



August 2024

Tyler

By email: foi+request-11829-341eb9f6@righttoknow.org.au

Dear Tyler

RE: Freedom of Information Request – Notice of intention to refuse request

I refer to your request received by the Department of Foreign Affairs and Trade (the department) on 9 August 2024 for access under the *Freedom of Information Act 1982* (the FOI Act) to:

... all documents in writing, including any electronic or paper/physical documents, internal to DFAT or between DFAT and other Australian government entities such as the Attorney-General's Department (and also including Australian Ministers and their offices), on the potential (and later actual) nomination, or support of the nomination, by the Australian Government of Professor James Crawford in 2012 and Professor Hilary Charlesworth in 2021 as Judges of the International Court of Justice (ICJ). The scope of this query is from 1 January 2012 to 31 October 2012 and from 1 May 2021 to 12 August 2021 inclusive.

Professor James Crawford and Professor Hilary Charlesworth were nominated by the Australian National Group and not the Australian Government and therefore the department can only process that part of your request relating to *Australian Government support for the nomination of Professor James Crawford and Professor Hilary Charlesworth as Judges of the International Court of Justice (ICJ)*.

I also writing to inform you that the department has identified a large volume of material within the scope of your request and the processing of which we assess (for the reasons set out below) *would substantially and unreasonably divert the resources of the agency from its other operations*.

However, you are welcome to revise the scope of your request in line with section 24AB(6)(b) of the FOI Act, so that it might be processed.

Sections of the FOI Act referred to in this notice are accessible at www.legislation.gov.au.

Notice of intended practical refusal

In accordance with section 24AB(2) of the FOI Act, I am providing you notice of my intention to refuse to grant access to documents in accordance with your request.

The reason for the proposed practical refusal is that the work involved in processing the request as it currently stands *would substantially and unreasonably divert the resources of the agency from its other operations*.

In making this assessment, I have had regard to the time and resources required to process the request, pursuant to section 24AA(2) of the FOI Act, including the resources involved in searching for documents, collating documents, examining the documents, consulting with third parties redacting material from the documents and preparing a final decision. I have been assisted in this task to date by staff in the Multilateral Order and Candidacies Branch (ORB) and the International Law Branch (ILB).

Preliminary searches have captured approximately 100 documents consisting of 1750 pages. All these documents would need to be assessed to determine which are within scope of the request and whether they are suitable for release. Given the volume of pages currently captured in your request and, using the Australian Government Solicitor Charges Calculator, I estimate the time required to process your request to be 116 hours. Please also note that the actual processing time is likely to be much higher as this estimate is based on a narrow reading of the request within the relevant date range and excludes documents on the department's secure system.

For these reasons, I am of the view that processing your request in its current form *would substantially and unreasonably divert the resources of the agency from its other operations* and therefore a practical refusal reason exists within the meaning of section 24AA(1) of the FOI Act.

Consultation to revise the scope of the request

Pursuant to section 24AB(6) of the FOI Act, you have 14 days from the day you are given this notice to:

- a. withdraw your request,
- b. revise the scope of your request, or
- c. inform the department that you do not wish to revise your request.

I invite you to contact me (via foi@dfat.gov.au) should you wish to revise the request in order that it may be processed.

In revising the scope of your request so that it can be processed, you may wish to consider excluding the nomination and election of these judges, confining your request to either Professor Crawford **or** Professor Charlesworth and limiting the time period of your request to a shorter period than the 1 January 2012 to 31 October 2012 period for Professor Crawford and 1 May 2021 to 12 August 2021 for Professor Charlesworth.

Please note that under section 24AB(7) of the FOI Act, if you do not *make a revised request or indicate that you do / do not wish to revise the scope of your request*, your request will be considered to have been withdrawn.

Please also be aware that during this period of consultation, the statutory timeframe under section 15(5) of the FOI Act for the processing of your request is on hold (see section 24AB(8) of the FOI Act for details).

Contact

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

Yours sincerely

A handwritten signature in black ink, appearing to read "J. McNamara", with a long horizontal flourish extending to the right.

Joseph McNamara
A/g Director
Freedom of Information Section