



Mr Paul Swain

By email: [Paul Swain](mailto:Paul.Swain@foi+request_8339-d34b318c@righttoknow.org.au) <foi+request\_8339-d34b318c@righttoknow.org.au>

Dear Mr Swain

***Re: Freedom of Information Request - Internal Review of LEX 5086***

The purpose of this letter is to advise you of the outcome of your request for an internal review of a decision to refuse access to a document that you requested under the *Freedom of Information Act 1982* (FOI Act).

After careful, independent consideration, I have decided to **affirm** the original decision.

***Your request***

On 15 February 2022 you requested access to:

1. *Could you please provide me with any documents that DFAT holds that shows that the Australian Government attempted to resolve the frozen UK State Pension issue with the UK Foreign Secretary Liz Truss and her staff during her recent visit.*
2. *If the Australian Government DID NOT attempt to resolve the frozen UK State Pension issue with the UK Foreign Secretary Liz Truss and her staff during her recent visit, could you please provide me with any documents that DFAT holds that shows why the Australian Government did not attempt to resolve this issue on this occasion.*
3. *If the Australian Government was once again ineffective in its attempt to resolve the frozen UK State Pension issue during this visit, could you please provide me with any documents that contain analyses that DFAT has done investigating the reason for the failure, and attempting to develop a more effective strategy for future attempts.*
4. *If DFAT does not hold any documents that are covered by point 3, could you please provide me with any documents that DFAT holds that shows why it does not attempt to improve its performance in resolving the frozen UK State Pension issue by analysing its past performance.*

***Original decision***

On 11 April 2022 you were provided with a decision by Elizabeth Le Bas, A/g Assistant Secretary, United States, United Kingdom and Canada Branch dated 24 March 2022 (original decision).

The original decision identified one document containing material relevant to the first part of your request, and access to the document was refused in full under section 33(a)(iii) of the FOI Act.

No documents relevant to the second, third and fourth parts of your request were located. The decision maker refused access to these parts of your request under section 24A(1) of the FOI Act.

### **Internal review**

On 26 April 2022 you requested an internal review of the original decision and stated:

*"Thank you for identifying that there is one document that is covered by my request, and for responding to my request before the agreed date. I would like an internal review of the decision to not release the document,"*

On this basis, I understand that your request for internal review is limited to the decision to refuse access to the document relevant to the first part of your original request. The department has not undertaken new searches for documents relevant to the second, third and fourth parts of your original request.

### **Decision**

I am an officer authorised under section 23 of the FOI Act to conduct an internal review of the original decision. I had no part in the original decision-making process.

I have made a fresh decision in accordance with section 54C of the FOI Act. I have decided to affirm the original decision of 24 March 2022. The reasons for my decision are set out below.

In making my decision I have taken into account your request, the FOI Act, and the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act ('FOI Guidelines'), together with the original decision. I have also taken into account submissions made in your email of 26 April 2022 requesting an internal review of the original decision. In your submissions, you noted the close relationship between the UK and Australia, and stated that:

*"it is difficult for me to understand how the relationship between Australia and the UK could be upset by a difference of opinion on something as long standing as the frozen pension issue, and any comments that Australia has made regarding that issue."*

Sections of the FOI Act referenced in my decision letter can be found online at [www.legislation.gov.au](http://www.legislation.gov.au).

### **Reasons**

#### *Damage to international relations*

Under section 33(a)(iii) of the FOI Act, a document is exempt if its disclosure 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 (FOI Guidelines, paragraph 5.36).



The expectation of damage to international relations must be reasonable in all circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship (FOI Guidelines, paragraph 5.37).

The expression 'damage' can encompass intangible damage, including inhibiting future negotiations between the Australian Government and a foreign government, or the future flow of confidential information from a foreign government (FOI Guidelines, paragraph 5.28). I note I am not required to balance any competing public interest in the disclosure of the document.

On balance, I am satisfied that disclosure of the relevant material in the document would be reasonably likely to damage future negotiations and inhibit the future flow of confidential information between the Australian Government and foreign governments. I have had regard to the nature of the information, the circumstances in which it was included in the document, and the likelihood and nature of the damage to international relations which could occur in the event of disclosure (FOI Guidelines, paragraph 5.37).

On this basis, I find that the document the original decision maker found to be exempt under section 33(a)(iii) of the FOI Act is exempt under that provision and I affirm the original decision.

#### *Irrelevant material*

The document identified as containing information relevant to your request also contains material that is not relevant to your request. To the extent the document contains irrelevant material, the document is not the subject of this decision. In determining what is relevant to your request, I have carefully considered the terms of your request which indicate a specific interest in the 'frozen UK State pension issue'.

#### **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](mailto:foi@dfat.gov.au).

Yours sincerely



James Fisher  
A/g First Assistant Secretary  
US & Indo-Pacific Strategy Division

### Your review rights

#### *Australian Information Commissioner*

Under the provisions of section 54L of the FOI Act, you are entitled to request a review by the Australian Information Commissioner of my access decision. You may also make a complaint to the Australian Information Commissioner under section 70 of the FOI Act about 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:

Office of the Australian Information Commissioner  
GPO Box 5218  
Sydney NSW 2001  
Telephone: 1300 363 992  
Fax: (02) 9284 9666  
Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

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>