



ACT
Government

Chief Minister and Treasury

Our ref: FOI CMTD 14/12-13

Dear

I refer to your request under the ACT *Freedom of Information Act 1989* (the Act) seeking access to information related to "extension of time penalties on construction within the confines of the [unspecified] Act".

As acknowledged in a letter to you of 20 May 2013, the Chief Minister and Treasury Directorate (CMTD) accepted a partial transfer from the Environment and Sustainable Development Directorate (ESDD) to respond to the portion of your request listed below as it was believed areas in Treasury may possess briefing material relevant to your request.

"b) Any subsequent changes to the legislation in relation to late penalties, and the briefing documentation in relation to these changes"

Decision Maker

I have been advised that efforts were made to contact you to advise of administrative delays and I thank you for your patience.

I am authorised under section 22 of the Act to make decisions on access to documents held by 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 for the documents you seek and those that are relevant to your request have been located in the Economics Branch, Budget Management Analysis Branch and Expenditure Review Division.

Decision on access

In the identification and consideration of documents relevant to your request, I have interpreted the scope to refer to documents directly relating to changes to legislation that pertain to the extension of time waiver policy developed under the ACT *Planning and Development Regulation 2008* and the ACT *Planning and Development Act 2007*.

The documents located include briefing material to the ACT Treasurer from the Executive Director, Policy Coordination and Development Division, and a draft Cabinet submission to the ACT Treasurer and ACT Minister for Planning.

I have considered all 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. All relevant items identified are listed on the attached schedule with a summary of my decision in relation to each and copies of the material that I have released are attached.

Exemptions claimed

Exemptions have been claimed to protect the private affairs of businesses, the considerations of Cabinet and internal working figures obtained from another directorate.

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 draft Cabinet submission under section 35(1)(a) of the Act. By my estimation, these considerations (including comments from other agencies) would not have been otherwise subsequently disclosed.

Internal working documents

Section 36 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.*

I have decided to exempt estimated figures contained in one document, under section 36(1) of the Act, on the basis that they were provided for internal deliberation. These estimates were options provided through consultation with ESDD that would not have been otherwise subsequently disclosed. They reflect the process pursued in the development of the extension of time waiver policy but are not the agreed figures nor do they reflect the figures in the budget papers; therefore, it is my view that the release of such figures would be confusing and potentially mislead the public.

I also consider that it is clearly in the public interest that ACT officials should be able to prepare briefing documents, make amendments and provide advice freely while in the process of working towards a final policy.

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.*

Under section 43 (1)(c) of the Act, I have exempted an excerpt of a brief that if disclosed would potentially have an adverse affect on particular organisations by making public information on private business strategy or undertakings.

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

Should you have any queries regarding this matter, please contact me on +61 2 620 70213.

Yours sincerely



Stuart Friend
Director
Expenditure Review Division

29 October 2013