

OFFICIAL

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Attachment A - Instrument of Authority under section 23(1) of the FOI Act to make decisions under the Act.

AUSTRALIAN GOVERNMENT

Department of Defence

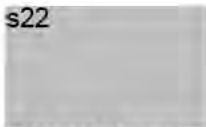
FREEDOM OF INFORMATION ACT 1982

INSTRUMENT OF AUTHORITY UNDER SECTION 23(1) OF THE FOI ACT TO MAKE DECISIONS UNDER THE ACT

I, Matt Yannopoulos, acting Secretary of the Department of Defence and 'principal officer' for the purpose of the *Freedom of Information Act 1982* (Cth) (the FOI Act):

- authorise the officers holding or performing the duties of a position referred to in column 2 of the Table in Part A of the Schedule to make decisions under the FOI Act as specified in the corresponding Item in Column 3 of the Schedule; and
- approve the arrangements for the administration of the FOI Act contained in Part B of the Schedule.

s22



Matt Yannopoulos

Acting Secretary

Department of Defence

19 January 2024

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Attachment A - Instrument of Authority under section 23(1) of the FOI Act to make decisions under the Act.

SCHEDULE

Part A – Table

Item	Position	Decision able to be made
1.	First Assistant Secretary Ministerial and Executive Coordination and Communication	All decisions
2.	Assistant Secretary Media and Information Disclosure	All decisions
3.	Special Advisor Freedom of Information - Review	All decisions subject to Internal Review; all decisions relating to procedures during an Information Commissioner Review
4.	Director Freedom of Information	All decisions
5.	Accredited decision makers	Decisions relating to refusal or grant of access to documents in accordance with a request received under section 15 of the FOI Act; decisions relating to an application for amendment or annotation of personal records under section 48 of the FOI Act; decisions under section 55G of the FOI Act, in response to a section 55(2)(e)(ii) direction from the Information Commissioner; decisions relating to the blocking of procurement from disclosure on AusTender
6.	All Executive Level 1 officers in Freedom of Information Directorate	Decisions relating to refusal or grant of access to documents in accordance with a request received under section 15 of the FOI Act; decisions relating to an application for amendment or annotation of personal records under section 48 of the FOI Act; decisions under section 55G of the FOI Act, in response to a section 55(2)(e)(ii) direction from the Information Commissioner; decisions relating to charges under section 29 of the FOI Act; decisions relating to the publication of information in accessed documents in accordance with section 8(2)(g) and 11C of the FOI Act
7.	Assistant Director Freedom of Information Review	All decisions subject to Internal Review; all decisions relating to procedures during an Information Commissioner Review
8.	All APS6 officers in the Freedom of Information Directorate	Decisions relating to extending the processing period in agreement with the applicant; decisions relating to applying to the Information Commissioner to extend the processing period; decisions relating to transferring a request to another agency

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Attachment A - Instrument of Authority under section 23(1) of the FOI Act to make decisions under the Act.

Part B – Arrangements

Commencement

1. These arrangements commence on 1 January 2024.
 - 1.1 All previous arrangements approved by the Secretary under section 23(1) of the FOI Act for the administration of the FOI Act are hereby cancelled.

Internal Review

2. In this arrangement, *Internal Review* means a decision made following a request for review made under section 54B of the FOI Act.
3. Only those persons with a delegation to make ‘all decisions’ or ‘all decisions subject to Internal Review’ may make decisions on internal reviews.

Accredited decision makers

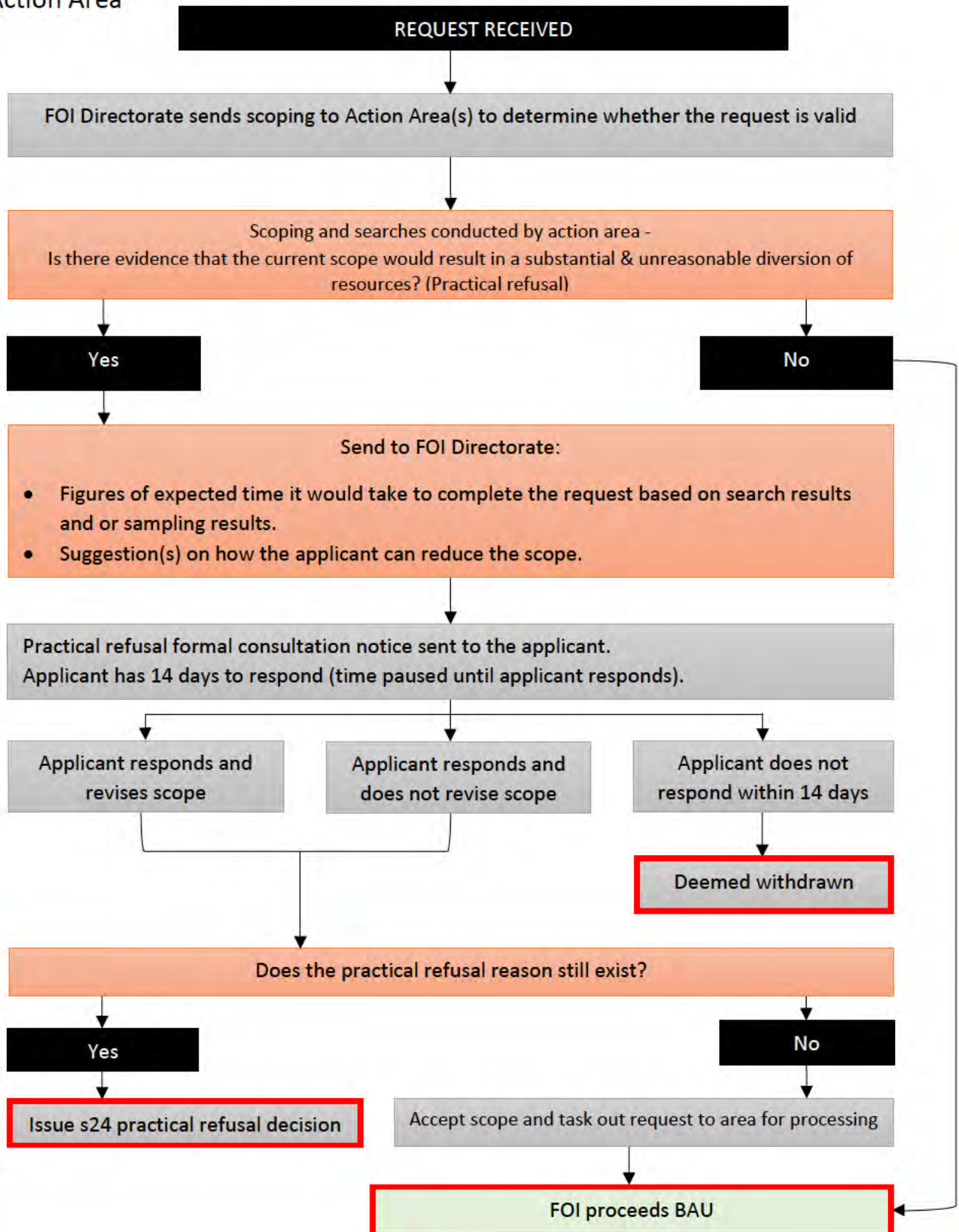
4. An ‘accredited decision maker’ is a person who has successfully completed the Defence FOI Decision Maker Accreditation Training Program (the Program) and the First Assistant Secretary Ministerial and Executive Coordination and Communication or the Assistant Secretary Media and Information Disclosure has accredited them in writing (however described) to be a Defence FOI accredited decision maker.
5. For the avoidance of doubt, a person will have successfully completed the Program when they have attended a Defence specific FOI Accredited Decision Maker Course conducted by the Australian Government Solicitor (or another approved training provider) and successfully passed the end of course examination.
6. For the further avoidance of doubt, the authority exercisable by FOI accredited decision makers referred to in column 2 of Item 5 of the Table in Part A of this Schedule is a personal authority. It attaches to the person accredited as an accredited decision maker and not to any position that an accredited decision maker occupies from time to time. The authority is not exercisable by any other officer holding or temporarily performing the duties from time to time of the position which an accredited decision maker occupies from time to time.
7. Notwithstanding paragraph 1.1, a person accredited as an accredited decision maker under previous arrangements for the administration of the FOI Act will remain an accredited decision maker until such time as their accreditation (however described) expires or is terminated, whichever occurs first.

