



Reference: Objective ID: R26690208

## **FOI 145/15/16 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT**

1. On 14 January 2016, the Department of Defence (Defence) made an internal review decision on [REDACTED] request under the *Freedom of Information Act 1982* (FOI Act), which Defence interpreted to be for access to the following reports:
  - a. 'A Preliminary Analysis of the Economic Impact of Future Submarines based on the experience of the Collins Program' [Item 1]; and
  - b. 'Building Submarines in Australia – Aspects of Economic Impact' [Item 2].
2. On 15 February 2016, Defence was notified by the Office of the Australian Information Commissioner (OAIC) that the applicant had requested the Information Commissioner (IC) review this decision. On 29 February 2016, the OAIC advised that the IC would review the decision under section 54Z of the FOI Act.
3. This statement of reasons is a revised decision in relation to the request under section 55G [Procedure in IC review – revocation or variation of access refusal decision] of the FOI Act.

### **Description of the documents**

4. Upon review I identified two documents matching Items 1 and 2 of the request, entitled:
  - a. 'A Preliminary Analysis of the Economic Impact of Future Submarines based on the experience of the Collins Program' [Item 1]; and
  - b. 'Building Submarines in Australia – Aspects of Economic Impact' [Item 2].

### **Decision**

5. I have decided to vary the decision by:
  - a. releasing Item 1 with deletions in accordance with subsection 22(1) [Access to edited copies with exempt or irrelevant matter deleted] of the FOI Act, on the grounds that the deleted material is considered to be exempt under paragraph 33(a)(iii) [Documents affecting the international relations of the Commonwealth] of the FOI Act; and
  - b. releasing Item 2 intact.
6. A copy of Item 2 in the form approved for release is at Enclosure 1. I am not able to release Item 1 at this stage as a third party has objected to its release during the course of consultation conducted under section 27 [consultation-business documents] of the FOI Act.

### Material taken into account

7. In arriving at my decision, I had regard to:
- a. the terms of the request;
  - b. the original decision of 11 December 2015 and internal review decision of 14 January 2016;
  - c. the content of the identified documents in issue;
  - d. advice from the Future Submarine Program Office;
  - e. comments by a third party as part of consultation under section 27 of the FOI Act;
  - f. relevant provisions in the FOI Act; and
  - g. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines).

### Findings and reasons for the decision

#### Paragraph 33(a)(iii)

8. Paragraph 33(a)(iii) [Documents affecting national security, defence or international relations] of the FOI Act states:

*33 Documents affecting national security, defence or international relations*  
*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*

9. Section 33 of the FOI Act exempts material from release if its disclosure would, or could reasonably be expected to cause damage to the security or defence of the Commonwealth. In regards to the terms, 'could reasonably be expected to' and 'damage', the Guidelines specify:

*5.13 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.*

*5.14 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.*

*5.25 'Damage' for the purposes of this exemption is not confined to loss or damage in monetary terms. The relevant damage may be intangible, such as inhibiting future negotiations between the Australian Government and a foreign government, or the future flow of confidential information from a foreign government or agency. In determining whether damage was likely to result from disclosure of the document(s) in question, a decision maker could have regard to the relationships between individuals representing respective governments. A dispute between individuals may have sufficient ramifications to affect relations between governments. It is not a necessary consequence in all cases but a matter of degree to be determined on the facts of each particular case.*

10. With regards to international relations, the Guidelines provides:

*5.30 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 government agencies...*

*5.32 For example, the disclosure of a document may diminish the confidence which another country would have in Australia as a reliable recipient of its confidential information, making that country or its agencies less willing to cooperate with Australian agencies in future. On the other hand, the disclosure of ordinary business communications between health regulatory agencies revealing no more than the fact of consultation will not, of itself, destroy trust and confidence between agencies.*

11. I found Item 1 contains information (including specific costs) relating to foreign-built submarines that, if released, could reasonably be expected to cause damage to Australia's international relations.

12. Release of such material without the explicit agreement of the foreign government and foreign entities could also diminish the relationship with Defence and adversely affect the ability of the Australian Government to maintain good working relationships. Further, release of the information could lessen confidence in Australia's ability to protect information and restrict the future flow of such information to the Australian Government.

13. Taking the above into account, I found material in Item 1 to be exempt under paragraph 33(a)(iii) of the FOI Act.

### **Contextual statement**

14. It should be noted the first two paragraphs at page 28 of Document 2 are important to the context in which this report should be read. The paragraphs specifically state:

*'the report is designed more to illustrate the dynamics underpinning the measurement of impact in a submarine environment using CGE modelling techniques than to provide a precise indication of what the economic effects of building a new class of submarine in Australia might be, especially at a regional level.*

*In the absence of data on sustainment savings from a domestic build in particular, the report might be an early step in what could be an extended process of economic analysis'.*

15. I note also that the report informs decision-makers that estimates of economic benefit are sensitive to the modelling techniques used. In particular, the executive summary at page 3 of Document 2 states:

*'With I-O modelling providing what might be regarded as a 'right of arc' in relation to estimates of economic impact and CGE modelling providing what might be regarded as 'left of arc' impact estimates, the question naturally arises of which set of estimates are likely to produce the most reliable indication of how a submarine build might affect the economy.'*

and:

*'With these points in mind, the focus of this report is on establishing a realistic range of potential economic impact estimates from which policy decision-makers might choose.'*

### **Third party consultation**

16. I decided to consult with a third party regarding their business information contained in Item 1. In response to this consultation, the third party objected to the release of Item 1.

17. I am required to advise the third party of my 'access grant' decision and cannot provide Item 1 to the applicant until it becomes apparent that the third party does not exercise its review rights.

18. The third party has until 12 September 2016 to appeal this decision. Accordingly, Defence will write to the applicant after this date to advise of the outcome.

**Tony.Brown2** Digitally signed by Tony.Brown2  
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Dr Tony Brown  
 Accredited Decision Maker

5 August 2016