



DEFENCE FOI 165/21/22 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 from Defence to the Commonwealth letter titled “Future Submarine Program - Submarine Design Contract - SFR Exit and Functional Baseline” (or similar title) dated 8 September 2021 (Objective ID: BM31956439). The document sought is the one listed as "Reference D" in the 15 September 2021 letter to Naval Group released to [REDACTED] on 2 October 2021 in Defence FOI Request 147/21/22.’

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 one document as matching the description 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. Defence has only considered final versions of documents.

Decision

5. 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 47 [Documents disclosing trade secrets or commercially valuable information]; and section 47G [public interest conditional exemptions – business] of the FOI Act.

Material taken into account

6. 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. advice received from officers from the Future Submarine Program: and
- f. consultation with Naval Group as a third party to the document.

Reasons for decision

Section 47 – Documents disclosing trade secrets or commercially valuable information

7. Section 47(1)(b) of the FOI Act provides that a document is an exempt document if its disclosure under the FOI Act would disclose any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
8. Subparagraph 47(1)(b) of the FOI Act states:

(1) A document is an exempt document if its disclosure under this Act would disclose:

... (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
9. The Guidelines state that to be exempt under s47(1)(b), a document must satisfy two criteria:

(a) the document must contain information that has a commercial value either to an agency or to another person or body, and

(b) the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed.
10. I found information in the document having commercial value to Naval Group. 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 the terms that Naval Group is prepared to accept.

Section 47G – Public interest conditional exemptions - business

11. 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.
12. 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.
13. 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.

14. 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

15. 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.*

16. 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

17. The document matching the terms of this FOI request contained protective handling markers. As the document is approved for release, these handling markers have been struck through.

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Kira Jorgensen
Accredited Decision Maker
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