



ACT
Government

Chief Minister and Treasury

Our ref: FOI CMTD 14/13-14

Dear

I refer to your request made under the *Freedom of Information Act 1989* (the Act) to the Commerce and Works Directorate (CWD) of 3 January 2014. The Chief Minister and Treasury Directorate (CMTD) has accepted a partial transfer of your request from CWD and will respond to you directly on the documents held in CMTD relevant to the portion of your request, as follows:

You are seeking access to "all correspondence between ACT Revenue Office and ACT Chief Minister's Office/département during the year 2011 in relation to the Pensioner's Stamp Duty Concession Scheme including information on Pensioner's Stamp Duty Concession Disallowable Instrument (DI2011-136)."

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 liability for charges.

Charges

I have decided under section 29 of the Act not to impose processing charges for this request.

Identification of Documents

Officers of CMTD have conducted thorough searches of paper and electronic files and email accounts. Documents that are relevant to your request have been located in the Economics and Accounting Branches.

Decision on access

In the identification and consideration of documents relevant to your request, I have interpreted the scope to refer to documents received by, or sent to, the ACT Revenue Office by the (now) Chief Minister and Treasury Directorate and Office relating to the Pensioner Duty Concession Scheme (PDCS) in 2011; these documents are listed on the attached schedules with a summary of my decision in relation to each.

In accordance with section 21 of the Act, where it has been possible to delete exempt material from a relevant document in order to provide access to the remaining information I have done so. I have enclosed with this letter a copy of the documents I have released to you in full, and those I have partially released, along with their corresponding schedule.

Exemptions Claimed

Exemptions have been claimed to protect the private affairs of individuals and businesses, the considerations of Cabinet and internal working figures and advice.

Executive documents

Section 35 provides:

- (1) *A document is an exempt document if it is—*
 - (a) *a document that has been submitted to the Executive for its consideration or is proposed by a Minister to be so submitted, being a document that was brought into existence for the purpose of submission for consideration by the Executive; or*
 - (b) *an official record of the Executive; or*
 - (c) *a document that is a copy of, or of a part of, or contains an extract from, a document referred to in paragraph (a) or (b); or*
 - (d) *a document the disclosure of which would involve the disclosure of any deliberation or decision of the Executive, other than a document by which a decision of the Executive was officially published.*

In respect of the confidential nature of the considerations of Cabinet, I have decided to exempt from release a portion of an email that is a draft Cabinet submission under section 35(1)(a) of the Act.

I have also exempted a portion of two emails and one document (fully) under section 35(1)(d) as they contain information that, if released, would disclose the deliberations of Cabinet. By my estimation, these considerations would not have been otherwise subsequently disclosed.

Internal Working Documents

Section 36 of the Act provides:

- (1) *Subject to this section, a document is an exempt document if its disclosure under this Act—*
 - (a) *would disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency or Minister or of the Territory; and*
 - (b) *would be contrary to the public interest.*
- (2) *In the case of a document of the kind referred to in section 8 (1), the matter referred to in subsection (1), (a) of this section does not include matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in section 8 (1).*
- (3) *This section does not apply to a document only because of purely factual material contained in the document.*
- (4) *This section does not apply to—*
 - (a) *reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters; or*
 - (b) *reports of a prescribed body or organisation established within an agency; or*
 - (c) *the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.*
- (5) *Where a decision is made under part 3 that an applicant is not entitled to access to a document because of this section, the notice under section 25 shall state the ground of public interest on which the decision is based.*

A portion of one of the identified documents contains information for which disclosure could be expected to interfere with ongoing capacity to effectively provide the Government with the best possible advice.

I consider that it is clearly in the public interest that ACT officials should be able to prepare briefs and draft documents, make amendments and provide advice freely while in the process of working towards formal advice and policy. I therefore consider that it is not in the public interest that opinions supplied as preliminary contributions to the deliberative process be released.

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.

Under section 41(1) of the Act, I have exempted an excerpt of correspondence that affects the personal privacy of another.

Documents relating to business affairs, etc.

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; or*
 - (ii) *the disclosure of which under this Act could reasonably be expected to prejudice the future supply of information to the Territory or an agency for the purpose of the administration of a law or the administration of matters administered by an agency.*

Under section 43 (1)(c)(ii) of the Act, I have exempted from release the identity of particular organisations views following consultation. I believe that the unwarranted disclosure of this information would potentially prejudice the future supply of information to the Territory.

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.

Personal information or business affairs information will not be made available under this policy. If you think the content of your request would contain such information, please inform the FOI Coordinator immediately.

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

Should you have any queries regarding this matter please contact me on 620 50772.

Yours sincerely



Kathy Goth
Director
Economics Branch

3 February 2014