



## DEFENCE FOI 235/22/23 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

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

*“Copies of any advices, reports, emails, cables, whatsapp messages, notes, documents, briefs, talking points from and/or to the Minister Dutton, his office or the Dept between the timeframe 1 January 2021 - 30 September 2021 in response to AUKUS announcement on 16 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 two (2) documents 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. release one (1) document in full; and
- b. partially release one (1) 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.

### 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); and
- e. advice received from relevant Defence subject matter experts from the Nuclear Powered Submarine Taskforce.

## Reasons for decision

### Section 33 – Documents affecting national security, defence or international relations

7. Section 33(a) 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.*

8. In regards 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.*

*International Relations: [Damages]*

5.37 *...The expectation of damage to international relations must be reasonable in all the circumstances, having regard to the nature of the information; the circumstances in which it was communicated; and the nature and extent of the relationship. There must also be real and substantial grounds for the exemption that are supported by evidence. These grounds are not fixed in advance, but vary according to the circumstances of each case.*

9. Additionally, the Guidelines state:

*International relations*

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.*

10. Having considered the Guidelines in relation to the request, I have identified material that contains information relating to Australia's relationship with foreign governments. Release of this information could reasonably be expected to cause damage to those relationships. Any damage to international confidence and close relationships with other countries would seriously affect Defence's ability to deliver on its obligations to protect Australia's interest. Further this information is not readily available to the public. As such, any release of the information would cause loss of trust and confidence in the Australian government and foreign officials may be less willing to engage with Australian government officials in the future.

11. In addition to the above, the identified material could reasonably be expected to affect participating nation's expectations. This is particularly the case concerning the subject of defence related inquiries, where the public release of such information may impact upon, and

potentially undermine, the trusted relationship between the nations and/or wider international relations with other nations if they become, or are made, aware of those confidential arrangements between nations.

12. Based on my consideration of the above, I am satisfied that release of the material could reasonably be expected to cause damage to international relations of the Commonwealth.

13. I have therefore determined that this material is exempt under section 33(a)(iii) of the FOI Act.

#### **Further Information**

14. One document matching the scope of the request was classified and contained a dissemination limiting marker (DLM). I have declassified the document and the DLM has been struck through.

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doug [redacted]  
Date: 2022.12.20 09:50:39  
+11'00'

Doug [redacted]  
Accredited Decision Maker  
Nuclear Powered Submarine Taskforce