



Open Access – Reasons for Withholding Access

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

Title: Cabinet Decision 18/359/CAB

Description of the information

A summary of a decision made by Cabinet on 14 June 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. 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 Cabinet 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.

Public Interest Test

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 *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 Cabinet Decision, 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:*
- promote open discussion of public affairs and enhance the government's accountability;*
 - contribute to positive and informed debate on important issues or matters of public interest;*

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 positive and informed debate on this matter and enhance the government's accountability. 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 contained within these documents 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;*
 - (x) *prejudice intergovernmental relations;*
 - (xiii) *prejudice the competitive commercial activities of an agency;*
 - (xvi) *prejudice a deliberative process of government;*

Having reviewed the decision made by Cabinet, I am satisfied that the release of it could prejudice intergovernmental relations and the economy of the Territory. The information considered by Cabinet will be subject to negotiation between the ACT and Commonwealth Government.

The decision made by Cabinet is an early agreement and indicates the government's position on the matter. The release of this information could preempt internal deliberations and adversely affect the government's ability to negotiate an amicable solution with the Commonwealth Government by damaging the competitive commercial activities of the government. As a result, the release of this information could prejudice intergovernmental relations with Commonwealth and the economy of the Territory. I am satisfied that all four factors favouring non-disclosure carry very significant weight and outweigh the public interest factors that favour disclosure.

Public Access decision

Having applied the test outlined in section 17 of the Act, I have decided to fully exempt from release the summary of Cabinet decision 18/359/CAB and the triple bottom line assessment as required by section 24(2)(b) and (c) of the Act as the factors favouring non-disclosure outweigh the factors favouring disclosure.

Authorised by:



Andrew Barr MLA
Chief Minister