



## ASA FOI FOI 014/24/25

### STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT 1982

1. I refer to the request by [REDACTED] (the applicant), dated and received on 27 February 2025 by the Australian Submarine Agency (ASA), for access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):
  - [Item 1] *Any Ministerial submission or briefing provided by ASA to the Minister for Defence or the Minister for Defence Industry and Capability Delivery that refers to the AUKUS nuclear submarine program as involving “high risk” or “very high risk”<sup>1</sup>*
  - [Item 2] *Any record of statement/s made by the Minister for Defence or the Minister for Defence Industry and Capability Delivery that refers to the AUKUS nuclear submarine program as involving “high risk” or “very high risk”.*
  - [Item 3] *All major projects have system engineering risk management processes that require the identification/analysis and monitoring/treatment of risk. The outputs of these process are normally capture in a risk register. I only seek the latest major or moderate risks in the risk register - that is an extract of a single document and only the latest instance of it. I do not seek access to information about retired risk.*

*I would also be happy for this information to be provided in summary form - if there is a summary form (e.g. from the most recent project report for management).*

### Background





### **FOI decision maker**

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

### **Documents identified**

6. I have identified Documents 1 and 2 as falling within the scope of Item 1 and Document 3 as falling within the scope of Item 3 of the request. No documents were identified falling within the scope of Item 2 of the request.

### **Exclusions**

7. 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. ASA has only considered final versions of documents.

### **Decision**

8. I have decided to:
- a. partially release Document 1 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 47E [Public interest conditional exemptions – certain operations of agencies] of the FOI Act;
  - b. refuse access to Documents 2 and 3 on the grounds that the documents are considered exempt under section 33 [Documents affecting national security, defence or international relations], section 34 [Cabinet documents] and section 45 [Documents containing material obtained in confidence] of the FOI Act; and
  - c. remove irrelevant material in accordance with section 22 of the FOI Act.

### **Material taken into account**

9. In making my decision, I have had regard for:
- a. the terms of the request;
  - b. the content of the identified documents in issue;
  - c. the 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); and
  - e. advice from subject matter experts within the Department of Prime Minister and Cabinet (PM&C) and the ASA.

## REASONS FOR DECISION

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

10. 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.
11. Document one contains information that is exempt under the FOI Act. I am satisfied that it is reasonably practicable to remove the exempt material and release the document to you in an edited form.
12. Furthermore, where a decision maker denies access to a document, section 22(1) of the FOI Act requires that they consider releasing the document with exempt matter deleted, if possible.
13. Paragraph 3.98 of the Guidelines provides that:

*...an agency or minister should take a common sense approach in considering whether the number of deletions would be so many that the remaining document would be of little or no value to the applicant.*
14. I have considered disclosing the documents to you with deletions, but have decided to refuse access as they would be meaningless and of little or no value once the exempt material is removed.

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

15. Section 33 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 security of the Commonwealth*
  - ...*
  - (iii) the international relations of the Commonwealth*
- (b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government ... to an authority of the Commonwealth or to a person received the communication on behalf of the Commonwealth or of an authority of the Commonwealth.*

16. With regard to the terms ‘would, or could reasonably be expected to’, 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.*

*Security of the Commonwealth: [Damages]*

5.31 *The meaning of 'damage' has three aspects:*

- i. *that of safety, protection or defence from something that is regarded as a danger. The AAT has given financial difficulty, attack, theft and political or military takeover as examples.*
- ii. *the means that may be employed either to bring about or to protect against danger of that sort. Examples of those means are espionage, theft, infiltration and sabotage.*
- iii. *the organisations or personnel providing safety or protection from the relevant danger are the focus of the third aspect.*

*International Relations: [Damages]*

5.40 *... the phrase does encompass intangible or speculative damage, such as loss of trust and confidence in the Australian Government or one of its agencies. 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.*

17. Additionally, the Guidelines state:

*Security of the Commonwealth:*

5.30 *The term 'security of the Commonwealth broadly refers to:*

- (a) *the protection of Australia and its population from activities that are hostile to, or subversive of, the Commonwealth's interests*
- (b) *the security of any communications system or cryptographic system of any country used for defence or the conduct of the Commonwealth's international relations*