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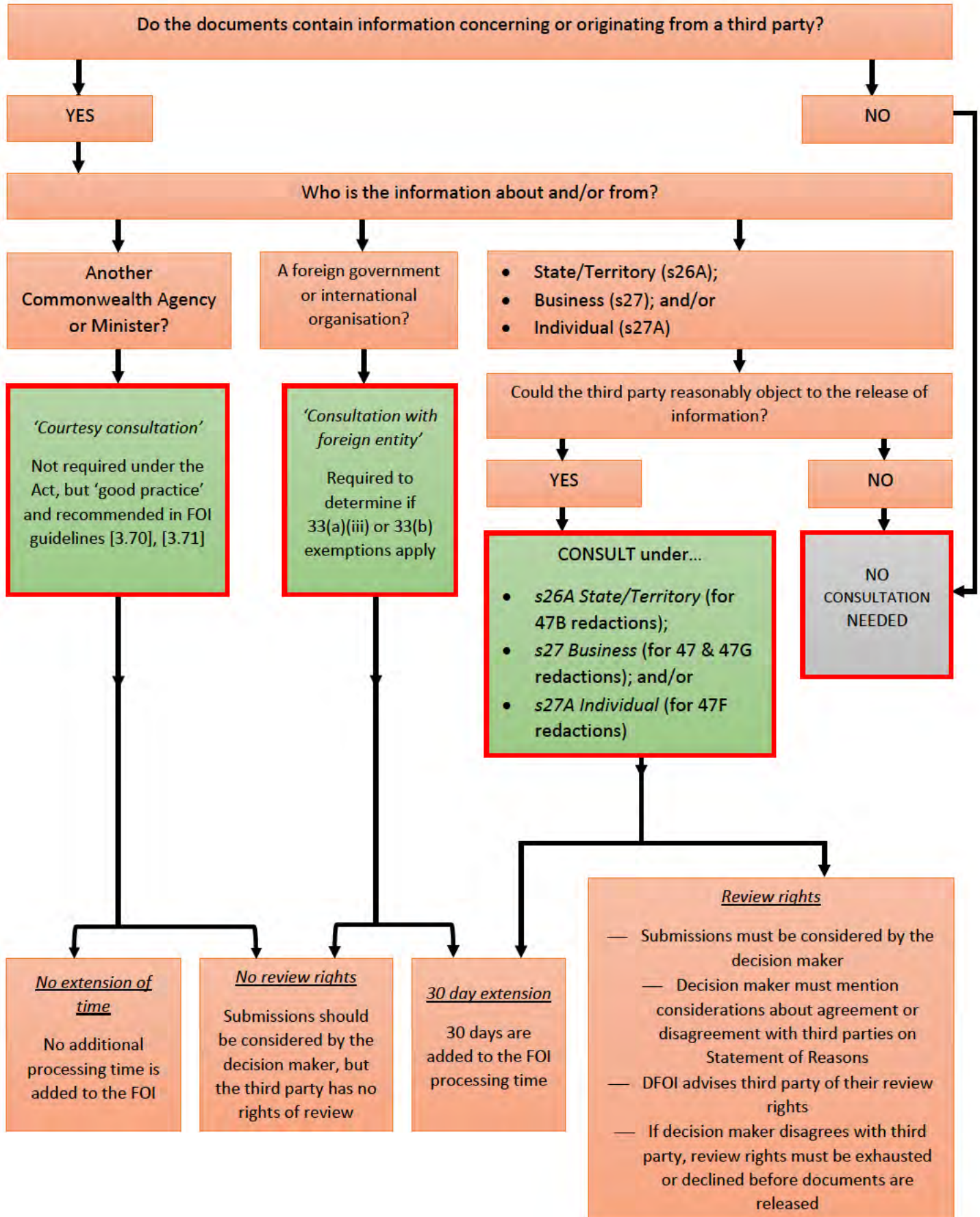
■ = FOI Directorate
■ = Action Area

FLOWCHART – Practical Refusal



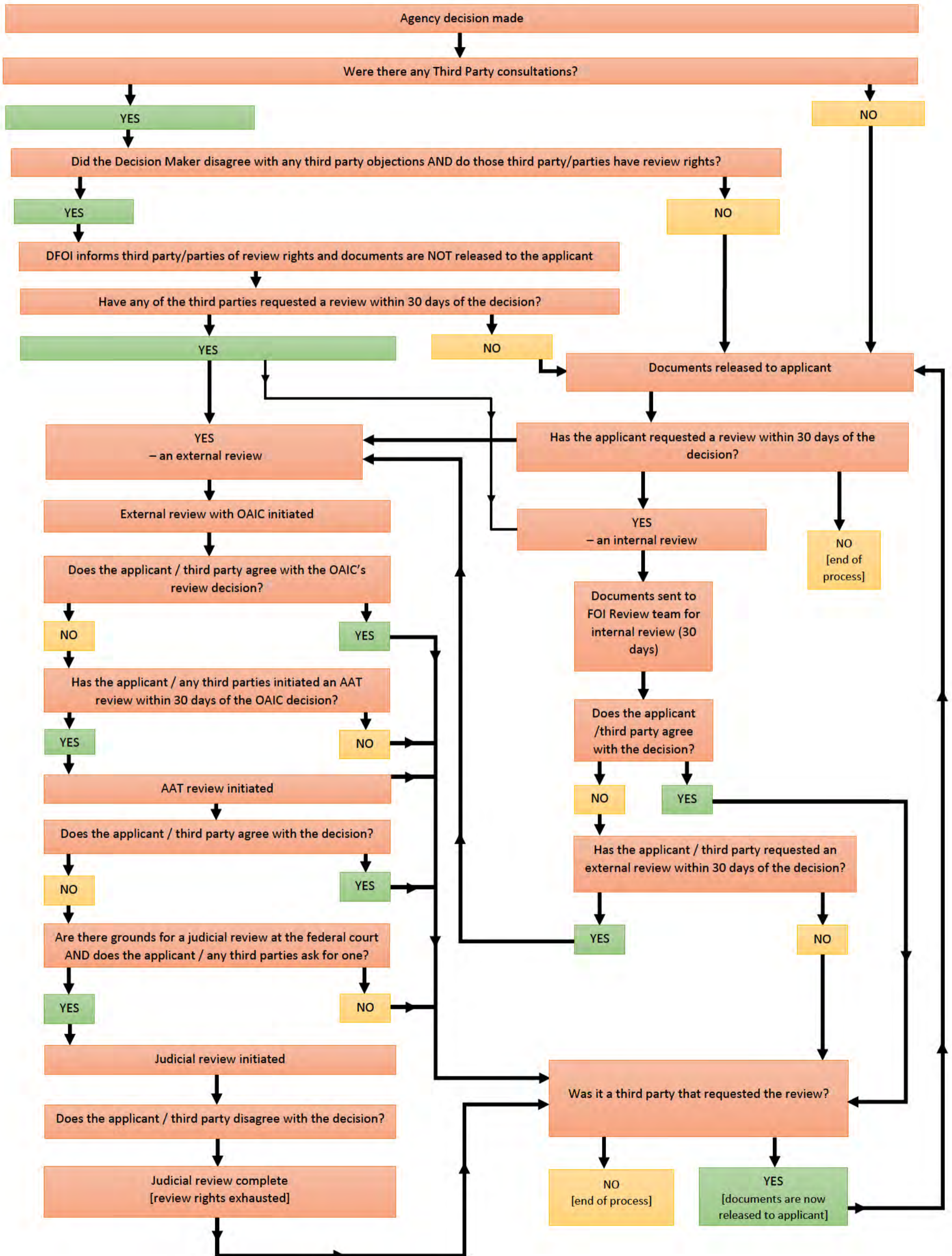


FLOWCHART – THIRD PARTY CONSULTATION (TPC)





FLOWCHART – Review Rights





FREEDOM OF INFORMATION – PROCESSING TIMELINE

Day 0-7 Search Retrieve and review	FOI	FOI application received at the Department
		Refine scope with applicant if applicable
		Distribute an ALERT to relevant Group/Service if request is media or sensitive
	Coord	Task request to relevant Group/Service providing known internal deadline dates, blank schedule of documents and an Authorised Decision Maker is assigned applicable to Group/Service requirements
		Organise search for documents and relay responses to FOI if advised the request is unclear or is likely to be voluminous, or if it requires tasking to other areas of the Department to undergo a document search
	FOI	Retrieve all documents in scope (DPN and DSN), convert to PDF format, rename each document to reflect the relevant Item/Serial number and provide to FOI to determine charges
FOI	Calculate if charges payable and send a preliminary assessment of charges to the applicant if applicable *** If not charges apply continue process below ***	

Processing timeline stops until charges are accepted and paid

Days 8 – 17 Examine Prepare Review	FOI	Advise Group/Service when deposit received and provide known internal processing deadline dates for the request
	ADM	Review documents for sensitivities and advise FOI if consultation required ***If third party consultation required skip to the 60 day timeline*** Mark proposed redactions to documents in Adobe using exemption codes, draft a statement of reasons and provide to FOI for review
	FOI	Review statement and marked up documents and provide ADM advice on FOI legislation, guidelines and application of exemptions if required and return

Day 18 – 25 Quality Assurance	ADM	Review decision package comments and seek further guidance from FOI if required (If significant comments, provide word version of the statement and revised copy of the marked up documents to FOI for final review and comment)
		Declassify DSN documents by applying redactions and move to DPN
		Convert schedule of documents to PDF, strike through any document DLMS and apply remaining redactions
	FOI	Combine all documents and place FOI reference, Item/Serial number on the first page of each document
	ADM	Review final statement and proposed release of documents and request the balance of charges invoice to be raised if applicable
ADM	Sign statement of reasons and send PDF decision package to FOI (signed statement of reasons, schedule of documents and redacted documents combined)	

Day 26 – 30 Alert / Decision	FOI	If request is media or sensitive s47E(d)
		Liaise with ADM if comments s47E(d)
	ADM	Coordinate a BRIEF in response s47E(d) if required
	FOI	Provide final decision package to applicant and prepare decision for release on the Defence Disclosure Log and advise Defence Web Information Capability if applicable

30 CALENDAR DAY PROCESSING TIMELINE

Day 8 – 10 Consultation	ADM	Provide written direction to FOI to undertake consultation and provide third party contact details and documents (redacted if necessary) to be sent to third parties for review
	FOI	Notify the applicant that consultation is required, seeking agreement to release identity and advise of the new due date, prepare consultation letters and distribute to third parties with redacted documents prepared by ADM
	ADM	Advise Group/Service and ADM of revised internal deadline dates

ADM TIP : Use the consultation period wisely and continue to examine, consider and prepare documents whilst awaiting responses

Day 40	FOI	Provide third party responses and recommendations on the proposed release of the documents to the ADM for consideration
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Days 41 – 47 Prepare Review	ADM	Mark proposed redactions to documents in Adobe using exemption codes, draft a statement of reasons and provide to FOI for review
	FOI	Review statement and marked up documents and provide ADM advice on FOI legislation, guidelines and application of exemptions if required and return

