



Dear Mr Smith

Re: Freedom of Information Request

I refer to your request received by the Department of Foreign Affairs and Trade (the department) on 23 June 2024 for access to documents under the *Freedom of Information Act 1982* (the FOI Act).

I am writing to provide you with a decision about your request.

I have identified documents relevant to your request. After careful consideration, I have decided to refuse access to the documents because the documents are exempt in full under the FOI Act.

Your request

You requested access to the following documents:

all documents received by the Government under Article 22(3) of the Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans Pacific Partnership.

Reasons

I am an officer authorised under section 23 of the FOI Act to make decisions in relation to FOI requests.

In making my decision I have taken into account:

- the terms of your request;
- the documents 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 (FOI Guidelines).

The reasons for my decision and for the application of exemptions under the FOI Act to the document are set out below. Where I refer to sections of the FOI Act, these are available at www.legislation.gov.au. Where I refer to parts of the FOI Guidelines, these are available at www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines.

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

All the emails and attachments within the scope of your request are emails from a foreign country to the Australian government.

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*.

'International relations' has been interpreted as 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 5.39).

Section 33(a)(iii) of the FOI Act therefore applies to documents, the disclosure of which may diminish the confidence which another country has in Australia as a reliable recipient of confidential information, making that country or its agencies less willing to cooperate with Australian agencies in future (FOI Guidelines, paragraph 5.42). This exemption therefore applies to all communications provided in confidence from foreign governments to Australia.

I consider that the expectation of damage to international relations resulting from the release of this information is reasonable in all the circumstances, having had regard to the nature of the information and the circumstances in which it was communicated by a foreign government (FOI Guidelines, paragraph 5.40).

I am therefore satisfied that the relevant information is exempt under section 33(a)(iii) of the FOI Act.

Material obtained 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.

Information is communicated in confidence by or on behalf of another government or international organisation if it was communicated under an express or implied understanding that the communication would be kept confidential (FOI Guidelines, paragraph 5.46).

An implied understanding of confidentiality means that the confidentiality need not be formal and a general understanding that communications of a particular nature will be treated in confidence will suffice. (FOI Guidelines, paragraph 5.48).

Based on the circumstances in which the communications occurred, including the relationship between the parties and the nature of the information communicated, I am satisfied that these communications from a foreign government to the Australian

government, while not formally confidential, were nevertheless made on the understanding of confidentiality.

I consider that the relevant information was communicated in confidence by a foreign government or an international organisation and is exempt under section 33(b) of the FOI Act.

Review rights

Information about your review rights is set out in the **Attachment** for your reference.

Contact

Should you have any queries regarding this matter please contact the Freedom of Information Section by email (foi@dfat.gov.au).

Yours sincerely

John Watts
Assistant Secretary
Department of Foreign Affairs and Trade

Your review rights

Internal review

You may apply for internal review of the decision (section 54 of the FOI Act). The internal review application must be made within 30 calendar days from the day you receive this notice.

Where possible, please attach reasons why you believe review of the decision is necessary.

The internal review will be carried out by another officer within 30 days.

Any request for internal review should be directed via email to foi@dfat.gov.au or addressed to:

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

Australian Information Commissioner

You may apply to the Australian Information Commissioner to review my decision (section 54L of the FOI Act). To do this, you must contact the Australian Information Commissioner within 60 calendar days from the day you receive this notice.

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: www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews.

Further information about how to make a complaint is available at: www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-complaints.

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

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 to mean 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 5.39).

This applies to documents, the disclosure of which may diminish the confidence which another country has in Australia as a reliable recipient of confidential information, making that country or its agencies less willing to cooperate with Australian agencies in future (FOI Guidelines, paragraph 5.42).

The expression 'damage' can include 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 or agency (FOI Guidelines, paragraph 5.25).

I consider the expectation of damage to international relations is reasonable in all the circumstances, having had regard to the nature of the information, the circumstances in which it was communicated, and the nature and extent of the relationship of the damage to international relations which could reasonably occur in the event of disclosure (FOI Guidelines, paragraph 5.40).

I consider that the disclosure of the information marked up in the documents would be reasonably likely to cause damage to the international relations of the Commonwealth, and that this information is exempt under section 33(a)(iii) of the FOI Act.

Material obtained 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.

Information is communicated in confidence by or on behalf of another government or international organisation if it was communicated under an express or implied understanding that the communication would be kept confidential (FOI Guidelines, paragraph 5.46).

Confidentiality need not be formal. A general understanding that communications of a particular nature will be treated in confidence will suffice. The understanding of confidentiality may be inferred from the circumstances in which the communications

occurred, including the relationship between the parties and the nature of the information communicated (FOI Guidelines, paragraph 5.48).

I consider that the disclosure of the information marked up in the documents was communicated in confidence by a foreign government or an international organisation and is exempt under section 33(b) of the FOI Act.