



ACT
Government

Chief Minister, Treasury and
Economic Development

Open Access – Reasons for Withholding Access

Document Category (s23): Open Access Information of a Minister.

Title: Cabinet Decision 18/579/CAB

Description of the information: A summary of a decision made by Cabinet on 27 September 2018 and the triple bottom line assessment for the decision.

Decision

I have decided to not release the Cabinet Decision and the triple bottom line assessment for the decision. This decision has been made under sections 24(2)(b) and (c) of the *Freedom of Information Act 2016* (FOI Act) on the basis that it is contrary to the public interest to disclose.

Statement of reasons

In reaching my access decision, I have taken the following into account:

- the FOI Act; and
- the information considered by Cabinet and the Cabinet Decision.

Sections 24(2)(b) and (c) allow for the Decision to be withheld on the basis that:

- it is taken to be contrary to the public interest to disclose under schedule 1; and
- the disclosure would, on balance, be contrary to the public interest under the test set out in section 17.

Legal Professional Privilege – Section 1.2 of Schedule 1

It is apparent that the majority of the communications and advice contained within this submission were brought into existence for the dominant purpose of providing a legal opinion in relation to the decision put to Cabinet. I am satisfied that the communications were made in circumstances of confidentiality and were provided by an independent legal adviser satisfying the requirements to attract legal professional privilege. Accordingly, I am satisfied that the provisions within section 1.2 of schedule 1 of the Act apply and release of the Cabinet Decision is not within the public interest.

Public Interest Test – Section 17

As a decision maker I am required to decide where, on balance, public interests lies. As part of this process I must consider factors favouring disclosure and non-disclosure, noting the FOI Act has a presumption in favour of disclosure.

In reviewing the information contained within the Cabinet Decision I note that some of the information may not be captured by section 1.2 of schedule 1 of the Act, therefore I consider it prudent to also conduct the public interest test under section 17 of the Act in relation to all of the information.

Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and schedule 2 of the Act.

Factors favouring disclosure (Schedule 2 section 2.1)

Taking into consideration the information contained in the Cabinet Decision, I have identified that the following public interest factors in favour of disclosure are relevant to determine if release of the information is within the 'public interest':

- (a) *disclosure of the information could reasonably be expected to do any of the following:*
- (i) *promote open discussion of public affairs and enhance the government's accountability;*
 - (iv) *ensure effective oversight of expenditure of public funds;*

The decision made by Cabinet is of public interest and I consider that release of the Cabinet Decision and the associated triple bottom line assessment may contribute to open discussion of public affairs and enhance the government's accountability and also allow the expenditure of public money to be scrutinised. I am satisfied that the public interest in increasing transparency and accountability of the government carries significant weight in favour of release.

Factors favouring non-disclosure (Schedule 2 section 2.2)

As required in the public interest test set out in section 17 of the Act, I have also identified the following public interest factors in favour of non-disclosure that I believe are relevant to determine if release of the information is within the 'public interest':

- (a) *disclosure of the information could reasonably be expected to do any of the following:*
- (viii) *prejudice the economy of the territory;*
 - (xvi) *prejudice a deliberative process of government;*

Having reviewed the decision made by Cabinet and noting the matters that were considered, I am satisfied that the release would disclose confidential information that would significantly disadvantage the Territory in regards to commercial and legal matters. Further, release would also harm an ongoing deliberative process of government. There is a reasonable chance that disclosure could prejudice the economy of the Territory.

Public Access decision

Having applied the test outlined in sections 16 and 17 of the Act, I have decided to fully exempt from release the summary of Cabinet decision 18/579/CAB and the triple bottom line assessment as required by section 24(1) of the Act. On balance, the factors favouring non-disclosure outweigh the factors favouring disclosure and the potential harm to the Territory's economy that could result from disclosure is greater than any factor favouring disclosure.

Authorised by:



Andrew Barr
Chief Minister