



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

## Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2018-0058

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Documents exempt
4. Additional information identified	No
5. Fees	N/A
6. Processing time (in working days)	35 working days
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

**From:** [REDACTED]  
**To:** [CMTEDD FOI](#)  
**Subject:** FOI Request - Correspondence from Commonwealth regarding West Basin  
**Date:** Friday, 9 March 2018 2:03:08 PM

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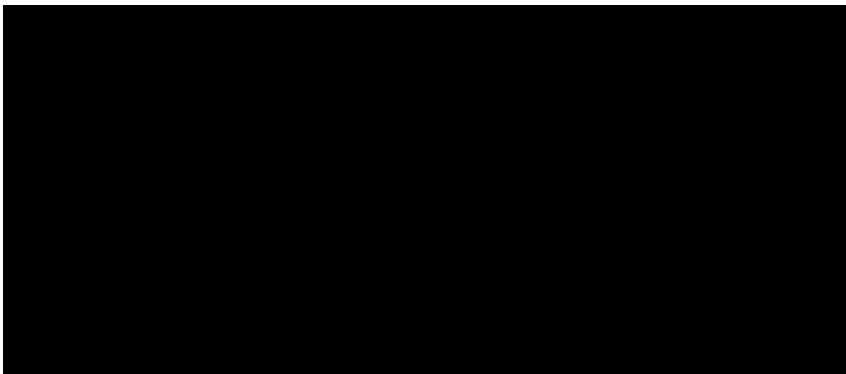
Good Afternoon

I write to request under the *Freedom of Information Act 2016* the following documents:

<b>Document Dated</b>	<b>Document</b>
2 Aug 2017	Letter to Chief Minister Barr from Minister Cormann
7 Sep 2017	Email from Department of Finance (Finance) to CMTEDD regarding Commonwealth ACT Land matters
20 Sep 2017	Meeting invitation from Finance to discuss land matters and agenda
9 Oct 2017	Email from Finance – land matters, including Table of Actions from 20 Sep 2017 meeting
30 Oct 2017	Meeting invitation from Finance to discuss land matters
8 Dec 2017	Letter to Chief Minister Barr from Minister Cormann

Should you require any further information or clarification about my request, please contact [REDACTED]

Kind regards,

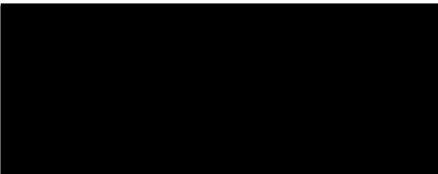




**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDDFOI 2018-0058



via email: [REDACTED]

Dear [REDACTED]

#### **FREEDOM OF INFORMATION REQUEST**

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 9 March 2018, in which you sought access to the documents listed below.

<b>Document Dated</b>	<b>Document</b>
2 August 2017	Letter to Chief Minister Barr from Minister Cormann
7 September 2017	Email from Department of Finance (Finance) to CMTEDD regarding Commonwealth ACT Land matters
20 September 2017	Meeting invitation from Finance to discuss land matters and agenda
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#### **Authority**

I am an Information Officer appointed by the Director-General of CMTEDD under section 18 of the Act to deal with access applications made under Part 5 of the Act.

#### **Timeframes**

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application by 3 May 2018.

### **Third Party Consultation**

In making this decision, I was required to consult with parties that I identified the release of the requested information may be of concern to in accordance with section 38 of the Act. The third party identified objected to release of the information on a number of grounds.

### **Decision on access**

A search of documents was conducted and resulted in 6 documents being identified that fall with the scope of your request.

I have decided to exempt from release all documents as I consider the information contained within these documents would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

I have included as Attachment A to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

In accordance with section 54(2) of the Act a statement of reasons outlining my decision is below.

### **Statement of Reasons**

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

- the Act;
- the content of the documents that fall within the scope of your request; and
- the views of relevant third party.