Days 48 – 55 Quality Assurance	ADM	Review decision package comments and seek further guidance if required (If significant comments, provide word version of the statement and revised copy of the marked up documents to FOI for final review and comment)
		Declassify DSN documents by applying redactions and move to DPN
		Convert schedule of documents to PDF, strike through any document DLMS and apply remaining redactions
	FOI	Combine all documents and place FOI reference, Item/Serial number on the first page of each document
	ADM	Review final statement and proposed release of documents and request the balance of charges invoice to be raised if applicable
ADM	Sign statement of reasons and send PDF decision package to FOI (signed statement of reasons, schedule of documents and redacted documents combined)	

Day 56 – 60 Alert / Decision	FOI	If request is media or sensitive s47E(d)
		Liaise with ADM if comments s47E(d)
	ADM	Coordinate a BRIEF in response s47E(d) if required
	FOI	Provide final decision package to applicant and prepare decision for release on the Defence Disclosure Log and advise Defence Web Information Capability if applicable

60 CALENDAR DAY PROCESSING TIMELINE





FOI Exemptions

Stakeholder quick reference guide

ABSOLUTE EXEMPTIONS

Section 33



Documents affecting national security, defence or international relations

Section 34



Cabinet documents

Section 37



Documents affecting enforcement of law and protection of public safety

Section 38



Secrecy provisions of enactments apply

Section 42



Legal professional privilege

Section 45



Material obtained in confidence

Section 46



Contempt of Parliament or contempt of court

Section 45A



Parliamentary Budget Office documents

Section 47



Commercially valuable information

Section 47A



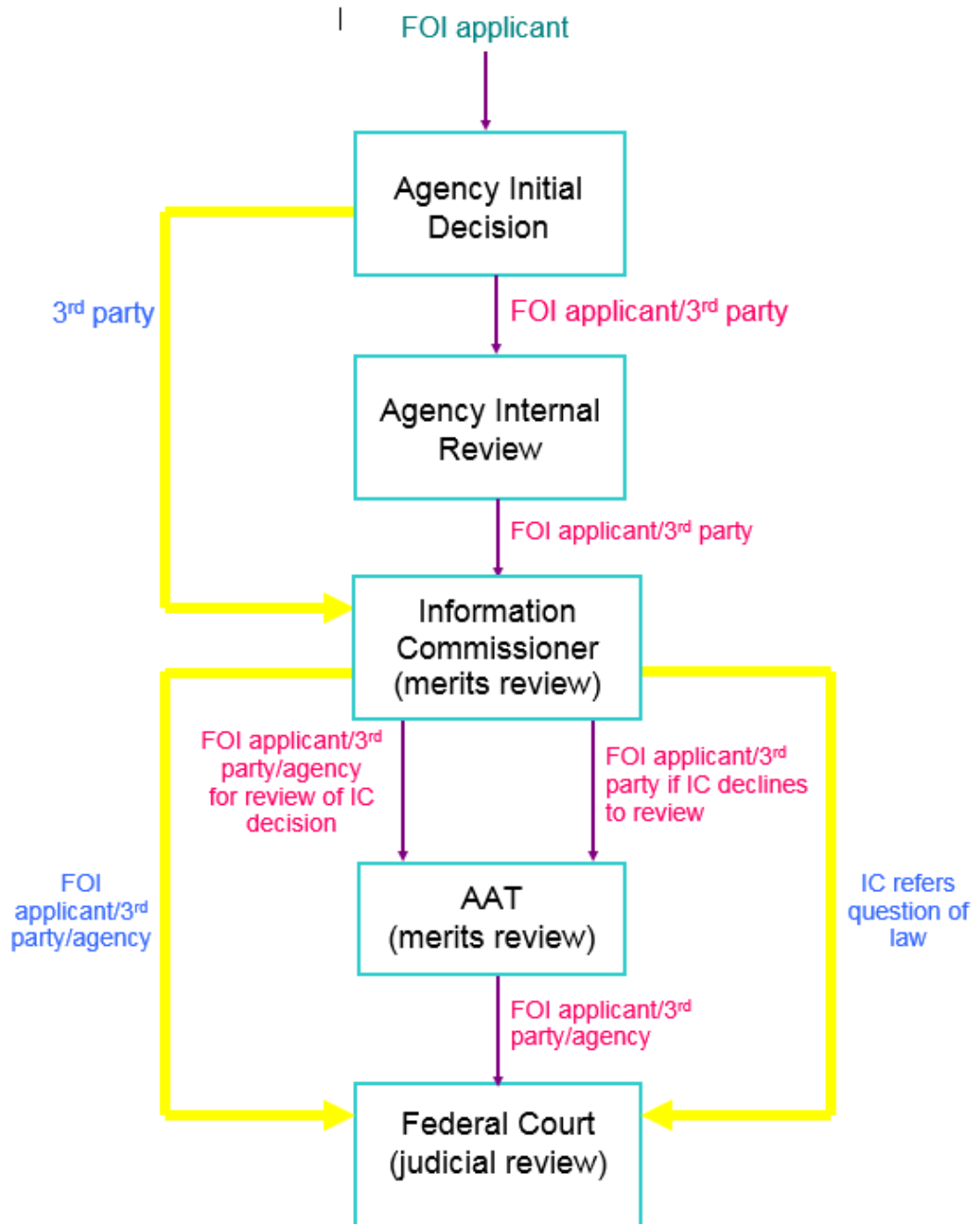
Electoral rolls and related documents



PUBLIC INTEREST CONDITIONAL EXEMPTIONS



FLOW CHART – Review Rights





Australian Government
Department of Defence

Department of Defence
FREEDOM OF INFORMATION

FOI Accredited Decision-Maker Training Material

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- Tab 7 Adobe Acrobat - Redactions + ADM Reference Guide
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Document search list / check list

Completion of the document checklist shows that Defence is taking a consistent approach when searching for documents. It is particularly important if a matter goes to an external review with the Information Commissioner as it acts as a contemporaneous record of the searches that were undertaken.

✓ or N/A

	Identify other departmental areas; retrieve documents from relevant departmental area(s)
--	--

Search databases

	Objective (seek assistance from Defence Archives if necessary)
	PMKeys
	Sentinel
	Sharepoint
	DPAWS / PDMS / DPSMS (IG and ADFIS)
	AIMS
	Any other relevant database in your area

Search hard copies

	Retrieve hard copy files from Defence Archives
	Retrieve hard copy files from National Archives of Australia (NAA)
	Search desks / drawers / cabinets / safes / vaults
	Examine old manual document registers / personal diaries / notes etc...
	Contact relevant staff (past/present) – obtain written response as evidence (if required)

Search other electronic records

	Personal / Group emails (inboxes, sent, deleted, archived)
	Personal folders, mobile phones, text messages, Lync, Skype

Any additional searches (please identify)

For **ALL** searches (even if documents found) please provide **pdf screenshots** of the searches conducted

Searches conducted by:		Time taken to conduct searches (in hours):	
-------------------------------	--	---	--

[Convert this document to PDF, insert electronic signature and email to your FOI case manager]



From: FOI Case Management
Subject: For Action: FOI Inquiry XXX - Advice on Scope - Due Midday/COB DAY XXX
MONTH 20XX

Dear **[recipient]**

Action required by COB/midday <day of the week> [date]

1. Review the scope and advise if the request can be actioned in its current form.
2. If the scope cannot be actioned in its current form, please advise why and provide suggested revisions that could be made to the applicants scope.
3. Advise of other business areas that may hold documents or have an equity in this request.

Defence has received a request under the *Freedom of Information Act 1982* (FOI Act) from **[applicant]** on **<DD Month YYYY>** for:

“[request]”.

Your area has been identified as potentially holding documents relevant to the scope of the request.

This is not a tasking to undertake document searches. Once your response is received or if we do not receive a response by the due date, a formal tasking will be sent.

Regards

<First name>

Freedom of Information Team

Media and Information Disclosure Branch
Ministerial & Executive Coordination and Communication Division
Department of Defence

[Freedom of information requests](#) | [About](#) | [Defence](#)

From: FOI Case Management
Subject: FOR ACTION: FOI Tasking - FOI xxx/YY/YY

Dear **[recipient]**

This is a formal tasking relating to a request made on **[date]** by **[applicant]** under the *Freedom of Information Act 1982* (FOI Act) for:

[request].

Talking Points will be required as this FOI request has been classified as '*Media/Sensitive*'.

Action required

Phase 1: Identify the documents and appoint an Accredited Decision Maker (ADM) – due by [date]

1. Notify who has been appointed as the ADM and if the documents can be released administratively outside the FOI Act.
2. Send the following:
 - Digitally signed [Document Search Checklist](#) with screenshots.
 - In-scope documents with no redactions in PDF format.
Note: For DSN documents, please email on the DPN when DSN documents provided.
 - [Draft Schedule of Documents](#) (SOD) if there are five or more documents.

Phase 2: Draft documents – due by [date]

Prepare and send:

1. [Statement of Reasons](#) (SOR) ([SOR Guidance](#)) as a word document (unsigned).
2. Draft in scope documents – combined into one single PDF document with **proposed** redactions unapplied - marked with relevant [exemption codes](#) using the [FOI redaction tool](#) in PDF.
3. [Schedule of Documents](#) (SOD), in word format if applicable.
4. Prepare draft '[Talking Points](#)' in Word Format – email relevant Strategic Communications adviser for clearance.

FOI Directorate (FOID) will review the draft decision package and provide feedback to the ADM and/or FOI Co-ord.

