



ACT
Government

Chief Minister and Treasury

Our ref: FOI CMTD 11/12-13

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Dear

I refer to your request received on 3 April 2013 addressed to the Chief Minister and Treasury Directorate (CMTD) made under the *Freedom of Information Act 1989* (the Act) seeking access to all documents relating to "any communication between the Minister for Workplace Safety and Industrial Relations (including members of their office) and the Directorate from 10 September – 20 October 2012".

Decision Maker

I am authorised under section 22 of the Act to make decisions on access to documents held by the Chief Minister and Treasury Directorate (CMTD) and whether charges should be imposed. Due to a low initial estimate of time required to process this request, I decided not to impose charges. Subsequently, further resources were required in sourcing additional documents relevant to your request and attributed to delays. I thank you for your patience in this.

Identification of Documents

As stated in my letter provided to you on 17 April 2013, I have interpreted the scope of your request to be for documents held by the divisions of the former Chief Minister and Cabinet Directorate – prior to the Administrative Arrangements that went into effect on 10 November 2012 – for communication between those divisions and the former Minister for Industrial Relations (the Minister).

Officers of the Directorate conducted thorough searches of paper and electronic files and email accounts. Documents that are relevant to your request have been located in the Workforce Capability and Governance Division.

Decision on access

I have considered the documents identified as relevant to your request and I have decided to release, in full, the majority of these documents. My decisions concern the relevant portions of these documents; the remaining information in the documents is beyond the scope of your request and has been excluded.

The documents located are mainly emails between Directorate staff and the Directorate's liaison officer in the Minister's Office, during the timeframe specified in your request. The subject matter of this correspondence includes work health and safety codes of practice and regulations, insurer protocols and performance standards, workplace incidents, and community fireworks. Also included is correspondence surrounding the Standing Committee on Justice and Community Safety's Scrutiny Report No.55 (20 August 2012); the draft Chief Minister and Cabinet Annual Report; and the Post Implementation Review of the *Fair Work Act 2009* (ACT).

All relevant documents identified are listed on the attached schedules with a summary of my decision in relation to each and copies of the documents which I have released in full are attached to their respective schedules. Duplicate documents have been listed on the schedules however, where applicable, only one copy has been included with the released documents.

Exemptions claimed

Exemptions have been claimed on portions of documents to protect the private affairs of individuals and businesses with one document fully exempted as it relates to the confidential workplace accident claim of a member of the public.

Under section 41(1) of the Act, I have exempted personal information that does not appear to have been communicated publicly; such as the personal financial affairs of an individual and the names and email addresses of individuals external to the ACT Public Service.

Documents affecting personal privacy

Section 41 of the Act provides:

- (1) *A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*
- (2) *Subject to subsection (3), subsection (1) does not apply to a request by a person for access to a document only because of the inclusion in the document of matter relating to that person.*
- (3) *Where—*
 - (a) *a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information of a medical or psychiatric nature concerning the person making the request; and*
 - (b) *it appears to the principal officer of the agency, or to the Minister, as the case may be, that the disclosure of the information to that person might be prejudicial to the physical or mental health or wellbeing of that person;**the principal officer or Minister may direct that access to the document, so far as it contains that information, that would otherwise be given to that person is not to be given to that person but is to be given instead to a doctor to be nominated by that person.*

A portion of a brief to the Minister, regarding a Canberra Times article on damages awarded by the ACT Supreme Court, includes senior counsel advice obtained by the Default Insurance Fund and I have decided, under section 42(1) of the Act, to exempt that portion as it is subject to legal professional privilege.

Legal Professional Privilege

Section 42 of the Act provides:

- (1) *A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.*
- (2) *A document of the kind referred to in section 8 (1) is not an exempt document under subsection (1) of this section only because of the inclusion in the document of matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in section 8 (1).*

Where documents on workplace incidents have identified specific private sector employers who were not disclosed in media reports, I have decided to exempt these names from release under section 43(1)(c)(i) of the Act.

I also take into consideration that the businesses appear not to have had the opportunity to publicly respond to these claims and it is not known whether the business was found to be at fault. I am of the view that it is reasonable to expect that the identification of these businesses could result in adversely affecting their reputation and business affairs.

Documents relating to Business Affairs

Section 43 of the Act provides:

- (1) *A document is an exempt document if its disclosure under this Act would disclose—*
- (a) trade secrets; or*
 - (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; or*
 - (c) information (other than trade secrets or information to which paragraph (b) applies) 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, being information—*
 - (i) the disclosure of which 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.*

Your right of review

Internal Review

You are entitled, under section 59 (1) of the Act, to request a review of my decision. This right of review extends to a review of the adequacy of the search for documents undertaken by the Directorate.

You have 28 days after receiving notice of my decision to ask for a review, or a further period as allowed by the Director-General.

Your request should be addressed to:

Director-General
Chief Minister and Treasury Directorate
GPO Box 158
CANBERRA ACT 2601

Complaints to the Ombudsman

Under section 54 of the Act, you may complain to the Ombudsman about administrative matters relating to the processing of your FOI request. There is no fee for making a complaint. The Ombudsman may conduct an independent investigation into your complaint. You can contact the Ombudsman either by telephone on 1300 362 072 or by writing to:

The Ombudsman
GPO Box 442
CANBERRA ACT 2601

Online FOI Policy

Please be aware that under the ACT Government's Online FOI Publication Policy, information released to you in response to your Freedom of Information request may be released on the internet. If you think the content of your request would contain such information, please inform the FOI Coordinator immediately on (02) 620 50238.

A copy of the policy, with details about what information may be published on the internet, is available online at:

http://www.cmd.act.gov.au/data/assets/pdf_file/0016/250333/FOI_Web_Release_Policy_-_Final.pdf

Should you have any queries in relation to this matter, please contact me on (02) 620 76003.

Yours sincerely


Heidi Robinson
A/g Director
Office of Industrial Relations

17 May 2013