



ASA FOI 037/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 13 June 2024 by the Australian Submarine Agency (ASA), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

I request a copy of the Australian Submarine Agency's finalised estimates briefing pack, including an index of back pocket briefs, for the 2024–25 estimates dated June 5–6 2024.

FOI decision maker

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

Documents identified

3. I have identified one (1) document falling within the scope of the request.

Exclusions

4. Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in the document 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

5. I have decided to partially release the document 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 sections 33 [Documents affecting national security, defence or international relations] and 47E [Public interest conditional exemptions – certain operations of agencies] of the FOI Act.

Material taken into account

6. In making my decision, I have had regard for:
 - a. the terms of the request;
 - b. the content of the identified documents in issue;
 - c. the 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 subject matter experts within the ASA.

REASONS FOR DECISION

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

7. 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.
8. The document contained exempt material and information that does not relate to the request.
9. I am satisfied that it is reasonably practicable to remove the exempt and irrelevant material and release the document to you in an edited form.

Section 33 – Documents affecting national security, defence or international relations

10. Section 33 of the FOI Act states:

A document is an exempt document if disclosure of the document under this Act:

(a) would, or could reasonably be expected to, cause damage to:

...

(iii) the international relations of the Commonwealth

11. In regard to the terms ‘would, or could reasonably be expected to’ and ‘damage’, the Guidelines provide:

5.16 The test requires the decision maker to assess the likelihood of the predicted or forecast event, effect or damage occurring after disclosure of a document.

5.17 The use of the word ‘could’ in this qualification is less stringent than ‘would’, and requires analysis of the reasonable expectation rather than certainty of an event, effect or damage occurring. It may be a reasonable expectation that an effect has occurred, is presently occurring, or could occur in the future.

...

International Relations: [Damages]

5.37 ... The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstance in which it was communicated; and the nature and extent of the relationship. There must also be real and substantial grounds for the exemption that are supported by evidence. These grounds are not fixed in advance, but vary according to the circumstances of each case.

12. Additionally, the Guidelines state:

5.36 The phrase ‘international relations’ has been interpreted as meaning the ability of the Australian Government to maintain good working relations with other governments and international organisations and to protect the flow of confidential information between them. The exemption is not confined to relations at the formal diplomatic or ministerial level. It also covers relations between Australian Government agencies and agencies of other countries.

13. I find that disclosure of the specified information could reasonably be expected to damage international relations. Australia's trilateral capability partnership, known as AUKUS, means that the United Kingdom and the United States are able to share information with Australia on an unprecedented level, in order to advance Australia's nuclear submarines program. If the specified information were to be publicly released without the specific authorisation of the relevant foreign country, the Commonwealth's ability to deal with that country in relation to similar matters in the future would be diminished. Accordingly, the disclosure of such information could significantly diminish the confidence that another country has in Australia as a reliable recipient of its confidence, making that country less willing to cooperate with Australian agencies in the future.
14. In view of the above, I am satisfied that the specified material is exempt under section 33(a)(iii) of the FOI Act.

Section 47E(d) –Public interest conditional exemptions – certain operations of agencies

15. Section 47E(d) of the FOI Act states:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...

- (d) *have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.*

16. The Guidelines, at paragraph 6.123, provide that:

The predicted effect must bear on the agency's 'proper and efficient' operations, that is, the agency is undertaking its expected activities in an expected manner.

17. In the case of 'ABK' and Commonwealth Ombudsman [2022] AICmr 44, the Information Commissioner (IC) found that where the direct email addresses and phone numbers of agency staff are not publicly known, they should be conditionally exempt under section 47E(d). The IC made this determination due to a reasonable expectation that the release of direct contact details would undermine the operation of established channels of communication with the public. Further, the IC accepted that staff who were contacted directly could be subject to excessive and abusive communications, which may give rise to work health and safety concerns.
18. I am satisfied that if the direct contact details of ASA personnel were made publicly available, it would have substantial adverse effects on the proper and efficient operation of existing public communication channels. Further, I am satisfied of a reasonable expectation that the information could be used inappropriately, in a manner which adversely affects the health, wellbeing and work of ASA personnel. Disclosure of names and phone numbers could, therefore, reasonably be expected to prejudice the operations of ASA.
19. The Guidelines provide, at paragraph 6.120, that I should consider whether disclosure of the information 'would, or could reasonably be expected to lead to a change in the agency's processes that would enable those processes to be more efficient.' Given that the direct contact details within the document are not publicly available and that more appropriate communication channels are available, I am satisfied that the release of the

information could reasonably be expected to lead to a change in ASA's processes that would not lead to any efficiencies.

20. Accordingly, I find that all staff information contained within the document is conditionally exempt under section 47E(d) of the FOI Act.

Public interest considerations – section 47E(d)

21. 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.

22. 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;*
- (d) *allow a person to access his or her own personal information.*

23. 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).

24. 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:

- the protection of an individual's right to privacy;
- the interests of an individual or a group of individuals;
- the management function of an agency; and
- the personnel management function of an agency.

25. It is in the public interest that ASA efficiently and productively operates with regard for the health and wellbeing of its personnel. As I have established above, the release of the names and phone numbers of ASA personnel can reasonably be expected to prejudice the management and personnel management functions of ASA. Existing communication channels and processes enable efficient and appropriate liaison with the public. The direct contact details of ASA personnel should, therefore, not be disclosed, as the public interest against their disclosure outweighs the public interest in their release.

26. 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.

27. 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. Accordingly, I find that the information is exempt under section 47E(d) of the FOI Act.



Alexander [redacted]
Acting Director Ministerial and Parliamentary Services
Australian Submarine Agency
25 July 2024