



18 December 2023



Ref: OIA-2023/24-0274

Dear 

Official Information Act request relating to advice provided on the situation in Israel, Gaza and the West Bank

Thank you for your Official Information Act 1982 (the Act) request received on 2 November 2023. You requested:

Since Oct 7, has DPMC provided advice in any form to elected representatives (governing or caretaker) that suggest whether any war crimes committed by any armed or governing parties have likely been committed in Israel, Gaza or the West Bank? And, what was that advice if advice was given?

Has any other advice on the situation in Israel, Gaza and the West Bank been given, and if so, what was that advice?

On 15 November 2023, we advised that aspects of your request were more closely connected to the functions of the Ministry of Foreign Affairs and Trade (MFAT). These aspects relate to any advice prepared by MFAT for elected representatives but also held by the Department of the Prime Minister and Cabinet (DPMC).

For clarity, MFAT's role includes providing advice to DPMC, as the Prime Minister's responsible agency, on the impact of foreign policy matters. DPMC then refers this advice to the Prime Minister. As such, your request has been partially transferred to MFAT in accordance with section 14(b)(i) of the Act to provide any material they originally prepared. Our response refers to any material prepared by DPMC, subject to information being withheld as noted.

On 29 November 2023 we wrote to you again, advising that we are extending the time to respond because consultation was needed to make a decision on your request. Following this extension, I am now in a position to respond. Thank you for your patience while we processed your request.

For clarity, we have interpreted advice as information containing opinions or recommendations to inform decision-makers.

Regarding the first part of your request, where you ask for advice on whether any war crimes have likely been committed in Israel, Gaza, or the West Bank, DPMC have not provided any such advice. Therefore, this part of your request is refused under section 18(g) of the Act as the requested information is not held by DPMC.

Regarding the second part of your request for any other advice on the situation in Israel, Gaza, and the West Bank, information has been identified relevant to your request.

The information in scope includes emails from DPMC's Policy Advisory Group sent to the former caretaker Prime Minister's Office relating to the Israel/Hamas conflict. The emails largely convey MFAT's advice on the situation and do not include additional advice from DPMC. This information will be covered by MFAT's response to your request, so we have not included it in this response.

We have not released the administrative emails conveying MFAT's material, as they do not contain substantive advice from DPMC on the situation. In places the correspondence does include suggestions from DPMC relating to the former caretaker Prime Minister's media handling, including content and timing of press releases. This advice is withheld in full under the following sections of the Act:

- Section 6(a), to protect the security or defence of New Zealand or the international relations of the Government of New Zealand
- Section 9(2)(f)(iv), to maintain the confidentiality of advice tendered by or to Ministers and officials
- Section 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinion.

Consistent with the caretaker convention, the former caretaker Prime Minister also determined at the outset of the response to the conflict between Israel and Gaza to keep the former Leader of the Opposition, now Prime Minister, Rt Hon Christopher Luxon, informed of developments. Therefore, daily Situation Reports prepared by MFAT were shared with the then Leader of the Opposition.

In addition, the former caretaker Prime Minister consulted the former Leader of the Opposition on decisions relating to Israel-Gaza. To support that, the Ministers of Foreign Affairs and Defence had asked that a series of decision submissions be shared with the former Leader of the Opposition through the former caretaker Prime Minister's Office.

The Chief Executive of DPMC attended two briefings to the former caretaker Prime Minister and other Ministers on 24 October 2023 and 2 November 2023. The Chief Executive also attended a briefing to Members of Parliament on 30 October 2023, which included members across parties.

These briefings were held virtually and as such, no documentation relevant to these briefings is held by DPMC. The contents and any summary of these discussions are withheld under section 6(b)(i) of the Act, to protect the entrusting of information to the Government of New Zealand on a basis of confidence by the Government of any other country or any agency of such a Government.

Also identified as relevant to your request are some briefings provided by DPMC's Policy Advisory Group to the Prime Minister. These briefings are provided to the Prime Minister in confidence to support him in his role as leader of the Government and chair of Cabinet. The dates and titles of these briefings are withheld in their entirety under the following sections of the Act:

- section 9(2)(f)(ii), to maintain collective and individual ministerial responsibility
- section 9(2)(f)(iv), to maintain the confidentiality of advice tendered by or to Ministers and officials
- section 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinion.

In making my decision, I have considered the public interest considerations in section 9(1) of the Act. No public interest has been identified that would be sufficient to override the reasons for withholding that information.

You have the right to ask the Ombudsman to investigate and review my decision under section 28(3) of the Act.

This response will be published on DPMC's website during our regular publication cycle. Typically, information is released monthly, or as otherwise determined. Your personal information including name and contact details will be removed for publication.

Yours sincerely



Janine Smith
Deputy Chief Executive, Policy