

17 August 2022

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Tēnā koe Scott

I refer to your email of 20 July 2022 in which you request the following under the Official Information Act 1982 (OIA):

'I would like to make a request for information relating to the legal opinion prepared for the government by MFAT concerning New Zealand's obligations around complicity in torture and other internationally wrongful acts. I understand the opinion was issued around late 2020.

For clarity, the opinion I am referring to has its origin in response to, and was referenced in, the Inspector-General of Intelligence and Security's report into New Zealand involvement in the CIA's enhanced interrogation programme, released July 2019 and accessible here:

<https://iqis.govt.nz/assets/Inquiries/CIA-Detention-Programme.pdf>

"...MFAT is leading, working with Crown Law, NZDF and the intelligence and security agencies to formalise a statement of New Zealand's obligations in relation to the law of torture and complicity in torture" (page 80).

It is also referenced in documents released to me by DPMC, which can be accessed here:

<https://fyi.org.nz/request/18903/response/72349/attach/5/OIA%202021%2022%201127%20Release%20document%20Part1.pdf>

On page 6:

"...MFAT is leading a process to clarify New Zealand's obligation, at international law, not to be complicit in the internationally wrongful acts of foreign partners." (From a briefing dated September 2019).

Page 17:

"We are also engaging with MFAT's ongoing development of legal advice to agencies regarding aid and assistance at international law..." (From a briefing dated January 2020).

And page 65:

"...MFAT has since issued a legal opinion to clarify New Zealand's obligation, at international law, not to be complicit in an internationally wrongful act of another State." (From a briefing dated December 2020).

On the topic of this opinion, I would like to make the following requests for information:

ONE: I would like to request a copy of the opinion.

TWO: I would like to request copies of all briefings, reports, advice, memos or aides memoire submitted to the Minister for Foreign Affairs or any other minister, including excerpts from Foreign Affairs Weekly Reports, that reference the opinion and its development.'

In response to part one of your request, we have withheld the document you requested in full under section 9(2)(h) of the OIA, to maintain legal professional privilege. We considered the public interest when we made this decision and identified no public interest in releasing the information that would override the reasons for withholding it.

After searches of information sources within the Ministry of Foreign Affairs and Trade (MFAT), we discovered nothing that is within the scope of part two of your request. Therefore we decline this part of your request under section 18(e) of the OIA, as the information requested does not exist.

During our consultations with other Agencies we asked whether they held information that could potentially be within the scope of part two of your request. The Government Communications Security Bureau (GCSB) confirmed that they held information that was potentially in scope of your request.

On 3 August 2022, we notified you that we had transferred question two of your request to the GCSB, in accordance with section 14(b)(i) of the OIA, as we believed that the information you requested in this part of your request was held by the GCSB.

If you have any questions about this decision, you can contact us by email at: DM-ESD@mfat.govt.nz. You have the right to seek an investigation and review by the Ombudsman of this decision by contacting www.ombudsman.parliament.nz or freephone 0800 802 602.

Nāku noa, nā



Sarah Corbett
for Secretary of Foreign Affairs and Trade