



## DEFENCE FOI 434/22/23 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:

*...briefings provided by the Department of Defence to the Minister for Defence, the Hon Richard Marles MP, for his visit to the United Kingdom in August-September 2022 that relate to:*

*(1) The United Kingdom's Maritime Underwater Future Capability (MUFC) program (also known as the Submersible Ship Nuclear (Replacement) or SSN(R) program);*

*and/or*

*(2) The Minister's visit to BAE Systems, Barrow.*

### 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. In accordance with the disclaimer, sent to you in our acknowledgement email on 6 February 2023, mobile telephone numbers contained within the document are excluded from this request. Defence has only considered final versions of documents.

### Decision

5. I have decided to partially release the 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 irrelevant or 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 document;
- 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 from Subject Matter Experts within the Nuclear Powered Submarine Taskforce.

## Reasons for decision

### Section 22 – Access to edited copies with exempt or irrelevant matter deleted

7. Section 22 of the FOI Act permits an agency to prepare and provide an edited copy of a document where the agency has decided to refuse 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.

8. The document contains exempt material and, as outlined in the exclusion above, information that does not relate to the scope of the request.

9. I am satisfied that it is reasonably practicable to remove the exempt and irrelevant material and release the document to you in an edited form.

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

10. 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:*

*...*

*(i) the defence of the Commonwealth; or*

*(ii) the international relations of the Commonwealth.*

11. In regards to the terms 'would, or could reasonably be expected to' and 'damage', the Guidelines provide:

*Would or could reasonably be expected to:*

*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.*

*Defence of the Commonwealth: [Damages]*

*5.35 Damage to the defence of the Commonwealth is not necessarily confined to monetary damage ...However, in all cases, there must be evidence that the release of the information in question will be likely to cause the damage claimed.*

*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.*

12. Additionally, the Guidelines state:

*Defence of the Commonwealth*

5.34 *The FOI Act does not define 'defence of the Commonwealth'. Previous Administrative Appeals Tribunal (AAT) decisions indicate that the terms includes:*

- *meeting Australia's international obligations*
- *ensuring the proper conduct of international defence relations*
- *detering and preventing foreign incursions into Australian territory*
- *protecting the Defence Force from hindrance or activities which would prejudice its effectiveness.*

*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.*

13. I identified material in the document that contains information which, if released, could reasonably be expected to cause damage to the defence of the Commonwealth by prejudicing the proper and efficient conduct of international defence relations.

14. 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.

15. The document within the scope of this request also contains information which, if released, could reasonably be expected to damage the international relations of the Commonwealth. The document contains information communicated to Australia by foreign governments and their officials under the expectation that it would not be disclosed. The release of such information could harm Australia's international standing and reputation. It could reasonably be expected to limit the Commonwealth's ability to deal with those countries in relation to similar matters in the future. If divulged, I find that the relevant information would cause a loss of trust and confidence such that foreign officials would be less willing to engage with the Australian Government. Accordingly, the disclosure of such information could impact Australia's good working relations with those foreign governments as well as inhibit the flow of confidential information.

16. In applying the section 33 exemption, I have also taken into account the intelligence technique known as the "mosaic theory", whereby information in a document may not, itself, cause harm but in combination with other known information, it may contribute to a complete picture which results in harm (the 'mosaic theory').

17. The Guidelines provide, at paragraph 5.39,:


*The mosaic theory*


5.39 *When evaluating the potential harmful effects of disclosing documents that affect Australia's national security, defence or international relations, decision makers may take into account not only the contents of the document but also the intelligence technique known as the 'mosaic theory'. This theory holds that individually harmless pieces of information, when combined with other pieces,*

*can generate a composite — a mosaic — that can damage Australia's national security, defence or international relations. Therefore, decision makers may need to consider other sources of information when considering this exemption.*

18. Accordingly, I assert further that the release of the identified material, when combined with information already in the public domain, could allow adversaries to undermine Defence's capability and effectiveness.

19. Based on the above considerations, I find that the identified material contained within the scope of the request is exempt pursuant to section 33 of the FOI Act.



**Robert**   
Accredited Decision Maker  
Strategy, Policy and Industry Group  
6 March 2023