

From: s22(1)(a)(ii)
To: "FOI"
Subject: FOI request - Transfer request - LEX9204 [SEC=OFFICIAL]
Date: Tuesday, 10 October 2023 12:10:11 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.png](#)
[image005.png](#)

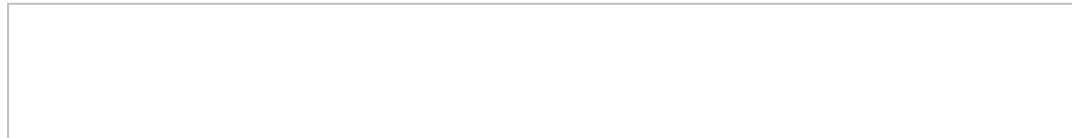
Thanks very much s22(1)(a)(ii)

Kind regards

s22(1)(a)(ii)

s22(1)(a)(ii)

Seconded Lawyer | Freedom of Information Section
Public Interest Law Branch | Regulatory and Legal Policy Division
Department of Foreign Affairs and Trade
Phone: s22(1)(a)(ii) |



© Kim Hill, *Among Women* (2011)

[We acknowledge](#) the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

This email and any attachments may contain confidential information or legal advice over which legal professional privilege can be claimed. Such privilege is not waived and you should ensure that, in your handling of the advice, you avoid waiving privilege. Please consult the author of the advice if unsure about appropriate handling.

From: FOI <FOI@pmc.gov.au>
Sent: Tuesday, 10 October 2023 12:01 PM
To: s22(1)(a)(ii) @dfat.gov.au>
Cc: FOI <FOI@pmc.gov.au>
Subject: RE: FOI request - Transfer request - LEX9204 [SEC=OFFICIAL]

FOI/2023/287

Hi s22(1)(a)(ii)

Thank you for your time on the phone yesterday.

PM&C does **not** accept transfer of the below FOI request, as we believe DFAT is best placed to respond to the first part of the request, being “*briefing notes and advice notes prepared by DFAT...*”.

I note that the applicant sent the request to both DFAT and PM&C. The Prime Minister’s Office

will respond to the portion of the request directed to the PMO - seeking "*briefing notes and advice notes prepared by... the Prime Minister's Office...*". We will clarify this in our acknowledgement to the applicant, noting that the remainder of the request will be processed by DFAT.

Please feel free to contact me if you wish to discuss.

Kind regards

s22(1)(a)(ii)

s22(1)(a)(ii)

Adviser

FOI Section | Legal Policy Branch

Department of the Prime Minister and Cabinet

p. s22(1)(a)(ii)

s22(1)(a)(ii)



The Department acknowledges and pays respect to the past, present and emerging Elders and Traditional Custodians of Country, and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples.

From: s22(1)(a)(ii) <@dfat.gov.au>

Sent: Monday, 9 October 2023 1:09 PM

To: FOI <FOI@pmc.gov.au>

Subject: FOI request - Transfer request - LEX9204 [SEC=OFFICIAL]

OFFICIAL

Dear PMC FOI Section

The Department of Foreign Affairs and Trade has received the following request under the *Freedom of Information Act 1982*:

All correspondence / documents such as emails, briefing notes and advice notes prepared by DFAT and the Prime Minister's Office for the purpose of briefing the Prime Minister for his statements in response to the war in Israel. We specifically refer to the Prime Minister's statements on Saturday October 7, Sunday October 8 and Monday October 9 2023.

As this request is more closely related to the functions of the Department of the Prime Minister and Cabinet (PMC), we request your agreement to accept transfer of this request under section 16(2)(b) of the FOI Act.

Kind regards

s22(1)(a)(ii)

Seconded Lawyer | Freedom of Information Section

Public Interest Law Branch | Regulatory and Legal Policy Division
Department of Foreign Affairs and Trade
Phone: s22(1)(a)(ii) |



© Kim Hill, *Among Women* (2011)

[We acknowledge](#) the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

This email and any attachments may contain confidential information or legal advice over which legal professional privilege can be claimed. Such privilege is not waived and you should ensure that, in your handling of the advice, you avoid waiving privilege. Please consult the author of the advice if unsure about appropriate handling.

IMPORTANT: This message, and any attachments to it, contains information that is confidential and may also be the subject of legal professional or other privilege. If you are not the intended recipient of this message, you must not review, copy, disseminate or disclose its contents to any other party or take action in reliance of any material contained within it. If you have received this message in error, please notify the sender immediately by return email informing them of the mistake and delete all copies of the message from your computer system.

FOI References: LEX 9207, 9269, 9295, 9321, 9322, 9326, 9346, 9358, 9366, 9368, 9373, 9419 and 9428

File No: 23/27688

14 November 2023

s22(1)(a)(ii)

By email: s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Thank you for your FOI request dated 9 October 2023 (LEX 9207) in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

1. *All talking points, submissions, meeting briefs and advice provided to Minister Wong or her staff between 6 October 2023 and 9 October 2023 regarding the Israel and Hamas conflict.*
2. *All emails and requests for information through parliamentary document management systems by the Department Liaison Officers in Minister Wong's office to the Department between 6 October 2023 and 9 October 2023 regarding the Israel and Hamas conflict.*
3. *All emails, encrypted messages and text messages received from and sent to Minister Wong or her staff between 6 October 2023 and 9 October 2023 regarding the Israel and Hamas conflict, by the:*
 - *Secretary*
 - *First Assistant Secretary (Middle East and Africa Group)*
 - *Assistant Secretary (Middle East Branch)*
 - *First Assistant Secretary (Strategic Communications Division)*
 - *Assistant Secretary (Media Communications Delivery Branch)*
 - *Assistant Secretary (Communications Planning and Public Diplomacy)*

Notice of intended practical refusal and notice that your requests have been combined

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

Under section 24AA(a)(i) of the FOI Act, for the purposes of section 24 of the FOI Act, a practical refusal reason exists in relation to a request for a document if the work involved in processing the request, in the case of the agency, would substantially and unreasonably divert the resources of an agency from its other operations.

Under section 24(2)(b) of the FOI Act, the agency may treat two or more requests as a single request if satisfied that the request relates to documents, the subject matter of which is substantially the same.

Combining your request

Between 9 October 2023 and 3 November 2023, the department received 13 FOI requests relating to the Hamas-Israel Conflict, seeking documents within the date range of 1 October 2023 to 3 November 2023.

Paragraph 3.123 of the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act provides:

“The most common circumstance in which requests may be combined under s 24(2) is likely to be multiple requests from a single applicant. However, s 24(2) can also apply to two or more requests from different applicants... Multiple requests can only be combined as a single request under s 24(2) if there is a clear connection between the subject matter of the requested documents.”

I have considered the scope and date range of all 13 requests received by the department and have decided to treat the requests as a single request. In accordance with section 24(2)(b) of the FOI Act, I am satisfied that the requests relate to documents, the subject matter of which is substantially the same, being the Hamas-Israel Conflict.

Further, I am of the view that processing the request, would constitute a substantial and unreasonable diversion of the department's resources, for the reasons set out below.

However, you are welcome to revise the scope of your request in line with section 24AB(2)(e) of the FOI Act so that your request might be processed.

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 the documents captured by your request.

The reason for the proposed practical refusal is that the department currently holds thousands of documents that are potentially relevant to your request and the work involved in processing the request, as it currently stands, would substantially and unreasonably divert the department's resources from its other operations.

In making this assessment, I have considered how the department could process your request and the time and resources that would be involved in doing so. To date, over ten percent of the workforce has been diverted to respond to the Hamas-Israel Conflict, with shifts operating 24/7. Relevant officers working within the department's crisis response centre have been unable to undertake searches or provide advice on sensitivities as a priority.

Accordingly, I engaged and have been assisted in this request by in the Business Solutions Branch (BSB) who have assisted in estimating resource demands of your request.

Searches for potentially relevant documents have been undertaken by BSB. BSB were engaged to undertake searches for emails and were provided with the following search parameters:

- a date range of 1 October 2023 to 3 November 2023,
- 14 key word search combinations, being:
 1. "Aid" and "Gaza"
 2. "Gaza"
 3. "Collective punishment"
 4. "Ceasefire"
 5. "Hospital explosion"/"hospital bombing"
 6. "Al-Ahli" and "Hospital"
 7. "Baptist"
 8. "De-escalation"
 9. "War crimes"
 10. "UNGA vote"/"UNGA abstention"/"A/ES-10/L.25"
 11. "Ed Husic", "Anne Aly" and "Tony Burke"
 12. "US assessment"
 13. "intelligence"
 14. "export permits" and "Israel"
- 77 email addresses that had been identified as holding documents.
 - This included officers working in the department's Crisis Centre, Humanitarian Division and a group inbox administered by the Media and Communications Delivery Branch.

Searches completed by BSB have identified 72,367 items. This estimate is considered to be conservative as the searches were confined to the 77 email addresses and do not capture multiple areas within the department, both in Australia and overseas, that have been identified as potentially holding relevant documents.

BSB were also engaged to undertake searches for cables and were provided with the following search parameters:

- 8 key word search combinations, being:
 1. "Gaza"
 2. "Collective punishment"
 3. "Ceasefire"
 4. "Hospital explosion"/"hospital bombing"
 5. "Al-Ahli hospital"

6. "De-escalation"
 7. "War crimes"
 8. "UNGA vote"/"UNGA abstention"/"A/ES-10/L.25"
- 10 potential to/from locations, including:
 1. Canberra
 2. Tel Aviv
 3. Ramallah
 4. Beirut
 5. Cairo
 6. Amman
 7. Kuwait City
 8. New York UN
 9. Geneva UN
 10. Vienna UN

The results returned 494 cables within the date range 7 October 2023 to 3 November 2023.

Targeted searches relating to your request

In addition to this and noting the shorter date range for your request, additional searches have been undertaken for your request to determine its volume based on the reduced timeframe. These searches have been undertaken by the department's Crisis Centre, Consular and Crisis Management Division, Strategic Communications Division (who also have responsibility for the talking points inbox), Humanitarian Division, the officers specifically name in your request and additional Senior Executive officers, including Offices of Deputy Secretaries.

Preliminary searches located 108 discrete documents, totalling 509 pages and an estimated 25 hours has been spent already searching for documents.

I consider the time spent on this request to date, and the number of documents located, to be conservative as additional business areas have been identified as potentially holding documents that have not yet completed document searches. Additionally, the hours required to process this request would far extend what is reasonable when considering the time required to undertake further searches, manually inspect each document to determine if they are all in scope, remove duplicate documents noting many areas in the department have undertaken searches, before collating the documents, identifying sensitivities and processing the documents.

I have considered the factors outlined in paragraph 3.116 and 3.117 of the FOI Guidelines including, but not limited to:

- Identifying, locating or collating documents.
- Examining the documents, deciding whether to grant, refuse or defer access.
- Consulting with other parties.

- Redacting exempt material from the document, making copies of documents.
- Notifying an interim or final decision to applicants.
- The staffing resources available to an agency for FOI processing.
- The impact that processing the request may have on other work in the agency, including FOI.
- The significant public interest in the documents requested.

I am of the opinion that processing your request in its current form would be a substantial and unreasonable diversion of the department's resources under section 24AA(1) of the Act.

Consultation to revise the scope of the request

In accordance with paragraph 3.125 of the FOI Guidelines, agencies are obliged to deal individually with each request that is not withdrawn or revised before the end of the consultation period.

Pursuant to section 24AB(2)(e) of the FOI Act, each applicant has fourteen days from the date of receipt of this notice to:

- (a) withdraw your request;
- (b) revise the scope of your request; or
- (c) notify the department that you do not wish to revise the scope of your request.

I invite you to contact me by email to foi@dfat.gov.au, should you wish to revise the request in order that it can be processed.

To support your consideration of a revised scope, it may be useful to:

- limit the type of documents sought, and
- reduce the date range for your request.

Please note that under section 24AB(7) of the FOI Act, if you do not take an opportunity to consult with the department within 14 days, your request will be considered withdrawn.

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

Where I refer to sections of the FOI Act, these are available at www.legislation.gov.au. Parts of the FOI Guidelines referenced can be found online at www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines.

Yours sincerely

s22(1)(a)(ii)

A/g Director
Freedom of Information Section

FOI References: LEX 9207, 9269, 9295, 9321, 9322, 9326, 9346, 9358, 9366, 9368, 9373, 9419 and 9428

File No: 23/27688

November 2023

s22(1)(a)(ii)

By email: s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Freedom of Information Request – Refusal under section 24(1)(b) of the FOI Act

I refer to your request dated 9 October 2023 (LEX 9207) in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

1. *All talking points, submissions, meeting briefs and advice provided to Minister Wong or her staff between 6 October 2023 and 9 October 2023 regarding the Israel and Hamas conflict.*
2. *All emails and requests for information through parliamentary document management systems by the Department Liaison Officers in Minister Wong's office to the Department between 6 October 2023 and 9 October 2023 regarding the Israel and Hamas conflict.*
3. *All emails, encrypted messages and text messages received from and sent to Minister Wong or her staff between 6 October 2023 and 9 October 2023 regarding the Israel and Hamas conflict, by the:*
 - *Secretary*
 - *First Assistant Secretary (Middle East and Africa Group)*
 - *Assistant Secretary (Middle East Branch)*
 - *First Assistant Secretary (Strategic Communications Division)*
 - *Assistant Secretary (Media Communications Delivery Branch)*
 - *Assistant Secretary (Communications Planning and Public Diplomacy)*

On 14 November 2023 I notified you of my intention under section 24AB(2) of the FOI Act to refuse to process your FOI request on the grounds that your request would constitute a substantial and unreasonable diversion of the department's resources.

That same day I also notified you that your request had been combined with 12 other requests and would be treated as a single request (the request). Under section 24(2)(b) of the FOI Act, I was satisfied that all 13 requests related to documents, the subject matter of which is substantially the same, being the Hamas-Israel Conflict.

That same day you revised the scope of your request to:

1. *All emails and requests for information through parliamentary document management systems by the Department Liaison Officers in Minister Wong's office to the Department between 6 October 2023 and 9 October 2023 regarding the Israel and Hamas conflict.*
2. *All emails, encrypted messages and text messages received from and sent to Minister Wong or her staff between 6 October 2023 and 9 October 2023 regarding the Israel and Hamas conflict, by the:*
 - *Secretary*
 - *First Assistant Secretary (Middle East and Africa Group)*
 - *Assistant Secretary (Middle East Branch)*
 - *First Assistant Secretary (Strategic Communications Division)*
 - *Assistant Secretary (Media Communications Delivery Branch)*
 - *Assistant Secretary (Communications Planning and Public Diplomacy)*

This was accepted as the revised scope for your part of the request.

Each applicant was consulted separately on the request and had fourteen days from the date of receipt of the consultation notice to:

- (a) withdraw their part of the request,
- (b) revise the scope of their part of the request, or
- (c) notify the department that they did not wish to revise the scope of their part of the request.

Decision

I have considered the terms of your revised request, along with the terms of the other revised requests. I am satisfied that the practical refusal reason still exists, and that processing the request would require a substantial and unreasonable diversion of the department's resources.

I am therefore notifying you of my decision to refuse the request, in accordance with section 24(1)(b) of the FOI Act. I have reached this decision based on the complexity and voluminous nature of the request.

In refusing the request, I have considered how the department could proceed to process the request, and the time and resources that would be involved in doing so.

Relevantly to the revised scope of your part of the request, I have consulted:

- the Cabinet, Ministerial and Parliamentary Branch (CXB),
- the Business Solutions Branch (BSB),
- the Secretary's Office,
- First Assistant Secretary (Middle East and Africa Group),
- Assistant Secretary (Middle East Branch),
- First Assistant Secretary (Strategic Communications Division),
- Assistant Secretary (Media Communications Delivery Branch), and
- Assistant Secretary (Communications Planning and Public Diplomacy).

Each of those listed above have assisted in estimating resource demands of your part of the request.

In the processing of your original scope, CXB were engaged to run searches of the parliamentary document management systems in relation to the now revised part 1 of your request and did not find any documents relevant to the request.

In the processing of your original scope, the Secretary's Office, First Assistant Secretary (Middle East and Africa Group), Assistant Secretary (Middle East Branch), First Assistant Secretary (Strategic Communications Division), Assistant Secretary (Media Communications Delivery Branch), and Assistant Secretary (Communications Planning and Public Diplomacy) undertook searches in relation to the now revised part 2 of your request.

The First Assistant Secretary (Middle East and Africa Group) and Assistant Secretary (Middle East Branch) identified documents relevant to the now revised part 2 of your request. However, the Secretary's Office, First Assistant Secretary (Strategic Communications Division), Assistant Secretary (Media Communications Delivery Branch), and Assistant Secretary (Communications Planning and Public Diplomacy) did not find any documents relevant to the now revised part 2 of your request.

As for the now revised part 2 of your request, noting the positive document returns the First Assistant Secretary (Middle East and Africa Group) and Assistant Secretary (Middle East Branch), and your contention that:

"the date range of my request represents only 11.8% of the scope of the combined request as advised by the Business Solutions Branch (BSB). The search terms of my request represent only one out of the 14 listed by the BSB for emails and none of the cables. The locations relevant for search based on the officials I listed are largely limited to Canberra – representing one out of the 10 locations BSB used for its estimation."

BSB were re-engaged to undertake searches for emails and were provided with the following search parameters:

- a date range of 6 October 2023 to 9 October 2023

- emails to/from the First Assistant Secretary (Middle East and Africa Group) and Assistant Secretary (Middle East Branch) to/from five ministerial advisors that had been identified from the documents returns by the relevant officers.

Searches completed by BSB identified 55 items within the search parameters. The 55 items were then manually reviewed to determine whether the documents were within scope of your request. Duplicates and emails outside the date range of our request (i.e., emails sent or received after 12:55pm on 9 October 2023) were removed from the document bundle.

Over 200 pages worth of emails and attachments were identified to be within the scope of the request. Additionally in undertaking the searches in your original request encrypted messages and text messages were also identified.

I have considered the factors outlined in paragraph 3.116 and 3.117 of the FOI Guidelines including, but not limited to the time already spent identifying, locating, and collating documents, and the time that is still required to:

- examine the documents, decide whether to grant, refuse or defer access,
- redact exempt material from the document,
- notifying an interim or final decision to applicants,
- the staffing resources available to an agency for FOI processing,
- the impact that processing the request may have on other work in the agency, including FOI, and
- the significant public interest in the documents requested.

I am satisfied that the request constitutes a substantial and unreasonable diversion of the department's resources and refuse your request under section 24(1)(b) of the FOI Act.

Combining requests

As outlined in the consultation letter sent to you on 14 November 2023, under section 24(2)(b) of the FOI Act, an agency may treat two or more requests as a single request if satisfied that the request relates to documents, the subject matter of which is substantially the same. Part 3.123 of the FOI Guidelines provide that section 24(2) of the FOI Act can apply to two or more requests from different applicants.

As noted in the consultation letter the department received 13 FOI requests relating to the Hamas-Israel Conflict, seeking documents within the date range of 1 October 2023 to 3 November 2023. I have considered your contention regarding the date range and the search terms of your request.

However, having undertaken further searches specific to your request and considering the scopes and documents captured by all parts of the combined request, I remain satisfied the requests related to documents, the subject matter of which is substantially the same, being the Hamas-Israel Conflict. Therefore, I remain satisfied your request could be combined with the other applicant's requests into one single request under section 24(2)(b) of the FOI Act.

Review

This decision is subject to review. Your review rights are set out in the Attachment for your reference.

Alternatively, you may wish to lodge a fresh FOI request, further revising the scope of your request.

We trust this information assists.

Yours sincerely

s22(1)(a)(ii)

A/g Director
Freedom of Information Section

Attachment**Your review rights***Internal review*

You may apply for internal review of the decision (s54 of the FOI Act). The internal review application must be made within 30 days of receipt of this letter.

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 within 60 days of receipt of this letter to the Australian Information Commissioner to review my decision (s54L of the FOI Act). You may also make a complaint to the Australian Information Commissioner about the Department's actions in relation to this decision (s70 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: <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>

From: [FOI FMO](#)
To: [FOI](#); [FOI FMO](#)
Cc: [s22\(1\)\(a\)\(ii\)](#)
Subject: RE: Seeking transfer of FOI request to FMO [SEC=OFFICIAL]
Date: Thursday, 19 October 2023 3:18:10 PM
Attachments: [image001.jpg](#)
[image002.png](#)

OFFICIAL

Thanks [s22\(1\)\(a\)\(ii\)](#) and sorry for the delay!