Phase 3: Final documents – due by [date]

Please discuss feedback provided on the draft decision package with the FOID, then prepare and send the final decision package:

1. SOR electronically signed by the ADM.
2. Documents in the form approved for release in PDF format with redactions applied.
3. SOD in PDF format.
4. Final, cleared Talking Points in PDF format – SES Band 2/2 Star clearance.

Consultation

Please consider/identify third party consultations early so that statutory time limits can be managed. The ADM is required to authorise these consultations and approve documents for release to any third parties which the FOI team will then coordinate. Extra time is provided when third party consultation is required.

If the ADM considers there is a requirement to liaise with the offices of the Minister, Secretary, CDF or VCDF, please advise as soon as possible which the FOI team will facilitate.

Timeframes

Under the FOI Act, Defence has **30 calendar days** to provide a decision and documents to the applicant. Documents and draft decisions must be reviewed by FOID before they can be signed by the ADM. Failure to provide the documents to FOID and appoint an ADM in a timely manner will impact on the time the ADM has available to make their decision within the legislated timeframe.

Templates and examples

Please [click here](#) to access the ADM Reference Guide. If you require assistance with drafting the SOR please contact me and I can provide sample wording to consider.

FOI Case Manager

I am the Case Manager for this request and am here to help you process this request. Please contact me early to discuss any questions or concerns.

Kind regards,

<SIGNATURE BLOCK>

From: FOI Case Management
Subject: FOR ACTION: FOI Tasking - FOI xxx/YY/YY

Dear **[recipient]**

This is a formal tasking relating to a request made on **[date]** by **[applicant]** under the *Freedom of Information Act 1982* (FOI Act) for:

“[request]”.

This FOI request has been identified as a routine request. Please advise of any sensitivities or media/parliamentary attention in relation to this topic.

Action required

Phase 1: Identify the documents and appoint an Accredited Decision Maker (ADM) – due by [date]

1. Notify who has been appointed as the ADM. Alternatively, let us know if the documents can be released administratively outside the FOI Act.
2. Send the following:
 - Digitally signed [Document Search Checklist](#) with screenshots.
 - In-scope documents with no redactions in PDF format.
Note: For DSN documents, please email on the DPN when DSN documents provided.
 - Draft [Schedule of Documents](#) (SOD) if there are five or more documents.

Phase 2: Draft decision package – due by [date]

Prepare and send the draft:

1. [Statement of Reasons](#) (SOR) as a word document (unsigned) (for guidance see [Statement of Reasons Guidance Notes](#)).
2. In-scope documents, combined into one single PDF document, with **proposed** redactions unapplied but marked with relevant [exemption codes](#) using the [FOI redaction tool](#).
3. [Schedule of Documents](#) (SOD) in word format (if applicable).

The FOI Directorate (FOID) will review the draft decision package and provide feedback to the ADM and/or FOI Co-ord.

Phase 3: Final decision package – due by [date]

Please discuss any feedback provided on the draft decision package with the Case Manager, then prepare and send the final decision package in PDF format:

1. SOR digitally signed by the ADM.
2. Documents in the form approved for release with redactions applied.
3. SOD (if applicable).

Consultation

Please consider/identify consultations early so that statutory time limits can be managed. The FOID will coordinate any consultation.

Timeframes

Under the FOI Act, Defence has **30 calendar days** to provide a decision and documents to the applicant. Documents and draft decisions must be reviewed by the FOID before they can be signed by the ADM. Failure to complete phase 1 by the due date will impact on the time the ADM has available to make their decision within the legislated timeframe.

Additional guidance

Please [click here](#) to access the ADM Reference Guide. If you require assistance with drafting the SOR please contact me and I can provide sample wording to consider.

FOI Case Manager

I am the Case Manager for this request and am here to help you process this request. Please contact me early to discuss any questions or concerns.

Regards

<SIGNATURE BLOCK>

From: FOI Case Management
Subject: FOR ACTION: FOI Tasking - FOI xxx/YY/YY

Dear **[recipient]**

This is a formal tasking relating to a request made on <DD Month YYYY>, by <applicant name> to amend/annotate their personal record maintained by Defence under section 48 of the *Freedom of Information Act 1982* (FOI Act). The applicant has requested their personal record be amended/annotated to include the following details:

“[insert requested amendments/annotations]”

Action required

Phase 1: Prepare draft decision and appoint an Accredited Decision Maker (ADM) – due by [date]

1. Acknowledge receipt of this request.
2. Appoint an Accredited Decision Maker (ADM) and advise the FOI Case Manager.
3. Review relevant evidence and determine if requested amendment / annotation is appropriate.
4. Prepare and send the draft [Statement of Reasons](#) (SOR) as a word document (unsigned) to the FOI Case Manager:

The FOI Directorate (FOID) will review the draft decision package and provide feedback to the ADM and/or FOI Co-ord.

Phase 2: Final decision package – due by [date]

Please discuss any feedback provided on the draft decision package with the Case Manager, then prepare and send the final decision package in PDF format:

1. SOR digitally signed by the ADM.
2. Documents in the form approved for release (if required).

Timeframes

Under the FOI Act, Defence has **30 calendar days** to provide a documents to the applicant. Documents and draft decision must be reviewed by the FOID before they can be signed by the ADM.

Additional guidance

Please [click here](#) to access the ADM Reference Guide. If you require assistance with drafting the SOR please contact me and I can provide sample wording to consider.

FOI Case Manager

I am the Case Manager for this request and am here to help you process this request. Please contact me early to discuss any questions or concerns.

Regards

<SIGNATURE BLOCK>



Australian Government
Department of Defence

DEFENCE FOI 319/21/22 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 to:

s47F



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 eight documents as matching the description of the request.
4. The decision in relation to each document is detailed in a schedule of documents.
5. I have added an FOI reference number and Item/Serial number to each of the documents, which corresponds with the schedule.

Exclusions

6. Personal email addresses, signatures, employee 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

7. I have decided to:
 - a. release five documents in full;
 - b. partially release three documents 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(d) [public interest conditional exemptions-certain operations of agency], 47F

[public interest conditional exemptions-personal privacy] and 47G [public interest conditional exemptions-business] of the FOI Act; and

- c. remove irrelevant material as referred to in the scope of the request in accordance with section 22(1)(b)(ii) of the FOI Act.

Material taken into account

8. 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. consultation with third parties.

Reasons for decision

Section 22 – Edited copies with exempt or irrelevant matter deleted

9. Section 22 of the FOI Act provides that if an agency or Minister decides:

- (i) to refuse access to an exempt document; or*
- (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access*

and it is reasonably practicable to prepare a copy of the document modified by deletions, the agency or Minister must give the applicant access to the edited copy.

10. Considering all of the above, I decided that it was reasonably practicable to remove the material that did not fall within scope of this request and release the documents in that form.

Section 47E – Certain operations of agencies

11. 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 an agency..*

12. Upon examination of the documents, I found information that relates specifically to names and ADF roles which are not publicly available information. If this information was to be made public, it could reasonably impact the ability of the individual to undertake their role and have an adverse effect on the proper and efficient conduct of the operations of the Department.

13. 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 47F - Personal privacy

14. On review of the documents, I identified information, specifically personal information of third parties other than the applicant, such as names, rank and personal details. I found the material to be conditionally exempt under section 47F of the FOI Act.

15. When assessing whether the disclosure of this personal information is unreasonable, I considered the following factors:

- a. the extent to which the information is well known;*
- b. whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;*
- c. the availability of the information from publicly accessible sources;*
- d. any other matters that the agency or Minister considers relevant.*

16. Against the above criteria I found:

- a. that the specific personal information is not well known;
- b. the individuals whose personal information is contained in the document is not known to be associated with the matters dealt with in the documents; and
- c. the information is not readily available from publicly accessible sources.

17. Taking into account the above factors, I consider the release of the material would be an unreasonable disclosure of personal information of individuals and could reasonably be expected to cause harm to their privacy. I have therefore decided that this information is conditionally exempt under section 47F of the FOI Act.

18. 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 - Business

19. Upon examination of the documents, I identified that they contained details relating to third party business information which is no longer relevant in respect of this request. I found the material to be conditionally exempt under section 47G of the FOI Act which 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;

20. I consulted with third parties regarding their business information which was contained within the documents. The third parties have objected to the release of their business details due to changes to business ownership and staffing.

21. While I consider that release of the material removed under sections 47G may be of some interest to the applicant, disclosure of the conditionally exempt material would not provide any meaningful information now that the business has changed hands, and the new

owners are concerned that releasing the information could reasonably adversely impact their business affairs. I agree with their objections.

22. Removal of the conditionally exempt information, does not significantly impact the relevance of the information held within the document as per the scope of the request.

23. Considering the above, I decided that release of this information would be unreasonable disclosure of their business information and I consider the material is conditionally exempt under section 47G of the FOI Act.

24. 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.

Sections 47E(d), 47F and 47G - Public interest considerations

25. 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) 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.*

26. I note that disclosure of the requested documents may promote some of the objects of the FOI Act, as information held by the Government is a national resource. 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.

27. 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 or harm:

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

28. I consider the release of the material removed under sections 47E(d), 47F and 47G may be of some interest to the applicant, however disclosure of the conditionally exempt material would not inform public debate on any matter of public importance in any meaningful way. Additionally, I do not consider that disclosure of the material would promote oversight of public expenditure.

29. While I accept there is a public interest in ensuring that Defence undertakes its functions in a transparent and proper manner, there is also a strong public interest in maintaining the confidentiality of material contained in the documents. In my view, it would

be contrary to the public interest to disclose the assessment material, names of Defence contractors and third party individuals, and cause unnecessary distress to them. Releasing third party business information would lessen confidence in Defence's ability to protect their information, which could have an adverse effect on Defence's ability to conduct and manage working relationships with its contractors in the future.

