



January 2025

Tyler (Right to Know)

By email: foi+request-12243-fcdfa4c3@righttoknow.org.au

Dear Tyler,

Re: Freedom of Information Request

I refer to your request received by the Department of Foreign Affairs and Trade (the department) 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 grant you access to an edited copy of the documents, with irrelevant and exempt material removed.

Your request

On 28 October 2024, you made the following request:

'Is it possible to provide, to extent possible subject to necessary redactions or omissions, copy of formal diplomatic or other statements or notes, which relate to Australia's recognition and establishment of diplomatic relations, that were exchanged between the government of Australia and Kosovo (around 2008)?'

On 15 November 2024, the department requested a 14-calendar day extension of time to process your request ([section 15AA of the FOI Act](#)).

On 16 November 2024, you consented to the extension of time. The department subsequently notified the Office of the Australian Information Commissioner (OAIC) of the extension of time in accordance with our reporting obligations.

On 28 November 2024, the department requested a 7-calendar day extension of time to process your request ([section 15AA of the FOI Act](#)).

On 29 November 2024, you consented to the extension of time. The department subsequently notified the Office of the Australian Information Commissioner (OAIC) of the extension of time in accordance with our reporting obligations.

On 13 December 2024, the department requested a 6-calendar day extension of time to process your request ([section 15AA of the FOI Act](#)).

On 13 December 2024, you consented to the extension of time. The department subsequently notified the Office of the Australian Information Commissioner (OAIC) of the extension of time in accordance with our reporting obligations.

On 18 December 2024, the department applied for a 30-calendar day extension of time from the Office of the Australian Information Commissioner (OAIC) to process your request ([section 15AB of the FOI Act](#)) due to the complexity in completing searches across multiple Embassies and High Commissions.

On 6 January 2025, the Office of the Australian Information Commissioner (OAIC) granted the department a 30-calendar day extension of time under [section 15AB of the FOI Act](#) to finalise processing of your request.

Authority

I am an officer authorised under [section 23 of the FOI Act](#) to make decisions in relation to FOI requests.

Reasons

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 [OAIC | FOI Guidelines](#).

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 could 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).

Furthermore, the expression damage could 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 (FOI Guidelines, paragraph 5.25).

I have had regard to the nature of the information, the circumstances in which it was communicated, and the nature of Australia's international relationship with the foreign country (FOI Guidelines, paragraph 5.40). Based on these considerations, I consider that the disclosure of the relevant material to which you seek access, would be reasonably likely to cause damage to Australia's foreign relationships.

For these reasons, I have decided that the information marked up in the documents is exempt under section 33(a)(iii) of the FOI Act.

Material communicated 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).

Paragraph 5.44 of the FOI Guidelines also provides that an understanding of confidentiality need not be formal and may be inferred from the circumstances in which the communications occurred.

For these reasons, I have decided that the information marked up in the documents is exempt under section 33(b) of the FOI Act.

Substantial adverse effect on an agency's proper and efficient conduct of operations (section 47E(d) of the FOI Act)

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 department's operations. A substantial adverse effect may be an indirect effect (FOI Guidelines, paragraph 6.82).

The predicted effect must bear on the department's proper and efficient operations, that is, the department must be undertaking its operations in an expected manner (FOI Guidelines, paragraph 6.115).

The documents in scope include content which relates to the department's proper and efficient management and conduct of diplomatic relations with foreign governments.

I am satisfied that the disclosure of this material within the scope of your request would prejudice the flow of similar information to the department in the future and that the department's inability to obtain similar information in future would, or could reasonably be expected to, have a substantial adverse effect on the department's ability to undertake its operational activities effectively and efficiently.

For these reasons, I have decided that the information marked up in the documents is conditionally exempt under section 47E(d) of the FOI Act.

Unreasonable disclosure of personal information (section 47F(1) of the FOI Act)

Under section 47F(1) and 47E(d) of the FOI Act, a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person.

Personal information refers to information or opinion about an identified individual, or an individual who is reasonably identifiable:

- whether the information or opinion is true or not; and
- whether the information or opinion is recorded in a material form or not.

