



FOI Reference: LEX3981

File No: 21/23770

15 June 2022

Mr Elias Ross

By email: [foi+request-7533-b9cc625b@righttoknow.org.au](mailto:foi+request-7533-b9cc625b@righttoknow.org.au)

Dear Mr Ross

**Re: Freedom of Information Request**

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982* (Cth) (FOI Act).

The Department apologises for the delay in finalising this matter.

**Request**

On 22 June 2021, you requested access to:

*"I am lodging a new request for documents used to compile the 2013 Sri Lankan country report. This request has already been partly fulfilled, a record of which can be found here: [https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.righttoknow.org.au%2Frequest%2Ftreatment of returnees sections 2%3Fnocache%3Dincoming-21097%23incoming-21097&data=04%7C01%7Cfoi%40dfat.gov.au%7Cfd17226fdffb463b850108d9353321db%7C9b7f23b30e8347a58a40ffa8a6fea536%7C0%7C1%7C637599315991627838%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C3000&data=01%2BCXyy1%2F8Fh9S6qEceHkx8qfX%2BqKwFH1uHXJpmab0U%3D&reserved=0](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.righttoknow.org.au%2Frequest%2Ftreatment%20of%20returnees%20sections%202%3Fnocache%3Dincoming-21097%23incoming-21097&data=04%7C01%7Cfoi%40dfat.gov.au%7Cfd17226fdffb463b850108d9353321db%7C9b7f23b30e8347a58a40ffa8a6fea536%7C0%7C1%7C637599315991627838%7CUnknown%7CTWFpbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTil6lk1haWwiLCJXVCi6Mn0%3D%7C3000&data=01%2BCXyy1%2F8Fh9S6qEceHkx8qfX%2BqKwFH1uHXJpmab0U%3D&reserved=0)*

*Please provide all email correspondences used to compile the 'treatment of returnees' section of the 2013 Sri Lankan country report. Please limit the request to those email correspondences between DFAT and the Sri Lankan Government, the International Organisation for Migration and the two NGOs mentioned in section 3.80 of the report."*

Under the FOI Act, the statutory period for notifying you of a decision on your request expired on 4 October 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 4 October 2021.

**Statement of reasons**

Searches conducted by the Department identified documents within the scope of your request. Following consideration of the documents I have concluded that, if your request was processed

within the statutory period, I would have decided to **refuse access** to the documents for the reasons below.

In forming this view 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 referenced in my decision letter can be found online at [www.legislation.gov.au](http://www.legislation.gov.au). Relevant sections of the FOI Guidelines can be found online at [www.oaic.gov.au/freedom-of-information/foi-guidelines/](http://www.oaic.gov.au/freedom-of-information/foi-guidelines/).

*Damage to international relations (section 33(a)(iii) of the FOI Act)*

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 (section 33(b) of the FOI Act)*

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 a foreign government or an international organisation.

*Substantial adverse effect on the operations of an agency (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 am satisfied that material contained within the documents would have been conditionally exempt 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 at [foi@dfat.gov.au](mailto:foi@dfat.gov.au).

Yours sincerely



Mary Ellen Miller  
Assistant Secretary  
Human Rights Policy and Social Inclusion 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 the Department's 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 the 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>