From: FOI <foi@dfat.gov.au>
Sent: Thursday, 19 October 2023 11:49 AM
To: FOI FMO <foi.fmo@dfat.gov.au>
Cc: [s22\(1\)\(a\)\(ii\)](#) @dfat.gov.au>
Subject: RE: Seeking transfer of FOI request to FMO [SEC=OFFICIAL]

OFFICIAL

Hi [s22\(1\)\(a\)\(ii\)](#)

Many thanks for verbal confirmation of transfer of this request yesterday.

As per standard practice I've written to the applicant and let them know you have accepted transfer of the request (**attached**).

Note that the statutory timeframe commenced on 15 October 2023 and a decision is due to the applicant by 14 November 2023.

Please don't hesitate to contact me should you have any questions on next steps. In the meantime we will close the file on our end.

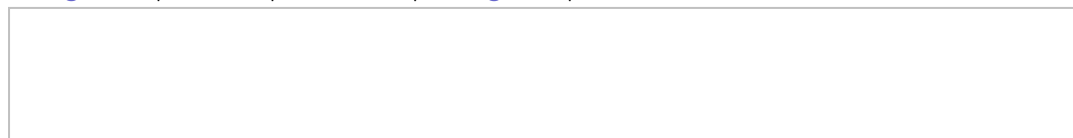
Kind regards

[s22\(1\)\(a\)\(ii\)](#)

Seconded Lawyer | Freedom of Information Section
Public Interest Law Branch | Regulatory and Legal Policy Division

Department of Foreign Affairs and Trade
P [s22\(1\)\(a\)\(ii\)](#)

[dfat.gov.au](#) | [Twitter](#) | [Facebook](#) | [Instagram](#) | [LinkedIn](#)



© Kim Hill, *Among Women* (2011)

[We acknowledge](#) the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

This email and any attachments may contain confidential information or legal advice over which legal professional privilege can be claimed. Such privilege is not waived and you should ensure that, in your handling of the advice, you avoid waiving privilege. Please consult the author of the advice if unsure about appropriate handling.

From: FOI <foi@dfat.gov.au>

Sent: Tuesday, 17 October 2023 3:51 PM

To: FOI FMO <foi.fmo@dfat.gov.au>

Cc: FOI <foi@dfat.gov.au>

Subject: RE: Seeking transfer of FOI request to FMO [SEC=OFFICIAL]

OFFICIAL

Hi s22(1)(a)(ii)

Just following up your consideration of this transfer request, as the statutory clock commences when the request is received.

Please let me know if you would like to discuss.

Kind regards,

s22(1)(a)(ii)

s22(1)(a)(ii)

A/g Director | Freedom of Information Section
Public Interest Law Branch | Regulatory and Legal Policy Division
Department of Foreign Affairs and Trade

P s22(1)(a)(ii) | **M** s22(1)(a)(ii)

dfat.gov.au | [Twitter](#) | [Facebook](#) | [Instagram](#) | [LinkedIn](#)

© Kim Hill, *Among Women* (2011)

We acknowledge the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

From: s22(1)(a)(ii) [@dfat.gov.au](mailto:s22(1)(a)(ii)@dfat.gov.au)

Sent: Monday, 16 October 2023 9:07 AM

To: FOI FMO <foi.fmo@dfat.gov.au>

Cc: FOI <foi@dfat.gov.au>

Subject: Seeking transfer of FOI request to FMO [SEC=OFFICIAL]

OFFICIAL

Dear s22(1)(a)(ii)

RE: LEX 9262

On 15 October 2023, the department received the attached FOI request from **s22(1)(a)(ii)** relating to legal advice received by the Foreign Minister relating to current events in Gaza.

It appears that this request is more closely aligned with the functions of the Office of the Foreign Minister. As such, we would be most grateful if you could confirm whether you would accept transfer of this request under section 16(1)(b) of the FOI Act.

Grateful if you could respond by **midday Tuesday 17 October 2023** confirming your position. If you confirm acceptance of the transfer, DFAT will notify the applicant that that part of the request has been transferred and provide you with that correspondence.

Should you have any questions, please do not hesitate to contact me.

Kind regards,
s22(1)(a)(ii)

s22(1)(a)(ii)

A/g Director | Freedom of Information Section
Public Interest Law Branch | Regulatory and Legal Policy Division
Department of Foreign Affairs and Trade
P s22(1)(a)(ii) | **M s22(1)(a)(ii)**
dfat.gov.au | [Twitter](#) | [Facebook](#) | [Instagram](#) | [LinkedIn](#)

© Kim Hill, *Among Women* (2011)

[We acknowledge](#) the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

FOI

From: FOI
Sent: Thursday, 19 October 2023 11:46 AM
To: s22(1)(a)(ii)
Subject: LEX 9262 - Notification of Transfer - FOI Request [SEC=UNOFFICIAL]

Dear s22(1)(a)(ii)

We refer to your below request dated 15 October 2023, in which you have sought access to documents held by the Department of Foreign Affairs and Trade under the Freedom of Information Act 1982 (FOI Act).

You have requested access to:

"... all documents, reports & communication that relate to the legal advice the Foreign Minister Penny Wong has received in regarding the fighting, bombing and blockade of Gaza in October 2023"

Documents which would be the subject of your request would be in the possession of the Office of the Minister for Foreign Affairs (FMO).

As such, your request was transferred to the FMO on 18 October 2023 under section 16 of the FOI Act so that that they can make a decision on your request for access to their documents.

Your application was received on 15 October 2023, and the 30 day statutory period for processing your request will commence from that date.

An officer from the FMO will be writing to you directly concerning your request.

Kind regards

DFAT FOI Team

Freedom of Information Section

Public Interest Law Branch | Regulatory and Legal Policy Division Department of Foreign Affairs and Trade dfat.gov.au
| Twitter | Facebook | Instagram | LinkedIn

© Kim Hill, Among Women (2011)

We acknowledge the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

-----Original Message-----

From: s22(1)(a)(ii)
Sent: Sunday, 15 October 2023 3:14 PM
To: FOI <foi@dfat.gov.au>
Subject: [EXTERNAL] Freedom of Information request - Legal advice on Gaza

CAUTION: This email originated from outside the organisation. Do not click links or open attachments unless you recognise the sender.

Dear Department of Foreign Affairs and Trade,

I am after all documents, reports & communication that relate to the legal advice the Foreign Minister Penny Wong has received in regarding the fighting, bombing and blockade of Gaza in October 2023

Yours faithfully,

s22(1)(a)(ii)

s22(1)(a)(ii)

FOI References: LEX 9207, 9269, 9295, 9321, 9322, 9326, 9346, 9358, 9366, 9368, 9373, 9419 and 9428

File No: 23/27688

14 November 2023

s22(1)(a)(ii)

By email: **s22(1)(a)(ii)**

Dear **s22(1)(a)(ii)**

I refer to your five FOI requests dated 14 October 2023 (LEX 9269), 20 October 2023 (LEX 9326), 24 October 2023 (LEX 9346), 27 October 2023 (LEX 9368) and 2 November 2023 (LEX 9419), in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

LEX 9269	<i>... copies of all cables, reports, emails, memoranda, submissions, advice, talking points, to the Minister and/or her office relating to the provision of support to Israel following the Hamas attacks on 7 October 2023 and in relation to the occurrence or possibility of war crimes against the citizens of Gaza.</i>
LEX 9326	<i>... copies of all cables, reports, emails, assessments, memoranda, submissions, advice, talking points, to the Minister and/or her office in relation to the bombing of Al-Shifa Baptist Hospital in Gaza.</i>
LEX 9346	<i>... copies of all cables, reports, emails, assessments, memoranda, submissions, requests, advice, talking points, directives, to the Minister and/or her office in relation calls for a ceasefire in Gaza from 7 October 2023 to date.</i>
LEX 9368	<i>... copies of emails, memoranda, advice, directives, recommendations, briefs to the Minister for Defence and/or his office and/or his Department in relation to defence export permits to Israel issued from 7 October 2023 to date.</i>
LEX 9419	<i>... all cables, talking points, submissions, memoranda, advice, emails, directives to the Minister and/or her office and/or her department in relation to Australia's abstention vote on motion A/ES-10/L.25 before the United Nations General Assembly on 27 October 2023.</i>

Notice of intended practical refusal and notice that your requests have been combined

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

Under section 24AA(a)(i) of the FOI Act, for the purposes of section 24 of the FOI Act, a practical refusal reason exists in relation to a request for a document if the work involved in processing the request, in the case of the agency, would substantially and unreasonably divert the resources of an agency from its other operations.

Under section 24(2)(b) of the FOI Act, the agency may treat two or more requests as a single request if satisfied that the request relates to documents, the subject matter of which is substantially the same.

Combining your requests

Between 9 October 2023 and 3 November 2023, the department received 13 FOI requests relating to the Hamas-Israel Conflict, seeking documents within the date range of 1 October 2023 to 3 November 2023.

Paragraph 3.123 of the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act provides:

“The most common circumstance in which requests may be combined under s 24(2) is likely to be multiple requests from a single applicant. However, s 24(2) can also apply to two or more requests from different applicants... Multiple requests can only be combined as a single request under s 24(2) if there is a clear connection between the subject matter of the requested documents.”

I have considered the scope and date range of all 13 requests received by the department and have decided to treat the requests as a single request. In accordance with section 24(2)(b) of the FOI Act, I am satisfied that the requests relate to documents, the subject matter of which is substantially the same, being the Hamas-Israel Conflict.

Further, I am of the view that processing the request, would constitute a substantial and unreasonable diversion of the department's resources, for the reasons set out below.

However, you are welcome to revise the scope of your request in line with section 24AB(2)(e) of the FOI Act so that your request might be processed.

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 the documents captured by your request.

The reason for the proposed practical refusal is that the department currently holds thousands of documents that are potentially relevant to your request and the work involved in processing the request, as it currently stands, would substantially and unreasonably divert the department's resources from its other operations.

In making this assessment, I have considered how the department could process your request and the time and resources that would be involved in doing so. To date, over ten

percent of the workforce has been diverted to respond to the Hamas-Israel Conflict, with shifts operating 24/7. Relevant officers working within the department's crisis response centre have been unable to undertake searches or provide advice on sensitivities as a priority.

Accordingly, I engaged and have been assisted in this request by in the Business Solutions Branch (BSB) who have assisted in estimating resource demands of your request.

Searches for potentially relevant documents have been undertaken by BSB. BSB were engaged to undertake searches for emails and were provided with the following search parameters:

- a date range of 1 October 2023 to 3 November 2023,
- 14 key word search combinations, being:
 1. "Aid" and "Gaza"
 2. "Gaza"
 3. "Collective punishment"
 4. "Ceasefire"
 5. "Hospital explosion"/"hospital bombing"
 6. "Al-Ahli" and "Hospital"
 7. "Baptist"
 8. "De-escalation"
 9. "War crimes"
 10. "UNGA vote"/"UNGA abstention"/"A/ES-10/L.25"
 11. "Ed Husic", "Anne Aly" and "Tony Burke"
 12. "US assessment"
 13. "intelligence"
 14. "export permits" and "Israel"
- 77 email addresses that had been identified as holding documents.
 - This included officers working in the department's Crisis Centre, Humanitarian Division and a group inbox administered by the Media and Communications Delivery Branch.

Searches completed by BSB have identified 72,367 items. This estimate is considered to be conservative as the searches were confined to the 77 email addresses and do not capture multiple areas within the department, both in Australia and overseas, that have been identified as potentially holding relevant documents.

BSB were also engaged to undertake searches for cables and were provided with the following search parameters:

- 8 key word search combinations, being:

1. "Gaza"
 2. "Collective punishment"
 3. "Ceasefire"
 4. "Hospital explosion"/"hospital bombing"
 5. "Al-Ahli hospital"
 6. "De-escalation"
 7. "War crimes"
 8. "UNGA vote"/"UNGA abstention"/"A/ES-10/L.25"
- 10 potential to/from locations, including:
 1. Canberra
 2. Tel Aviv
 3. Ramallah
 4. Beirut
 5. Cairo
 6. Amman
 7. Kuwait City
 8. New York UN
 9. Geneva UN
 10. Vienna UN

The results returned 494 cables within the date range 7 October 2023 to 3 November 2023.

I have considered the factors outlined in paragraph 3.116 and 3.117 of the FOI Guidelines including, but not limited to:

- Identifying, locating or collating documents.
- Examining the documents, deciding whether to grant, refuse or defer access.
- Consulting with other parties.
- Redacting exempt material from the document, making copies of documents.
- Notifying an interim or final decision to applicants.
- The staffing resources available to an agency for FOI processing.
- The impact that processing the request may have on other work in the agency, including FOI.
- The significant public interest in the documents requested.

I am of the opinion that processing your request in its current form would be a substantial and unreasonable diversion of the department's resources under section 24AA(1) of the FOI Act.

Consultation to revise the scope of the request

In accordance with paragraph 3.125 of the FOI Guidelines, agencies are obliged to deal individually with each request that is not withdrawn or revised before the end of the consultation period.

Pursuant to section 24AB(2)(e) of the FOI Act, each applicant has fourteen days from the date of receipt of this notice to:

- (a) withdraw your request;
- (b) revise the scope of your request; or
- (c) notify the department that you do not wish to revise the scope of your request.

I invite you to contact me by email to foi@dfat.gov.au, should you wish to revise the request in order that it can be processed.

To support your consideration of a revised scope, it may be useful to:

- limit the type of documents sought, and
- reduce the date range for your request.

Please note that under section 24AB(7) of the FOI Act, if you do not take an opportunity to consult with the department within 14 days, 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 Act for the processing of your request is on hold (see section 24AB(8) of the FOI Act for details).

Where I refer to sections of the FOI Act, these are available at www.legislation.gov.au. Parts of the FOI Guidelines referenced can be found online at www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines.

Yours sincerely

s22(1)(a)(ii)

A/g Director
Freedom of Information Section

FOI References: LEX 9207, 9269, 9295, 9321, 9322, 9326, 9346, 9358, 9366, 9368, 9373, 9419 and 9428

File No: 23/27688

November 2023

s22(1)(a)(ii)

By email: s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Freedom of Information Request – Refusal under section 24(1)(b) of the FOI Act

I refer to your five FOI requests dated 14 October 2023 (LEX 9269), 20 October 2023 (LEX 9326), 24 October 2023 (LEX 9346), 27 October 2023 (LEX 9368) and 2 November 2023 (LEX 9419), in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

LEX 9269	<i>... copies of all cables, reports, emails, memoranda, submissions, advice, talking points, to the Minister and/or her office relating to the provision of support to Israel following the Hamas attacks on 7 October 2023 and in relation to the occurrence or possibility of war crimes against the citizens of Gaza.</i>
LEX 9326	<i>... copies of all cables, reports, emails, assessments, memoranda, submissions, advice, talking points, to the Minister and/or her office in relation to the bombing of Al-Shifa Baptist Hospital in Gaza.</i>
LEX 9346	<i>... copies of all cables, reports, emails, assessments, memoranda, submissions, requests, advice, talking points, directives, to the Minister and/or her office in relation calls for a ceasefire in Gaza from 7 October 2023 to date.</i>
LEX 9368	<i>... copies of emails, memoranda, advice, directives, recommendations, briefs to the Minister for Defence and/or his office and/or his Department in relation to defence export permits to Israel issued from 7 October 2023 to date.</i>
LEX 9419	<i>... all cables, talking points, submissions, memoranda, advice, emails, directives to the Minister and/or her office and/or her department in relation to Australia's abstention vote on motion A/ES-10/L.25 before the United Nations General Assembly on 27 October 2023.al.</i>

On 14 November 2023 I notified you of my intention under section 24AB(2) of the FOI Act to refuse to process your FOI request on the grounds that your request would constitute a substantial and unreasonable diversion of the department's resources.

That same day I also notified you that your request had been combined with 12 other requests and would be treated as a single request (the request). Under section 24(2)(b) of the FOI Act, I was satisfied that all 13 requests related to documents, the subject matter of which is substantially the same, being the Hamas-Israel Conflict.

On 28 November 2023 you wrote to the department and advised:

You will note that I have provided a specific date range for the documents requested and I fail to see how the FOIs received from other parties is relevant to the 5 FOIs, that I have requested, save and except that the documents should already have been inspected and collated for the other requests.

I'm prepared to withdraw FOI requests LEX 9269, 9326 and 9346 but press FOI requests LEX 9368 and LEX 9419.

Each applicant was consulted separately on the request and had fourteen days from the date of receipt of the consultation notice to:

- (a) withdraw their part of the request,
- (b) revise the scope of their part of the request, or
- (c) notify the department that they did not wish to revise the scope of their part of the request.

Decision

As per the terms of your revision, you have withdrawn LEX 9269, 9326 and 9346. Accordingly, I have considered the terms of your two remaining parts of the requests (LEX 9638 and LEX 9419), including that you have not revised the scope of those parts, along with the terms of the other revised requests. I am satisfied that the practical refusal reason still exists, and that processing the request would require a substantial and unreasonable diversion of the department's resources.

I am therefore notifying you of my decision to refuse the request, in accordance with section 24(1)(b) of the FOI Act. I have reached this decision based on the complexity and voluminous nature of the request.

In refusing the request, I have considered how the department could proceed to process the request, and the time and resources that would be involved in doing so.

Relevantly to your two remaining parts of the request (LEX 9638 and LEX 9419), I have consulted colleagues in the Cabinet, Ministerial and Parliamentary Branch (CXB), Business Solutions Branch (BSB) and Cyber Security and Networks Branch (CRB) who have assisted in

estimating resource demands of your parts of the request. Searches for potentially relevant documents have been undertaken by CXB, BSB and CRB.

CXB were engaged to undertake searches of the department's parliamentary document management systems for relevant ministerial submissions for each request and did not find any documents relevant to your request.

BSB were engaged to undertake searches for talking points, within which the Foreign Minister's Office was a recipient. As of 27 October 2023 (being the relevant date range for your parts of the request) the talking points were at version 50 (averaging 10 pages per document and an estimate of 500 pages to be examined to determine if any of the talking points are in scope).

CRB were engaged to undertake department wide searches for emails and were provided with the following search parameters:

- a date range of 7 October 2023 to 27 October 2023
- key word search combinations being:
 1. "abstention" or "abstention vote" or "A/ES-10/L.25" or "United Nations General Assembly"
 2. "Department of Defence" AND "export permit" OR "Minister for Defence" AND "export permit" OR "defence export permit" AND "Israel" OR "defence export permit" OR "export permit"
 3. "Department of Defence" AND "export permit" OR "Minister for Defence" AND "export permit" OR "defence export permit" AND "Israel".

Searches completed by CRB identified 37,146 items for the first key word search combination, 4,848 items for the second key word search combination and 2,911 items for the second key word search combination.

A manual review of each document would be required to determine whether the documents are within the scope of your request, and whether each document contains material that would be exempt from release.

Additionally, I consider the documents obtained to date to be a conservative estimate as areas who may also hold documents are yet to be engaged, such as the team that manages the cable system.

I am satisfied that even if your request was not combined with the 12 other requests your request would still constitute a substantial and unreasonable diversion of the department's resources and refuse your request under section 24(1)(b) of the FOI Act.

Combining requests

I refer to your contention:

You will note that I have provided a specific date range for the documents requested and I fail to see how the FOIs received from other parties is relevant to the 5 FOIs, that I have requested, save and except that the documents should already have been inspected and collated for the other requests.

As outlined in the consultation letter sent to you on 14 November 2023, under section 24(2)(b) of the FOI Act, an agency may treat two or more requests as a single request if satisfied that the request relates to documents, the subject matter of which is substantially the same. Part 3.123 of the FOI Guidelines provide that section 24(2) of the FOI Act can apply to two or more requests from different applicants.

As noted in the consultation, letter the department received 13 FOI requests relating to the Hamas-Israel Conflict, seeking documents within the date range of 1 October 2023 to 3 November 2023. Whilst you have provided a specific date range for your remaining requests (LEX 9368 and LEX 9419), your date ranges cover a date range for LEX 9368 of up to 27 October 2023, with no start date, and a date range for LEX 9419 7 October 2023 to 27 October 2023. Therefore, your date range for your parts of the request spans most of the date range considered when combining the different requests.

