

**From:** FOI <foi@dfat.gov.au>  
**Sent:** Wednesday, 6 September 2023 5:02 PM  
**To:** FOI  
**Subject:** RE: For response by 6 Sep - FOI consultation - PM&C refs: FOI/2021/267IC and FOI/2021/112IC [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

**OFFICIAL: Sensitive**  
**Legal privilege**

Dear s 47F

Thank you for consulting the Department of Foreign Affairs and Trade (DFAT) in regard to FOI/2021/267IC and FOI/2021/112IC.

DFAT has reviewed the material, and advises that we have not identified any sensitivities associated with the release of these documents. We note that the treatment of this material in the context of the OAIC review is ultimately a matter for PM&C's decision-maker.

If you have any further questions please do not hesitate to contact us.

Kind regards

s 47F

Assistant Director | Freedom of Information Section  
 Public Interest Law Branch | Regulatory and Legal Policy Division

Department of Foreign Affairs and Trade

T

s 47F

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*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.*

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**From:** FOI <FOI@pmc.gov.au>  
**Sent:** Wednesday, 30 August 2023 5:08 PM  
**To:** FOI <foi@dfat.gov.au>  
**Cc:** FOI <FOI@pmc.gov.au>  
**Subject:** For response by 6 Sep - FOI consultation - PM&C ref: FOI/2021/267IC [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

**OFFICIAL: Sensitive**  
**Legal privilege**

**FOI/2021/267IC**

Dear FOI Colleagues

The Department of the Prime Minister and Cabinet (the Department) is currently preparing its submissions regarding an Information Commissioner (IC) review application, and would like to consult your agency on relevant material.

### **Background**

On 18 October 2021, an applicant made an FOI request to the Department in the following terms:

*On 19 March 2012, your department emailed AusAID (DFAT) stating 'further to your recent discussion with Peter, here's draft text for your consideration that we propose to brief the new PSPM Senator Jan McLucas with soon'. Titled 'amendment of humanitarian overseas service medal (iraq) declaration 2004 to extend to specified commercial contractors' the document recommended the PSPM:*

*'1. Sign the letter to the Governor-General recommending she makes a declaration under HOSM Regulations 2011, extending eligibility for the 'Iraq' clasp to the medal, to specified commercial contractors (Attachment A).*

*2. Sign the proposed Humanitarian Overseas Service Medal (Iraq) Declaration 2011 (Attachment B).'*

*On 11 April 2012 your department emailed AusAID (DFAT) providing a written agreement to 'settle the declaration ... and brief the PSPM next week'. However FOI investigations reveal your department evidently withheld the documents from PSPM McLucas.*

*Please provide a copy of your department's subsequent correspondence to AusAID regarding this matter. Please limit the search to subsequent correspondence occurring between 11 April and 5 December 2012.*

One document was identified as falling within scope of the request. On 16 November 2021, the Department issued a decision refusing access to the document on the basis that it contains material that is exempt under s 42 (legal professional privilege), s 47C (deliberative matter), s 47E(d) (operations of an agency) and s 47G (business information) of the FOI Act.

A subsequent internal review affirmed the original decision. On 11 August 2023, the Department was notified that the applicant sought IC review. The Department’s preliminary view is that the sensitivity within the document has not diminished even with the passage of time, and accordingly, we are preparing submissions to support the original exemptions claimed.

**For action**

We have **attached** the document which may be of interest to your agency. We would appreciate any comments you may have as to the potential harm that would flow from release. Our line area advised that your Humanitarian Response Planning Section, Humanitarian and Preparedness Branch (point of contact is **s 47F** [@dfat.gov.au](mailto:@dfat.gov.au)), may be able to comment regarding the material.

It will assist if you were to express your views in terms of the exemptions provided for in the FOI Act, and if you were to provide reasons which are sufficiently detailed so that the Department can ensure any concerns and sensitivities are taken into account in its (confidential) submissions to the IC. The document is marked-up in red boxes to show the exemptions claimed and the material considered irrelevant to the request.


We would appreciate your response by **COB Wednesday, 6 September 2023** to enable us to respond to the Information Commissioner within timeframes.

Please do not hesitate to contact me on **s 47F** if you have any questions or wish to discuss.

Yours sincerely  
**s 47F**

**Adviser | FOI Section**  
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 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.

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