



ASA FOI 009/24/25

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 11 November 2024 by the Australian Submarine Agency (ASA), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

[Item 1] REMOVED from scope.

[Item 2] *Any briefings/submissions provided to the Defence Secretary from January 2023 that relate to the trilateral cost-sharing principles.*

[Item 3] *Any briefings/submissions provided to either Minister Marles or Conroy from January 2023 that relate to the trilateral cost-sharing principles.*

I do NOT seek access to duplicates of any document captured within the scope of the request, nor the mobile numbers or full email addresses of government officials, nor the names and contact details of government officials not in the Senior Executive Service or equivalent. I do ask that junior official's position or titles be left unredacted, along with email domains that provide useful information as to the origin and destination of communication e.g. '[redacted]@defence.gov.au'.

Background





FOI decision maker

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

Documents identified

7. I identified one document falling within Item 3 and no documents falling within Item 2 of the scope of the request.

Exclusions

8. Personal email addresses, signatures, PMKeyS numbers and mobile telephone numbers contained in documents that fall within the scope of this 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

9. I have decided to:
 - a. partially release one 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 33 [Documents affecting national security, defence or international relations] of the FOI Act; and
 - b. remove irrelevant material in accordance with section 22 of the FOI Act.

Material taken into account

10. 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. 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

11. 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.

12. The document in question contains irrelevant material that does not relate to the request and exempt information.
13. I am satisfied that it is reasonably practicable to remove the irrelevant and exempt material to enable the release of the document to you in an edited form.

Section 33(a)(iii) – Documents affecting national security, defence or international relations

14. Section 33(a)(iii) 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

15. 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.

...

5.31 The meaning of ‘damage’ has three aspects:

- i. that of safety, protection or defence from something that is regarded as a danger. The AAT has given financial difficulty, attack, theft and political or military takeover as examples.*
- ii. the means that may be employed either to bring about or to protect against danger of that sort. Examples of those means are espionage, theft, infiltration and sabotage.*
- iii. the organisations or personnel providing safety or protection from the relevant danger are the focus of the third aspect.*

16. In regard to ‘international relations’, the Guidelines provide at paragraph 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.

17. Upon examination of the document, I identified material which, upon release, could reasonably be expected to cause damage to international relations. AUKUS is an enhanced trilateral security partnership between Australia, the United Kingdom (UK) and the United States (US). This partnership means that the UK and the US are able to share information with Australia on an unprecedented level, in order to advance Australia’s nuclear submarines program. The identified material has been shared between AUKUS partners in their capacity as trusted allies such that it allows the three

nations to cooperate closely on key defence capabilities. If divulged, I find that the relevant information would cause a loss of trust and confidence in Australia such that it could materially impact Australia's good working relations with its AUKUS partners.

18. In view of the above and a response to foreign government consultations, I am satisfied that the identified material is exempt under section 33(a)(iii) of the FOI Act.

FURTHER INFORMATION

19. Pages 3 and 4 of Document 1 have been removed as this material is exempt or irrelevant in its entirety.
20. The document matching the scope of this request is classified PROTECTED CABINET AUSTEO. Accordingly, I have declassified the version of the document that is approved for release, redacting the dissemination limiting markers (DLM).

Digitally signed by

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Director Ministerial and Parliamentary Services
Australian Submarine Agency