Additionally, I considered the scope off all 13 requests and was satisfied the requests related to documents, the subject matter of which is substantially the same, being the Hamas-Israel Conflict. Therefore, I was satisfied your requests could be combined with the other applicant's requests into one single request under section 24(2)(b) of the FOI Act.

Review

This decision is subject to review. Your review rights are set out in the Attachment for your reference.

Alternatively, you may wish to lodge a fresh FOI request, further revising the scope of your request.

We trust this information assists.

Yours sincerely

s22(1)(a)(ii)

A/g Director

Freedom of Information Section

Attachment**Your review rights***Internal review*

You may apply for internal review of the decision (s54 of the FOI Act). The internal review application must be made within 30 days of receipt of this letter.

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 within 60 days of receipt of this letter to the Australian Information Commissioner to review my decision (s54L of the FOI Act). You may also make a complaint to the Australian Information Commissioner about the Department's actions in relation to this decision (s70 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: <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>

FOI References: LEX 9207, 9269, 9295, 9321, 9322, 9326, 9346, 9358, 9366, 9368, 9373, 9419 and 9428

File No: 23/27688

14 November 2023

s22(1)(a)(ii)

By email: s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Thank you for your FOI request dated 17 October 2023 (LEX 9295) in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

"... all documents including reports, correspondence, file notes, talking points, meeting minutes or memos that relate to the Department of Foreign Affairs & Trade's position on "De-escalation" or "Ceasefire" in the current Gaza war that began in October 2023."

Notice of intended practical refusal and notice that your requests have been combined

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

Under section 24AA(a)(i) of the FOI Act, for the purposes of section 24 of the FOI Act, a practical refusal reason exists in relation to a request for a document if the work involved in processing the request, in the case of the agency, would substantially and unreasonably divert the resources of an agency from its other operations.

Under section 24(2)(b) of the FOI Act, the agency may treat two or more requests as a single request if satisfied that the request relates to documents, the subject matter of which is substantially the same.

Combining your request

Between 9 October 2023 and 3 November 2023, the department received 13 FOI requests relating to the Hamas-Israel Conflict, seeking documents within the date range of 1 October 2023 to 3 November 2023.

Paragraph 3.123 of the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act provides:

"The most common circumstance in which requests may be combined under s 24(2) is likely to be multiple requests from a single applicant. However, s 24(2) can also apply to two or more requests from different applicants... Multiple requests can only be combined as a single request under s 24(2) if there is a clear connection between the subject matter of the requested documents."

I have considered the scope and date range of all 13 requests received by the department and have decided to treat the requests as a single request. In accordance with section 24(2)(b) of the FOI Act, I am satisfied that the requests relate to documents, the subject matter of which is substantially the same, being the Hamas-Israel Conflict.

Further, I am of the view that processing the request, would constitute a substantial and unreasonable diversion of the department's resources, for the reasons set out below.

However, you are welcome to revise the scope of your request in line with section 24AB(2)(e) of the FOI Act so that your request might be processed.

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 the documents captured by your request.

The reason for the proposed practical refusal is that the department currently holds thousands of documents that are potentially relevant to your request and the work involved in processing the request, as it currently stands, would substantially and unreasonably divert the department's resources from its other operations.

In making this assessment, I have considered how the department could process your request and the time and resources that would be involved in doing so. To date, over ten percent of the workforce has been diverted to respond to the Hamas-Israel Conflict, with shifts operating 24/7. Relevant officers working within the department's crisis response centre have been unable to undertake searches or provide advice on sensitivities as a priority.

Accordingly, I engaged and have been assisted in this request by in the Business Solutions Branch (BSB) who have assisted in estimating resource demands of your request.

Searches for potentially relevant documents have been undertaken by BSB. BSB were engaged to undertake searches for emails and were provided with the following search parameters:

- a date range of 1 October 2023 to 3 November 2023,

- 14 key word search combinations, being:
 1. "Aid" and "Gaza"
 2. "Gaza"
 3. "Collective punishment"
 4. "Ceasefire"
 5. "Hospital explosion"/"hospital bombing"
 6. "Al-Ahli" and "Hospital"
 7. "Baptist"
 8. "De-escalation"
 9. "War crimes"
 10. "UNGA vote"/"UNGA abstention"/"A/ES-10/L.25"
 11. "Ed Husic", "Anne Aly" and "Tony Burke"
 12. "US assessment"
 13. "intelligence"
 14. "export permits" and "Israel"
- 77 email addresses that had been identified as holding documents.
 - This included officers working in the department's Crisis Centre, Humanitarian Division and a group inbox administered by the Media and Communications Delivery Branch.

Searches completed by BSB have identified 72,367 items. This estimate is considered to be conservative as the searches were confined to the 77 email addresses and do not capture multiple areas within the department, both in Australia and overseas, that have been identified as potentially holding relevant documents.

BSB were also engaged to undertake searches for cables and were provided with the following search parameters:

- 8 key word search combinations, being:
 1. "Gaza"
 2. "Collective punishment"
 3. "Ceasefire"
 4. "Hospital explosion"/"hospital bombing"
 5. "Al-Ahli hospital"
 6. "De-escalation"
 7. "War crimes"
 8. "UNGA vote"/"UNGA abstention"/"A/ES-10/L.25"
- 10 potential to/from locations, including:
 1. Canberra
 2. Tel Aviv
 3. Ramallah

4. Beirut
5. Cairo
6. Amman
7. Kuwait City
8. New York UN
9. Geneva UN
10. Vienna UN

The results returned 494 cables within the date range 7 October 2023 to 3 November 2023.

I have considered the factors outlined in paragraph 3.116 and 3.117 of the FOI Guidelines including, but not limited to:

- Identifying, locating or collating documents.
- Examining the documents, deciding whether to grant, refuse or defer access.
- Consulting with other parties.
- Redacting exempt material from the document, making copies of documents.
- Notifying an interim or final decision to applicants.
- The staffing resources available to an agency for FOI processing.
- The impact that processing the request may have on other work in the agency, including FOI.
- The significant public interest in the documents requested.

I am of the opinion that processing your request in its current form would be a substantial and unreasonable diversion of the department's resources under section 24AA(1) of the FOI Act.

Consultation to revise the scope of the request

In accordance with paragraph 3.125 of the FOI Guidelines, agencies are obliged to deal individually with each request that is not withdrawn or revised before the end of the consultation period.

Pursuant to section 24AB(2)(e) of the FOI Act, each applicant has fourteen days from the date of receipt of this notice to:

- (a) withdraw your request;
- (b) revise the scope of your request; or
- (c) notify the department that you do not wish to revise the scope of your request.

I invite you to contact me by email to foi@dfat.gov.au, should you wish to revise the request in order that it can be processed.

To support your consideration of a revised scope, it may be useful to:

- limit the type of documents sought, and
- reduce the date range for your request.

Please note that under section 24AB(7) of the FOI Act, if you do not take an opportunity to consult with the department within 14 days, 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 Act for the processing of your request is on hold (see section 24AB(8) of the FOI Act for details).

Where I refer to sections of the FOI Act, these are available at www.legislation.gov.au. Parts of the FOI Guidelines referenced can be found online at www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines.

Yours sincerely

s22(1)(a)(ii)

A/g Director
Freedom of Information Section

FOI References: LEX 9207, 9269, 9295, 9321, 9322, 9326, 9346,
9358, 9366, 9368, 9373, 9419 and 9428

File No: 23/27688

November 2023

s22(1)(a)(ii)

By email: s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Freedom of Information Request – Refusal under section 24(1)(b) of the FOI Act

I refer to your request dated 17 October 2023 (LEX 9295) in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

“... all documents including reports, correspondence, file notes, talking points, meeting minutes or memos that relate to the Department of Foreign Affairs & Trade’s position on “De-escalation” or “Ceasefire” in the current Gaza war that began in October 2023.”

On 14 November 2023 I notified you of my intention under section 24AB(2) of the FOI Act to refuse to process your FOI request on the grounds that your request would constitute a substantial and unreasonable diversion of the department’s resources.

That same day I also notified you that your request had been combined with 12 other requests and would be treated as a single request (the request). Under section 24(2)(b) of the FOI Act, I was satisfied that all 13 requests related to documents, the subject matter of which is substantially the same, being the Hamas-Israel Conflict.

On 15 November 2023 you wrote to the department and sought the department’s assistance, stating:

“As per the FOI guidelines there is a requirement for agencies to assist the applicant to revise the scope of the request so that the request does not attract section 24AA too voluminous provision. Given that the timeframe I have requested for documents is exceptionally small (7th October 2023 - 17th October 2023).

My understanding is that you have taken multiple requests from different applicants, and assessed them all as too large. I only require documents regarding "Ceasefire" and "De-escalation" during this time period. I believe if you did not merge my requests with others, it would not attract the section 24AA provision.

Given this, can you please advise on how the request can be amended so that it is not too large?"

On 16 November 2023, after consulting Cyber Security and Networks Branch (CRB) and asking them to conduct targeted searches, the department advised you:

*"Our cyber team has re-run a search of the 77 inboxes based on your specified date range of 7 October 2023 to 17 October 2023 and using the search terms "ceasefire" or "de-escalation" and they have located **1,476** items.*

This is considered to be a conservative estimate as it only includes a sample of people's email addresses used to run the original searches, and does not include many other areas within the department, including overseas posts, that have also been identified as holding documents.

*Additionally this search is confined to **emails only**, and your request was for "all documents including reports, correspondence, file notes, talking points, meeting minutes or memos".*

On this basis, your request attracts a practical refusal reason, whether it is a standalone request or combined.

To reduce the size of your request you may consider limiting your request to a particular document type (such as a talking points or diplomatic cables)."

On 22 November 2023, you responded to the department and asked:

"Can we limit the scope to talking points, diplomatic cables and ministerial submissions?"

On 23 November 2023, the department responded to you and advised we would take your revised scope to be for:

"Talking points, diplomatic cables and ministerial submissions for the date range 7 October 2023 to 17 October 2023 that relate to the Department of Foreign Affairs & Trade's position on "De-escalation" or "Ceasefire" in the current Gaza war that began in October 2023."

On 27 November 2023, you advised:

"I am happy with this."

This was accepted as the revised scope for your part of the request.

Each applicant was consulted separately on the request and had fourteen days from the date of receipt of the consultation notice to:

- (a) withdraw their part of the request,
- (b) revise the scope of their part of the request, or
- (c) notify the department that they did not wish to revise the scope of their part of the request.

Decision

I have considered the terms of your revised request, along with the terms of the other revised requests. I am satisfied that the practical refusal reason still exists, and that processing the request would require a substantial and unreasonable diversion of the department's resources.

I am therefore notifying you of my decision to refuse the request, in accordance with section 24(1)(b) of the FOI Act. I have reached this decision based on the complexity and voluminous nature of the request.

In refusing the request, I have considered how the department could proceed to process the request, and the time and resources that would be involved in doing so.

Relevantly to the revised scope of your part of the request, I have also consulted colleagues in the Cabinet, Ministerial and Parliamentary Branch (CXB) and the Business Solutions Branch (BSB) who have assisted in estimating resource demands of your part of the request.

Searches for potentially relevant documents have been undertaken by CXB and BSB.

BSB were engaged to undertake searches for final talking points sent via the diplomatic cable system. As of 17 October 2023 (the date range specified in your revised request) these talking points were at version 28 (averaging 10 pages per document and an estimate of 280 pages to be examined to determine if any of the talking points are in scope).

BSB were also engaged to undertake searches for diplomatic cables more generally and were provided with the following parameters:

- a date range of 7 October 2023 to 17 October 2023, and
- key word search terms of:
 - “de-escalation”, and
 - “ceasefire”

Searches completed by BSB identified 35 items within the search parameters.

Additionally, CXB were engaged to undertake searches of the department's parliamentary document management systems for relevant ministerial submissions and did not find any documents relevant to your request.

A manual review of each document would be required to determine whether the documents are within the scope of your request, and whether each document contains material that would be exempt from release.

I am satisfied that the request constitutes a substantial and unreasonable diversion of the department's resources and refuse your request under section 24(1)(b) of the FOI Act.

Review

This decision is subject to review. Your review rights are set out in the Attachment for your reference.

Alternatively, you may wish to lodge a fresh FOI request, further revising the scope of your request.

It may be useful to revise your scope as follows:

Talking points sent via diplomatic cable and any other diplomatic cables for the date range 7 October 2023 to 17 October 2023 that contain the key words "De-escalation" or "Ceasefire" in relation to the current Gaza war that began in October 2023.

We trust this information assists.

Yours sincerely

s22(1)(a)(ii)

A/g Director
Freedom of Information Section

Attachment**Your review rights***Internal review*

You may apply for internal review of the decision (s54 of the FOI Act). The internal review application must be made within 30 days of receipt of this letter.

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 within 60 days of receipt of this letter to the Australian Information Commissioner to review my decision (s54L of the FOI Act). You may also make a complaint to the Australian Information Commissioner about the Department's actions in relation to this decision (s70 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: <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>

FOI References: LEX 9207, 9269, 9295, 9321, 9322, 9326, 9346, 9358, 9366, 9368, 9373, 9419 and 9428

File No: 23/27688

14 November 2023

s22(1)(a)(ii)

By email: s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Thank you for your FOI request dated 21 October 2023 (LEX 9322) in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

"On the 19th October 2023, it was reported by news.com.au that Foreign Minister Penny Wong said "Our current assessment is that Israel is not responsible for the explosion in a hospital in Gaza."...

INFORMATION I AM SEEKING:

- 1. I am seeking all documents, including but not limited to investigation reports, other reports, meeting minutes, correspondence, records of conversation & file notes held by the Department of Foreign Affairs that were used by the Foreign Minister in making the assessment*
- 2. I also require all the draft versions of all these documents."*

Notice of intended practical refusal and notice that your requests have been combined

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

Under section 24AA(a)(i) of the FOI Act, for the purposes of section 24 of the FOI Act, a practical refusal reason exists in relation to a request for a document if the work involved in processing the request, in the case of the agency, would substantially and unreasonably divert the resources of an agency from its other operations.

Under section 24(2)(b) of the FOI Act, the agency may treat two or more requests as a single request if satisfied that the request relates to documents, the subject matter of which is substantially the same.

Combining your request

Between 9 October 2023 and 3 November 2023, the department received 13 FOI requests relating to the Hamas-Israel Conflict, seeking documents within the date range of 1 October 2023 to 3 November 2023.

Paragraph 3.123 of the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act provides:

“The most common circumstance in which requests may be combined under s 24(2) is likely to be multiple requests from a single applicant. However, s 24(2) can also apply to two or more requests from different applicants... Multiple requests can only be combined as a single request under s 24(2) if there is a clear connection between the subject matter of the requested documents.”

I have considered the scope and date range of all 13 requests received by the department and have decided to treat the requests as a single request. In accordance with section 24(2)(b) of the FOI Act, I am satisfied that the requests relate to documents, the subject matter of which is substantially the same, being the Hamas-Israel Conflict.

Further, I am of the view that processing the request, would constitute a substantial and unreasonable diversion of the department's resources, for the reasons set out below.

However, you are welcome to revise the scope of your request in line with section 24AB(2)(e) of the FOI Act so that your request might be processed.

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 the documents captured by your request.

The reason for the proposed practical refusal is that the department currently holds thousands of documents that are potentially relevant to your request and the work involved in processing the request, as it currently stands, would substantially and unreasonably divert the department's resources from its other operations.

In making this assessment, I have considered how the department could process your request and the time and resources that would be involved in doing so. To date, over ten percent of the workforce has been diverted to respond to the Hamas-Israel Conflict, with shifts operating 24/7. Relevant officers working within the department's crisis response centre have been unable to undertake searches or provide advice on sensitivities as a priority.

Accordingly, I engaged and have been assisted in this request by in the Business Solutions Branch (BSB) who have assisted in estimating resource demands of your request.

Searches for potentially relevant documents have been undertaken by BSB. BSB were engaged to undertake searches for emails and were provided with the following search parameters:

- a date range of 1 October 2023 to 3 November 2023,
- 14 key word search combinations, being:
 1. "Aid" and "Gaza"
 2. "Gaza"
 3. "Collective punishment"
 4. "Ceasefire"
 5. "Hospital explosion"/"hospital bombing"
 6. "Al-Ahli" and "Hospital"
 7. "Baptist"
 8. "De-escalation"
 9. "War crimes"
 10. "UNGA vote"/"UNGA abstention"/"A/ES-10/L.25"
 11. "Ed Husic", "Anne Aly" and "Tony Burke"
 12. "US assessment"
 13. "intelligence"
 14. "export permits" and "Israel"
- 77 email addresses that had been identified as holding documents.
 - This included officers working in the department's Crisis Centre, Humanitarian Division and a group inbox administered by the Media and Communications Delivery Branch.

Searches completed by BSB have identified 72,367 items. This estimate is considered to be conservative as the searches were confined to the 77 email addresses and do not capture multiple areas within the department, both in Australia and overseas, that have been identified as potentially holding relevant documents.

BSB were also engaged to undertake searches for cables and were provided with the following search parameters:

- 8 key word search combinations, being:
 1. "Gaza"
 2. "Collective punishment"
 3. "Ceasefire"
 4. "Hospital explosion"/"hospital bombing"
 5. "Al-Ahli hospital"
 6. "De-escalation"
 7. "War crimes"

8. "UNGA vote"/"UNGA abstention"/"A/ES-10/L.25"

- 10 potential to/from locations, including:
 1. Canberra
 2. Tel Aviv
 3. Ramallah
 4. Beirut
 5. Cairo
 6. Amman
 7. Kuwait City
 8. New York UN
 9. Geneva UN
 10. Vienna UN

The results returned 494 cables within the date range 7 October 2023 to 3 November 2023.

I have considered the factors outlined in paragraph 3.116 and 3.117 of the FOI Guidelines including, but not limited to:

- Identifying, locating or collating documents.
- Examining the documents, deciding whether to grant, refuse or defer access.
- Consulting with other parties.
- Redacting exempt material from the document, making copies of documents.
- Notifying an interim or final decision to applicants.
- The staffing resources available to an agency for FOI processing.
- The impact that processing the request may have on other work in the agency, including FOI.
- The significant public interest in the documents requested.

I am of the opinion that processing your request in its current form would be a substantial and unreasonable diversion of the department's resources under section 24AA(1) of the FOI Act.

Consultation to revise the scope of the request

In accordance with paragraph 3.125 of the FOI Guidelines, agencies are obliged to deal individually with each request that is not withdrawn or revised before the end of the consultation period.

Pursuant to section 24AB(2)(e) of the FOI Act, each applicant has fourteen days from the date of receipt of this notice to:

- (a) withdraw your request;
- (b) revise the scope of your request; or
- (c) notify the department that you do not wish to revise the scope of your request.

I invite you to contact me by email to foi@dfat.gov.au, should you wish to revise the request in order that it can be processed.

To support your consideration of a revised scope, it may be useful to:

- limit the type of documents sought, and
- reduce the date range for your request.

Please note that under section 24AB(7) of the FOI Act, if you do not take an opportunity to consult with the department within 14 days, 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 Act for the processing of your request is on hold (see section 24AB(8) of the FOI Act for details).

Where I refer to sections of the FOI Act, these are available at www.legislation.gov.au. Parts of the FOI Guidelines referenced can be found online at www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines.

Yours sincerely

s22(1)(a)(ii)

A/g Director
Freedom of Information Section

FOI References: LEX 9207, 9269, 9295, 9321, 9322, 9326, 9346,
9358, 9366, 9368, 9373, 9419 and 9428

File No: 23/27688

November 2023

s22(1)(a)(ii)

By email: s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Freedom of Information Request – Refusal under section 24(1)(b) of the FOI Act

I refer to your request dated 21 October 2023 (LEX 9322) in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

"On the 19th October 2023, it was reported by news.com.au that Foreign Minister Penny Wong said "Our current assessment is that Israel is not responsible for the explosion in a hospital in Gaza."...

INFORMATION I AM SEEKING:

1. I am seeking all documents, including but not limited to investigation reports, other reports, meeting minutes, correspondence, records of conversation & file notes held by the Department of Foreign Affairs that were used by the Foreign Minister in making the assessment

2. I also require all the draft versions of all these documents."

On 14 November 2023 I notified you of my intention under section 24AB(2) of the FOI Act to refuse to process your FOI request on the grounds that your request would constitute a substantial and unreasonable diversion of the department's resources.