30. None of the factors listed in section 11B(4) of the FOI Act were taken into account when making this decision.

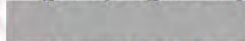
31. After weighing all of the above, I consider that, on balance the public interest factors against disclosure outweigh the factors for disclosure. I have therefore decided that it would be contrary to the public interest to release the information considered exempt under sections 47E(d), 47F and 47G of the FOI Act.

Further Information

32. Some of the documents released as part of this request contain a dissemination-limiting marker (DLM). As the documents are approved for public release the DLM has been struck through.



Digitally signed by



Date: 2022.03.03 13:51:03
+11'00'

Accredited Decision Maker



Schedule of Documents – Defence FOI XXX/XX/XX

Item	Document	Date	Document description or title	Pages	Decision	Reason for decision under the Act
1	1	1/6/2019	Email: Record of conversation		Partial access	Deletions made in accordance with section 22 of the FOI Act, on the grounds that the deleted material is exempt under section 47F of the FOI Act.
	2	11/7/2019	Statement		Full access	Deletions made in accordance with section 22 of the FOI Act, on the grounds that the deleted material is irrelevant.
2	1	12/7/2019	Email: Further detail		Deny access	Document is exempt under sections 47F and 47E(c) of the FOI Act.
	2	13/7/2019	Ministerial submission 91-20135		Partial access	Deletions made in accordance with section 22 of the FOI Act, on the grounds that the deleted material is exempt under section 33(a)(iii), and section 47E(d) of the FOI Act.
3	1	11/7/2019	Report		Full access	
4	1	01/03/2021	Brief		Full access	Deletions made in accordance with section 22 of the FOI Act on the grounds that the deleted material is irrelevant.

Titles explained – DELETE AFTER COMPLETED

Item – relates to each item within the scope of the request. *Optional as not all scopes will have separate items.

Document – relates to the document number assigned to the in scope document

Date – this is the date the document was created/signed. *Documents should be listed in chronological order

Document description or title – Keep it simple. It should be enough information for the applicant to understand what type of document it is

Pages – Number of pages in the document. *Optional for final version, but it can assist when preparing large document packs.

Decision – Simple reason for decision made on the document. *Full access, partial access, access denied.

Reasons for decision under the Act – Outlines what exemptions codes have been used on the document.

Note: A Schedule of Documents is only required where there are five or more documents identified.

FOI REDACTION CODES

This is an electronic resource with built-in functions, please open in Adobe Pro

Refer to page 4 of the ADM Reference Guide for instructions

EXEMPTIONS	PUBLIC INTEREST EXEMPTIONS
s22 irrelevant Information	s47B Cwlth/State relations
s33(a)(i) security of the Cwlth	s47C deliberative processes
s33(a)(ii) defence of the Cwlth	s47F personal privacy
S33(a)(iii) International Relations	s47G business
s37 affecting enforcement of law and protection of public safety	s47E(c) certain operations of an agency – management or assessment of personnel
s38 secrecy provisions of enactments (e.g. Def (Inq) Regs)	s47E(d) certain operations of an agency – substantial adverse effect on proper and efficient conduct of operations of an agency
s42 legal professional privilege	
s46 contempt of Parl or court	
Admin release	Classification strike through
	DLMs above - unclassified/official TIP - hold down control

s22 - PMKeyS numbers, hand written signatures, personal emails and mobile numbers - providing the applicant has agreed to the disclaimer.

s33(a) i - Information for protected identities (including but not limited to contact details, signatures, rank and names)

s47E(c) or (d) - used in certain circumstances to exempt APS or ADF (below SES 1/1-Star level) names, ranks, position, contact details and electronic signatures.



ADM Reference Guide

Overview

- This guide has been prepared by the FOI Case Management team to assist Accredited Decision Makers (ADM) to effectively complete each phase of a formal FOI tasking
- All completed tasks should be sent to the FOI Case Management inbox: foi.casemanagement@defence.gov.au
- Please contact the Case Manager if you require assistance

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Phase 1: identify the in-scope documents

1. How to organise the in-scope documents

Where documents have been located by the line area, consider reviewing and organising the documents using this suggested process before sending to the Case Manager by the due date:

1	Save the document(s) from the line area to your H drive
2	Open the first document
3	<p>Review the document to:</p> <ol style="list-style-type: none"> 1. confirm it is within scope of the request 2. ensure attachments are included 3. determine whether it should be removed on the basis of an exclusion. This might be the case if: <ol style="list-style-type: none"> a. it is a draft b. it is a duplicate of another document identified to be in-scope (for example, it is an email that is in a subsequent email thread) c. it was previously sent to or from the applicant <p>If the document passes the review, proceed to step 4</p>
4	<p>Convert/print the document to PDF if it is not in PDF format. You will need to 'print to PDF' PDF documents that have been digitally signed before any redactions can be applied</p> <p>See section 2 'How to print/convert a document to Adobe PDF' or watch the video 'How to convert a document to PDF' on the FOI intranet page</p>
5	Order the document chronologically by including the date of the document at the beginning of the file name in the format YYYYMMDD. If there are multiple documents of the same date, you can use the format YYYYMMDD(X). For example: '20170904(1)' followed by '20170904(2)'
6	Repeat steps 1 – 5 for each document
7	Number the documents and also list them in order in the Schedule of Documents (SOD) if there are 5 or more documents

2. How to convert/print a document to Adobe PDF

1	Click: File > Save as Adobe PDF > Save
2	Click: File > Print > Printer: Adobe PDF > Print > Save
	<p>Note: if you are converting an email to PDF using this method, your name will appear on the document. This can be redacted during phase 2 under s22</p>





3. Phase 1 checklist

Review this checklist before sending the documents to the Case Manager by the due date:

<input type="checkbox"/>	The document(s) are within scope of the applicant's request
<input type="checkbox"/>	The document(s) are in PDF format
<input type="checkbox"/>	Attachments to documents are included
<input type="checkbox"/>	Only the final email thread of an email conversation is included
<input type="checkbox"/>	There are no draft or duplicate documents (unless expressly requested by the applicant)
<input type="checkbox"/>	There are no documents that were received from or sent to the applicant (unless expressly requested by the applicant)
<input type="checkbox"/>	The documents are in chronological/a logical order
<input type="checkbox"/>	A search checklist has been completed for any documents that cannot be located

Phase 2: prepare the draft decision package

1. How to prepare the draft decision package

Where documents have been located, consider preparing the draft decision package following this suggested process:

The document(s):	
1	Open Document 1
2	Make your proposed redactions using the Redaction Tool See section 2 'How to use the Redaction Tool' or watch the video 'How to use the FOI redaction tool' on the FOI intranet page
3	Add the FOI Header See section 3 'How to add the FOI Header' or watch the video 'How to add document headers' on the FOI intranet page
4	Record your decision in the SOD (if applicable)
5	Save the edited document to a new folder. Do not apply your redactions (these will
6	Repeat steps 1 – 5 for each document
7	Combine the documents in order using Adobe Pro
8	Save the combined document file to your H Drive and to Objective
The Statement of Reasons (SOR):	
9	Draft the SOR ensuring to: <ul style="list-style-type: none"> use the applicable template on the FOI intranet page

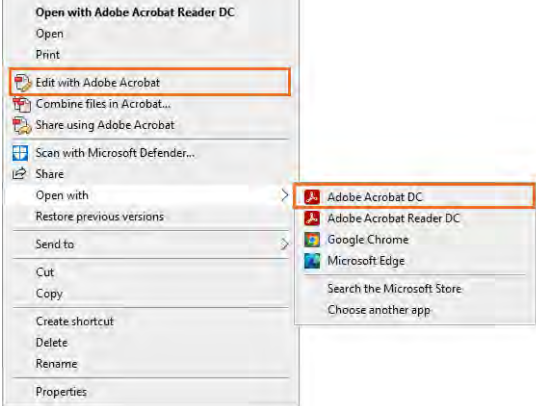

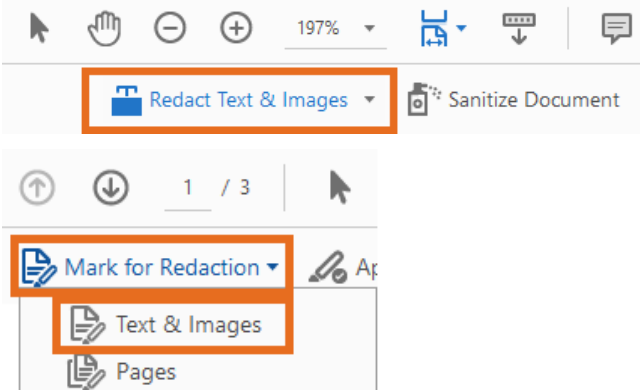




- set out your reasons for applying each exemption
- address all relevant legislative provisions and the Freedom of Information Guidelines

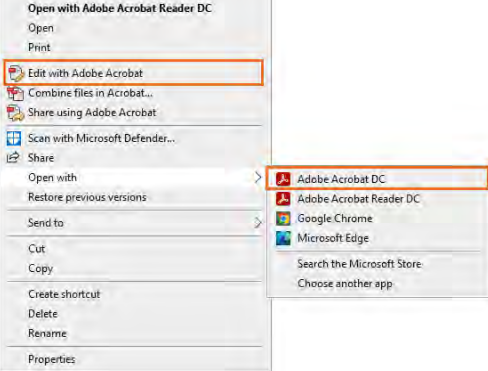
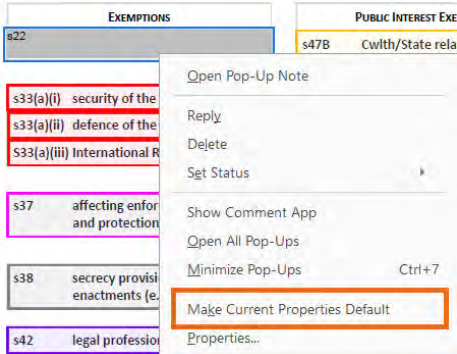

