Dear Ms Maung

The purpose of this letter is to provide a decision about your request for access to documents, initially lodged on 18 February 2022 and revised on 10 March 2022, under the Freedom of Information Act 1982 (FOI Act).

In relation to parts 1, 2 and 4 of your 10 March 2022 request the department has not identified any documents relevant to the scope of your request and therefore I must refuse these parts of your request.

In relation to parts 3 and 5 of your request I have identified documents relevant to the scope of your request and, after careful consideration, I have decided that the documents are exempt in part.

Request

On 18 February 2022 you sought access under the FOI Act:

“I make an application under the Freedom of Information Act 1982 in regards to the accommodation arrangement of DFAT staff in Myanmar. Please provide information of any agreements, bookings and payments to the following condos, hotels and serviced apartments since February 1, 2021:

1. Central Hotel
2. Golden City Condominium
3. Lotte Hotel and Lotte Hotel Serviced Apartments
4. Novotel Max
5. Shangri-La Hotel
6. Any other accommodation that DFAT is aware of as being owned by the Myanmar military or military families

Additionally, I request a copy of the lease agreement for the Australian Embassy, Ambassador’s Residence and any other property that DFAT is currently leasing in Myanmar, including who the the lease is with.
I do not request the names or personal details of DFAT staff."

On 10 March 2022 you revised the scope of your request to:

"Bookings and payments to the following condos, hotels and services apartments since February 1, 2021:

1. Central Hotel
2. Golden City Condominium
3. Lotte Hotel and Lotte Serviced Apartments
4. Shangri-La Hotel
5. A list of Australian Commonwealth leased real estate in Myanmar, payments made since February 1, 2021 and who those payments were made to.

We do not need copies of lease or booking agreements."

Reasons

I am an officer authorised under section 23 of the FOI Act to make decisions in relation to FOI requests.

In making my decision I have taken into account the terms of the request, the FOI Act, and the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

The reasons for my decision are set out below. Where I refer to sections of the FOI Act, these are available at www.legislation.gov.au. Sections of the FOI Guidelines referenced can be found online at https://www.oaic.gov.au/freedom-of-information/foi-guidelines/.

Parts 1, 2 and 4 of your request

Thorough searches conducted by the department found no documents relevant to your request. This is because the department does not, and has not, used Central Hotel, Golden City Condominium or Shangri-La Hotel. I am therefore satisfied that documents do not exist in relation to these parts of your request and refuse parts 1, 2 and 4 of your request under section 24A(1) of the FOI Act.

Parts 3 and 5 of your request

Thorough searches conducted by the department found documents relevant to parts 3 and 5 of your request.

Substantial adverse effect on the operations of an agency (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 this department.

I have decided that some material contained within the documents is conditionally exempt under section 47E(d), as its release could have a substantial adverse effect on operations of the department.
Personal privacy (section 47F(1) of the FOI Act)

Under section 47F(1) of the FOI Act, a document is conditionally exempt if release would constitute an unreasonable disclosure of personal information. The test of ‘unreasonableness’ implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals (paragraph 6.138 of the FOI Guidelines).

Some material within the documents is conditionally exempt as release would be an unreasonable disclosure of the personal information of other individuals, including names, room numbers, home addresses and signatures of the individuals. I have had regard to the factors in section 47F(2) of the FOI Act and consider that disclosure of the conditionally exempt material would constitute an unreasonable disclosure of personal information.

I am satisfied that in addition to these special circumstances the disclosure of the personal information would be unreasonable for the following reasons:
- the documents do not contain any of your personal information,
- you do not have the consent of the individuals for the release of their personal information, and
- the identity of the individuals concerned is readily apparent.

Business affairs (section 47G(1)(a) of the FOI Act)

Under section 47G(1)(a) of the FOI Act a document is conditionally exempt if its disclosure would involve releasing information about the business, commercial or financial affairs of a person/an organisation in circumstances which:

a) would, or could reasonably be expected to, adversely affect the relevant person/organisation, in an unreasonable way, with regard to its business, commercial or financial affairs.

The business information exemption is intended to protect the interests of third parties dealing with the Government (paragraph 6.185 of the FOI Guidelines). I have carefully considered the contents of the documents that fall within the scope of this request.

I am satisfied that the documents or some of the material contained within the documents are conditionally exempt under section 47G(1) of the FOI Act and the disclosure would, or could reasonably be expected to adversely affect the business affairs of certain organisations in respect of their business, commercial, or financial affairs (section 47G(1)(a) of the FOI Act).

Public Interest Considerations

As sections 47E(c), 47E(d), 47F(1) and 47G of the FOI Act are conditional exemptions I have considered whether providing access to the material in question would, on balance, be contrary to the public interest (section 11A of the FOI Act).

In assessing the public interest, I have considered the FOI Guidelines and the public interest factors favouring disclosure, including to:
- promote the objects of the FOI Act,
- inform debate on a matter of public importance, and
- promote effective oversight of public expenditure.

I have also considered the public interest factors against disclosure, including that disclosure could reasonably be expected to prejudice the:
- management function of the department,
- department's ability to carry out its functions effectively and efficiently,
- business affairs of third parties,
- future supply of information to the department, and
- protection of an individual's right to privacy.

I have concluded that granting you access to parts of the documents would, on balance, be contrary to the public interest.

Irrelevant material

Some material contained within the documents captured by your request is not relevant to the scope of your request (section 22(1)(a)(ii) of the FOI Act). In determining what is relevant to your request, I have taken note of the terms of your request and note that on 18 February 2022 you stated that you do not request the names or personal details of DFAT staff. Additionally, I have also taken note of the email which you received from the department on 3 March 2022 in which you were invited to respond if you required the names and contact details of government officials not in the Senior Executive Service. As you have not stated that you require this information, I have decided to remove it from the documents being released to you.

Review

Your review rights are attached for your reference.

Should you have any queries regarding this matter please contact the FOI and Privacy Law Section by email to foi@dfat.gov.au.

Yours sincerely

Simon Fellows
Assistant Secretary
Southeast Asia Mainland Branch
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 and Privacy Law 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 (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