That same day I also notified you that your request had been combined with 12 other requests and would be treated as a single request (the request). Under section 24(2)(b) of the FOI Act, I was satisfied that all 13 requests related to documents, the subject matter of which is substantially the same, being the Hamas-Israel Conflict.

That same day you wrote to the department and revised the scope of your part of the request to:

"1. I only need the documents requested from 17th October 2023 - 19th October 2023

2. I only require those documents about the Al- Ahli Arab Hospital bombing that occurred on the 17th October 2023. I do not require documents about any other hospital bombing."

Each applicant was consulted separately on the request and had fourteen days from the date of receipt of the consultation notice to:

- (a) withdraw their part of the request,
- (b) revise the scope of their part of the request, or
- (c) notify the department that they did not wish to revise the scope of their part of the request.

Decision

I have considered the terms of your revised request, along with the terms of the other revised requests. I am satisfied that the practical refusal reason still exists, and that processing the request would require a substantial and unreasonable diversion of the department's resources.

I am therefore notifying you of my decision to refuse the request, in accordance with section 24(1)(b) of the FOI Act. I have reached this decision based on the complexity and voluminous nature of the request.

In refusing the request, I have considered how the department could proceed to process the request, and the time and resources that would be involved in doing so.

Relevantly to the revised scope of your part of the request, I have also consulted colleagues in the Business Solutions Branch (BSB) and Cyber Security and Networks Branch (CRB) who have assisted in estimating resource demands of your part of the request. Searches for potentially relevant documents have been undertaken by BSB and CRB.

BSB were engaged to undertake searches for diplomatic cables and were provided with the following parameters:

- a date range of 17 October 2023 to 19 October 2023, and
- key word search terms of:
 - "Al- Ahli Arab Hospital"
 - "Hospital explosion"/"hospital bombing"
 - "Al-Ahli" and "Hospital".

Searches completed by BSB identified 12 items within the search parameters.

Additionally, CRB were engaged to undertake department wide searches for emails and were provided with the following search parameters:

- a date range of 17 October 2023 to 19 October 2023, and
- key word search terms of:
 - "Al-Ahli Arab Hospital"
 - "Hospital explosion"
 - "hospital bombing"
 - "Al-Ahli" AND "Hospital".

Searches completed by CRB identified 37,939 items within the search parameters.

A manual review of each document would be required to determine whether the documents are within the scope of your request, and whether each document contains material that would be exempt from release.

I am satisfied that even if your request was not combined with the 12 other requests, your request would still constitute a substantial and unreasonable diversion of the department's resources and refuse your request under section 24(1)(b) of the FOI Act.

Note that, even if a manual review of each document was undertaken, the department would not be able to identify documents that were used by the Foreign Minister. Only documents that were provided to the Foreign Minister.

Review

This decision is subject to review. Your review rights are set out in the Attachment for your reference.

Alternatively, you may wish to lodge a fresh FOI request, further revising the scope of your request.

We trust this information assists.

Yours sincerely

s22(1)(a)(ii)

A/g Director
Freedom of Information Section

Attachment**Your review rights***Internal review*

You may apply for internal review of the decision (s54 of the FOI Act). The internal review application must be made within 30 days of receipt of this letter.

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 within 60 days of receipt of this letter to the Australian Information Commissioner to review my decision (s54L of the FOI Act). You may also make a complaint to the Australian Information Commissioner about the Department's actions in relation to this decision (s70 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: <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>

FOI References: LEX 9207, 9269, 9295, 9321, 9322, 9326, 9346, 9358, 9366, 9368, 9373, 9419 and 9428

File No: 23/27688

14 November 2023

s22(1)(a)(ii)

By email: **s22(1)(a)(ii)**

Dear **s22(1)(a)(ii)**

Thank you for your FOI request dated 25 October 2023 (LEX 9358) in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

“any briefing materials prepared for the foreign minister about humanitarian or war law relating to Israel's retaliation against Hamas since October 6.”

Notice of intended practical refusal and notice that your requests have been combined

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

Under section 24AA(a)(i) of the FOI Act, for the purposes of section 24 of the FOI Act, a practical refusal reason exists in relation to a request for a document if the work involved in processing the request, in the case of the agency, would substantially and unreasonably divert the resources of an agency from its other operations.

Under section 24(2)(b) of the FOI Act, the agency may treat two or more requests as a single request if satisfied that the request relates to documents, the subject matter of which is substantially the same.

Combining your request

Between 9 October 2023 and 3 November 2023, the department received 13 FOI requests relating to the Hamas-Israel Conflict, seeking documents within the date range of 1 October 2023 to 3 November 2023.

Paragraph 3.123 of the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act provides:

“The most common circumstance in which requests may be combined under s 24(2) is likely to be multiple requests from a single applicant. However, s 24(2) can also apply to two or more requests from different applicants... Multiple requests can only be combined as a single request under s 24(2) if there is a clear connection between the subject matter of the requested documents.”

I have considered the scope and date range of all 13 requests received by the department and have decided to treat the requests as a single request. In accordance with section 24(2)(b) of the FOI Act, I am satisfied that the requests relate to documents, the subject matter of which is substantially the same, being the Hamas-Israel Conflict.

Further, I am of the view that processing the request, would constitute a substantial and unreasonable diversion of the department's resources, for the reasons set out below.

However, you are welcome to revise the scope of your request in line with section 24AB(2)(e) of the FOI Act so that your request might be processed.

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 the documents captured by your request.

The reason for the proposed practical refusal is that the department currently holds thousands of documents that are potentially relevant to your request and the work involved in processing the request, as it currently stands, would substantially and unreasonably divert the department's resources from its other operations.

In making this assessment, I have considered how the department could process your request and the time and resources that would be involved in doing so. To date, over ten percent of the workforce has been diverted to respond to the Hamas-Israel Conflict, with shifts operating 24/7. Relevant officers working within the department's crisis response centre have been unable to undertake searches or provide advice on sensitivities as a priority.

Accordingly, I engaged and have been assisted in this request by in the Business Solutions Branch (BSB) who have assisted in estimating resource demands of your request.

Searches for potentially relevant documents have been undertaken by BSB. BSB were engaged to undertake searches for emails and were provided with the following search parameters:

- a date range of 1 October 2023 to 3 November 2023,
- 14 key word search combinations, being:
 1. “Aid” and “Gaza”
 2. “Gaza”

3. "Collective punishment"
 4. "Ceasefire"
 5. "Hospital explosion"/"hospital bombing"
 6. "Al-Ahli" and "Hospital"
 7. "Baptist"
 8. "De-escalation"
 9. "War crimes"
 10. "UNGA vote"/"UNGA abstention"/"A/ES-10/L.25"
 11. "Ed Husic", "Anne Aly" and "Tony Burke"
 12. "US assessment"
 13. "intelligence"
 14. "export permits" and "Israel"
- 77 email addresses that had been identified as holding documents.
 - This included officers working in the department's Crisis Centre, Humanitarian Division and a group inbox administered by the Media and Communications Delivery Branch.

Searches completed by BSB have identified 72,367 items. This estimate is considered to be conservative as the searches were confined to the 77 email addresses and do not capture multiple areas within the department, both in Australia and overseas, that have been identified as potentially holding relevant documents.

BSB were also engaged to undertake searches for cables and were provided with the following search parameters:

- 8 key word search combinations, being:
 1. "Gaza"
 2. "Collective punishment"
 3. "Ceasefire"
 4. "Hospital explosion"/"hospital bombing"
 5. "Al-Ahli hospital"
 6. "De-escalation"
 7. "War crimes"
 8. "UNGA vote"/"UNGA abstention"/"A/ES-10/L.25"
- 10 potential to/from locations, including:
 1. Canberra
 2. Tel Aviv
 3. Ramallah
 4. Beirut
 5. Cairo
 6. Amman
 7. Kuwait City

8. New York UN
9. Geneva UN
10. Vienna UN

The results returned 494 cables within the date range 7 October 2023 to 3 November 2023.

I have considered the factors outlined in paragraph 3.116 and 3.117 of the FOI Guidelines including, but not limited to:

- Identifying, locating or collating documents.
- Examining the documents, deciding whether to grant, refuse or defer access.
- Consulting with other parties.
- Redacting exempt material from the document, making copies of documents.
- Notifying an interim or final decision to applicants.
- The staffing resources available to an agency for FOI processing.
- The impact that processing the request may have on other work in the agency, including FOI.
- The significant public interest in the documents requested.

I am of the opinion that processing your request in its current form would be a substantial and unreasonable diversion of the department's resources under section 24AA(1) of the FOI Act.

Consultation to revise the scope of the request

In accordance with paragraph 3.125 of the FOI Guidelines, agencies are obliged to deal individually with each request that is not withdrawn or revised before the end of the consultation period.

Pursuant to section 24AB(2)(e) of the FOI Act, each applicant has fourteen days from the date of receipt of this notice to:

- (a) withdraw your request;
- (b) revise the scope of your request; or
- (c) notify the department that you do not wish to revise the scope of your request.

I invite you to contact me by email to foi@dfat.gov.au, should you wish to revise the request in order that it can be processed.

To support your consideration of a revised scope, it may be useful to:

- limit the type of documents sought, and
- reduce the date range for your request.

Please note that under section 24AB(7) of the FOI Act, if you do not take an opportunity to consult with the department within 14 days, 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 Act for the processing of your request is on hold (see section 24AB(8) of the FOI Act for details).

Where I refer to sections of the FOI Act, these are available at www.legislation.gov.au. Parts of the FOI Guidelines referenced can be found online at www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines.

Yours sincerely

s22(1)(a)(ii)

A/g Director
Freedom of Information Section

FOI References: LEX 9207, 9269, 9295, 9321, 9322, 9326, 9346, 9358, 9366, 9368, 9373, 9419 and 9428

File No: 23/27688

November 2023

s22(1)(a)(ii)

By email: **s22(1)(a)(ii)**

Dear **s22(1)(a)(ii)**

Freedom of Information Request – Refusal under section 24(1)(b) of the FOI Act

I refer to your request dated 25 October 2023 (LEX 9358) in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

“any briefing materials prepared for the foreign minister about humanitarian or war law relating to Israel's retaliation against Hamas since October 6.”

On 14 November 2023 I notified you of my intention under section 24AB(2) of the FOI Act to refuse to process your FOI request on the grounds that your request would constitute a substantial and unreasonable diversion of the department's resources.

That same day I also notified you that your request had been combined with 12 other requests and would be treated as a single request (the request). Under section 24(2)(b) of the FOI Act, I was satisfied that all 13 requests related to documents, the subject matter of which is substantially the same, being the Hamas-Israel Conflict.

On 23 November 2023 you wrote to the department and stated:

“I would like to significantly reduce and alter the scope of my request.

Firstly, can I please extend the date range from October 6 to November 23 and only request the final version of ministerial briefs sent to the minister regarding Israel acting in accordance with international law and any briefs on the same issue that required the minister to action it.

I am happy to completely cut out email chains, diplomatic cables and draft documents.”

On 27 November 2023 the department responded to you and advised:

"The right of access applies to documents that exist at the time the FOI request was made (paragraph 2.34 of the FOI Guidelines). Your request was made at 4:17pm on 25 October 2023. This means the date range for your revised request will be 6 October 2023 to 25 October 2023.

We note the substantial revision to your scope, requiring only the final version of ministerial briefs sent to the minister. Noting your request has been combined with other requests and your revision, you may wish to consider withdrawing your request and making a new request with the revised scope, and larger time frame.

We note that the consultation period ends tomorrow. If we do not hear from you we will take your revised request to be for:

"October 6 to October 25 and only request the final version of ministerial briefs sent to the minister regarding Israel acting in accordance with international law and any briefs on the same issue that required the minister to action it."

That same day you agreed to the revision of scope as above and did not elect to withdraw your request and make a new request. This was therefore accepted as the revised scope for your part of the request.

Each applicant was consulted separately on the request and had fourteen days from the date of receipt of the consultation notice to:

- (a) withdraw their part of the request,
- (b) revise the scope of their part of the request, or
- (c) notify the department that they did not wish to revise the scope of their part of the request.

Decision

I have considered the terms of your revised request, along with the terms of the other revised requests. I am satisfied that the practical refusal reason still exists, and that processing the request would require a substantial and unreasonable diversion of the department's resources.

I am therefore notifying you of my decision to refuse the request, in accordance with section 24(1)(b) of the FOI Act. I have reached this decision based on the complexity and voluminous nature of the request.

In refusing the request, I have considered how the department could proceed to process the request, and the time and resources that would be involved in doing so.

Relevantly to the revised scope of your part of the request, I have consulted colleagues in the Cabinet, Ministerial and Parliamentary Branch (CXB) who have assisted in estimating resource demands of your part of the request.

Searches for potentially relevant documents have been undertaken by CXB who identified 15 potentially relevant documents for the period 6 October 2023 to 25 October 2023.

A manual review of each document would be required to determine whether the documents are within the scope of your request, and whether each document contains material that would be exempt from release.

Noting your request has been combined with other requests, I am satisfied that the request constitutes a substantial and unreasonable diversion of the department's resources and refuse your request under section 24(1)(b) of the FOI Act.

Review

This decision is subject to review. Your review rights are set out in the Attachment for your reference.

Alternatively, you may wish to lodge a fresh FOI request, further revising the scope of your request.

Noting a new request would no longer be combined with other requests, it may be useful to revise your scope as follows:

"October 6 to October 25 and only request the final version of ministerial briefs sent to the minister regarding Israel acting in accordance with international law and any briefs on the same issue that required the minister to action it."

We trust this information assists.

Yours sincerely

s22(1)(a)(ii)

A/g Director
Freedom of Information Section

Attachment**Your review rights***Internal review*

You may apply for internal review of the decision (s54 of the FOI Act). The internal review application must be made within 30 days of receipt of this letter.

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 within 60 days of receipt of this letter to the Australian Information Commissioner to review my decision (s54L of the FOI Act). You may also make a complaint to the Australian Information Commissioner about the Department's actions in relation to this decision (s70 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: <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>

From: FOI
To: FOI FMO
Cc: s22(1)(a)(ii)
Subject: RE: LEX 9365 - s16 Transfer Request - DFAT to FMO [SEC=OFFICIAL]
Date: Wednesday, 1 November 2023 11:55:20 AM
Attachments: [image001.jpg](#)
[LEX 9365 - Your DFAT FOI Request - Notification of Transfer SECUNOFFICIAL.msg](#)

OFFICIAL

Hi s22(1)(a)(ii)

Many thanks for confirming transfer. As per standard practice I've written to the applicant and let them know you have accepted transfer of the request (**attached**).

Note that the statutory timeframe commenced on 26 October 2023 and a decision is due to the applicant on 27 November 2023.

s22(1)(a)(ii)

Please don't hesitate to contact me should you have any questions on next steps. In the meantime we will close the file on our end.

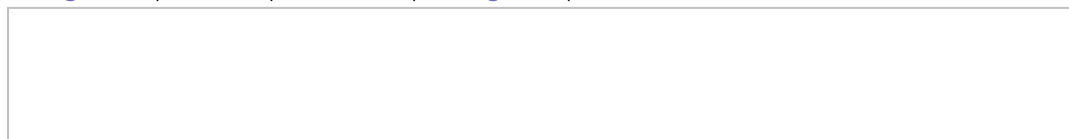
Kind regards

s22(1)(a)(ii)

Seconded Lawyer | Freedom of Information Section
Public Interest Law Branch | Regulatory and Legal Policy Division

Department of Foreign Affairs and Trade
p s22(1)(a)(ii)

dfat.gov.au | [Twitter](#) | [Facebook](#) | [Instagram](#) | [LinkedIn](#)



© Kim Hill, *Among Women* (2011)

[We acknowledge](#) the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

This email and any attachments may contain confidential information or legal advice over which legal professional privilege can be claimed. Such privilege is not waived and you should ensure that, in your handling of the advice, you avoid waiving privilege. Please consult the author of the advice if unsure about appropriate handling.

From: FOI FMO <foi.fmo@dfat.gov.au>
Sent: Tuesday, 31 October 2023 9:53 AM
To: FOI <foi@dfat.gov.au>; FOI FMO <foi.fmo@dfat.gov.au>

Cc: s22(1)(a)(ii) @dfat.gov.au>

Subject: RE: LEX 9365 - s16 Transfer Request - DFAT to FMO [SEC=OFFICIAL]

OFFICIAL

Hi s22(1)(a)(ii)

Yes, FMO accepts this transfer request.

Thanks

s22(1)(a)(ii)

From: FOI <foi@dfat.gov.au>

Sent: Monday, 30 October 2023 4:41 PM

To: FOI FMO <foi.fmo@dfat.gov.au>

Cc: s22(1)(a)(ii) @dfat.gov.au>

Subject: RE: LEX 9365 - s16 Transfer Request - DFAT to FMO [SEC=OFFICIAL]

OFFICIAL

Hi s22(1)(a)(ii)

Further to the below, grateful if you could please advise if FMO accepts transfer of this request.

Kind regards

s22(1)(a)(ii)

Seconded Lawyer | Freedom of Information Section
Public Interest Law Branch | Regulatory and Legal Policy Division

Department of Foreign Affairs and Trade
p s22(1)(a)(ii)

dfat.gov.au | [Twitter](#) | [Facebook](#) | [Instagram](#) | [LinkedIn](#)

© Kim Hill, *Among Women* (2011)

We acknowledge the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

This email and any attachments may contain confidential information or legal advice over which legal professional privilege can be claimed. Such privilege is not waived and you should ensure that, in your handling of the advice, you avoid waiving privilege. Please consult the author of the advice if unsure about appropriate handling.

From: FOI <foi@dfat.gov.au>

Sent: Friday, 27 October 2023 9:09 AM

To: FOI FMO <foi.fmo@dfat.gov.au>

Cc: s22(1)(a)(ii) @dfat.gov.au>

Subject: LEX 9365 - s16 Transfer Request - DFAT to FMO [SEC=OFFICIAL]

OFFICIAL

Dear s22(1)(a)(ii)

On 26 October 2023, DFAT received the **attached** request from s22(1)(a)(ii) seeking access under the FOI Act to the following:

"I am seeking all documents, including but not limited to reports, meeting minutes, memos, ministerial submissions, correspondence, talking points held by the Minister for Foreign Affairs that references, mentions or alludes to collective punishment in Gaza, from the 7th October 2023 to the date of this FOI request."

It appears to DFAT that this request is more closely aligned with the functions of the Office of the Foreign Minister. As such, we would be most grateful if you could confirm whether you would accept transfer of this request under section 16(1)(b) of the FOI Act.

Grateful if you could respond by **COB Monday 30 October 2023** confirming your position. If you confirm acceptance of the transfer, DFAT will notify the applicant that the request has been transferred and provide you with that correspondence.

Note that we have also received another request from the applicant made on the same terms, but seeks documents held by the department.

Should you have any questions, please do not hesitate to contact me.

Kind regards

s22(1)(a)(ii)

Seconded Lawyer | Freedom of Information Section
Public Interest Law Branch | Regulatory and Legal Policy Division

Department of Foreign Affairs and Trade
p s22(1)(a)(ii)

dfat.gov.au | [Twitter](#) | [Facebook](#) | [Instagram](#) | [LinkedIn](#)

© Kim Hill, *Among Women* (2011)

We acknowledge the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

This email and any attachments may contain confidential information or legal advice over which legal professional privilege can be claimed. Such privilege is not waived and you should ensure that, in your handling of the advice, you avoid waiving privilege. Please consult the author of the

advice if unsure about appropriate handling.

s22(1)(a)(ii)

From: FOI
Sent: Wednesday, 1 November 2023 11:51 AM
To: s22(1)(a)(ii)
Cc: FOI
Subject: LEX 9365 - Your DFAT FOI Request - Notification of Transfer [SEC=UNOFFICIAL]

Dear s22(1)(a)(ii)

We refer to your below request dated 26 October 2023, in which you have sought access to documents held by the Department of Foreign Affairs and Trade under the *Freedom of Information Act 1982* (FOI Act).

You have requested access to:

"I am seeking all documents, including but not limited to reports, meeting minutes, memos, ministerial submissions, correspondence, talking points held by the Minister for Foreign Affairs that references, mentions or alludes to collective punishment in Gaza, from the 7th October 2023 to the date of this FOI request."

Documents which would be the subject of your request would be in the possession of the Office of the Minister for Foreign Affairs (FMO).

As such, your request was transferred to the FMO on 31 October 2023 under section 16 of the FOI Act so that that they can make a decision on your request for access to their documents.