The test of unreasonableness implies a need to balance the public interest in the disclosure of government-held information and the private interest in the privacy of individuals (FOI Guidelines, paragraph 6.133).

I have had regard to the following matters in considering whether disclosure of some information would involve an unreasonable disclosure of personal information:

- the extent to which the information is well known;
- whether the individuals to whom the information relates are known to be (or to have been) associated with the matters in the documents;
- the availability of the information from publicly accessible sources; and
- any other matters that the agency considers relevant (section 47F(2) of the FOI Act).

Having regard to the nature of the information, and the implications for the identified individuals if disclosed, I am satisfied that the disclosure of the personal information in this case would be unreasonable. I am not satisfied that the information is well known or publicly available, or that the disclosure of the relevant information would achieve a public purpose.

For these reasons, I have decided that the information marked up in the documents is conditionally exempt under section 47F(1) of the FOI Act.

As section 47F(1) of the FOI Act is a conditional exemption, I must grant you access to this material unless providing access would, on balance, be contrary to the public interest (section 11A(5) of the FOI Act).

In assessing the public interest, I have considered the FOI Guidelines referred to above and the public interest factors listed in section 11B of the FOI Act as favouring access, including whether granting access to the documents would:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance; and
- allow an individual access to their own personal information.

I have also considered public interest factors against disclosure, including that disclosure may reasonably be expected to:

- prejudice the department's ability to obtain confidential information;
- prejudice the internal functions and process of the department; and
- prejudice an individual's right to privacy.

On balance, I am of the view that the public interest is weighted against the disclosure of the conditionally exempt 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.

Irrelevant and excluded material (section 22(1)(a)(ii) of the FOI Act)

Some of the material excluded from the documents released to you is outside the scope or could reasonably be regarded as irrelevant to your request (section 22(1)(a)(ii) of the FOI Act).

In determining what is relevant to your request, I have taken into account the terms of your request and the email which you received from the department on 13 November 2024, in which you were invited to respond if you required the personal information of junior staff from ministerial offices and government officials not in the Senior Executive Service (SES) or equivalent, including their email addresses and contact numbers, together with all signatures, mobile phone numbers, departmental inboxes and technical transmission details including reference numbers. As you have not stated that you require this information, I have decided to remove it from the documents being released to you.

You were also notified that any duplicate documents or duplicate emails within email chains would be treated as outside the scope of your request. These documents, if any, have been removed from the scope of your request.

Declassifying documents

The department will declassify a document before it is released to you. This process involves redacting the original security classification on a document. If applicable, the redaction will appear as a black rectangle at the top of the document. For further information regarding

sensitive and classified information please see the Protective Security Policy Framework www.protectivesecurity.gov.au/system/files/2022-11/protective-security-guidance-for-executives.pdf.

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

Sean Starmer
Assistant Secretary
Department of Foreign Affairs and Trade

REVIEW AND COMPLAINT OPTIONS

If you consider the department made the wrong decision, please request a review.

If you are dissatisfied with the way your request was processed, please make a complaint.

REVIEW

How to seek a review of this decision

Internal review by the department

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.

A new decision maker, who was not involved in the initial decision, will review your request, and make a new decision within 30 calendar 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

External review by the Information Commissioner (IC)

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

Further information on applying for an IC review is available on Office of the Australian Information Commissioners (OAIC) website.ⁱ

Third party review rights

Third parties who were consulted by the department are entitled to seek an internal review of the department's decision to grant access to a document.

Further information about third party review rights is available on OAICs website.ⁱⁱ

You may also apply for an external review by the IC (section 54L of the FOI Act). To do this, you must make your application within 30 calendar days from the day you receive this notice.

COMPLAINT

How to make a complaint about process

Complaint to the department

If you wish to make a complaint about how your FOI request was processed by the department, we welcome you sending an email with the details of your complaint to the department in the first instance via foi@dfat.gov.au.

Complaint to the IC

You may also make a complaint to the IC about the Departments actions in relation to this decision (section 70 of the FOI Act).

Further information about how to make a complaint is available on OAICs website.ⁱⁱⁱ