2. How to use the Redaction Tool

Use the Redaction Tool to prepare an edited copy of a document which contains irrelevant or exempt information:

<p>1 Open the document in Adobe Pro</p>	
<p>2 Select: More Tools > Redact</p>	
<p>3 Select Redact Text & Images</p> <p>If you do not have this option, select: Mark for Redaction > Text & Images > OK</p>	





4	Open the Redaction Tool in Adobe Pro	
5	Right click on the exemption > select Make Current Properties Default	
6	Return to the document and redact the irrelevant or exempt matter. The redaction will be visible if you hover your mouse over the redacted text	

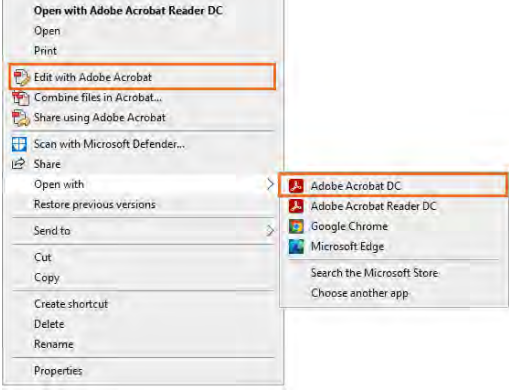
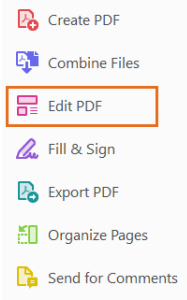
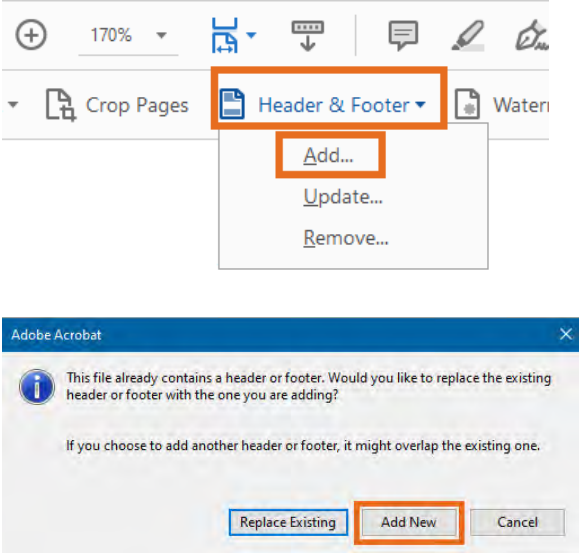
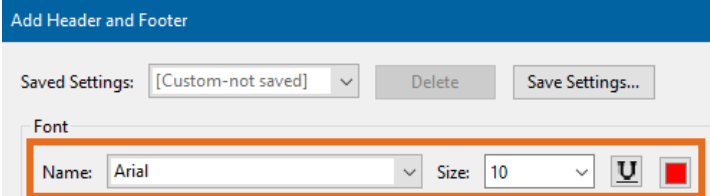
Why use the Redaction Tool?

- ✓ It is easy to use, it is more time efficient, and was created to be very user-friendly
- ✓ The redaction properties are already set so you don't need to change them
- ✓ There is no need to manually add the exemption to the proposed redacted information
- ✓ The different coloured exemptions make it easy for the Case Manager to determine the exemption claimed when reviewing the documents





3. How to add the FOI Header

<p>1</p>	<p>Open the document in Adobe Pro</p>	
<p>2</p>	<p>Select Edit PDF</p>	
<p>3</p>	<p>Select: Header and Footer > Add</p> <p><i>Note: if you receive a message that the file already contains a header or footer, select 'Add New'</i></p>	
<p>4</p>	<p>Change the font to: Arial > size 10 > Red</p>	





5	<p>In the Right Header Text, type the Defence FOI number and document number on a separate line</p> <p>If the applicant’s request contains multiple items, include the item number</p>	
6	<p>Save these settings if there are multiple items or documents</p>	
7	<p>Click Ok</p>	

4. Phase 2 checklist

Review this checklist before sending the draft decision package to the Case Manager by the due date:

The document(s):	
<input type="checkbox"/>	The FOI Header has been added to each page
<input type="checkbox"/>	Document(s) with exempt or irrelevant information have been edited using the Redaction Tool
<input type="checkbox"/>	<p>The disclosure/removal of staff names and contact details is consistent with the department’s established position</p> <p>See also OAIC Guidance on the disclosure of public servants’ names and contact details or contact your Case Manager if you’re unsure</p>
<input type="checkbox"/>	Whole documents and whole pages of documents which are not being released remain in the document package for the Case Manager’s review
The SOR:	
<input type="checkbox"/>	I have used the relevant SOR template on the FOI intranet page
<input type="checkbox"/>	I have had regard to the FOI Act and FOI Guidelines
The SOD:	
<input type="checkbox"/>	I have included the SOD if there are five or more documents
<input type="checkbox"/>	The decision and exemptions are correct





Phase 3: finalise the decision package

1. Phase 3 checklist

Review this checklist before sending the final decision package to the Case Manager by the due date:

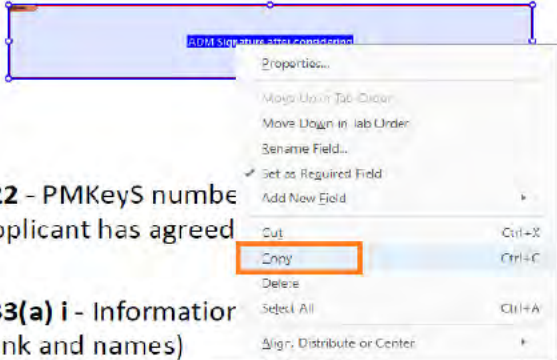
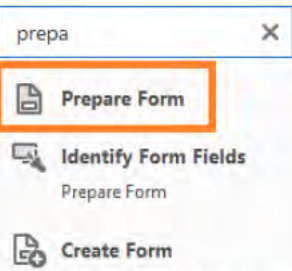
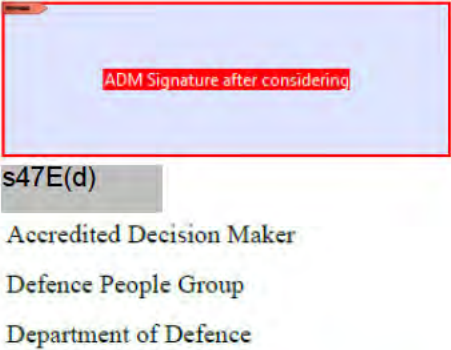
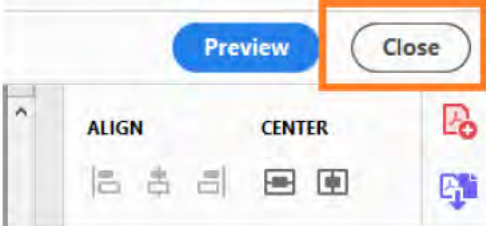

The document(s):	
<input type="checkbox"/>	Whole pages of documents which are not being released have been removed and replaced with a statement that the pages are exempt from release See Annexure 1 for the template wording
The SOR:	
<input type="checkbox"/>	I have considered any changes suggested by the Case Manager
<input type="checkbox"/>	I have converted the SOR to PDF format and applied my digital signature See section 2 'How to apply your digital signature'
The SOD:	
<input type="checkbox"/>	I have converted the SOD to PDF format

2. How to apply your digital signature in Adobe

1	Save your SOR as an Adobe PDF: File > Save as Adobe PDF	
2	Open the Redaction Tool and search and select 'Prepare Form'	





<p>3</p>	<p>Copy the ADM signature block from the Redaction Tool</p>	
<p>4</p>	<p>Open your SOR and search and select 'Prepare Form' You may also need to select 'Start' and follow the prompts</p>	
<p>5</p>	<p>Paste the ADM signature block and place it above your name Adjust the dimensions as necessary</p>	
<p>6</p>	<p>Close out of 'Prepare Form'</p>	
<p>7</p>	<p>Click on the ADM signature block and sign with your Digital ID</p>	





Annexure 1: Template wording where whole pages have been removed

This page and the following XX pages are exempt from release under section XX(x) of the FOI Act.



Third Party Consultation

The Australian Information Commissioner (IC) finalised an investigation into a complaint relating to the Department's process for conducting personal information consultations under section 27A of the *Freedom of Information Act 1982* (FOI Act).

The IC recommended that all staff members be reminded of the importance of the consultation process and Defence's obligation to consider whether a person might reasonably wish to make a contention that a document should be exempt on the grounds of personal information under section 47F of the FOI Act.

The attached statement details the consultation process under the FOI Act where documents capture the personal information of an individual other than the applicant. It outlines both the process and the role of accredited decision makers (ADM) and FOI case managers.

Please familiarise yourself with the statement and seek further guidance from the FOI team if you have any questions regarding the consultation process.

Following the processes outlined below, will ensure that Defence complies with its obligations under the FOI Act. It will ensure that all individuals affected by the FOI process have the opportunity to have their contentions considered prior to the release of any documents and ensure they understand their review rights, in the event that they are not satisfied with the ADM's decision.

Section 47F – Personal Information

Section 47F of the *Freedom of Information Act 1982* (FOI Act) conditional exempts documents where disclosure would involve the unreasonable disclosure of personal information of any person (including deceased persons).