Your application was received on 26 October 2023, and the 30 day statutory period for processing your request will commence from that date.

An officer from the FMO will be writing to you directly concerning your request.

Kind regards

DFAT FOI Team

Freedom of Information Section
Public Interest Law Branch | Regulatory and Legal Policy Division
Department of Foreign Affairs and Trade
dfat.gov.au | [Twitter](#) | [Facebook](#) | [Instagram](#) | [LinkedIn](#)



© Kim Hill, *Among Women* (2011)

[We acknowledge](#) the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

-----Original Message-----

From: s22(1)(a)(ii)
Sent: Thursday, 26 October 2023 4:32 PM
To: FOI <foi@dfat.gov.au>
Subject: [EXTERNAL] Freedom of Information request - Collective punishment of people in Gaza

CAUTION: This email originated from outside the organisation. Do not click links or open attachments unless you recognise the sender.

Dear Minister for Foreign Affairs,

BACKGROUND:

On the 26th October 2023, it was reported by the Sky News that Foreign Minister Penny Wong disagreed that Palestinians were being collectively punished in Gaza.

<https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.skynews.com.au%2Faustralia-news%2Fpolitics%2Fpolitical-judgement-not-fact-penny-wong-clashes-with-jordon-steelejohn-over-israel-collective-punishment-claim%2Fnews-story%2F2ddc8656313c130d1431bd2ddf45c5ce&data=05%7C01%7Cfoi%40dfat.gov.au%7C1f6710bc020549f0600a08dbd5e4ef1b%7C9b7f23b30e8347a58a40ffa8a6fea536%7C0%7C0%7C638338951629848200%7CUnknown%7CTWFPbGZsb3d8eyJWljojMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBtil6Ik1haWwiLCJXVCi6Mn0%3D%7C2000%7C%7C%7C&sd ata=RyXh%2BQped8e7VEYmXS9AOM79xHGVM8il9r7L694QN5Y%3D&reserved=0>

INFORMATION I AM SEEKING:

I am seeking all documents, including but not limited to reports, meeting minutes, memos, ministerial submissions, correspondence, talking points held by the Minister for Foreign Affairs that references, mentions or alludes to collective punishment in Gaza, from the 7th October 2023 to the date of this FOI request.

Yours faithfully,

s22(1)(a)(ii)

s22(1)(a)(ii)

FOI References: LEX 9207, 9269, 9295, 9321, 9322, 9326, 9346, 9358, 9366, 9368, 9373, 9419 and 9428

File No: 23/27688

14 November 2023

s22(1)(a)(ii)

By email: s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Thank you for your FOI request dated 26 October 2023 (LEX 9366) in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

“On the 26th October 2023, it was reported by the Sky News that Foreign Minister Penny Wong disagreed that Palestinians were being collectively punished in Gaza.

...

INFORMATION I AM SEEKING:

I am seeking all documents, including but not limited to reports, meeting minutes, memos, ministerial submissions, correspondence, talking points held by the Department of Foreign Affairs and Trade that references, mentions or alludes to collective punishment in Gaza, from the 7th October 2023 to the date of this FOI request.”

Notice of intended practical refusal and notice that your requests have been combined

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

Under section 24AA(a)(i) of the FOI Act, for the purposes of section 24 of the FOI Act, a practical refusal reason exists in relation to a request for a document if the work involved in processing the request, in the case of the agency, would substantially and unreasonably divert the resources of an agency from its other operations.

Under section 24(2)(b) of the FOI Act, the agency may treat two or more requests as a single request if satisfied that the request relates to documents, the subject matter of which is substantially the same.

Combining your request

Between 9 October 2023 and 3 November 2023, the department received 13 FOI requests relating to the Hamas-Israel Conflict, seeking documents within the date range of 1 October 2023 to 3 November 2023.

Paragraph 3.123 of the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act provides:

“The most common circumstance in which requests may be combined under s 24(2) is likely to be multiple requests from a single applicant. However, s 24(2) can also apply to two or more requests from different applicants... Multiple requests can only be combined as a single request under s 24(2) if there is a clear connection between the subject matter of the requested documents.”

I have considered the scope and date range of all 13 requests received by the department and have decided to treat the requests as a single request. In accordance with section 24(2)(b) of the FOI Act, I am satisfied that the requests relate to documents, the subject matter of which is substantially the same, being the Hamas-Israel Conflict.

Further, I am of the view that processing the request, would constitute a substantial and unreasonable diversion of the department's resources, for the reasons set out below.

However, you are welcome to revise the scope of your request in line with section 24AB(2)(e) of the FOI Act so that your request might be processed.

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 the documents captured by your request.

The reason for the proposed practical refusal is that the department currently holds thousands of documents that are potentially relevant to your request and the work involved in processing the request, as it currently stands, would substantially and unreasonably divert the department's resources from its other operations.

In making this assessment, I have considered how the department could process your request and the time and resources that would be involved in doing so. To date, over ten percent of the workforce has been diverted to respond to the Hamas-Israel Conflict, with shifts operating 24/7. Relevant officers working within the department's crisis response centre have been unable to undertake searches or provide advice on sensitivities as a priority.

Accordingly, I engaged and have been assisted in this request by in the Business Solutions Branch (BSB) who have assisted in estimating resource demands of your request.

Searches for potentially relevant documents have been undertaken by BSB. BSB were engaged to undertake searches for emails and were provided with the following search parameters:

- a date range of 1 October 2023 to 3 November 2023,
- 14 key word search combinations, being:
 1. "Aid" and "Gaza"
 2. "Gaza"
 3. "Collective punishment"
 4. "Ceasefire"
 5. "Hospital explosion"/"hospital bombing"
 6. "Al-Ahli" and "Hospital"
 7. "Baptist"
 8. "De-escalation"
 9. "War crimes"
 10. "UNGA vote"/"UNGA abstention"/"A/ES-10/L.25"
 11. "Ed Husic", "Anne Aly" and "Tony Burke"
 12. "US assessment"
 13. "intelligence"
 14. "export permits" and "Israel"
- 77 email addresses that had been identified as holding documents.
 - This included officers working in the department's Crisis Centre, Humanitarian Division and a group inbox administered by the Media and Communications Delivery Branch.

Searches completed by BSB have identified 72,367 items. This estimate is considered to be conservative as the searches were confined to the 77 email addresses and do not capture multiple areas within the department, both in Australia and overseas, that have been identified as potentially holding relevant documents.

BSB were also engaged to undertake searches for cables and were provided with the following search parameters:

- 8 key word search combinations, being:
 1. "Gaza"
 2. "Collective punishment"
 3. "Ceasefire"
 4. "Hospital explosion"/"hospital bombing"
 5. "Al-Ahli hospital"
 6. "De-escalation"
 7. "War crimes"

8. "UNGA vote"/"UNGA abstention"/"A/ES-10/L.25"

- 10 potential to/from locations, including:
 1. Canberra
 2. Tel Aviv
 3. Ramallah
 4. Beirut
 5. Cairo
 6. Amman
 7. Kuwait City
 8. New York UN
 9. Geneva UN
 10. Vienna UN

The results returned 494 cables within the date range 7 October 2023 to 3 November 2023.

I have considered the factors outlined in paragraph 3.116 and 3.117 of the FOI Guidelines including, but not limited to:

- Identifying, locating or collating documents.
- Examining the documents, deciding whether to grant, refuse or defer access.
- Consulting with other parties.
- Redacting exempt material from the document, making copies of documents.
- Notifying an interim or final decision to applicants.
- The staffing resources available to an agency for FOI processing.
- The impact that processing the request may have on other work in the agency, including FOI.
- The significant public interest in the documents requested.

I am of the opinion that processing your request in its current form would be a substantial and unreasonable diversion of the department's resources under section 24AA(1) of the FOI Act.

Consultation to revise the scope of the request

In accordance with paragraph 3.125 of the FOI Guidelines, agencies are obliged to deal individually with each request that is not withdrawn or revised before the end of the consultation period.

Pursuant to section 24AB(2)(e) of the FOI Act, each applicant has fourteen days from the date of receipt of this notice to:

- (a) withdraw your request;
- (b) revise the scope of your request; or
- (c) notify the department that you do not wish to revise the scope of your request.

I invite you to contact me by email to foi@dfat.gov.au, should you wish to revise the request in order that it can be processed.

To support your consideration of a revised scope, it may be useful to:

- limit the type of documents sought, and
- reduce the date range for your request.

Please note that under section 24AB(7) of the FOI Act, if you do not take an opportunity to consult with the department within 14 days, 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 Act for the processing of your request is on hold (see section 24AB(8) of the FOI Act for details).

Where I refer to sections of the FOI Act, these are available at www.legislation.gov.au. Parts of the FOI Guidelines referenced can be found online at www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines.

Yours sincerely

s22(1)(a)(ii)

A/g Director
Freedom of Information Section

FOI References: LEX 9207, 9269, 9295, 9321, 9322, 9326, 9346,
9358, 9366, 9368, 9373, 9419 and 9428

File No: 23/27688

November 2023

s22(1)(a)(ii)

By email: s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Freedom of Information Request – Refusal under section 24(1)(b) of the FOI Act

I refer to your request dated 26 October 2023 (LEX 9366) in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

“On the 26th October 2023, it was reported by the Sky News that Foreign Minister Penny Wong disagreed that Palestinians were being collectively punished in Gaza.

...

INFORMATION I AM SEEKING:

I am seeking all documents, including but not limited to reports, meeting minutes, memos, ministerial submissions, correspondence, talking points held by the Department of Foreign Affairs and Trade that references, mentions or alludes to collective punishment in Gaza, from the 7th October 2023 to the date of this FOI request.”

On 14 November 2023 I notified you of my intention under section 24AB(2) of the FOI Act to refuse to process your FOI request on the grounds that your request would constitute a substantial and unreasonable diversion of the department’s resources.

That same day I also notified you that your request had been combined with 12 other requests and would be treated as a single request (the request). Under section 24(2)(b) of the FOI Act, I was satisfied that all 13 requests related to documents, the subject matter of which is substantially the same, being the Hamas-Israel Conflict.

On 15 November 2023 you wrote to the department and revised the scope of your part of the request to:

"Instead of all documents held by the Department of Foreign Affairs and Trade, I would instead like the documents provided to the Foreign Minister Penny Wong, and/or those documents used to inform her assessment that Palestinians were not being collectively punished in Gaza."

Each applicant was consulted separately on the request and had fourteen days from the date of receipt of the consultation notice to:

- (a) withdraw their part of the request,
- (b) revise the scope of their part of the request, or
- (c) notify the department that they did not wish to revise the scope of their part of the request.

Decision

I have considered the terms of your revised request, along with the terms of the other revised requests. I am satisfied that the practical refusal reason still exists, and that processing the request would require a substantial and unreasonable diversion of the department's resources.

I am therefore notifying you of my decision to refuse the request, in accordance with section 24(1)(b) of the FOI Act. I have reached this decision based on the complexity and voluminous nature of the request.

In refusing the request, I have considered how the department could proceed to process the request, and the time and resources that would be involved in doing so.

Relevantly to the revised scope of your part of the request, I have also consulted colleagues in the Crisis Centre, the Cabinet, Ministerial and Parliamentary Branch (CXB) and the Business Solutions Branch (BSB) who have assisted in estimating resource demands of your part of the request. Searches for potentially relevant documents have been undertaken by the Crisis Centre, CXB and BSB.

BSB were engaged to undertake searches for talking points, within which the Foreign Minister's Office was a recipient. As of 26 October 2023 (the date of receipt your request) the talking points were at version 47 (averaging 10 pages per document and an estimate of 470 pages to be examined to determine if any of the talking points are in scope).

The Crisis Centre were engaged to undertake searches for documents and located 8 documents, totalling 73 pages, comprising Question Time Briefs and Senate Estimate Briefs.

Additionally, CXB were engaged to undertake searches of the department's parliamentary document management systems for briefing documents sent to the Foreign Minister and did not find any documents relevant to your request.

A manual review of each document identified would be required to determine whether the documents are within the scope of your request, and whether each document contains material that would be exempt from release.

Additionally, I consider the documents obtained to date to be a conservative estimate as the Cyber Security and Networks Branch have not been re-engaged to undertake searches for potentially relevant emails.

I am satisfied that your request constitutes a substantial and unreasonable diversion of the department's resources and refuse your request under section 24(1)(b) of the FOI Act.

Note that, even if a manual review of each document was undertaken, the department would not be able to identify documents that were used by the Foreign Minister. Only documents that were provided to the Foreign Minister.

Review

This decision is subject to review. Your review rights are set out in the Attachment for your reference.

Alternatively, you may wish to lodge a fresh FOI request, further revising the scope of your request.

It may be useful to:

- limit to a specific type of document, and / or
- limit the date range for your request.

We trust this information assists.

Yours sincerely

s22(1)(a)(ii)

A/g Director
Freedom of Information Section

Attachment**Your review rights***Internal review*

You may apply for internal review of the decision (s54 of the FOI Act). The internal review application must be made within 30 days of receipt of this letter.

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 within 60 days of receipt of this letter to the Australian Information Commissioner to review my decision (s54L of the FOI Act). You may also make a complaint to the Australian Information Commissioner about the Department's actions in relation to this decision (s70 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: <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>

From: [FOI](#)
To: [FOI](#)
Subject: RE: LEX 9368 - Request for section 16 transfer - DFAT to Defence [SEC=OFFICIAL]
Date: Friday, 27 October 2023 3:15:21 PM
Attachments: [image001.jpg](#)

OFFICIAL

Hi **s22(1)(a)(ii)**

Many thanks for getting back to me so quickly. We will proceed with processing.

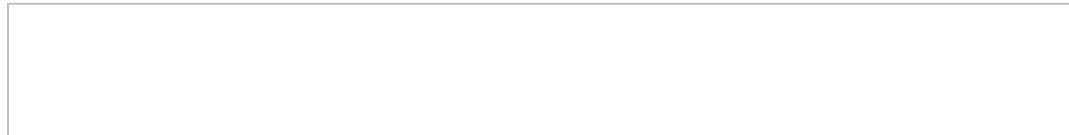
Kind regards

s22(1)(a)(ii)

Seconded Lawyer | Freedom of Information Section
Public Interest Law Branch | Regulatory and Legal Policy Division

Department of Foreign Affairs and Trade
P **s22(1)(a)(ii)**

dfat.gov.au | [Twitter](#) | [Facebook](#) | [Instagram](#) | [LinkedIn](#)



© Kim Hill, *Among Women* (2011)

We acknowledge the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

This email and any attachments may contain confidential information or legal advice over which legal professional privilege can be claimed. Such privilege is not waived and you should ensure that, in your handling of the advice, you avoid waiving privilege. Please consult the author of the advice if unsure about appropriate handling.

From: **s22(1)(a)(ii)** @defence.gov.au> **On Behalf Of** FOI
Sent: Friday, 27 October 2023 3:13 PM
To: FOI <foi@dfat.gov.au>
Cc: FOI <foi@defence.gov.au>
Subject: RE: LEX 9368 - Request for section 16 transfer - DFAT to Defence [SEC=OFFICIAL]

OFFICIAL

Dear **s22(1)(a)(ii)**

Thank you for your email.

Defence is currently processing a similar request from the same applicant.

With this in mind, can you please seek the applicant's agreement to have the request transferred

to Defence. If the applicant does not agree, Defence will not accept transfer under section 16 of the FOI Act.

Kind regards

s22(1)(a)(ii)

Assistant Director Freedom of Information Media & Sensitive

Media and Information Disclosure Branch

Ministerial & Executive Coordination and Communication Division

Department of Defence

Tel: s22(1)(a)(ii)

For FOI guidance & information, please visit: [Defence FOI](#)

IMPORTANT: This email remains the property of the Department of Defence. Unauthorised communication and dealing with the information in the email may be a serious criminal offence. If you have received this email in error, you are requested to contact the sender and delete the email immediately.

From: FOI <foi@dfat.gov.au>

Sent: Friday, 27 October 2023 10:49 AM

To: FOI <foi@defence.gov.au>

Subject: LEX 9368 - Request for section 16 transfer - DFAT to Defence [SEC=OFFICIAL]

OFFICIAL

Dear FOI Colleagues

On 27 October 2023, DFAT received the **attached** request seeking access under the FOI Act to the following:

“copies of emails, memoranda, advice, directives, recommendations, briefs to the Minister for Defence and/or his office and/or his Department in relation to defence export permits to Israel issued from 7 October 2023 to date.”

It appears to DFAT that this request is more closely aligned with the functions of the Department of Defence. As such, we would be most grateful if you could confirm whether you would accept transfer of this request under section 16(1)(b) of the FOI Act.

Grateful if you could respond by **COB Monday 30 October 2023** confirming your position.

If you confirm acceptance of the transfer, DFAT will notify the applicant that that part of the request has been transferred and provide you with that correspondence.

Should you have any questions, please do not hesitate to contact me.

Kind regards

s22(1)(a)(ii)

Seconded Lawyer | Freedom of Information Section
Public Interest Law Branch | Regulatory and Legal Policy Division

Department of Foreign Affairs and Trade

P **s22(1)(a)(ii)**

dfat.gov.au | [Twitter](#) | [Facebook](#) | [Instagram](#) | [LinkedIn](#)



© Kim Hill, *Among Women* (2011)

[We acknowledge](#) the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

This email and any attachments may contain confidential information or legal advice over which legal professional privilege can be claimed. Such privilege is not waived and you should ensure that, in your handling of the advice, you avoid waiving privilege. Please consult the author of the advice if unsure about appropriate handling.

From: s22(1)(a)(ii)
To: [FOI](#)
Subject: [EXTERNAL] FOI request
Date: Friday, 27 October 2023 10:35:46 AM

CAUTION: This email originated from outside the organisation. Do not click links or open attachments unless you recognise the sender.

Dear Sir/Madam

Pursuant to the Freedom of Information Act (Cth) I request copies of emails, memoranda, advice, directives, recommendations, briefs to the Minister for Defence and/or his office and/or his Department in relation to defence export permits to Israel issued from 7 October 2023 to date.

Yours faithfully
s22(1)(a)(ii)

From: [FOI](#)
To: [FOI FMO](#)
Cc: [s22\(1\)\(a\)\(ii\)](#)
Subject: RE: LEX 9427 - s16 Transfer Request - DFAT to FMO [SEC=OFFICIAL]
Date: Friday, 3 November 2023 2:44:58 PM
Attachments: [image001.jpg](#)
[LEX 9427 - Your DFAT FOI Request - Notification of Transfer SECUNOFFICIAL.msg](#)

OFFICIAL

Hi [s22\(1\)\(a\)\(ii\)](#)

Many thanks for confirming transfer. Please find **attached** the notice of transfer just sent to the applicant.

Note that the statutory timeframe commenced on 3 November 2023 and a decision is due to the applicant on 4 December 2023.

Please don't hesitate to contact me should you have any questions. In the meantime we will close the file on our end.

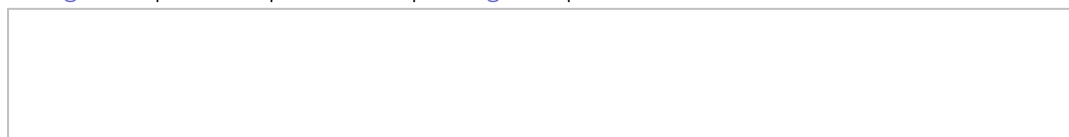
Kind regards

[s22\(1\)\(a\)\(ii\)](#)

Seconded Lawyer | Freedom of Information Section
Public Interest Law Branch | Regulatory and Legal Policy Division

Department of Foreign Affairs and Trade
P [s22\(1\)\(a\)\(ii\)](#)

dfat.gov.au | [Twitter](#) | [Facebook](#) | [Instagram](#) | [LinkedIn](#)



© Kim Hill, *Among Women* (2011)

[We acknowledge](#) the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

This email and any attachments may contain confidential information or legal advice over which legal professional privilege can be claimed. Such privilege is not waived and you should ensure that, in your handling of the advice, you avoid waiving privilege. Please consult the author of the advice if unsure about appropriate handling.

