



ASA FOI 008/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 12 November 2024 by the Australian Submarine Agency (ASA), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

... the Australian Submarine Association's finalised briefing documents prepared for Supplementary Estimates hearings for the Foreign Affairs, Defence and Trade Committee, Wednesday 6 November 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 section 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 refused 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 in question contains irrelevant material and information that does not relate to the request.
9. Therefore, I am satisfied that it is reasonably practicable to remove the irrelevant material and release the document to you in an edited form.

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

10. Section 47E(c) of the FOI Act states:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to ...:

...

- (c) *have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency*

11. The Guidelines (paragraph 6.109) recognise that “*in some circumstances, it may be appropriate to address concerns about the work health and safety impacts of disclosing public servants’ personal information (such as names and contact details) under s47E(c)*”.

12. For the grounds in section 47E(c) to apply, the Guidelines state at paragraph 6.102 that:

Where a document relates to an agency’s policies and practices in relation to the assessment or management of personnel, the decision maker must address both elements of the conditional exemption in s47E(c), namely that:

- *an effect would reasonably be expected following disclosure*
- *the expected effect would be both substantial and adverse.*

13. In consideration of the above, paragraph 6.111 of the Guidelines specifies a non-exhaustive list of relevant factors to consider when deciding whether s47E(c) applies to the names and contact details of public servants. The factors that I find particularly relevant to the current circumstances are:

- the nature of the functions discharged by the agency; and
- whether the relevant information is already publicly available.

14. Paragraph 6.102 of the Guidelines provides that:

Where a document relates to the agency’s policies and practices in relation to the assessment or management of personnel, the decision maker must address both elements of the conditional exemption in s 47E(c), namely that:

- *an effect would reasonably be expected following disclosure*
- *the expected effect would be both substantial and adverse.*

15. The specified material contains personal identifying information, being the names of ASA personnel who are not in the public domain. Revealing details which are not in the public domain that could identify non-SES personnel of an agency, is a significant breach of an individual's privacy. Agencies must be mindful of how information is shared to ensure that innocuous pieces of information about an individual's identity are not inadvertently disclosed in ways that would compromise their privacy. Accordingly, the ASA is of the view that disclosure of the identified material would undermine the Agency's management of personnel with broader policy implications for human resources, including recruitment and occupational health and safety.
16. Furthermore, ASA personnel operate in an environment with close links to national security, defence and international relations of the Commonwealth. Accordingly, they are required to be conservative about the personal and employment information that they themselves share publicly. Release of the identified information would undermine these efforts to maintain the security of the Agency and its personnel. The acquisition of conventionally-armed, nuclear-powered submarines (AUKUS) is the single biggest leap in our military capability since World War II. It may reasonably be expected that the ASA and its personnel could be the target of nefarious actors or those with ill intent. Release of this information may not only compromise the security and safety of ASA staff, but that of the wider Agency and the AUKUS program that it is tasked with delivering.
17. Accordingly, I am satisfied that the information is conditionally exempt under section 47E(c) of the FOI Act.

Public interest considerations - sections 47E(c)

18. 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.

19. I have considered the factors favouring disclosure as set out in section 11B(3) [factors favouring access] of the FOI Act. The relevant factors are 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*

20. 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).

21. Paragraph 6.233 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors that I find particularly relevant to this request are that release of the specified information could reasonably be expected to prejudice:

- prejudice the protection of an individual's right to privacy;
- harm the interests of an individual or a group of individuals; and

- prejudice the personnel management function of an agency.
22. The ASA is of the view that the release of personal information about ASA personnel would not promote any of the factors favouring access as stated in the Guidelines. Publicly releasing information that identifies ASA personnel could reasonably be expected to interfere with an individual's right to privacy as well as the management functions and security of the ASA. Existing communication channels and processes enable efficient and appropriate liaison with the public.
23. 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.
24. Based on the above particulars, I am satisfied that 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(c) of the FOI Act.

FURTHER INFORMATION

25. The ASA does not own Brief 4. This brief was only provided to the ASA for consultation. Any questions at Senate Estimates regarding its content would have been referred to the agency responsible for the brief. Accordingly, five pages have been removed from the document pack in accordance with section 22 of the FOI Act on the grounds that the deleted material is irrelevant.

nikki [redacted]

Digitally signed by

nikki [redacted]

Date: 2024.12.12 18:01:35

+11'00'

Nikki [redacted]

Assistant Director General
Government and Public Relations
Australian Submarine Agency