



ASA FOI 024/23/24

STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 7 March 2024 by the Australian Submarine Agency (ASA), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

I seek access to:

- 1) *the contract; and*
- 2) *any written communication between the Defence/ASA and Mr Grzeskowiak that proceeded contract signature that relates to the scope and purpose of the review*

Background

It is understood that contract CN3960520 was entered into to facilitate Mr Grzeskowiak looking into a site on Defence Land for a high level radioactive waste management facility to receive spent submarine nuclear fuel and operational nuclear waste.

Background

2. On 26 March 2024, the period for dealing with the request was extended from 6 April 2024 until 6 May 2024 under section 15(6) [Extension of processing period to comply with requirements of section 26A, 27 or 27A] of the FOI Act to enable consultation with a third party in accordance with section 27 of the FOI Act.

FOI decision maker

3. I am the authorised officer pursuant to section 23 of the FOI Act to make a decision on this FOI request.

Documents identified

4. I have identified one (1) document as falling within the scope of the request.

Exclusions

5. Addresses, signatures, and work telephone numbers contained in the document that fall within the scope of the FOI request,

Decision

6. I have decided to 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 sections 47E [Public interest conditional exemptions – certain operations of the agency] and 47F [Public interest conditional exemptions – personal privacy] of the FOI Act.

Material taken into account

7. In making my decision, I have had regard to:
 - a. the terms of the request;
 - b. the content of the identified document in issue;
 - c. relevant provisions of 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. responses received as part of a third party consultation process; and
 - f. advice provided by the ASA's Safeguards and Non-Proliferation Branch, and Finance Branch.

REASONS FOR DECISION

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

8. 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.
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 47E(d) – Public interest conditional exemptions – certain operations of agencies

10. Section 47E(d) of the FOI Act states:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.

11. The Guidelines, at paragraph 6.123, provide that:

The predicted effect must bear on the agency's 'proper and efficient' operations, that is, the agency is undertaking its expected activities in an expected manner.

12. In the case of 'ABK' and *Commonwealth Ombudsman* [2022] AICmr 44, the Information Commissioner (IC) found that where the direct email addresses and phone numbers of agency staff are not publicly known, they should be conditionally exempt under section 47E(d). The IC made this determination due to reasonable expectation that the release of direct contact details would undermine the operation of established channels of communication with the public. Further, the IC accepted that staff who were contacted directly could be subject to excessive and abusive communications, which may give rise to work health and safety concerns.

13. I am satisfied that were the contact details of ASA personnel made publicly available, it would have substantial adverse effects on the proper and efficient operation of existing public communication channels. Further, I am satisfied of a reasonable expectation that the information could be used inappropriately, in a manner which adversely affects the health, wellbeing and work of ASA personnel. Disclosure of names, email addresses and phone numbers could, therefore, reasonably be expected to prejudice the operations of ASA.
14. The Guidelines provide at paragraph 6.120 that I should consider whether disclosure of the information ‘would, or could reasonably be expected to lead to a change in the agency’s processes that would enable those processes to be more efficient.’ Given that the direct contact details within the document are not publicly available and that more appropriate communication channels are already available, I am satisfied that release of the information could reasonably be expected to lead to a change in ASA’s processes that would not lead to any efficiencies.
15. I also identified material the disclosure of which would reveal potential strategic partnerships as well as make known information that could provide insights into ASA’s dealings with third parties. The release of this information could undermine trust between parties in future dealings, thus adversely affecting proper and efficient operations. It is important to protect this information in order to foster a conducive environment for effective decision-making.
16. Accordingly, I am satisfied that all staff information contained within the document is conditionally exempt under section 47E(d) of the FOI Act.

Section 47F – Public interest conditional exemptions - personal privacy

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

A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

18. The FOI Act shares the same definition of ‘personal information’ as the *Privacy Act 1988* (Cth). The Guidelines provide that:

6.128 Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

(a) whether the information or opinion is true or not; and

(b) whether the information or opinion is recorded in a material form or not.

19. I found that the document contains personal information including the signatures of ASA personnel and third parties. The document also contains information regarding third party addresses, company insurance and security clearances.
20. In my assessment of whether the disclosure of personal information is unreasonable, I considered the following factors in accordance with section 47F(2):
 - a. the extent to which the information is well known;

- b. the availability of the information from publicly accessible sources; and
 - c. the effect the release of the personal information could reasonably have on the third party.
21. With reference to the above, I found that the personal information detailed in paragraph 18 is not readily available from publicly available sources, nor is the information well known. I consider that the release of the identified information would constitute an unreasonable disclosure of personal information.
22. Accordingly, I am satisfied that the information is conditionally exempt under section 47F of the FOI Act.

Public interest considerations - sections 47E(d) and 47F

23. Section 11A(5) of the FOI Act states:

The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

24. I have considered the factors favouring disclosure as set out in section 11B(3) [Factors favouring access] of the FOI Act. The relevant factors being whether access to the document would:

(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.

25. In my view, disclosure of this information would not increase public participation in the ASA process (section 3(2)(a) of the FOI Act), nor would it increase scrutiny or discussion of ASA activities (section 3(2)(b) of the FOI Act).

26. Paragraph 6.22 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors I find particularly relevant to this request are that release of this information could reasonably be expected to prejudice:

- the protection of an individual's right to privacy;
- the interests of an individual or a group of individuals;
- an agency's ability to obtain similar information in the future;
- the management function of an agency; and
- the personnel management function of an agency.

27. With regard to s 47E(d), it is in the public interest that ASA efficiently and productively operates with regard for the health and wellbeing of its personnel. As I

have previously established above, the release of the names, email addresses and phone numbers of ASA personnel can reasonably be expected to prejudice the management and personnel management functions of ASA. Existing communication channels and processes enable efficient and appropriate liaison with the public. The direct contact details of ASA personnel should, therefore, not be disclosed as the public interest against their disclosure outweighs the public interest in their release.

28. With regard to s 47F, I do not find any public interest in the release of the personal information of the individuals and third parties identified in the document that the ASA has obtained in the course of conducting its usual operations. The ASA has an obligation to protect the personal information it holds from public disclosure through a process such as FOI, and there is a general public expectation that their own personal information would not be released through a similar process.
29. I have not taken any of the factors listed in section 11B(4) [Irrelevant factors] of the FOI Act into account when making this decision.
30. I am satisfied, based on the above particulars, the public interest factors against disclosure outweigh the factors for disclosure, and that, on balance, it is against the public interest to release the information to you.
31. Accordingly, I find that the information is exempt under sections 47E(d) and 47F of the FOI Act.

FURTHER INFORMATION

32. The document matching the scope of this request contained a dissemination limiting marker (DLM). As the document has been approved for public release, the DLM has been struck through.



Acting Director Ministerial and Parliamentary Services

Decision Maker

Australian Submarine Agency

2 May 2024