From: FOI FMO <foi.fmo@dfat.gov.au>
Sent: Friday, 3 November 2023 2:19 PM
To: FOI <foi@dfat.gov.au>
Subject: RE: LEX 9427 - s16 Transfer Request - DFAT to FMO [SEC=OFFICIAL]

OFFICIAL

Hi s22(1)(a)(ii)

Thanks, we will accept the transfer.

s22(1)(a)(ii)

From: FOI <foi@dfat.gov.au>

Sent: Friday, 3 November 2023 1:40 PM

To: FOI FMO <foi.fmo@dfat.gov.au>

Cc: s22(1)(a)(ii) <[s22\(1\)\(a\)\(ii\)@dfat.gov.au](mailto:s22(1)(a)(ii)@dfat.gov.au)>

Subject: LEX 9427 - s16 Transfer Request - DFAT to FMO [SEC=OFFICIAL]

OFFICIAL

Dear s22(1)(a)(ii)

On 3 November 2023, DFAT received the **attached** request from s22(1)(a)(ii) seeking access under the FOI Act to the following:

- All written communication held within Foreign Minister Penny Wong's office regarding public comments made by Ministers Ed Husic, Anne Aly or Tony Burke on Israel, Gaza and/or the Israel-Hamas war.
- Please limit search to October 7-November 3, 2023.
- Please include text messages - such as SMS, WhatsApp and Signal - which fall within the scope of the request.

It appears to DFAT that this request is more closely aligned with the functions of the Office of the Foreign Minister. As such, we would be most grateful if you could confirm whether you would accept transfer of this request under section 16(1)(b) of the FOI Act.

Grateful if you could respond by **COB Monday 6 November 2023** confirming your position. If you confirm acceptance of the transfer, DFAT will notify the applicant that the request has been transferred and provide you with that correspondence.

Note that we have also received another request from the applicant made on the same terms, but seeks documents held by the department.

Should you have any questions, please do not hesitate to contact me.

Kind regards

s22(1)(a)(ii)

Seconded Lawyer | Freedom of Information Section
Public Interest Law Branch | Regulatory and Legal Policy Division

Department of Foreign Affairs and Trade
P s22(1)(a)(ii)

dfat.gov.au | [Twitter](#) | [Facebook](#) | [Instagram](#) | [LinkedIn](#)



© Kim Hill, *Among Women* (2011)

We acknowledge the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

This email and any attachments may contain confidential information or legal advice over which legal professional privilege can be claimed. Such privilege is not waived and you should ensure that, in your handling of the advice, you avoid waiving privilege. Please consult the author of the advice if unsure about appropriate handling.

From: [FOI](#)
To: [s22\(1\)\(a\)\(ii\)](#)
Subject: LEX 9427 - Your DFAT FOI Request - Notification of Transfer [SEC=UNOFFICIAL]
Date: Friday, 3 November 2023 2:43:15 PM
Attachments: [~WRD2676.jpg](#)
[image001.jpg](#)

Dear [s22\(1\)\(a\)\(ii\)](#)

We refer to your below request dated 3 November 2023, in which you have sought access to documents held by the Department of Foreign Affairs and Trade under the *Freedom of Information Act 1982* (FOI Act).

You have requested access to:

- *All written communication held within Foreign Minister Penny Wong's office regarding public comments made by Ministers Ed Husic, Anne Aly or Tony Burke on Israel, Gaza and/or the Israel-Hamas war.*
- *Please limit search to October 7-November 3, 2023*
- *Please include text messages - such as SMS, WhatsApp and Signal - which fall within the scope of the request.*

Documents which would be the subject of your request would be in the possession of the Office of the Minister for Foreign Affairs (FMO).

As such, your request was transferred to the FMO on 3 November 2023 under section 16 of the FOI Act so that that they can make a decision on your request for access to their documents.

Your application was received on 3 November 2023, and the 30 day statutory period for processing your request will commence from that date.

An officer from the FMO will be writing to you directly concerning your request.

Kind regards

DFAT FOI Team

Freedom of Information Section
Public Interest Law Branch | Regulatory and Legal Policy Division
Department of Foreign Affairs and Trade
dfat.gov.au | [Twitter](#) | [Facebook](#) | [Instagram](#) | [LinkedIn](#)

© Kim Hill, Among Women (2011)

[We acknowledge](#) the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

From: s22(1)(a)(ii)

Sent: Friday, 3 November 2023 2:00 PM

To: FOI <foi@dfat.gov.au>

Subject: [EXTERNAL] FOI request - Minister's office

CAUTION: This email originated from outside the organisation. Do not click links or open attachments unless you recognise the sender.

Hello, I wish to make the following FOI request:

- All written communication held within Foreign Minister Penny Wong's office regarding public comments made by Ministers Ed Husic, Anne Aly or Tony Burke on Israel, Gaza and/or the Israel-Hamas war.
- Please limit search to October 7-November 3, 2023.
- Please include text messages - such as SMS, WhatsApp and Signal - which fall within the scope of the request.

Regards

s22(1)(a)(ii)

FOI References: LEX 9207, 9269, 9295, 9321, 9322, 9326, 9346, 9358, 9366, 9368, 9373, 9419 and 9428

File No: 23/27688

14 November 2023

s22(1)(a)(ii)

By email: s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Thank you for your FOI request dated 3 November 2023 (LEX 9428) in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

- *All written communication - including emails, memos and departmental briefings - regarding comments Ministers Ed Husic, Anne Aly and Tony Burke have made publicly on Israel, Gaza and/or the Israel-Hamas war.*
- *Please limit search to between October 7-November 3, 2023.*
- *Please exclude text messages such as SMS, WhatsApp and Signal.*

Notice of intended practical refusal and notice that your requests have been combined

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

Under section 24AA(a)(i) of the FOI Act, for the purposes of section 24 of the FOI Act, a practical refusal reason exists in relation to a request for a document if the work involved in processing the request, in the case of the agency, would substantially and unreasonably divert the resources of an agency from its other operations.

Under section 24(2)(b) of the FOI Act, the agency may treat two or more requests as a single request if satisfied that the request relates to documents, the subject matter of which is substantially the same.

Combining your request

Between 9 October 2023 and 3 November 2023, the department received 13 FOI requests relating to the Hamas-Israel Conflict, seeking documents within the date range of 1 October 2023 to 3 November 2023.

Paragraph 3.123 of the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act provides:

“The most common circumstance in which requests may be combined under s 24(2) is likely to be multiple requests from a single applicant. However, s 24(2) can also apply to two or more requests from different applicants... Multiple requests can only be combined as a single request under s 24(2) if there is a clear connection between the subject matter of the requested documents.”

I have considered the scope and date range of all 13 requests received by the department and have decided to treat the requests as a single request. In accordance with section 24(2)(b) of the FOI Act, I am satisfied that the requests relate to documents, the subject matter of which is substantially the same, being the Hamas-Israel Conflict.

Further, I am of the view that processing the request, would constitute a substantial and unreasonable diversion of the department's resources, for the reasons set out below.

However, you are welcome to revise the scope of your request in line with section 24AB(2)(e) of the FOI Act so that your request might be processed.

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 the documents captured by your request.

The reason for the proposed practical refusal is that the department currently holds thousands of documents that are potentially relevant to your request and the work involved in processing the request, as it currently stands, would substantially and unreasonably divert the department's resources from its other operations.

In making this assessment, I have considered how the department could process your request and the time and resources that would be involved in doing so. To date, over ten percent of the workforce has been diverted to respond to the Hamas-Israel Conflict, with shifts operating 24/7. Relevant officers working within the department's crisis response centre have been unable to undertake searches or provide advice on sensitivities as a priority.

Accordingly, I engaged and have been assisted in this request by in the Business Solutions Branch (BSB) who have assisted in estimating resource demands of your request.

Searches for potentially relevant documents have been undertaken by BSB. BSB were engaged to undertake searches for emails and were provided with the following search parameters:

- a date range of 1 October 2023 to 3 November 2023,

- 14 key word search combinations, being:
 1. "Aid" and "Gaza"
 2. "Gaza"
 3. "Collective punishment"
 4. "Ceasefire"
 5. "Hospital explosion"/"hospital bombing"
 6. "Al-Ahli" and "Hospital"
 7. "Baptist"
 8. "De-escalation"
 9. "War crimes"
 10. "UNGA vote"/"UNGA abstention"/"A/ES-10/L.25"
 11. "Ed Husic", "Anne Aly" and "Tony Burke"
 12. "US assessment"
 13. "intelligence"
 14. "export permits" and "Israel"
- 77 email addresses that had been identified as holding documents.
 - This included officers working in the department's Crisis Centre, Humanitarian Division and a group inbox administered by the Media and Communications Delivery Branch.

Searches completed by BSB have identified 72,367 items. This estimate is considered to be conservative as the searches were confined to the 77 email addresses and do not capture multiple areas within the department, both in Australia and overseas, that have been identified as potentially holding relevant documents.

BSB were also engaged to undertake searches for cables and were provided with the following search parameters:

- 8 key word search combinations, being:
 1. "Gaza"
 2. "Collective punishment"
 3. "Ceasefire"
 4. "Hospital explosion"/"hospital bombing"
 5. "Al-Ahli hospital"
 6. "De-escalation"
 7. "War crimes"
 8. "UNGA vote"/"UNGA abstention"/"A/ES-10/L.25"
- 10 potential to/from locations, including:
 1. Canberra
 2. Tel Aviv
 3. Ramallah

4. Beirut
5. Cairo
6. Amman
7. Kuwait City
8. New York UN
9. Geneva UN
10. Vienna UN

The results returned 494 cables within the date range 7 October 2023 to 3 November 2023.

I have considered the factors outlined in paragraph 3.116 and 3.117 of the FOI Guidelines including, but not limited to:

- Identifying, locating or collating documents.
- Examining the documents, deciding whether to grant, refuse or defer access.
- Consulting with other parties.
- Redacting exempt material from the document, making copies of documents.
- Notifying an interim or final decision to applicants.
- The staffing resources available to an agency for FOI processing.
- The impact that processing the request may have on other work in the agency, including FOI.
- The significant public interest in the documents requested.

I am of the opinion that processing your request in its current form would be a substantial and unreasonable diversion of the department's resources under section 24AA(1) of the FOI Act.

Consultation to revise the scope of the request

In accordance with paragraph 3.125 of the FOI Guidelines, agencies are obliged to deal individually with each request that is not withdrawn or revised before the end of the consultation period.

Pursuant to section 24AB(2)(e) of the FOI Act, each applicant has fourteen days from the date of receipt of this notice to:

- (a) withdraw your request;
- (b) revise the scope of your request; or
- (c) notify the department that you do not wish to revise the scope of your request.

I invite you to contact me by email to foi@dfat.gov.au, should you wish to revise the request in order that it can be processed.

To support your consideration of a revised scope, it may be useful to:

- limit the type of documents sought, and
- reduce the date range for your request.

Please note that under section 24AB(7) of the FOI Act, if you do not take an opportunity to consult with the department within 14 days, 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 Act for the processing of your request is on hold (see section 24AB(8) of the FOI Act for details).

Where I refer to sections of the FOI Act, these are available at www.legislation.gov.au. Parts of the FOI Guidelines referenced can be found online at www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines.

Yours sincerely

s22(1)(a)(ii)

A/g Director
Freedom of Information Section

FOI References: LEX 9207, 9269, 9295, 9321, 9322, 9326, 9346, 9358, 9366, 9368, 9373, 9419 and 9428

File No: 23/27688

November 2023

s22(1)(a)(ii)

By email: s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Freedom of Information Request – Refusal under section 24(1)(b) of the FOI Act

I refer to your request dated 3 November 2023 (LEX 9428) in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to:

- *All written communication - including emails, memos and departmental briefings - regarding comments Ministers Ed Husic, Anne Aly and Tony Burke have made publicly on Israel, Gaza and/or the Israel-Hamas war.*
- *Please limit search to between October 7-November 3, 2023.*
- *Please exclude text messages such as SMS, WhatsApp and Signal.*

On 14 November 2023 I notified you of my intention under section 24AB(2) of the FOI Act to refuse to process your FOI request on the grounds that your request would constitute a substantial and unreasonable diversion of the department's resources.

That same day I also notified you that your request had been combined with 12 other requests and would be treated as a single request (the request). Under section 24(2)(b) of the FOI Act, I was satisfied that all 13 requests related to documents, the subject matter of which is substantially the same, being the Hamas-Israel Conflict.

That same day you wrote to the department and revised the scope of your part of the request to:

- *All written communication - including emails, memos, cables and departmental briefings - regarding comments Ministers Ed Husic and/or Anne Aly have made publicly on Israel, Gaza and/or the Israel-Hamas war.*
- *Please only include documents which specifically mention one or both of the individuals above (Husic and Aly).*

- Please limit search to documents that deal with the notion that Israel has committed war crimes or that residents of Gaza have been subject to collective punishment.
- Please limit search to between October 19-November 3, 2023.
- Please exclude text messages such as SMS, WhatsApp and Signal.

Each applicant was consulted separately on the request and had fourteen days from the date of receipt of the consultation notice to:

- (a) withdraw their part of the request,
- (b) revise the scope of their part of the request, or
- (c) notify the department that they did not wish to revise the scope of their part of the request.

Decision

I have considered the terms of your revised request, along with the terms of the other revised requests. I am satisfied that the practical refusal reason still exists, and that processing the request would require a substantial and unreasonable diversion of the department's resources.

I am therefore notifying you of my decision to refuse the request, in accordance with section 24(1)(b) of the FOI Act. I have reached this decision based on the complexity and voluminous nature of the request.

In refusing the request, I have considered how the department could proceed to process the request, and the time and resources that would be involved in doing so.

Relevant to the revised scope of your part of the request, I have also consulted colleagues in the Business Solutions Branch (BSB) and Cyber Security and Networks Branch (CRB) who have assisted in estimating resource demands of your part of the request. Searches for potentially relevant documents have been undertaken by BSB and CRB.

BSB were engaged to undertake searches for diplomatic cables, however no relevant cables were identified.

CRB were engaged to undertake department wide searches for emails and were provided with the following search parameters:

- a date range of 19 October 2023 to 3 November 2023
- key word search combinations being:
 1. "Ed Husic" OR "Minister Husic" OR "Husic" OR "Minister for Industry and Science" AND "Gaza" AND "collective punishment" OR "Israel" AND "war crimes".

2. "Anne Aly" OR "Minister Aly" OR "Minister for Early Childhood Education" OR "Minister for Youth" AND "Gaza" AND "collective punishment" OR "Israel" AND "war crimes".

Searches completed by CRB identified 6,552 items for the first key word search combination and 2,980 for the second key word search combination.

A manual review of each document would be required to determine whether the documents are within the scope of your request, and whether each document contains material that would be exempt from release.

I am satisfied that even if your request was not combined with the 12 other requests your request would still constitute a substantial and unreasonable diversion of the department's resources and refuse your request under section 24(1)(b) of the FOI Act.

Review

This decision is subject to review. Your review rights are set out in the Attachment for your reference.

Alternatively, you may wish to lodge a fresh FOI request, further revising the scope of your request.

We trust this information assists.

Yours sincerely

s22(1)(a)(ii)

A/g Director
Freedom of Information Section

Attachment**Your review rights***Internal review*

You may apply for internal review of the decision (s54 of the FOI Act). The internal review application must be made within 30 days of receipt of this letter.

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 within 60 days of receipt of this letter to the Australian Information Commissioner to review my decision (s54L of the FOI Act).

You may also make a complaint to the Australian Information Commissioner about the Department's actions in relation to this decision (s70 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: <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>

From: [FOI](#)
To: [FOI](#)
Cc: [FOI](#)
Subject: PMC Ref 2023/346 - DFAT LEX 9582 - Request for partial section 16 transfer - DFAT to PM&C [SEC=OFFICIAL]
Date: Wednesday, 22 November 2023 3:30:04 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image004.png](#)
[EXTERNAL Legal advice prepared since the Hamas attack in October 2023.msg](#)

OFFICIAL

PMC Ref: FOI/2023/346

Dear **s22(1)(a)(ii)**

Thank you for your email below requesting partial transfer of a request under section 16 of the FOI Act.

I can confirm that as per the telephone conversation you had with **s22(1)(a)(ii)** our FOI Senior Adviser, in this instance, we feel that the scope of the request is better placed with your Department.

In light of the above, we advise that PMC is unable to accept your partial transfer request but please do not hesitate to contact us if you require any assistance.

Kind regards

s22(1)(a)(ii)

Coordinator | FOI Section

Department of the Prime Minister and Cabinet

p. **s22(1)(a)(ii)**

Ngunnawal Country | One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600

e. FOI@pmc.gov.au w. pmc.gov.au



The Department acknowledges and pays respect to the past, present and emerging Elders and Traditional Custodians of Country, and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples.

From: FOI <foi@dfat.gov.au>

Sent: Tuesday, 21 November 2023 9:57 AM

To: FOI <FOI@pmc.gov.au>

Subject: LEX 9582 - Request for partial section 16 transfer - DFAT to PM&C [SEC=UNOFFICIAL]

Warning: DKIM Failure. Email authenticity verification failed
Dear FOI Colleagues

On 21 November 2023, DFAT received the **attached** request seeking access under the FOI Act to the following:

“all correspondence, briefing notes, and/or legal advice sought by or prepared for the Prime Minister, the Minister for Defence and the Minister for Foreign Affairs between October 7 and October 17 concerning the conflict in Israel and Gaza, in particular concerning the legal definition of:

-- What constitutes an act of war

-- What constitutes a war crime

-- What constitutes "collective punishment" under international law”

It appears to DFAT that the part of this request relating to the Prime Minister is more closely aligned with the functions of the Department of Prime Minister and Cabinet. As such, we would be most grateful if you could confirm whether you would accept partial transfer of this request under section 16(1)(b) of the FOI Act.

Grateful if you could respond by **COB Thursday 23 November 2023** confirming your position. Note that we are also seeking partial transfer for the request to the Department of Defence.

If you confirm acceptance of partial transfer, DFAT will notify the applicant that part of the request has been transferred and provide you with that correspondence.

Should you have any questions, please do not hesitate to contact me.

Kind regards

s22(1)(a)(ii)

Seconded Lawyer | Freedom of Information Section
Public Interest Law Branch | Regulatory and Legal Policy Division

Department of Foreign Affairs and Trade

P s22(1)(a)(ii)

dfat.gov.au | [Twitter](#) | [Facebook](#) | [Instagram](#) | [LinkedIn](#)

cid:image001.jpg@01DA1C61.10BBCEC0

© Kim Hill, *Among Women* (2011)

We acknowledge the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

that is confidential and may also be the subject of legal professional or other privilege. If you are not the intended recipient of this message, you must not review, copy, disseminate or disclose its contents to any other party or take action in reliance of any material contained within it. If you have received this message in error, please notify the sender immediately by return email informing them of the mistake and delete all copies of the message from your computer system.

From: s22(1)(a)(ii)
To: FOI
Subject: [EXTERNAL] Legal advice prepared since the Hamas attack in October 2023
Date: Tuesday, 21 November 2023 8:44:40 AM

CAUTION: This email originated from outside the organisation. Do not click links or open attachments unless you recognise the sender.

Hi,

My name is s22(1)(a)(ii)

I request under the *Freedom of Information Act 1982* all correspondence, briefing notes, and/or legal advice sought by or prepared for the Prime Minister, the Minister for Defence and the Minister for Foreign Affairs between October 7 and October 17 concerning the conflict in Israel and Gaza, in particular concerning the legal definition of:

- What constitutes an act of war
- What constitutes a war crime
- What constitutes "collective punishment" under international law

I would like to have digital copies of these documents sent to me at this email address: s22(1)(a)(ii)

- Please exclude duplicates, documents already been publicly released (such as media releases, reports, articles and or statements to the media).
- If emails are captured, please limit to the final thread of the conversation. If there are multiple briefing notes on the same topic, please limit to the most recent along with any attachments.
- I also agree to having the names and direct contact details of non-senior staff removed.
- If the information I'm seeking exists in one document, I'm happy to limit my application to just that.
- Given the public interest on this topic, I believe a charge should not be imposed.
- If a large number of documents are captured within the scope of this request, I would be happy to discuss narrowing this request.
- Please feel free to let me know if you'd like to discuss this request or discuss ways to make it more efficient for both of us.

Many thanks, I look forward to hearing from you,

s22(1)(a)(ii)

From: s22(1)(a)(ii) on behalf of FOI
To: FOI
Cc: FOI
Subject: RE: LEX 9582 - Request for partial section 16 transfer - DFAT to Defence [SEC=UNOFFICIAL]
Date: Friday, 24 November 2023 9:22:01 AM
Attachments: [image001.jpg](#)

UNOFFICIAL

Dear s22(1)(a)(ii)

Thank you for your email and time on the phone. As discussed, the Department of Defence (Defence) will decline to accept this transfer.

