



Australian Government
Department of Foreign Affairs and Trade

FOI Reference: LEX11708
File Reference: 24/38849

November 2024

Tyler
Via Right to Know

Email: foi+request-12244-0eeb6adf@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 29 October 2024, you sought access to:

A 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 Montenegro (around 2006) ?

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;

- consultation with other departmental agencies;
- 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 documents 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)

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 (paragraph 5.42 of the FOI Guidelines).

'Damage' to international relations includes intangible damage, such as inhibiting future negotiations between the Australian Government and a foreign government or inhibiting future flow of confidential information from a foreign government to the Australian Government (paragraph 5.25 of the FOI Guidelines).

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

For these reasons, I have decided that this information 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.

Information is communicated in confidence by or on behalf of another government if it was communicated under an express or implied understanding that the communication will 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 relevant information conveyed in confidence from the government of Montenegro to Australia 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' does not have to be direct and includes an indirect effect such as where the release of documents would compromise Australia's international relations (paragraph 6.82 of the FOI Guidelines).

The documents in scope include Third Person Notes (TPNs), which are formal confidential, diplomatic communications exchanged between governments. I am satisfied that the disclosure of the TPNs would directly affect Australia's international relations with Montenegro and indirectly with other countries.

I am satisfied that 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 diplomatic operations in a proper and efficient manner.

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.

Conditional exemptions - public interest considerations (section 11A(5) of the FOI Act)

As section 47E(d) 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; and
- inform debate on a matter of public importance.

I have also considered public interest factors against disclosure, including that disclosure may reasonably be expected to prejudice the diplomatic and foreign affairs' functions of the department.

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 30 October 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.

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

Sally-Anne Henfry
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.

Third party review rights

Further information about third party review rights are available on the Office of the Australian Information Commissioner's (OAIC) website at www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/freedom-of-information-reviews/personal-and-business-information-third-party-review-rights.