### **Exemptions claimed**

My reasons for deciding not to grant access to these documents are as follows:

#### Information Contrary to Public Interest

The Act has a presumption in favour of disclosure. 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.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when 'used in a statute, the term [public interest] derives its content from "the subject matter and the scope and purpose" of the enactment in which it appears'. 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 documents found to be within the scope of your request, I have identified that the following public interest factors in favour of disclosure are relevant to determine if release of the information contained within these documents 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;*
  - (ii) *contribute to positive and informed debate on important issues or matters of public interest;*
  - (viii) *reveal the reason for a government decision and any background or contextual information that informed the decision;*

Having considered the factors identified as relevant in this matter, I consider that release of the information within the scope of the request may contribute to open discussion of public affairs and enhance the government's accountability. The documents identified contain information relating to land matters which I consider is of public interest as it provides details of government projects and resolution of land issues. The release of the documents identified will also provide contextual information relating to how land issues are resolved and as a result this may contribute to positive and informed debate on land matters. I am satisfied that the public interest in increasing transparency and accountability of the Directorate carries significant weight in favour of release. However, this weight is to be balanced with the weight of factors favouring non-disclosure.

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 contained within these documents is within the 'public interest':

- (a) *disclosure of the information could reasonably be expected to do any of the following:*
- (x) *prejudice intergovernmental relations;*
  - (xii) *prejudice an agency's ability to obtain confidential information;*
  - (xvi) *prejudice a deliberative process of government;*

When reviewing the documents and factors in favour of non-disclosure, I consider that the release of the documents could prejudice intergovernmental relations. The documents identified provide details of a number of sensitive land issues that are subject to ongoing negotiations and deliberations. Information contained in these documents was provided in confidence to assist parties to negotiate an amicable solution for various land matters. The release of these documents could adversely affect these negotiations

and deliberations by damaging continued level of trust and co-operation in the relations between the officers conducting negotiations. I consider that maintaining good working relations between the ACT and the Commonwealth are crucial to the ongoing negotiations on this issue and on future matters. I am satisfied that the release of the documents could prejudice intergovernmental relations and the Directorate's ability to obtain confidential information by impairing the future flow of information between the ACT and the Commonwealth. As a result, this will prejudice the deliberative process of the Directorate. I am satisfied that all three factors favouring non-disclosure carry very significant weight.

Having applied the test outlined in section 17 of the Act, I have decided to fully exempt from release all documents as the factors favouring non-disclosure outweigh the factors favouring disclosure.

### **Charges**

Pursuant to *Freedom of Information (Fees) Determination 2017 (No 2)* processing charges are not applicable for this request because no documents are to be released to you.

### **Online publishing – Disclosure Log**

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application and my decision in response to your access application will be published in the CMTEDD disclosure log after 8 May 2018. Your personal contact details will not be published. You may view CMTEDD disclosure log at: <https://www.cmtedd.act.gov.au/functions/foi/disclosure-log>.

### **Ombudsman Review**

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the Ombudsman at:

The ACT Ombudsman  
GPO Box 442  
CANBERRA ACT 2601  
Via email: [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au)

**ACT Civil and Administrative Tribunal (ACAT) Review**

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal  
Level 4, 1 Moore St  
GPO Box 370  
Canberra City ACT 2601  
Telephone: (02) 6207 1740  
<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email [CMTEDDFOI@act.gov.au](mailto:CMTEDDFOI@act.gov.au)

Yours sincerely,



Daniel Riley  
Information Officer  
Information Access Team  
Chief Minister, Treasury and Economic Development Directorate

3 May 2018



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

## FREEDOM OF INFORMATION REQUEST SCHEDULE

NAME	WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.
	The documents listed below regarding the West Basin project.	CMTEDDFOI 2018-0058

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-2	Letter to Chief Minister Barr from Minister Cormann	2 Aug 2017	Exempt	Sch 2 s2.2(a)(x)(xii)(xvi)	No
2	3-4	Email from Department of Finance (Finance) to CMTEDD regarding Commonwealth ACT Land matters	7 Sep 2017	Exempt	Sch 2 s2.2(a)(x)(xii)(xvi)	No
3	5-8	Meeting invitation from Finance to discuss land matters and agenda	20 Sep 2017	Exempt	Sch 2 s2.2(a)(x)(xii)(xvi)	No
4	9-11	Email from Finance – land matters, including Table of Actions from 20 Sep 2017 meeting	9 Oct 2017	Exempt	Sch 2 s2.2(a)(x)(xii)(xvi)	No
5	12-13	Meeting invitation from Finance to discuss land matters	30 Oct 2017	Exempt	Sch 2 s2.2(a)(x)(xii)(xvi)	No
6	14-15	Letter to Chief Minister Barr from Minister Cormann	8 Dec 2017	Exempt	Sch 2 s2.2(a)(x)(xii)(xvi)	No
<b>Total No of Docs</b>						
6						