If you have any questions or concerns going forward please let me know.

Kind regards

s22(1)(a)(ii)

Assistant Director Freedom of Information

Media and Information Disclosure Branch

Ministerial & Executive Coordination and Communication Division

Department of Defence

Tel: s22(1)(a)(ii)

[Freedom of information requests](#) | [About](#) | [Defence](#)

From: FOI <foi@dfat.gov.au>
Sent: Tuesday, 21 November 2023 9:39 AM
To: FOI <foi@defence.gov.au>
Subject: LEX 9582 - Request for partial section 16 transfer - DFAT to Defence [SEC=UNOFFICIAL]

Dear FOI Colleagues

On 21 November 2023, DFAT received the **attached** request seeking access under the FOI Act to the following:

“all correspondence, briefing notes, and/or legal advice sought by or prepared for the Prime Minister, the Minister for Defence and the Minister for Foreign Affairs between October 7 and October 17 concerning the conflict in Israel and Gaza, in particular concerning the legal definition of:

- What constitutes an act of war*
- What constitutes a war crime*
- What constitutes "collective punishment" under international law”*

It appears to DFAT that the part of this request relating to the Minister for Defence is more closely aligned with the functions of the Department of Defence. As such, we would be most grateful if you could confirm whether you would accept partial transfer of this request under section 16(1)(b) of the FOI Act.

Grateful if you could respond by **COB Thursday 23 November 2023** confirming your position. Note that we are also seeking partial transfer for the request to the Department of the Prime Minister and Cabinet.

If you confirm acceptance of partial transfer, DFAT will notify the applicant that part of the request has been transferred and provide you with that correspondence.

Should you have any questions, please do not hesitate to contact me.

Kind regards

s22(1)(a)(ii)

Seconded Lawyer | Freedom of Information Section
Public Interest Law Branch | Regulatory and Legal Policy Division

Department of Foreign Affairs and Trade
P **s22(1)(a)(ii)**

dfat.gov.au | [Twitter](#) | [Facebook](#) | [Instagram](#) | [LinkedIn](#)



© Kim Hill, *Among Women* (2011)

[We acknowledge](#) the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

This email and any attachments may contain confidential information or legal advice over which legal professional privilege can be claimed. Such privilege is not waived and you should ensure that, in your handling of the advice, you avoid waiving privilege. Please consult the author of the advice if unsure about appropriate handling.

From: s22(1)(a)(ii)
To: FOI FMO
Cc: DLO FM; s22(1)(a)(ii)
Subject: FOI - Documents provided to the FM on what constitutes an act of war, war crime and collective punishment - Upcoming Decision [SEC=OFFICIAL]
Date: Thursday, 14 December 2023 5:17:03 PM
Attachments: LEX 9582 - Decision Letter.pdf
 s22(1)(a)(ii)

OFFICIAL

Dear s22(1)(a)(ii)

For information – the department has finalised an FOI request from s22(1)(a)(ii) seeking access to:

“all correspondence, briefing notes, and/or legal advice sought by or prepared for the Prime Minister, the Minister for Defence and the Minister for Foreign Affairs between October 7 and October 17 concerning the conflict in Israel and Gaza, in particular concerning the legal definition of:

- *What constitutes an act of war*
- *What constitutes a war crime*
- *What constitutes "collective punishment" under international law”*

Searches were conducted by the Cabinet, Ministerial and Parliamentary Branch, Crisis Preparedness and Management Branch, Humanitarian Preparedness and Response Branch, International Law Branch I (ILB) and the MAD Crisis Policy Centre, with documents located by ILB and the MAD Policy Crisis Centre.

The document will be **released in part**, with material removed due to deliberative material, substantial adverse effect on the operations of the agency and personal privacy. Irrelevant s22(1)(a)(ii) has also been removed.

s22(1)(a)(ii) Assistant Secretary, Africa Branch is the decision-maker. The decision letter, and an audit and redacted copy of the documents are attached.

Consultations

The FOI Team undertook the following consultations in the preparation of this response, with responses received from all:

Internal	- Middle East Branch
	- General Counsel Branch
	- International Law Branch
External	- N/A
Third party	- N/A

We will release the decision to the applicant at **4pm Monday 18 December 2023**.

I would be pleased to provide any further information.

Kind regards,

s22(1)(a)(ii)

s22(1)(a)(ii)

A/g Director | Freedom of Information Section

Public Interest Law Branch | Regulatory and Legal Policy Division

T s22(1)(a)(ii) | **M** s22(1)(a)(ii)

s22(1)(a)(ii)

FOI Reference: LEX 9582**File Reference:** 23/29048

December 2023

s22(1)(a)(ii)

By email: s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Re: Freedom of Information Request

I am writing to provide you with a decision about your request under the *Freedom of Information Act 1982* (the FOI Act).

In relation to the part of your request relating to the Minister for Foreign Affairs, I have identified documents relevant to this part of your request and, after careful consideration, I have decided to release the documents in part with irrelevant and exempt material removed.

In relation to the part of your request relating to the Prime Minister and the Minister for Defence, I have not identified any documents relevant to this part and, after careful consideration, I have decided to refuse this part of your request.

Request

On 21 November 2023 you requested access to:

“all correspondence, briefing notes, and/or legal advice sought by or prepared for the Prime Minister, the Minister for Defence and the Minister for Foreign Affairs between October 7 and October 17 concerning the conflict in Israel and Gaza, in particular concerning the legal definition of:

- What constitutes an act of war*
- What constitutes a war crime*
- What constitutes "collective punishment" under international law”*

Reasons

I am authorised under section 23 of the FOI Act to make decisions in relation to FOI requests and have been appointed to be the decision-maker on your request.

In making my decision I have taken into account:

- the terms of your request,
- the documents found to be 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.

Sections of the FOI Act referenced in my decision letter can be found online at www.legislation.gov.au. Relevant sections of the FOI Guidelines can be found online at <https://www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines>.

The reasons for my decision are set out below.

Documents sought by or prepared for the Prime Minister and the Minister for Defence

On 24 November 2023 the department wrote to you and acknowledged your request. In doing so the department advised:

“...the Prime Minister and the Minister for Defence are responsible for the Department of the Prime Minister and Cabinet and the Department of Defence respectively. You may wish to consider withdrawing the parts of your request relating to them and instead direct those parts of your request to the relevant department.”

You did not respond to this email.

Thorough searches conducted by the department found no documents relevant to the part of your request relating to the Prime Minister and the Minister for Defence. I am therefore satisfied that documents do not exist in relation to this part of your request and refuse this part of your request under section 24A(1) of the FOI Act. Should these documents exist, it is likely they would be held by the Department of the Prime Minister and Cabinet and the Department of Defence.

Documents sought by or prepared for the Minister for Foreign Affairs

Documents subject to deliberative processes (section 47C(1) of the FOI Act)

Under section 47C(1) of the FOI Act, a document is conditionally exempt if it contains deliberative matter. Deliberative matter is content that is in the nature of, or relates to:

- (a) an opinion, advice or recommendation that has been obtained, prepared or recorded, or
- (b) a consultation or deliberation that has taken place, in the course of, or for the purposes of, a deliberative process of the government, an agency or minister (section 47C(1) of the FOI Act).

The conditionally exempt material includes content which is in the nature of advice that has been obtained and prepared in the context of a deliberative process of the government or

the agency. That includes both obtaining and providing advice internally and subsequently providing that advice to the Foreign Minister's Office.

I am satisfied that the material in question is not operational information (as defined by section 8A of the FOI Act) or purely factual material (section 47C(2) of the FOI Act). To the extent that the conditionally exempt material might be considered factual, it is inextricably intertwined with deliberative material and cannot be practically excised.

Substantial adverse effect on the operations of the department (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 operations of an agency. A 'substantial adverse effect' may be indirect (FOI Guidelines, paragraph 6.92).

The conditionally exempt material includes content which, if disclosed, would have a substantial adverse effect on the proper and efficient conduct on the operations of the department, particularly in obtaining, preparing and providing advice to the business area (and subsequently the Foreign Minister's Office) that was working on our response to the Hamas-Israel conflict. Disclosure of this material would, or could reasonably be expected to, have a substantial adverse effect on the department's ability to manage the crisis, obtain, act, and respond to advice, as well as provide advice efficiently to the Foreign Minister's Office.

I have decided that material contained within 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) of the FOI Act, a document is conditionally exempt if disclosure would involve the unreasonable disclosure of personal information about any person (including a deceased person).

Some material within the documents is conditionally exempt as release would be an unreasonable disclosure of the personal information of other individuals (section 47F(1) of the FOI Act). In reaching this view, I have also considered each of the factors listed in section 47F(2) of the FOI Act.

The conditionally exempt material within the documents includes the personal information of third parties, in particular Ministerial staffers. I consider that disclosure of the conditionally exempt material would constitute an unreasonable disclosure of the third parties' personal information.

For these reasons, I have decided that the relevant material is conditionally exempt under section 47F(1) of the FOI Act.

Public interest considerations

As exemptions under sections 47C(1), 47E(d) and 47F(1) of the FOI Act are conditional, 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 public interest.

In applying the public interest test, I considered the public interest factors favouring disclosure set out in section 11B(3) of the FOI Act, which include:

- (a) promoting the objects of the FOI Act, and
- (b) informing debate on a matter of public importance.

I have also considered the factors against disclosure, including that disclosure could reasonably be expected to:

- (a) prejudice the management function of an agency, and
- (b) prejudice the protection of an individual's right to privacy.

I have considered these factors and, on balance, find that the disclosure of the conditionally exempt material is contrary to the public interest. I find this to be the case for each of the conditional exemptions claimed under sections 47C(1), 47E(d) and 47F(1) of the FOI Act.

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 material

Some of the material 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 your statement:

- *I also agree to having the names and direct contact details of non-senior staff removed.*

As you have stated that you do not require this information, I have decided to remove this information from the documents being released to you.

Additional exemption claims

I consider that some material in the documents may also be exempt under section 42(1) of the FOI Act (legal professional privilege). However, given the material is conditionally exempt under other provisions, this exemption has not been considered further at this time.

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 FOI Section by email at foi@dfat.gov.au.

Yours sincerely

s22(1)(a)(ii)

Assistant Secretary

Department of Foreign Affairs and Trade

Attachment*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 days of receipt of this letter.

Where possible, please attach reasons 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 within 60 days of the date of this letter to the Australian Information Commissioner to review my decision (section 54L of the FOI Act). 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: <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>

FOI Reference: LEX 9614

File Reference: 23/28799

15 December 2023

s22(1)(a)(ii)

By email: s22(1)(a)(ii)

Dear s22(1)(a)(ii)

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 22 November 2023, for access under the *Freedom of Information Act 1982* (the FOI Act) to:

I am seeking any documents including but not limited to records, minutes, agendas, lists of attendees, correspondences, meeting invites, time, date and location of any meetings. Specifically, meetings held between organisations, individuals, foreign government representatives or any other representatives of groups acting in the interests of Israel and the Department of Foreign Affairs and Trade and/or the ministers office. The timeframe for such meetings is between 7 October 2023 to the date of receipt of this FOI request.

I am writing to inform you that the department considers that this request, as currently drafted, does not provide sufficient information so as to enable departmental officers to identify the documents you seek (see section 15(2)(b) of the FOI Act).

However, you are welcome to revise the scope of your request in line with section 24AB(2)(e) 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 a document in accordance with your request. I have decided that the scope of your request does not provide such information concerning the document as is reasonably necessary to enable a responsible officer of the department to identify it, and therefore a practical refusal reason exists within the meaning of section 24AA(1)(b) of the FOI Act.

Opportunity for you to narrow the scope of your request

In accordance with section 24AB(6) of the FOI Act, you have the following options:

- a) withdraw your request,
- b) revise the scope of your request, or
- c) advise that do not wish to revise your request.

I invite you to contact me via foi@dfat.gov.au should you wish to narrow your request to enable the department to proceed with your request.

As is currently drafted, your request is very broad in nature and appears to capture every overseas Post as well as a significant number of Canberra line areas. To enable departmental officers to identify the documents to which you seek access, you may wish to specify whether you are seeking documents from Canberra, or from our overseas Posts and, if so, identify the relevant locations.

The reference to 'groups acting in the interests of Israel' is also too broad to enable the department to conduct searches for relevant documents. You may wish to consider specifying groups, organisations or individuals you are seeking to capture.

Please note that under section 24AB(7) of the FOI Act if you do take one of the above actions within 14 days, your request will be taken 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).

Yours sincerely

s22(1)(a)(ii)

A/g Director
Freedom of Information Section

FOI Reference: LEX 9615

File Reference: 23/28798

15 December 2023

s22(1)(a)(ii)

By email: s22(1)(a)(ii)

Dear s22(1)(a)(ii)

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 22 November 2023, for access under the *Freedom of Information Act 1982* (the FOI Act) to:

I am seeking any documents including but not limited to records, minutes, agendas, lists of attendees, correspondences, meeting invites, time, date and location of any meetings. Specifically, meetings held between organisations, individuals, foreign government representatives or any other representatives of groups acting in the interests of the occupied Palestinian territories and the Department of Foreign Affairs and Trade and/or the ministers office. The timeframe for such meetings is between 7 October 2023 to the date of receipt of this FOI request.

I am writing to inform you that the department considers that this request, as currently drafted, does not provide sufficient information so as to enable departmental officers to identify the documents you seek (see section 15(2)(b) of the FOI Act).

However, you are welcome to revise the scope of your request in line with section 24AB(2)(e) 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 a document in accordance with your request. I have decided that the scope of your request does not provide such information concerning the document as is reasonably necessary to enable a responsible officer of the department to identify it, and therefore a practical refusal reason exists within the meaning of section 24AA(1)(b) of the FOI Act.

Opportunity for you to narrow the scope of your request

Pursuant to section 24AB(2)(e) 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) advise that do not wish to revise your request.

I invite you to contact me via foi@dfat.gov.au should you wish to narrow your request to enable the department to proceed with your request.

As is currently drafted, your request is very broad in nature and appears to capture every overseas Post as well as a significant number of Canberra line areas. To enable departmental officers to identify the documents to which you seek access, you may wish to specify whether you are seeking documents from Canberra, or from our overseas Posts and, if so, identify the relevant locations.

The reference to 'groups acting in the interests of the occupied Palestinian territories' is also too broad to enable the department to conduct searches for relevant documents. You may wish to consider specifying groups, organisations or individuals you are seeking to capture.

Please note that under section 24AB(7) of the FOI Act if you do take one of the above actions within 14 days, your request will be taken 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).

Yours sincerely

s22(1)(a)(ii)

A/g Director
Freedom of Information Section

FOI Reference: LEX 9662
File Reference: 23/29698

December 2023

s22(1)(a)(ii)

By email: s22(1)(a)(ii)

Dear s22(1)(a)(ii)

RE: Freedom of Information Request

I refer to your request received by the Department of Foreign Affairs and Trade (the department) on 30 November 2023 for access under the *Freedom of Information Act 1982* (the FOI Act) to:

- *All emails sent by Canberra-based staff in the Middle East Branch referencing comments made by Industry and Science Minister Ed Husic on 19 October, 2023 questioning whether residents of Gaza have been subject to collective punishment.*
- *Only include emails which explicitly mention the term “collective punishment” and refer to Minister Husic.*
- *Exclude all other forms of communication such as cables, text messages etc that aren’t emails.*
- *Include any attachments to emails which fall within the scope.*
- *Please limit scope to emails sent on October 19 or October 20, 2023.*
- *Please do not combine my request with other, much broader requests under section 24(2)(b) of the FOI Act, if they merely touch on the same broad subject but are not substantially the same in scope.*

On 6 December 2023, you consented to a 10-calendar day extension of time under section 15AA of the FOI Act. The department notified the Office of the Australian Information Commissioner (OAIC) of the extension.

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

Decision

I am an officer authorised under section 23 of the FOI Act to make decisions in relation to FOI requests and have been appointed to be the decision-maker on your request.

The **Israel-Gaza Taskforce (Taskforce)** has been established by the department to manage ongoing matters relating to the Israel-Gaza Conflict. The Taskforce sits within the Middle East Branch.

Thorough searches conducted by the Taskforce, found no documents matching the description of the documents you requested

Searches were undertaken in Microsoft Office for emails containing the keywords 'Husic' and 'collective punishment' for the period 19-20 October 2023.

After taking all reasonable steps to find the documents, I am satisfied that they cannot be found or do not exist. I therefore refuse your request in accordance with section 24A(1) of the FOI Act.

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

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

s22(1)(a)(ii)

Freedom of Information Section

Attachment***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.

From: s22(1)(a)(ii) on behalf of FOI
To: FOI
Cc: FOI
Subject: RE: FOI request - Request for transfer - Australian fighters in Gaza war - LEX9726 [SEC=OFFICIAL]
Date: Friday, 22 December 2023 12:19:53 PM
Attachments: image001.jpg

OFFICIAL

Dear s22(1)(a)(ii)

Thank you for your email below and apologies for the delay in responding.

Defence is not in a position to accept this request under section 16(1) of the FOI Act. If the applicant is welcome to submit this portion of the request to Defence, the details on how to submit a request with Defence is contained in the following link: [Freedom of information requests | About | Defence](#).

Thank you and regards

s22(1)(a)(ii)

Freedom of Information

Media and Information Disclosure Branch
Ministerial & Executive Coordination and Communication Division
Department of Defence

Tel: s22(1)(a)(ii)

IMPORTANT: This email remains the property of the Department of Defence. Unauthorised communication and dealing with the information in the email may be a serious criminal offence. If you have received this email in error, you are requested to contact the sender and delete the email immediately.

From: FOI <foi@dfat.gov.au>
Sent: Wednesday, 20 December 2023 1:46 PM
To: FOI <foi@defence.gov.au>
Subject: 20231220 1345 - [FOI]-[FOI] FOI request - Request for transfer - Australian fighters in Gaza war - LEX9726

OFFICIAL

Dear Department of Defence FOI section

On 11 December 2023, the department received a new FOI request, part of which seeks access to:

All documents, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 Oct. to date between the Australian Embassy in Israel, the Embassy of Israel in Australia, the Gvt of Israel, and the Australian Gvt evidencing

2.4.1. *The list of defence articles and related technical information that were provided by Australia to Israel*

2.4.2. *What military personnel, defence articles and related technical information Australia has sent to Israel.*

2.4.3. *A purpose for Australian military involvement other than assisting with the extraction of Australian citizens.*

Under section 16(1) of the FOI Act, the department may transfer a request where the documents are not in the possession of the agency or the subject matter of the document is more closely aligned with the functions of another agency.

I would be grateful if you could please confirm whether your department will accept transfer of this part of the request as soon as possible.

Please feel free to contact me to discuss further.

Kind regards

s22(1)(a)(ii)

Seconded Lawyer | Freedom of Information Section
Public Interest Law Branch | Regulatory and Legal Policy Division
Department of Foreign Affairs and Trade
Phone: s22(1)(a)(ii) |

© Kim Hill, *Among Women* (2011)

[We acknowledge](#) the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

This email and any attachments may contain confidential information or legal advice over which legal professional privilege can be claimed. Such privilege is not waived and you should ensure that, in your handling of the advice, you avoid waiving privilege. Please consult the author of the advice if unsure about appropriate handling.

dissemination, distribution or copying of this email is strictly prohibited. Opinions, conclusions and other information in this message that do not relate to the official business of Al Jazeera shall be understood as neither given nor endorsed by Al Jazeera.

From: FOI
To: "FOI"
Subject: FOI request - Request for transfer - Australian fighters in Gaza war - LEX9726 [SEC=OFFICIAL]
Date: Wednesday, 20 December 2023 10:43:44 AM
Attachments: [image001.jpg](#)
[FOI Request - Notice of partial transfer of request - s22\(1\)\(a\)\(ii\) - LEX9726 - s22\(1\)\(a\) SECOFFICIAL.msg](#)
[EXTERNAL FOI Request s22\(1\)\(a\)\(ii\).msg](#)
[EXTERNAL RE FOI Request - s22\(1\)\(a\)\(ii\) - LEX9712 SECOFFICIAL.msg](#)

OFFICIAL

Dear s22(1)(a)(ii)

Thank you very much for agreeing to the partial transfer of this request.