*International Relations:*

5.39 *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.*

18. I identified material in Document 3 which, upon release into the public domain, would, or could reasonably be expected to, cause damage to the security of the Commonwealth, by identifying areas of sensitivity associated with the analysis of alternatives in support of the determination of what would become the Optimal Pathway. Systems engineering is crucial for successfully designing, developing and managing the program, with an assessment regarding the likelihood of risks from those processes captured in a risk register (Document 3). This technical risk register is an essential tool for the identification, and analysis of risks key to informing advice to government. This register incorporates many technical aspects of AUKUS that are integrated into a whole of system outcome. Releasing information that discusses technical aspects of AUKUS and provides tangible mitigation measures when analysing risks, could expose the program to malicious actors seeking to exploit that information in such a way as to introduce targeted disruptions.

19. In addition, I find that disclosure of the specified information could reasonably be expected to damage international relations. AUKUS is an enhanced trilateral security partnership between Australia, the United Kingdom (UK) and the United States (US).

This partnership means that the UK and the US are able to share information with Australia on an unprecedented level, in order to advance Australia's nuclear submarines program. The identified material has been shared between AUKUS partners in their capacity as trusted allies such that it allows the three nations to cooperate closely on key defence capabilities. If divulged, I find that the relevant information would cause a loss of trust and confidence in Australia such that it could materially impact Australia's good working relations with its AUKUS partners. It would very likely cause damage to international relations of the Commonwealth and may diminish the confidence which other countries have in Australia as a reliable recipient of their confidence, resulting in those countries being less willing to cooperate with Australian agencies in the future

20. The Guidelines further provide at paragraph 5.39:

*The mosaic theory:*

5.43 *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 of information, 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.*

21. In view of the above, I also assert further that the release of the identified material, when combined with information already in the public domain, could allow adversaries to undermine AUKUS's capability and effectiveness.
22. Furthermore, I find that disclosure of exempt material would divulge information or matter communicated in confidence by or on behalf of an authority of a foreign government to an authority of the Commonwealth. In making this decision, I note that sensitive technical information contained in Document 3 was communicated in confidence over classified means in circumstances importing an obligation of confidence for use in the AUKUS program.
23. In view of the above and a response to foreign government consultations, I am satisfied that the identified material is exempt under section 33(a)(iii) and 33(b) of the FOI Act.

## **Section 34 – Cabinet documents**

24. 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...*

...

(c) *it was brought into existence for the dominant purpose of briefing a Minister on a document to which paragraph (a) applies;*

25. Additionally, the Guidelines state that:

*Cabinet documents (s34)*

*5.63 The Cabinet documents exemption in s 34 of the FOI Act is designed to protect the confidentiality of the Cabinet process and to ensure that the principle of collective ministerial responsibility (fundamental to the Cabinet system) is not undermined. ... [T]his exemption is not subject to the public interest tests. The public interest is implicit in the purpose of the exemption itself.*

26. I find that the material in Document 2 of this request includes a Cabinet submission that was brought into existence for the dominant purpose of briefing a Minister on a document to which section 34(1)(a) applies.
27. Furthermore, PM&C requests agencies consult with Cabinet Division on any Cabinet-related material identified within the scope of a FOI request. PM&C subsequently advised that they support the use of section 34 in relation to the specified material.
28. Based on the above reasoning, I consider the documents to be exempt under section 34(1)(c) of the FOI Act.

#### **Section 45 – Documents containing material obtained in confidence**

29. Section 45 of the FOI Act states:

*(1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency or the Commonwealth), for breach of confidence.*

30. In relation to the term ‘*breach of confidence*’, the Guidelines further explain:

*Breach of Confidence:*

*5.186 A breach of confidence is the failure of a recipient to keep confidential, information which has been communicated in circumstances giving rise to an obligation of confidence. The FOI Act expressly preserves confidentiality where that confidentiality would be actionable at common law or in equity.*

*5.189 To found an action for breach of confidence (which means s 45 may be applied by an agency or minister), the following 5 criteria must be satisfied in relation to the information:*

- it must be specifically identified*
- it must have the necessary quality of confidentiality*
- it must have been communicated and received on the basis of a mutual understanding of confidence*
- it must have been disclosed, or threatened to be disclosed, without authority*
- unauthorised disclosure of the information has or will cause detriment.*

31. Upon examination of the material, I have formed the view that disclosure of the information would be a basis for an action to be brought against the Commonwealth for breach of confidence and for compensation to be sought for loss or damages arising from disclosure. The exempted material was obtained on the basis of a mutual understanding of confidence. I believe disclosure of this information could have a substantial adverse effect on the future supply of information under the AUKUS program
32. Based on the above reasoning, I consider the documents to be exempt under section 34(1)(c) of the FOI Act.

