



Australian Government

Department of Foreign Affairs and Trade

FOI Ref: 1501-F1060
File No: 15/1775
2 March 2015

Mr Culley Palmer
Email: foi+request-866-13742ada@righttoknow.org.au

Dear Mr Palmer

Re: Freedom of Information Request

I refer to your current request for access under the *Freedom of Information Act 1982* (FOI Act) to:

All communications sent to or from the Australian Embassy in Saudi Arabia, discussing or mentioning the killing of any Australian citizen by a US Unmanned Aerial (sic) Vehicle (Drone) in Yemen; excluding drafts, duplicate documents, and the personal information of the individuals concerned.

I am authorised under section 23 of the FOI Act to make access decisions, and have been appointed to be the decision-maker on your request as required by departmental procedures. I have been provided with the documents identified in searches within the Department as relevant to your request.

Decision

After careful consideration of the material and the terms and context of your request, I have identified three documents as being relevant to your request. I have decided to release these documents in part.

Section 26 of the FOI Act provides that where access to a document has been denied in full or in part, a statement must be provided to the applicant setting out findings on material questions of fact, the material on which those findings were based, and the reasons for the decision. Please find this information below.

Material considered

The material on which my decision is based includes:

- the request and the documents within the scope of the request;
- the FOI Act; and
- the Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act.

Reasons for my decision, including any material findings of fact

The reasons for my decision are set out below.

Some material has been deleted under section **22(1)(a)(ii)** of the FOI Act, which allows material that is either irrelevant to the request or exempt from release to be deleted, to enable the remaining material in the document to be released.

This includes automatically generated metadata showing administrative details (ie automated distribution lists) which have been exempted on the grounds of irrelevance as they add no substance to the specifics of the FOI request.

I have also decided to exempt the personal information (names and contact details) of junior employees of the Department where I have assessed there is no need for future contact with that particular public servant.

I have decided to exempt some information under section **47F(1)** of the FOI Act, which provides that:

A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

I have decided to exempt the personal details, in particular the names, nationality and contact details of individuals, which falls under the definition of 'personal information' in the FOI Act. In my view, releasing this material would involve the unreasonable disclosure of that individual's personal information.

However, section 11A of the Act requires that access to conditionally exempt material must be provided unless that access would, on balance, be contrary to the public interest. The FOI Guidelines provide a set of public interest factors favouring disclosure and factors against disclosure in such circumstances.

In this particular case, the public interest factors in favour of release, including the right of the public to access Government-held documents, are outweighed by the importance of the individual's right to privacy.

The disclosure of the material in question into the public domain could have a substantial adverse impact on the department's ability to perform its functions by undermining the confidence of individuals that DFAT would appropriately handle personal information, and prejudice their willingness to provide information to DFAT in future.

This in turn could limit DFAT's access to information and impact adversely on its ability to most effectively fulfil its consular responsibilities – a core part of the role DFAT plays in serving the public interest. As such, I consider it would be contrary to the public interest to disclose such information.

In reaching this decision, I have taken into account the factors set out in section 47F(1) of the FOI Act, which require me to have regard to:

- (a) the extent to which the information is well known;
- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- (c) the availability of the information from publicly accessible sources; and
- (d) any other matters that the agency or minister considers relevant (s 47F(2)).

With regard to consideration (a) and (c), the information is neither well known nor publicly available. With regard to consideration (b), while the person to whom the information relates is known to be associated with the matters in the documents, this is outweighed by the factors against disclosure.

Weighing up all of these factors, I have concluded that the release of this information would be an unreasonable disclosure of personal information and contrary to the public interest. Therefore, the information has been exempted, having regard to both sections 47F and 11(A)(5) of the FOI Act.

Some material is exempt from disclosure under section 33(a)(iii) of the Act, which provides as follows:

“A document is an exempt document if disclosure of the document under this Act would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth”.

The material in question is exempt from disclosure as its release could reasonably be expected to cause damage to Australia’s international relations. This material relates primarily to information provided by foreign governments. The public disclosure of this information would adversely affect working relationships between Australia and other countries as it could raise doubts about Australia’s ability to protect information, and thereby reduce the willingness of representatives of foreign governments to share information with Australian officials in future. This in turn would have a substantial adverse impact on DFAT’s ability to conduct its core business of advancing Australia’s international interests, including through the provision of consular services.

Your review rights

Internal review

Under the provisions of section 54 of the FOI Act, you are entitled to request a review of my access decision. Your request in writing within 30 days of the date of this letter should be directed to:

Director
Freedom of Information and Privacy Law Section
Department of Foreign Affairs and Trade
R G Casey Building
John McEwen Crescent
Barton ACT 0221

Australian Information Commissioner

Under the provisions of section 54 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 on 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:

GPO Box 2999
Canberra ACT 2601
Telephone: 1300 363 992
Fax: (02) 9284 9666
Email: enquiries@oaic.gov.au

Complaints to the Commonwealth Ombudsman

You may complain to the Ombudsman concerning actions taken by an agency in the exercise of its powers or, more specifically, the performance of its functions under the FOI Act. There is no fee for making a complaint. The Ombudsman will conduct an independent investigation of your complaint.

You may complain to the Ombudsman by calling or writing to:

Commonwealth Ombudsman
GPO Box 442
Canberra ACT 2601
Telephone: 1300 362 072
Fax: (02) 6249 7829

Should you have any queries regarding this matter please contact your FOI case officer Jennifer Streat on (02) 6261 1142.

Yours sincerely



Angus Mackenzie
Assistant Secretary
Consular Policy Branch