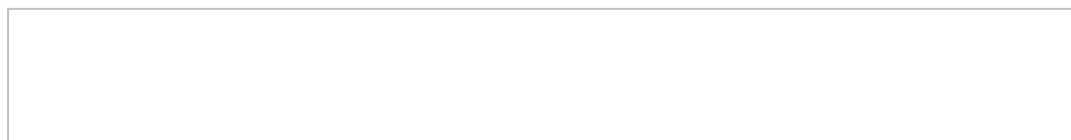
Please see attached:

- A copy of the original request for documents and
- A copy of the notice of partial transfer to the applicant; and
- A copy of the applicant's email agreeing to a 30 day extension of time under section 15AA of the FOI Act. A decision is therefore due to the applicant on 12 February 2024.

Kind regards

s22(1)(a)(ii)

Seconded Lawyer | Freedom of Information Section
Public Interest Law Branch | Regulatory and Legal Policy Division
Department of Foreign Affairs and Trade
Phone: s22(1)(a)(ii) |



© Kim Hill, *Among Women* (2011)

[We acknowledge](#) the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

This email and any attachments may contain confidential information or legal advice over which legal professional privilege can be claimed. Such privilege is not waived and you should ensure that, in your handling of the advice, you avoid waiving privilege. Please consult the author of the advice if unsure about appropriate handling.

From: FOI <foi@homeaffairs.gov.au>
Sent: Wednesday, 20 December 2023 9:53 AM
To: FOI <foi@dfat.gov.au>
Subject: RE: FOI request - Request for transfer - Australian fighters in Gaza war - LEX9726 [SEC=OFFICIAL]

OFFICIAL

Dear s22(1)(a)(ii)

Thank you for your email.

Please note we will accept the part transfer of this FOI request.

Please notify the applicant of the transfer and forward us a copy of the correspondence for our records.

Regards

s22(1)(a)(ii)

Position number: s22(1)(a)(ii)

FOI Officer | Freedom of Information Section
Privacy, FOI & Records Management Branch | Legal Group
Department of Home Affairs
E: foi@homeaffairs.gov.au

OFFICIAL

From: FOI <foi@dfat.gov.au>

Sent: Tuesday, 19 December 2023 1:58 PM

To: FOI <foi@homeaffairs.gov.au>

Subject: FOI request - Request for transfer - Australian fighters in Gaza war - LEX9726
[SEC=OFFICIAL]

OFFICIAL

Dear Department of Home Affairs FOI section

On 11 December 2023, the department received a new FOI request part of which seeks access to:

2.7 All documents, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 Oct. to date evidencing the Australian Gvt or DFAT requesting Border Force and the AFP not to interfere with Australians seeking to travel to Israel to serve in the Israeli Defence Force (IDF).

2.8. All documents, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 Oct. to date evidencing the number of people who, since 7 October 2023 to date, have travelled to:

2.8.1. Israel.

2.8.2. Israel for the purposes of serving in the IDF.

2.9. All documents, correspondence, cables briefing papers, cabinet records, summaries,

reports, and memos from 7 Oct. to date evidencing

2.9.1. information on Australian citizens serving in the IDF.

Under section 16(1) of the FOI Act, the department may transfer a request where the documents are not in the possession of the agency or the subject matter of the document is more closely aligned with the functions of another agency.

I would be grateful if you could please confirm whether your department will accept transfer of this part of the request as soon as possible.

Please feel free to contact me to discuss further.

Kind regards

s22(1)(a)(ii)

Seconded Lawyer | Freedom of Information Section
Public Interest Law Branch | Regulatory and Legal Policy Division
Department of Foreign Affairs and Trade
Phone: s22(1)(a)(ii) |

© Kim Hill, *Among Women* (2011)

We acknowledge the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

This email and any attachments may contain confidential information or legal advice over which legal professional privilege can be claimed. Such privilege is not waived and you should ensure that, in your handling of the advice, you avoid waiving privilege. Please consult the author of the advice if unsure about appropriate handling.

dissemination, distribution or copying of this email is strictly prohibited. Opinions, conclusions and other information in this message that do not relate to the official business of Al Jazeera shall be understood as neither given nor endorsed by Al Jazeera.

Important Notice: The content of this email is intended only for use by the individual or entity to whom it is addressed. If you have received this email by mistake, please advise the sender and delete the message and attachments immediately. This email, including attachments, may contain confidential, sensitive, legally privileged and/or copyright information.

Any review, retransmission, dissemination or other use of this information by persons or entities other than the intended recipient is prohibited. The Department of Home Affairs, the ABF and the National Emergency Management Agency respect your privacy and have obligations under the Privacy Act 1988.

Unsolicited commercial emails MUST NOT be sent to the originator of this email.

s22(1)(a)(ii)

11 December 2023

s22(1)(a)(ii)

The Director, Freedom of Information
Section
Regulatory and Legal Policy Division
Department of Foreign Affairs and Trade
R.G. Casey Building, John McEwen Crescent
Barton ACT 0221

By Email: foi@dfat.gov.au

Dear Sir / Madam,

RE: FREEDOM OF INFORMATION APPLICATION

1. This request is a Freedom of Information application for the purposes of the *Freedom of Information Act 1985* (Cth).
2. We request access to the following documents:
 - 2.1. All documents, financial statements, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 October 2023 to date in possession of the Department of Foreign Affairs and Trade evidencing whether the Australian Government and the Department of Foreign Affairs and Trade consider the actions of Hamas on 7 October 2023 a war crime.
 - 2.2. All documents, financial statements, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 October 2023 to date in possession of the Department of Foreign Affairs and Trade evidencing the position of the Australian Government and the Department of Foreign Affairs and Trade with respect to its previous objections to the International Criminal Court's investigation into alleged war crimes in Palestine.
 - 2.3. All documents, financial statements, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 October 2023 to date between the Australian government, the Department of Foreign Affairs and Trade and the Israeli Government, the US Government, the United Nations, and the International Criminal Court evidencing any process of investigation, documentation, verification of or compensation for alleged war crimes occurring in Israel and Gaza.

s22(1)(a)(ii)

- 2.4. All documents, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 October to date between the Australian Embassy in Israel, the Embassy of Israel in Australia, the Government of Israel, and the Australian Government evidencing
 - 2.4.1. The list of defence articles and related technical information that were provided by Australia to Israel
 - 2.4.2. What military personnel, defence articles and related technical information Australia has sent to Israel.
 - 2.4.3. A purpose for Australian military involvement other than assisting with the extraction of Australian citizens.
- 2.5. All documents, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 October 2023 to date evidencing whether the Australian Government or the Department of Foreign Affairs and Trade have sought legal advice in light of unfolding events in Israel and the Occupied Palestinian Territories on the international or domestic criminal liability of:
 - 2.5.1. Government Ministers.
 - 2.5.2. The Australian Government
- 2.6. All documents, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 October 2023 to date evidencing the Australian Government and the Department of Foreign Affairs and Trade considering the legality of or otherwise obtaining legal advice on Australians leaving Australia to fight with Israel against Hamas or against Palestine.
- 2.7. All documents, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 October 2023 to date evidencing the Australian government or the Department of Foreign Affairs and Trade requesting Border Force and the Australian Federal Police not to interfere with Australians seeking to travel to Israel to serve in the Israeli Defence Force (**IDF**).
- 2.8. All documents, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 October 2023 to date evidencing the number of people who, since 7 October 2023 to date, have travelled to
 - 2.8.1. Israel.
 - 2.8.2. Israel for the purposes of serving in the IDF.
- 2.9. All documents, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 October 2023 to date evidencing
 - 2.9.1. information on Australian citizens serving in the IDF.
 - 2.9.2. Information on Australian businesses doing business with
 - 2.9.2.1. the IDF.
 - 2.9.2.2. the Government of Israel.

- 2.10. All documents, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 October 2023 evidencing the Australian Government and the Department of Foreign Affairs and Trade considering sanctions against Israeli settlers in the West Bank in response to increasing attacks against Palestinians.
3. In considering this application we request that you take into account section 12B(4)(a) of the Act, that it is an irrelevant consideration whether *access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government*;
4. We respectfully submit that providing access to the requested documents satisfies the public interest test of section 11B of the *Freedom of Information Act 1982* (Cth). Providing access to the requested documents is in the general public interest as access:
- 4.1. *Will promote Australia's representative democracy by contributing towards increasing public participation in Government processes, with a view to promoting better-informed decision making* pursuant to sections 11B(3)(a) and 3(2)(a) of the Act.
- 4.2. *Will promote Australia's representative democracy by contributing towards increasing scrutiny, discussion, comment and review of the Government's activities* pursuant to sections 11B(3)(a) and 3(2)(b) of the Act.
- 4.3. *will inform debate on a matter of public importance.* pursuant to section 11B(3)(b) of the Act
- 4.4. *promotes effective oversight of public expenditure* pursuant to section 11B(3)(c) of the Act.
5. If in determining this application, you or the relevant agencies conclude that any aspect has not be addressed, we would appreciate the earliest notice identifying any unaddressed items. We will seek to have these items and information provided to you as a matter of priority.
6. Should you have any queries, please contact our office.

Yours faithfully
s22(1)(a)(ii)

From: FOI
To: s22(1)(a)(ii)
Subject: FOI Request - Notice of partial transfer of request - s22(1)(a)(ii) [SEC=OFFICIAL] - LEX9726 - s22(1)(a)
Date: Wednesday, 20 December 2023 10:28:17 AM
Attachments: [image001.jpg](#)
[image002.jpg](#)

OFFICIAL

Dear s22(1)(a)(ii)

Thank you for your email dated 19 December 2023 agreeing to a 30 day extension of time under the *Freedom of Information Act 1982*.

The purpose of this email is to advise you that part of your request has been transferred to the Department of Home Affairs (DHA).

Under section 16(1) of the FOI Act, the department, with the agreement of the other agency, may transfer part of the request to the other agency if the subject matter of the document is more closely connected with the functions of the other agency.

Accordingly, on 20 December 2023, the Department of Foreign Affairs and Trade (the department) transferred the following part of your request to DHA:

2.6. All documents, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 Oct. to date evidencing the Australian Gvt and DFAT considering the legality of or otherwise obtaining legal advice on Australians leaving Australia to fight with Israel against Hamas or against Palestine.

2.7 All documents, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 Oct. to date evidencing the Australian Gvt or DFAT requesting Border Force and the AFP not to interfere with Australians seeking to travel to Israel to serve in the IDF.

2.8. All documents, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 Oct. to date evidencing the number of people who, since 7 October 2023 to date, have travelled to:

2.8.1. Israel.

2.8.2. Israel for the purposes of serving in the IDF.

2.9. All documents, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 Oct. to date evidencing

2.9.1. information on Australian citizens serving in the IDF. "" The transfer of your request does not affect the due date for completion of your request.

You should therefore expect a decision from DHA by 12 February 2024. However, the statutory period of 30 days may be extended if DHA needs to consult third parties or for other reasons. DHA will advise you if this happens.

This department will continue to process the remaining part of your request.

Should you require any further information, please do not hesitate to contact us by return e-mail at foi@dfat.gov.au.

Kind regards

Freedom of Information Section
Public Interest Law Branch
Regulatory and Legal Policy Division
Department of Foreign Affairs and Trade



© Kim Hill, *Among Women* (2011)

[We acknowledge](#) the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging.

This email and any attachments may contain confidential information or legal advice over which legal professional privilege can be claimed. Such privilege is not waived and you should ensure that, in your handling of the advice, you avoid waiving privilege. Please consult the author of the advice if unsure about appropriate handling.

From: s22(1)(a)(ii)
Sent: Monday, 11 December 2023 2:50 PM
To: FOI <foi@dfat.gov.au>
Subject: [EXTERNAL] FOI Request s22(1)(a)(ii)

CAUTION: This email originated from outside the organisation. Do not click links or open attachments unless you recognise the sender.

Dear Sir/Madam

Please refer to the FOI Request for the Department's urgent attention.

Yours faithfully,

s22(1)(a)(ii)

s22(1)(a)(ii)

From: s22(1)(a)(ii)
To: [FOI](#)
Subject: [EXTERNAL] RE: FOI Request - s22(1)(a)(ii) - LEX9712 [SEC=OFFICIAL]
Date: Tuesday, 19 December 2023 5:56:45 PM
Attachments: [image002.jpg](#)
[image003.jpg](#)
[image004.jpg](#)

CAUTION: This email originated from outside the organisation. Do not click links or open attachments unless you recognise the sender.

Dear DFAT FOI Team,

I confirm I agree to that proposed extension.

Kind Regards,

s22(1)(a)(ii)

From: FOI <foi@dfat.gov.au>

Sent: Monday, December 18, 2023 3:29 PM

To: s22(1)(a)(ii)

Subject: FOI Request - s22(1)(a)(ii)

- LEX9712 [SEC=OFFICIAL]

OFFICIAL

Dear s22(1)(a)(ii)

Thank you for your request dated 11 December 2023 seeking access to documents under the *Freedom of Information Act 1982*.

This email sets out some information about how your request will be processed by the Department of Foreign Affairs and Trade.

Scope of request:

You have sought access to:

2.1. All documents, financial statements, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 Oct. to date ... evidencing whether the Australian Gvt and DFAT consider the actions of Hamas on 7 Oct. a war crime.

2.2. All documents, financial statements, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 Oct. to date in possession of DFAT evidencing the position of the Australian Gvt and DFAT with respect to its previous objections to the ICC's investigation into alleged war crimes in Palestine.

2.3 All documents, financial statements, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 Oct. to date between the Australian Gvt, the DFAT and the Israeli Gvt, the US Gvt, the UN, and the ICC evidencing any process of investigation, documentation, verification of or compensation for alleged war crimes occurring in Israel and Gaza.

2.4. All documents, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 Oct. to date between the Australian Embassy in Israel, the Embassy of Israel in Australia, the Gvt of Israel, and the Australian Gvt evidencing

2.4.1. The list of defence articles and related technical information that were provided by Australia to Israel

2.4.2. What military personnel, defence articles and related technical information Australia has sent to Israel.

2.4.3. A purpose for Australian military involvement other than assisting with the extraction of Australian citizens.

2.5. All documents, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 Oct. to date evidencing whether the Australian Gvt or DFAT have sought legal advice in light of unfolding events in Israel and the Occupied Palestinian Territories on the international or domestic criminal liability of:

2.5.1. Gvt Ministers.

2.5.2. The Australian Gvt

2.6. All documents, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 Oct. to date evidencing the Australian Gvt and DFAT

considering the legality of or otherwise obtaining legal advice on Australians leaving Australia to fight with Israel against Hamas or against Palestine.

2.7 All documents, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 Oct. to date evidencing the Australian Gvt or DFAT requesting Border Force and the AFP not to interfere with Australians seeking to travel to Israel to serve in the Israeli Defence Force (IDF).

2.8. All documents, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 Oct. to date evidencing the number of people who, since 7 October 2023 to date, have travelled to:

2.8.1. Israel.

2.8.2. Israel for the purposes of serving in the IDF.

2.9. All documents, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 Oct. to date evidencing

2.9.1. information on Australian citizens serving in the IDF.

2.9.2. Information on Australian businesses doing business with

2.9.2.1. the IDF.

2.9.2.2. the Gvt of Israel.

2.10. All documents, correspondence, cables briefing papers, cabinet records, summaries, reports, and memos from 7 Oct. evidencing the Australian Gvt and DFAT considering sanctions against Israeli settlers in the West Bank in response to increasing attacks against Palestinians.

Timeframe for receiving our decision:

We received your request on 11 December 2023, and the 30-day statutory period for processing your request commenced from the day after that date. The period of 30 days may be extended in certain circumstances. Due to the upcoming holiday and shutdown period over Christmas and New Year, we are **seeking your agreement to an extension of 30 days** to process your request (under section 15AA of the *Freedom of Information Act 1982*). We will endeavour to finalise your matter as soon as possible.

We would be grateful if you could please **confirm your agreement by return email**. Should you agree to this extension, we will inform the Office of the Australian Information Commissioner (OAIC).

Charges:

Please note that the department may issue charges for processing FOI requests. If applicable, we will advise you of any relevant charges when we are in a position to estimate the resources required to process your request.

Disclosure log:

Please note that, with some exceptions (such as personal information), documents released under the FOI Act may later be published on the department's disclosure log:

<https://www.dfat.gov.au/about-us/corporate/freedom-of-information/foi-disclosure-log>.

Exclusion of officials' names and contact details:

It is the department's policy to withhold the mobile numbers of all government officials. If you require the mobile numbers of all government officials, please let us know at foi@dfat.gov.au so the decision-maker may consider; otherwise we will take it that you agree to that information

being excluded from the scope of your request.

Personal Information:

If we need to consult with other people or organisations regarding your FOI request, we may need to disclose your personal information (e.g. your name). When we consult it may be apparent that you have made a request, even if we do not disclose your identity. Please let us know if you have any concerns in this regard. The department's privacy policy is available at dfat.gov.au/privacy.html.

Should you require any further information, please do not hesitate to contact us by return email at foi@dfat.gov.au.

Kind regards

DFAT FOI Team

Freedom of Information Section
Public Interest Law Branch | Regulatory and Legal Policy Division
Department of Foreign Affairs and Trade
dfat.gov.au | [Twitter](#) | [Facebook](#) | [Instagram](#) | [LinkedIn](#)

© Kim Hill, Among Women (2011)

[We acknowledge](#) the Traditional Custodians of Country throughout Australia, and their continuing connection to land, waters and community. We pay our respects to all First Nations peoples, their cultures and to their Elders, past, present and emerging

From: s22(1)(a)(ii)

Sent: Monday, 11 December 2023 2:50 PM

To: FOI <foi@dfat.gov.au>

Subject: [EXTERNAL] FOI Request s22(1)(a)(ii)

CAUTION: This email originated from outside the organisation. Do not click links or open attachments unless you recognise the sender.

Dear Sir/Madam

Please refer to the FOI Request for the Department's urgent attention.

Yours faithfully,

s22(1)(a)(ii)

s22(1)(a)(ii)

From: s22(1)(a)(ii)
To: [FOI](#)
Subject: [EXTERNAL] FOI Request s22(1)(a)(ii)
Date: Monday, 11 December 2023 2:50:26 PM
Attachments: [image001.jpg](#)
[Freedom of Information Application to the Department of Foreign Affairs and Trade \(11122023\).pdf](#)

CAUTION: This email originated from outside the organisation. Do not click links or open attachments unless you recognise the sender.

Dear Sir/Madam

Please refer to the FOI Request for the Department's urgent attention.

Yours faithfully,

s22(1)(a)(ii)

FOI Reference: LEX 9788

File No: 23/32804

January 2024

s22(1)(a)(ii)

By email: s22(1)(a)(ii)

Dear s22(1)(a)(ii)

Re. Freedom of Information Request

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982* (FOI Act).

On 17 December 2024 you requested access to:

“- any assessment, discussion, evaluation, deliberation or consideration of the risk or likelihood of any Australian official being investigated or prosecuted by the International Criminal Court in connection with any acts or omissions by Australian officials relating to Israel's actions in Gaza since 7 October 2023; and

- any assessment, discussion, evaluation, deliberation or consideration of the risk or likelihood of any Australian official being investigated or prosecuted for war crimes in connection with any acts or omissions by Australian officials relating to Israel's actions in Gaza since 7 October 2023.

The above should be construed to include legal advice and/or advice to any Government Minister.

Without limiting the above, the purpose of this request is to understand whether your department has considered whether any Australian officials could become liable for war crimes in connection with Australia's support of Israel's actions in Gaza since 7 October 2023.

Please exclude any personal or business information from any documents within scope of the above.”

I am authorised under section 23 of the FOI Act to make decisions in relation to FOI requests and have been appointed to be the decision maker on your request.

Thorough searches conducted by the Cabinet, Ministerial and Parliamentary Branch, the International Law Branch, the Israel-Gaza Taskforce and Middle East Branch found no documents relevant to your request.

After taking all reasonable steps to find documents, I am satisfied that they cannot be found or do not exist. I therefore refuse your request under section 24A(1) of the FOI Act.

Your review rights are attached for your reference.

Should you have any queries regarding this matter please contact the FOI Section by email to foi@dfat.gov.au

Yours sincerely

s22(1)(a)(ii)

A/g Director
Freedom of Information Section

Attachment**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 days of receipt of this letter.

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 2600
Australia

Australian Information Commissioner

You may apply within 60 days of receipt of this letter to the Australian Information Commissioner to review my decision (section 54L of the FOI Act).

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: <https://www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/freedom-of-information-reviews/internal-review-process>

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