



## **DEFENCE FOI 234/21/22 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT**

1. I refer to the application by [REDACTED] under the *Freedom of Information Act 1982* (FOI Act) for access to:

*“Any correspondence, emails or texts between Mr Greg Sammut and senior Defence Department officials relating to the achievement of criteria for Naval Group to move to Contract Work Scope 2 (CWS2) including any recommendations that Mr Sammut may be making in respect to the program.*

*This includes, specifically, the correspondence with Mr Greg Moriarty and others that was identified by Mr Sammut at Senate Estimates on 27 October 2021, at which Mr Sammut agreed, on notice, to provide the email between himself and Mr Moriarty to Senator Kimberley Kitching.*

*Search is for the period between 1 July 2021 and 15 September 2021”*

### **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 identified four documents as matching the description of the request.
4. The decision in relation to each document is detailed in a schedule of documents.
5. I have added an FOI reference number and Item/Document number to each of the documents, which corresponds with the schedule.

### **Exclusions**

6. 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. Defence has only considered final versions of documents.

### **Decision**

7. I have decided to partially release four documents 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 34 [Cabinet documents] and 47G [public interest conditional exemptions – business].

### **Material taken into account**

8. In making my decision, I had regard to:
  - a. the terms of the request;
  - b. the content of the identified documents in issue;

- c. relevant provisions in 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. consultation with Naval Group; and
- f. consultation with the Department of the Prime Minister and Cabinet.

## Reasons for decision

### Section 34 – Cabinet documents

9. Section 34 of the FOI Act states:

*(1) A document is an exempt document if:*

- (a) both of the following are satisfied:*
  - (i) it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;*
  - (ii) it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or*
- (b) it is an official record of the cabinet; or*
- (c) it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies; or*
- (d) it is a draft of a document to which paragraph (a), (b) or (c) applies.*

10. I have identified documents that fall within this category, specifically attachments to emails identified in the schedule as documents 2 and 4. The attachments were drafts of a document brought into existence for the dominant purpose of submission for consideration by the Cabinet, and the final submission was submitted to the Cabinet for its consideration. This meets the requirements of section 34(1)(d) of the FOI Act.

11. The guidelines relating to section 34 of the FOI Act state that Agencies should refer to the Cabinet Handbook issued by the Department of the Prime Minister and Cabinet (PM&C) for guidance about Cabinet processes and the underlying principles of the Cabinet System. The Handbook states that agencies must consult with PM&C on any Cabinet-related material identified as being within the scope of an FOI request. Consequently, I consulted with PM&C on the documents.

12. Based on the above, I am satisfied that the requirements of section 34 have been met. Accordingly, I exempt the release of these documents in full.

13. Subsection 22(1) of the FOI Act requires that where a decision maker denies access to a document they must consider releasing the document with exempt matter deleted, where possible. I have considered disclosing the documents to you with deletions, but have decided against this course of action, as the documents would be meaningless and of little or no value once the exempt material is removed. Specifically, this applies to the attachments to the emails identified in the schedule as documents 2 and 4, and have been excluded from the page counts in the schedule.

14. Section 34 of the FOI Act also states:

- (3) A document is an exempt document to the extent that it contains information the disclosure of which would reveal a Cabinet deliberation or decision, unless the existence of the deliberation or decision has been officially disclosed.*

15. I found information in the documents that was provided to Cabinet for deliberation in previous submissions. Release of this information would reveal Cabinet deliberations that have not been officially disclosed. This meets the requirements of section 34(3) of the FOI Act.

#### **Section 47G – Public interest conditional exemptions - business**

16. Upon examination of the documents, I identified the business information of Naval Group that if released, would, or could reasonably be expected to adversely affect Naval Group in respect of its business or professional affairs.

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

- (1) *A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:*
- (a) *would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.*

18. Disclosure of the commercial arrangements agreed between Naval Group and the Commonwealth could reasonably be expected to benefit Naval Group's competitors in winning future work for which Naval Group is competing by revealing business arrangements that Naval Group is prepared to accept. Consequently, disclosure of this information would, or could reasonably be expected to adversely affect Naval Group in respect of its business or professional affairs. In light of the above, I have decided that the specified material identified is exempt under section 47G(1)(a) of the FOI Act.

19. Section 11A(5) of the FOI Act requires an agency to allow access to an exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest. My public interest considerations are set out below.

#### **Section 47G – Public interest considerations**

20. In assessing whether disclosure is, on balance, contrary to the public interest, I considered the Guidelines together with a range of factors set out in section 11B(3) [public interest exemptions-factors favouring access] of the FOI Act, which favours access to a document:

- (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.*

I note that disclosure of the requested information may promote some of the objects of the FOI Act. However, disclosure of the specific conditionally exempt material would not increase public participation in the Defence process, nor would it increase scrutiny or discussion of Defence activities.

**Further Information**

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

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