



**Australian Government**  
**Australian Submarine Agency**

**ASA FOI 005/23/24**

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

1. I refer to the request by [REDACTED] (the applicant), dated and received on 23 August 2023 by the Australian Submarine Agency (ASA), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

*I seek access to the tender documents related to contract notice CN3988242 (awarded to Aecom Australia Pty Ltd) – insofar as those documents relate to the requested scope of work/tasks and schedule.*

**FOI decision maker**

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

**Documents identified**

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

**Exclusions**

4. 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**

5. I have decided to:
  - a. partially release 2 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 section 47C [Public interest conditional exemptions—deliberative processes] and section 47F [Public interest conditional exemptions—personal privacy] of the FOI Act; and
  - b. release 2 documents in full.

**Material taken into account**

6. 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);
- e. advice received from subject matter experts within ASA SSN Construction Division; and
- f. advice received from Australian Nuclear Science and Technology Organisation (ANSTO) and Department of Defence, Security and Estate Group.

## **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. I have identified irrelevant material in the documents that does not relate to the request.
9. I am satisfied that it is reasonably practicable to remove the irrelevant material and release the documents to you in an edited form.

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

10. Section 47C of the FOI Act conditionally exempts documents from disclosure that would disclose deliberative matter.
11. 20. Section 47C of the FOI Act specifically states:

#### *General Rule*

- (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.*

#### *Exceptions*

- (2) *Deliberative matter does not include either of the following:*
  - (a) *operational information ...;*
  - (b) *purely factual material.*

12. Relevantly, the Guidelines, at paragraph 6.52, state:

*...Deliberative matter is content that is in the nature of, or relating to either:*

- an opinion, advice or recommendation that has been obtained, prepared or recorded, or*
- a consultation or deliberation that has taken place, in the course of, or for the purposes of, a deliberative process of the government, an agency or minister.*

13. Paragraph 6.91 of the Guidelines provides that the conditional exemption must only apply where the potential effect following disclosure is expected to ‘be both substantial and adverse.’

14. Following a review of the documents, I identified deliberative matter – that is, content that is in the nature of, or relating to either opinion, advice or recommendation that has been obtained, prepared or recorded; or a consultation or deliberation that has taken place, in the course of, or for the purpose of, a deliberative process of ASA.

15. I have considered the extent to which any deliberative processes of ASA in relation to the specified material may already be in the public domain.

16. Due to the currency of the subject matter (in that certain aspects of the subject matter have not yet been settled or remain open for consultation with parties outside of ASA), I am of the opinion that the identified information would reveal deliberative processes. Accordingly, I find that the identified documents contain deliberative matters which is conditionally exempt under section 47C(1) of the FOI Act.

### **Section 47F – Public interest conditional exemptions - personal privacy**

17. Section 47F(1) of the FOI Act states:

*A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*

18. The FOI Act shares the same definition of ‘personal information’ as the *Privacy Act 1988* (Cth). The Guidelines provide that:

*6.128 Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:*

- (a) whether the information or opinion is true or not; and*
- (b) whether the information or opinion is recorded in a material form or not.*

19. I found that the documents contain personal information of identified individuals. This includes their names which would reasonably identify a third party/parties.

20. In my assessment of whether the disclosure of personal information is unreasonable, I considered the following factors in accordance with section 47F(2):

- a. the extent to which the information is well known;

- b. whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
  - c. the availability of the information from publicly accessible sources; and
  - d. the effect the release of the personal information could reasonably have on the third party.
21. I found that the specific personal information listed is not well known, individuals whose personal information is contained in the documents are not widely known to be associated with the matters dealt with in the document and the information is not readily available from publicly accessible sources.
22. Accordingly, I am satisfied that the information is conditionally exempt under section 47F of the FOI Act.

**Public interest considerations – sections 47C and 47F**

23. I have found that some of the identified material in the documents is conditionally exempt under sections 47C and 47F of the FOI Act. Section 11A(5) of the FOI Act provides that, if a document is conditionally exempt, it must be disclosed ‘unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest’.
24. 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.*
25. 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).
26. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factor I have found particularly relevant to this request is that release of this information could reasonably be expected to prejudice the interests of an individual or a group of individuals.
27. While I accept there is a public interest in ensuring that ASA undertakes its functions in a transparent and proper manner, there is also a strong public interest in maintaining the confidentiality of material contained in the documents.
28. 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 47C and 47F of the FOI Act.

## FURTHER INFORMATION

29. Some of the documents matching the scope of this request contained a dissemination limiting marker (DLM). Where documents have been approved for public release, the DLM has been struck through.

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Accredited Decision Maker

Australian Submarine Agency