## Section 47E –Public interest conditional exemptions – certain operations of agencies

33. Section 47E(c) 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:*

...

- (c) *have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency.*

34. For the grounds in section 47E(c) to apply, the Guidelines state at paragraph 6.102 that:

*Where a document relates to an agency's policies and practices in relation to the assessment or management of personnel, the decision maker must address both elements of the conditional exemption in s47E(c), namely that:*

- *an effect would reasonably be expected following disclosure*
- *the expected effect would be both substantial and adverse.*

35. Paragraph 6.109 of the Guidelines also recognise:

*In some circumstances, it may be appropriate to address concerns about the work health and safety impacts of disclosing public servants' personal information (such as names and contact details) under s47E(c).*

36. In consideration of the above, paragraph 6.111 of the Guidelines specifies a non-exhaustive list of relevant factors for consideration when deciding whether s47E(c) applies to the names and contact details of public servants. The factors that I find particularly relevant to the current circumstances are:

- the nature of the functions discharged by the agency; and
- whether the relevant information is already publicly available.

37. Paragraph 6.102 of the Guidelines provides that:

*Where a document relates to the agency's policies and practices in relation to the assessment or management of personnel, the decision maker must address both elements of the conditional exemption in s 47E(c), namely that:*

- *an effect would reasonably be expected following disclosure*
- *the expected effect would be both substantial and adverse.*

38. The specified material contains personal identifying information, being the names and direct contact details of ASA personnel who are not in the public domain. Revealing details which are not in the public domain that could identify non-SES personnel of an agency, is a significant breach of an individual's privacy. Agencies must be mindful of how information is shared to ensure that innocuous pieces of information about an individual's identity are not inadvertently disclosed in ways that would compromise their privacy. Accordingly, the ASA is of the view that disclosure of the identified material would undermine the Agency's management of personnel with broader policy implications for human resources, including recruitment and occupational health and safety.



39. Furthermore, ASA personnel operate in an environment with close links to national security, defence and international relations of the Commonwealth. Accordingly, they are required to be conservative about the personal and employment information that they themselves share publicly. Release of the identified information would undermine these efforts to maintain the security of the agency and its personnel. The acquisition of conventionally-armed, nuclear-powered submarines (AUKUS) is the single biggest leap in our military capability since World War II. It may reasonably be expected that the ASA and its personnel could be the target of nefarious actors or those with ill intent. Release of this information may not only compromise the security and safety of ASA staff, but that of the wider agency as well as the AUKUS program that it is tasked with delivering.
40. Accordingly, I am satisfied that the information is conditionally exempt under section 47E(c) of the FOI Act.

**Public interest considerations – section 47E(c)**

41. 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.*

42. 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..*

43. 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).

44. Paragraph 6.233 of the Guidelines specifies a non-exhaustive list of public interest factors against disclosure. The factors that I find particularly relevant to this request are that release of the specified information could reasonably be expected to:

- prejudice the protection of an individual's right to privacy;
- harm the interests of an individual or a group of individuals; and
- prejudice the personnel management function of an agency.

45. The ASA is of the view that the release of personal identifying information about ASA personnel would not promote any of the factors favouring access as stated in the Guidelines. Publicly releasing information that identifies ASA personnel could reasonably be expected to interfere with an individual's right to privacy as well as the management functions and security of the ASA. Existing communication channels and processes enable efficient and appropriate liaison with the public.



46. 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.
47. Based on the above particulars, I am satisfied that 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. Accordingly, I find that the information is exempt under section 47E(c) of the FOI Act.