Personal information

Personal information is defined in section 6 of the *Privacy Act 1988* as:

information or an opinion about an identified individual, or an individual who is reasonable 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.*

The *Freedom of Information Act 1982* (FOI Act) applies the definition of personal information from the Privacy Act.

Examples of personal information

For something to be considered personal information it:

- must be information about an identified person (name them) or an individual who is reasonably identifiable (give enough information to identify them)
- say something about them
- may be an opinion
- does not need to be true
- may be recorded in a material form or not

Personal information can include a person's name, address, mobile phone number, signature, date of birth, medical record, bank account details, leave history, performance management records and taxation information.

Section 27A of the FOI Act - Personal information consultations

Where a document includes personal information relating to a person who is not the FOI applicant, the individual should be given a reasonable opportunity to make submissions that their personal information in the document should be exempted from disclosure.

Section 27A of the FOI Act provides:

(1) This section applies if:

- (a) a request is made to an agency or Minister for access to a document containing personal information about a person (including a person who has died); and*
- (b) it appears to the agency or Minister that the person or the person's legal personal representative (the person concerned) might reasonably wish to make a contention (the exemption contention) that:*
 - (i) the document is conditionally exempt under section 47F; and*
 - (ii) access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5).*

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

- (2) In determining, for the purposes of paragraph (1)(b), whether the person concerned might reasonably wish to make an exemption contention because of personal information in a document, the agency or Minister must have regard to the following matters:*
- (a) the extent to which the information is well known;*
 - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the information;*
 - (c) the availability of the information from publicly accessible sources;*
 - (d) any other matters that the agency or Minister considers relevant.*

Opportunity to make submissions

- (3) The agency or Minister must not decide to give the applicant access to the document unless:*
- (a) the person concerned is given a reasonable opportunity to make submissions in support of the exemption contention; and*
 - (b) the agency or the Minister has regard to any submissions so made.*
- (4) However, subsection (3) only applies if it is reasonably practicable for the agency or Minister to give the person concerned a reasonable opportunity to make submissions in support of the exemption contention, having regard to all the circumstances (including the application of subsections 15(5) and (6) (time limits for processing requests)).*

Decision to give access

- (5) If the agency or Minister decides to give access to the document, the agency or Minister must give written notice of the decision to both of the following:*
- (a) the person concerned;*
 - (b) the applicant.*

Access not to be given until review or appeal opportunities have run out

- (6) However, the agency or Minister must not give the applicant access to the document unless, after all the opportunities of the person concerned for review or appeal in relation to the decision to give access to the document have run out, the decision to give access still stands, or is confirmed.*

Note 1: The decision to give access to the document is subject to internal review (see Part VI), review by the Information Commissioner (see Part VII) and review by the Tribunal (see Part VIIA).

Note 2: For when all opportunities for review or appeal in relation to the decision to give access to the document have run out, see subsection 4(1).

Notice and stay of decision not to apply unless submission made in support of exemption contention

(7) Subsections (5) and (6) do not apply unless the person concerned makes a submission in support of the exemption contention as allowed under paragraph (3)(a).

Edited copies and personal information

(8) This section applies:

(a) in relation to an edited copy of a document—in the same way as it applies to the document; and

(b) in relation to a document containing personal information—to the extent to which the document contains such information.

Generally the starting point is that consultation should occur if an individual's personal information is captured in the documents that fall within scope of the request and it not already in the public domain.

The consultation process

Roles

Once personal information has been identified in the documents, the ADM must advise the FOI case manager that a consultation under section 27A of the FOI Act is required. The ADM then provides a copy of any sections of the documents which contain the individual's personal information to facilitate the consultation process.

The FOI team is responsible for conducting the consultation process on behalf of ADMs using the consultation template.

The FOI case manager will contact the FOI applicant and confirm if they consent for their name to be disclosed for the purpose of consultation.

The FOI case manager will also add an additional 30 days to the processing period and advise the applicant of this change.

The consultation

The consultation will occur with:

- the person (or their legal representative)
- if the person is deceased, their legal representative

Consultation on personal information should take place:

- where it is reasonably practicable to do so
- where it appears that the person might reasonably wish to make a submission that their personal information should not be released
- where a person is specifically named in the scope of an FOI request

However, it may not be reasonably practicable to consult a person where:

- there are no contact details for the person
- a large number of people need to be consulted
- the person's information is not within the scope of the request.

In these circumstances, the ADM should apply section 47F of the FOI Act to the personal information, on the grounds that the person has not had the opportunity to object.

Public servants

Where a public servant's name appears in the documents because of their usual duties or responsibilities it would not be unreasonable to disclose this unless special circumstances exist. Special circumstances may include:

- work health and safety concerns
- where the scope of the request includes potentially sensitive issues – including an individual's disposition or private characteristics, family law, risks of harm
- staffing issues – including staff management / personnel management issue, fact findings.

If special circumstances exist, the individual should have an opportunity to raise their concerns either directly to DFOI or through their manager.

This stance in relation to the release of public servant's names aligns with the position paper published by the Office of the Australian Information Commissioner in August 2020 which provides that:

Agencies and Ministers should start from the position that including the full names of staff in documents released in response to FOI request increases transparency and accountability of government and is consistent with the objects of the FOI Act.

Further guidance on the release of public servant names and contact details is available in the [position paper](#).

Defence encourages decision makers to engage with the FOI team and relevant work areas around the release of any staff names that appear in identified documents when they are performing their official duties. If there are special circumstances, such as a work health or safety reason, this information can be considered further by the ADM, with consultation undertaken under section 27A of the FOI Act.

The content of the consultation

The consultation will cover all the documents that are relevant to the individual.

The person being consulted should be asked to address:

- whether they object to the release of information and why
- the extent to which the information is well known
- whether they have been linked to the information
- whether the information is in the public domain

The name of the FOI applicant cannot be released to the person being consulted, unless the FOI applicant has agreed to release their name. Information relating to other third parties should not be released to the person being consulted.

Consultation response

The ADM must consider the consultation response when deciding whether to release the personal information. In the Statement of Reason, the ADM should advise the FOI applicant whether consultation with third parties occurred, and identify whether any material facts emerged from the consultation that were or not relied on in making their decision.

Regardless of whether the ADM agrees with the contentions of the person, they must be consulted before the documents are released to the applicant. If the ADM does not agree with the contentions of the third party, the third party has the opportunity to seek a review of the decision, prior to the release of any documents to the FOI applicant.

More information / questions

For more information on the consultation process speak to the FOI team.

The [OAIC website](#) contains further information on the consultation process, including flow charts that may assist you to better understand the process.



What sort of documents should I release administratively?

Stakeholder fact sheet

Section 15A of the FOI Act provides provisions for persons seeking access to documents containing their personal information to first seek them through the **Department's established administrative processes**.

If a member or ex-serving member of the Australian Defence Force or a current or ex-employee of the Department of Defence is seeking access to their **personnel records** they **must** seek them administratively in the first instance, using the established administrative process.

You must not rely on the FOI process to handle requests made for access to documents which can be handled outside the FOI Act. There are several categories of documents which should be considered for release without a formal FOI application.

As a general rule, the sorts of documents that are suitable for administrative release include those:

- that relate to an individual
- provided by an individual to the Department, which an individual would reasonably be expected to have access to
- where the information involved would be released if it was requested under the FOI Act, either generally or to particular applicants whom the information concerns or affects
- which are publicly available or can be made publicly available

For example: documents which should be made available include service records, medical records, personnel file/records, fact finds (used to be referred to as Quick assessments) that involve the member and recruiting files. This list is not exhaustive and other documents containing personal information should also be considered.

Administrative access will not be appropriate at all times. Where disclosure of the information sought would likely impact third parties, or would result in information from the documents being heavily redacted prior to disclosure, it may be more appropriate to deal with the request through the FOI process.

Please note – FOI will **not** seek administrative release for documents such as:

- Inquiry Officer Inquiries (IOI) – Defence Inquiries are only to be released in accordance with the Defence (Inquiry) Regulations, subsection 63(2).
- Documents to which secrecy provisions apply – under section 38 of the FOI Act and inclusive of items listed in Schedule 3 of the FOI Act

What should be considered when releasing documents outside the FOI Act?

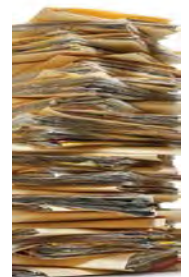
When releasing documents outside the FOI Act which also contain information other than that of the requesting individual you should prepare the document to comply with the *Privacy Act 1988*.

It is therefore necessary to point out to the applicant that the document should continue to be treated as official information and should not be released to the public.

Further guidance relating to privacy matters can be located at:

Web: <http://drnet/People/ComplaintResolution/Pages/Complaints.aspx>

Email: defence.privacy@defence.gov.au



Further information

Applicants seeking their **personnel records** are asked to provide written evidence to the FOI Directorate that they have attempted to seek the documents administratively in the first instance and any responses they have received from the actioning area.

For applicants who agree to an administrative release, they must first withdraw their FOI request. This does not prevent or preclude the applicant from making any future valid FOI request.

Requests for access to personnel records

Members and former members of the ADF, or current and former employees of the Department, who wish to have access to their personnel records are prevented by section 15A of the FOI Act from applying under the Act unless they have first requested access through normal administrative channels.

These may be their personal, health or psychology records.

More information can be found here <http://www.defence.gov.au/Records/>

Accessing documents through the National Archives of Australia (NAA)

Requests can be made to access Commonwealth archival records in the OPEN period (more than 20 – 30 years old).

