



## ASA FOI 012/23/24

### STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 17 November 2023 by the Australian Submarine Agency (ASA), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

*1. The Discussion Paper: The legal and regulatory framework to support Naval Nuclear Power Safety (the discussion paper is referred to at <https://www.defence.gov.au/about/governance/australian-naval-nuclear-powersafety-bill-2023>). If the discussion paper has not yet been finalised, I seek the most recent draft.*

*2. The most recent versions (draft status or final) of policy documents/reports generated since 13 March 2023 that go to, or substantially go to, the following topics.*

- a) Nuclear regulatory models/entities*
- b) Nuclear stewardship and safety*
- c) Nuclear non-proliferation - safeguard model and waste management*
- d) Management of operational waste*
- e) Reactor decommissioning*
- f) Management and disposal (including technical solutions) of spent nuclear waste"*

#### **Background**

2. On 29 November 2023 the ASA notified the applicant that the Discussion Paper requested at Item one (1) had been published. On the same day, the applicant agreed to withdraw the request for Item one (1).

#### **FOI decision maker**

3. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

#### **Documents identified**

4. I have identified three (3) documents as falling within the scope of the request.

#### **Exclusions**

5. Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of the FOI request, duplicates of

documents, and documents sent to or from the applicant are excluded from this request. ASA has only considered final versions of documents.

### **Decision**

6. I have decided to:
  - a. release one (1) document in full;
  - b. refuse access to two (2) documents in accordance with section 22 [Access to edited copies with exempt or irrelevant matter deleted] of the FOI Act on the grounds that the deleted material is considered exempt under section 47C [Public interest conditional exemptions – deliberative processes] of the FOI Act.

### **Material taken into account**

7. In making my decision, I have had regard to:
  - a. the terms of the request;
  - b. the content of the identified documents in issue;
  - c. relevant provisions of the FOI Act;
  - d. the Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines); and
  - e. advice from the relevant ASA business area.

### **REASONS FOR DECISION**

#### **Section 22 – Access to edited copies with exempt or irrelevant matter deleted**

8. Section 22 of the FOI Act permits an agency to prepare and provide an edited copy of a document where the agency has decided to refuse access to an exempt document or that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access.
9. Upon examination of the documents, I identified information that is exempt from release under the FOI Act, as well as information that is not relevant to the scope of the request.
10. In accordance with section 22 of the FOI Act, I have decided to prepare edited copies of the relevant documents where I have removed the exempt and irrelevant information prior to disclosure.

#### **Section 47C – Public interest conditional exemptions - deliberative processes**

11. Section 47C(1) of the FOI Act states:
  - (1) *A document is conditionally exempt if its disclosure under this Act would disclose matter (**deliberative matter**) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:*
    - (a) *an agency; or*
    - (b) *a Minister; or*

(c) *the Government of the Commonwealth.*

12. On examination of the documents, I found they contain information relating to consultation that has taken place for the purposes of the deliberative processes involved in the functions of the ASA.
13. Section 47C(2)(b) of the FOI Act provides that deliberative matter does not include purely factual material. The Guidelines, at paragraph 6.73, state that:

*[p]urely factual material' does not extend to factual material that is an integral part of the deliberative content and purpose of a document, or is embedded in or intertwined with the deliberative content such that it is impractical to excise it.*

14. Accordingly, I am satisfied that the document contains deliberative matters in the form of advice and recommendations that form part of a deliberative process within the ASA, were provided for consideration in the exercise of Government process and subsequently used to inform a submission to Cabinet. I am satisfied that the content meets the definition of deliberative material, and that where the content is purely factual, it is embedded in, or intertwined with the deliberative content and cannot be excised. The Government is still in the process of considering this information and I consider that disclosing this material would have a substantial and adverse affect on this process.
15. Therefore, I have decided that the relevant information is conditionally exempt under section 47C of the FOI Act.

#### **Public interest considerations - section 47C**

16. Section 11A(5) of the FOI Act states:

*The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.*

17. I have considered the factors favouring disclosure as set out in section 11B(3) [factors favouring access] of the FOI Act. The relevant factors being whether access to the document would:

*(a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);*

*(b) inform debate on a matter of public importance;*

*(c) promote effective oversight of public expenditure.*

18. I note that disclosure of the requested documents may promote some of the objects of the FOI Act. However, in my view, disclosure of this information would not increase public participation in the ASA process (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of ASA activities (section 3(2)(b) of the FOI Act).
19. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I find particularly relevant to this request are that release of this information could reasonably be expected to prejudice:

- an agency's ability to obtain confidential information;

- an agency's ability to obtain similar information in the future; and
  - the management functions of an agency.
20. While I accept there is a strong public interest in ensuring that the ASA undertakes its functions in a transparent and proper manner, there is also strong public interest in maintaining the confidentiality of the material contained in the documents, particularly those still under consideration by Government. Releasing information would unreasonably affect the ASA's ability to produce confidential information or obtain independent advice for the purposes of deliberations, and hinder the ASA's ability to provide robust advice to Government in the future. In addition, the disclosure of material which the ASA may be considering at this time could unduly impact the management functions of the Agency and potentially prejudice a future decision of Government.
21. I have not taken any of the factors listed in section 11B(4) [irrelevant factors] of the FOI Act into account when making this decision.
22. I am satisfied, based on the above particulars, the public interest factors against disclosure outweigh the factors for disclosure, and that, on balance, it is against the public interest to release the information to you.
23. Accordingly, I find that the information is exempt under section s47C of the FOI Act.

#### **FURTHER INFORMATION**

24. ASA also identified the following publicly available documents within the scope of this request:
- [The AUKUS Nuclear-Powered Submarine Pathway: A partnership for the future](#)
  - [Nuclear non-proliferation fact sheet](#)
  - [Nuclear stewardship and waste fact sheet](#)

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Accredited Decision Maker

Australian Submarine Agency