I have concluded that, if your request was processed within the statutory period, I would have decided to **release in part** the material relevant to your request for the reasons below.

In reaching this conclusion I have taken into account the terms of your request, the documents found to be within the scope of your request, the FOI Act, and the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act. Sections of the FOI Act referred to in my letter can be found online at www.legislation.gov.au.

Deliberative processes (section 47C of the FOI Act)

Section 47C of the FOI Act conditionally exempts deliberative matter. Deliberative matter is content that is in the nature of, or relating to either a) opinion, advice or recommendations that has been obtained, prepared or recorded; or b) a consultation or deliberation that has taken place, in the course of, or for the purpose of, a deliberative process of the government, agency or minister.

I have decided that some material contained within the documents is conditionally exempt under section 47C, as it contains deliberative matter associated with the processing of your previous FOI request. I am satisfied that the conditionally exempt material is information that is not purely factual or operational information.

Substantial adverse effect on the operations of the department (section 47E(d) of the FOI Act)

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 have decided that some material contained within the documents is conditionally exempt under section 47E(d), as its release could have a substantial adverse effect on the operations of the department. Specifically, release of this material could adversely affect the department's processes for the preparation of country information reports and the processing of FOI requests.

Public interest considerations

As exemptions under sections 47C and 47E(d) of the FOI Act are conditional, section 11A(5) of the FOI Act requires access to be granted to a conditionally exempt document unless access would, on balance, be contrary to public interest.

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

I have also considered the public interest factors against disclosure, including that disclosure could reasonably be expected to prejudice the department's processes for the preparation of country information reports and the processing of FOI requests.

On balance, I am of the view that the public interest is weighed against disclosure of this material. I find that this is the case for the conditional exemptions under sections 47C and 47E(d) of the FOI Act.

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

Irrelevant material (section 22(1)(a)(ii) of the FOI Act)

Some material contained within the documents captured by your request is not relevant to the scope of your request (section 22(1)(a)(ii) of the FOI Act).

In determining what is relevant to your request, I have taken note of the email which you received from the department on 2 August 2021 in which you were invited to respond if you required the names and contact details of government officials not in the Senior Executive Service. As you have not stated that you require this information, I have decided to remove it from the documents being released to you.

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 at foi@dfat.gov.au.

Yours sincerely



Ben Milton
Assistant Secretary
Information Disclosure Services and Corporate Law Branch

Your review rights

Australian Information Commissioner

You may apply within 60 days of the date of this letter to the Australian Information Commissioner to review my decision (section 54L 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](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](http://www.oaic.gov.au/freedom-of-information/foi-complaints)