If the records sought were created by a Commonwealth Department or Agency and are more than 20 years old, a request to access them under the *Archives Act 1983* (Cth) can be made by emailing ref@naa.gov.au or at the NAA webpage <http://www.naa.gov.au/collection/askquestion/index.aspx>

Accessing documents through other related agencies

The Department of Veterans Affairs – <https://www.dva.gov.au/>

The Australian War Memorial – <https://www.awm.gov.au>

Links to legislation and guidance about FOI

Office of the Australian Information Commissioner (OAIC)
<https://www.oaic.gov.au/freedom-of-information/>

Freedom of Information Act 1982 (FOI Act)
<https://www.legislation.gov.au/Series/C2004A02562>

FOI Guidelines
<https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>

FOI contact details

For further information please contact the FOI Directorate:

Freedom of Information Directorate s47E(d)
Campbell Park Offices
Canberra ACT 2600

Send an email to:
FOI@defence.gov.au

On Sat, 2 Oct 2021 at 09:33, [REDACTED] wrote:

OFFICIAL

Dear [REDACTED],

Please find attached the decision and documents relating to Defence FOI 147/21/22.

Rights of Review

Under section 54 of the FOI Act, you are entitled to request a review of this decision. Your review rights are attached.

Should you have any questions in regard to this matter please contact this office.

Kind regards,

[REDACTED] | Acting Director Freedom of Information

Enterprise Transformation Branch | Enterprise Transformation and Governance Division | Department of Defence
s47E(d) Campbell Park Offices ACT 2600

m [REDACTED]

<http://www.defence.gov.au/FOI/privacy.asp>

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[REDACTED]

From: [REDACTED]
Sent: Wednesday, 6 October 2021 12:39 PM
To: FOI HEADS UP
Cc: CASG FOI; Submarine Group - Coordination; [REDACTED]
Subject: FOI Heads Up: Media/Sensitive – [REDACTED], s47F [REDACTED] – Submarine Design Contract [SEC=OFFICIAL]
Importance: High

OFFICIAL

KEY DATES:

Received by Defence – 02/10/2021

Due to Applicant – 01/11/2021

ACTION AREA:

CASG - The FOI Directorate has sent the tasking/driving instructions. Please advise the ADM and Band One SME allocated to this case.

Good afternoon,

Defence has received a Freedom of Information request from [REDACTED] for access to the following:

'..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 s47F [REDACTED] on 2 October 2021 in Defence FOI Request 147/21/22.'

Kind regards,

[REDACTED]

[REDACTED] | Assistant Director Freedom of Information Media & Sensitive
Enterprise Transformation Branch | Enterprise Transformation and Governance Division | Department of Defence
s47E(d) [REDACTED] Campbell Park Offices ACT 2600
m [REDACTED]

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From: [REDACTED] on behalf of FOI Case Management
Sent: Wednesday, 6 October 2021 12:25 PM
To: CASG FOI
Subject: FOR ACTION: FOI Tasking - FOI 165/21/22 [SEC=OFFICIAL]
Attachments: Document Search Check List.docx; 02 FOI Determination - Schedule of Documents.doc; Statement of Reasons - Template.doc; S - FS - MIN Alert Processes for ADM.pdf; 00 Media and Sensitive Talking Points.docx

OFFICIAL

Dear CASG

This is a formal tasking relating to a request made on 2 October 2021, 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 s47F [REDACTED] on 2 October 2021 in Defence FOI Request 147/21/22.'

Action required

Phase 1: Identify documents and appoint an ADM – due by 11 Oct 2021

1. Acknowledge receipt of this request.
2. Appoint an appropriate FOI Accredited Decision Maker (ADM) and advise the FOI Case Manager. Note: Please advise if there is a change to the appointed decision maker during the life of this request.
3. Advise the FOI Case Manager of the name and contact details for the SES Band 1/1 Star subject matter expert for the topic of the request.
4. Send the following to the FOI Case Manager:
 - The in-scope documents in PDF form with no redactions
 - An electronically signed copy of the 'search checklist' (attached).
 - The Schedule of Documents (only required if there are five or more documents)

Phase 2: Prepare draft documents – due by 18 Oct 2021

1. Prepare and send the following to the FOI Case Manager:
 - Draft (unsigned) Statement of Reasons
 - Draft Schedule of Documents
 - PDF copy of the documents with **proposed** redactions marked with relevant redaction codes

Phase 3: Final documents – due by 25 Oct 2021

1. Prepare and send the following to the FOI Case Manager:
 - Finalised cleared Talking Points (if requested)
 - Signed Statement of Reasons (PDF version)
 - Documents in the form approved for release (with redactions applied by the ADM)
 - Schedule of Documents (if applicable)

Consultation

If the ADM identifies information that requires consultation with third parties, including foreign entities or State governments, please contact me for further guidance. It is important that this is identified early so that we can manage the available time appropriately.

If the ADM considers there is a requirement to liaise with the offices of the Minister, Secretary, CDF or VCDF, please advise as soon as possible—the FOI team will facilitate.

Talking points and briefing support

Talking points are required for all media and sensitive FOI requests. As this is a media request, additional information has been attached for your information.

Timeframes

Under the FOI Act, Defence has **30 calendar days** to provide a decision and documents to the applicant. Failure to provide the documents to the appointed ADM in a timely manner will impact on the time they have available to make their decision. Documents and draft decisions must be reviewed by the FOI Directorate before they can be signed by the ADM. The timeline below provides a rough outline of what is required during the 30 days.

Templates and examples

Templates have been attached to this email for the Statement of Reasons (SOR), Schedule of Documents and Document Search Checklist. If you require assistance with drafting the SOR please contact the FOI Case Manager and we can provide sample wording for the ADM to consider.

FOI Case Manager

I am the Case Manager for this request and I am here to help you process this request. Please contact me early to discuss any questions or concerns. The best way to contact me is via email to:

FOI.CaseManagement@defence.gov.au.

Regards

[Redacted] | Case Manager Freedom of Information
Enterprise Transformation Branch | Enterprise Transformation and Governance Division | Department of Defence
a/s47E(d) [Redacted] Campbell Park Offices ACT 2600
t [Redacted]
FOI email: FOI.CaseManagement@defence.gov.au

Defence FOI – 30 Day Timeline

Calendar Day 0-4	Calendar Day 5-11	Calendar Day 12-19	Calendar Day 20-27	Calendar Day 28-30
Scoping of Request	Identify Documents	Draft Decision Pack	Final Document Pack	Final Decision
<ul style="list-style-type: none"> Scope clarification to line area Formal tasking to line area 	<ul style="list-style-type: none"> Identify and provide original documents within scope Appoint an Accredited Decision Maker 	<ul style="list-style-type: none"> Draft Statement of Reasons Documents with proposed redactions 	<ul style="list-style-type: none"> Signed Statement of Reasons Documents with applied redactions 	<ul style="list-style-type: none"> Decision made by ADM Final decision pack to applicant
<p>Contact the FOI team early for all consultation with third parties</p>		<p>If marked Sensitive, FOI will issue a MIN Alert through the release of a decision to the applicant—raise any concerns immediately with the FOI team</p>		

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[REDACTED]

From: [REDACTED] on behalf of FOI Case Management
Sent: Monday, 11 October 2021 8:54 PM
To: [REDACTED]
Subject: Defence FOI 165/21/22 - Acknowledgement, due date and disclaimer
[SEC=OFFICIAL]

OFFICIAL

Dear [REDACTED]

I refer to your correspondence of 2 October 2021, in which you sought access under the *Freedom of Information Act 1982* (FOI Act) to the following documents:

'..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 s47F [REDACTED] on 2 October 2021 in Defence FOI Request 147/21/22.'

Please note that Defence does not release information that is considered 'personal information' of individuals other than the applicant; this includes private email addresses, signatures, personnel (PMKeyS) numbers and mobile telephone numbers, unless you specifically request such details. Defence excludes duplicates of documents and any documents sent to or from you. Furthermore, Defence only considers final versions of documents. If you are seeking personal details of other individuals, please advise this office by **13 October 2021** so that the decision maker can consider your request.

Defence may impose a charge for the work involved in providing access to the documents in accordance with the *Freedom of Information (Charges) Regulations*. You will be notified separately if your request attracts a charge. Please note that there is no charge for documents that contain the personal information of the applicant.

The statutory deadline for you to receive a response to your request is **1 November 2021**.

I am the Case Manager for this request. Should you have any questions relating to your request, please do not hesitate to contact me via email to FOI.CaseManagement@defence.gov.au.

Regards

[REDACTED] | **Freedom of Information**
Department of Defence
t [REDACTED] | e FOI.casemanagement@defence.gov.au

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Australian Government
Department of Defence

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 s47F [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.



Accredited Decision Maker
Capability Acquisition and Sustainment Group

[REDACTED]

From: [REDACTED]
Sent: Tuesday, 21 December 2021 3:58 PM
To: [REDACTED]
Subject: 20211221 15:57 - Email - [REDACTED] - Defence FOI Request 165/21/22 – Decision and documents
Attachments: C - FS - Applicant review rights.pdf; Defence FOI 165_21_22 - Document.pdf; Defence FOI 165_21_22 - Statement of Reasons.pdf
Importance: High

OFFICIAL

Dear [REDACTED],

Please find attached the decision and documents relating to Defence FOI 165/21/22.

Rights of Review

Under section 54 of the FOI Act, you are entitled to request a review of this decision. Your review rights are attached.

Should you have any questions in regard to this matter please contact this office.

Kind regards,

[REDACTED] | Assistant Director Freedom of Information Media & Sensitive
Enterprise Transformation Branch | Enterprise Transformation and Governance Division | Department of Defence
s47E(d) [REDACTED] Campbell Park Offices ACT 2600
m [REDACTED]

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