



Ali Anwar

By email: foi+request-9013-fcddf4c2@righttoknow.org.au

Dear Mr Anwar

Re: Freedom of Information Request Internal Review

The purpose of this letter is to advise you of the outcome of your request for an internal review of a decision to release documents to you in part, 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 12 June 2022 you requested access to:

"In 2005, the Israeli government attempted to appoint an Arie Scher, who had previously needed to leave his post in Brazil in a hurry, to the post of Israeli Consul in Canberra.

I am seeking all DFAT internal documents and communications from between January 2004 and December 2007 related to Scher. Typically, the man's name is transliterated to our language as 'Arie Scher' or 'Aryeh Scher'."

Original decision

On 12 July 2022, you were notified of a decision made by Gemma Huggins, Acting Assistant Secretary Middle East Branch (original decision).

The original decision identified two documents relevant to your request. Access to the documents was provided in part, with access to some material refused on the basis that 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 (section 47E(d) of the FOI Act). Some material was also removed under section 22(1)(a)(ii) of the FOI Act as it was not relevant to your request.

Internal review

On 7 August 2022, you requested an internal review of the original decision. In your request, you stated:

"I am writing to request an internal review of Department of Foreign Affairs and Trade's handling of my FOI request 'DFAT communications'.

I have no objections to the decision to suppress the names of officials involved in handling the Scher affair.

However, I have trouble following the suggestion that it would cause a substantial adverse effect on the proper and efficient conduct of the operations of DFAT to disclose-anonymized- internal communications regarding the attempt of the Israeli Foreign Ministry to bring in a pedophile as a diplomatic officer.

If DFAT officials were discussing an effort to push back against the effort to impose Scher on the Australian people, then that can only demonstrate the good functioning of DFAT, and their commitment to protecting the Australian people. On the other hand, if there were DFAT officials who advocated in favor of letting in this pedophile and giving him diplomatic immunity, then that is something that is clearly in the public interest to know."
(errors in original)

Based on the above, I consider your request for internal review is limited to consideration of the application of section 47E(d) of the FOI Act to the documents.

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. The reasons for my decision are set out below.

In making my decision I have taken into account your request, advice from the areas of the department that conducted document searches, 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 7 August 2022 requesting internal review of the original decision.

Sections of the FOI Act referenced in my decision letter can be found online at www.legislation.gov.au.

Reasons

Operations of the 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.

In this case, the conditionally exempt material involves internal cable reference numbers and cable distribution lists. The conditionally exempt material does not involve, as you have suggested, any "discussions by DFAT officials" or "communications regarding the attempt of the Israeli Foreign Ministry to bring in a pedophile (sic) as a diplomatic officer".

Cable reference numbers and cable distribution lists relate to internal departmental processes, and disclosure of the material could have a substantial adverse effect on the operations of the

department. The ability of the department to undertake reporting from its overseas missions is central to the proper conduct of Australia's diplomatic operations and the performance of the department's functions, including the ability to advocate, promote, and protect Australia's interests overseas.

I therefore find that material contained within the documents is conditionally exempt under section 47E(d) of the FOI Act.

Public interest considerations

As section 47E(d) of the FOI Act is a conditional exemption, 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 the public interest.

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

I have also considered the public interest factors against disclosure, including that disclosure could reasonably be expected to prejudice the operations and functions of the department.

On balance, I am of the view that the public interest is weighed against disclosure of this material. In forming this view, I have not taken into account any of the irrelevant factors specified in section 11B(4) 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

Marc Innes-Brown
First Assistant Secretary
Middle East, Africa and Afghanistan 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

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>