## FURTHER INFORMATION

48. The Minister for Defence and the Minister for Defence Industry and Capability Delivery have both frequently acknowledged the risks involved with AUKUS Pillar 1 since the launch of the ASA. While no in scope documents were identified containing the terms ‘high risk’ or ‘very high risk’ in relation to Item 2 of your request, please see below a selection of extracts for your consideration:
- 5 March 2025: Joint DPM/MINDI Media Release:  
<https://www.minister.defence.gov.au/media-releases/2025-03-05/major-milestone-south-australias-skills-and-training-academy>. - *“Quotes attributable to Premier of South Australia, Peter Malinauskas: “Developing the skills needed to deliver Adelaide-built nuclear-powered submarines is both the biggest opportunity, and biggest risk of AUKUS”.*
  - 5 November 2025: DPM In Conversation at SIA Conference:  
<https://www.minister.defence.gov.au/transcripts/2024-11-05/conversation-submarine-institute-australia-conference-canberra> - *“And I think there is a real risk here, which is what I’m alluding to, that you kind of make these changes at a policy level and legal level, but do things actually change on the ground?”*
  - 20 May 2024: DPM Television Interview ABC Afternoon Briefing:  
<https://www.minister.defence.gov.au/transcripts/2024-05-20/television-interview-abc-afternoon-briefing>. - *“This is the pathway that we must walk down if we are to ensure that no capability gap opens up, and this is the pathway we need to walk down if we’re going to see our existing submarine evolve to what we ultimately need when we’re operating nuclear-powered submarines. We are confident that we can engage in the Life of Type Extensions. It is of course a challenge. There will be risks. But it is a process we must undertake and we are confident about our ability to undertake it.”*
  - 17 April 2024: DPM speech to launch of the National Defence Strategy and Integrated Investment Program:  
<https://www.minister.defence.gov.au/speeches/2024-04-17/launch-national-defence-strategy-and-integrated-investment-program> - *“The acquisition of the Virginia class submarines from the United States- a decade earlier than planned has closed the capability gap on our future submarines. The decision to operate the same future class of submarines with the United Kingdom means we will be sharing the risk of the biggest industrial endeavour in our country’s history.*
  - 4 April 2024: DPM speech to The Sydney Institute:  
<https://www.minister.defence.gov.au/speeches/2024-04-04/sydney-institute> - *“In reaching an agreement with the UK that both countries would construct the same class of future submarines, we ensured that the risk of this huge endeavour was genuinely shared”.*

- 22 March 2024: DPM Doorstop Interview, Osborne SA:  
<https://www.minister.defence.gov.au/transcripts/2024-03-22/doorstop-interview-osborne-sa>. - “There will be a production line in Barrow in the UK, which will be producing the same class of submarine for the Royal Navy for the UK, and that’s really important because having two production lines amongst friends enables us to share risk, gain experience from each other not just in the building of the submarines but in the operation of them.”
- 22 March 2024: MINDI Radio Interview, 6PR Perth Mornings:  
<https://www.minister.defence.gov.au/transcripts/2024-03-22/radio-interview-6pr-perth-mornings>. - “So, for example, our first nuclear-powered submarine won’t hit the water until somewhere between three to five years after the first British one. So they’re taking all the risk of being the first of type and we’ll be in a much better position to learn from how they’ve constructed their ones, the mistakes that inevitably will be made and the corrections.”
- 28 November 2023: MINDI address to National Press Club:  
<https://www.minister.defence.gov.au/speeches/2023-11-28/address-national-press-club> - “In addition, we have further reduced risk by staging Australian production behind that of the UK. The UK will bear the first-of-class risks common in defence procurement, especially in naval construction.” ... “Learning from the challenges of the past, we have built a very significant contingency into the program’s cost estimates to allow planning for real-world economic uncertainty, including inflation, the cost of labour and raw materials. It is entirely prudent to include an estimate of risk and uncertainty.”
- 22 March 2023: DPM statement on the Optimal Pathway:  
<https://www.minister.defence.gov.au/statements/2023-03-22/aukus-nuclear-powered-submarine-pathway-house-representatives-parliament-house-canberra-act> - “This arrangement will spread the risk over two production lines and improve efficiencies, as we avoid a bespoke design and delivery model.”

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[redacted]  
Director Ministerial and Parliamentary Services  
Government and Public Relations  
Australian Submarine Agency