



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: *FOI CMTD 32/13-14*

Dear

I refer to your request, made under the ACT *Freedom of Information Act 1989* (the Act), for access to documents relating to the **supply, installation and maintenance of pay parking ticket machines in the ACT.**

Specifically, you are seeking:

1. "The tender submitted by Reino International Pty Limited ABN 75 079 147 201 ("Duncan Solutions") in response to the joint request for tender no 22293.110 by the Australian Capital Territory and the National Capital Authority ("RFT");
2. The consultancy or other agreement pursuant to which the ACT retained Parking and Traffic Consultants to provide services in relation to the RFT;
3. Any expert report referred to by the ACT in assessing the tenders submitted in response to the RFT;
4. The record of, or a formal statement of the reasons for, the final decision to award the contract number: LMZ:RS624088 for the Title Supply, installation and maintenance of pay parking ticket machines dated 10 January 2014 to Duncan Solutions."

Decision Maker

I am authorised under section 22 of the Act and have been appointed to make a decision in relation to your request in so far as there are relevant documents in the possession or control of the Chief Minister, Treasury and Economic Development Directorate (CMTEDD).

Charges

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

Identification of Documents

In considering your application under the Act, I have interpreted the scope of your request to include the Duncan Solutions tender under the first portion of your request; the Services Agreement with Parking and Traffic Consultants (public version) and Deed of Variation – Variation of Replacement of Pay Parking Machines Consultancy (public version) under the second portion of your request; The Parking and Traffic Consultants – Parking Ticket Machines Tender Analysis under the third portion of your request; and the signed brief to the Under Treasurer along with the signed Tender Evaluation Report (the Report) under the fourth and final portion of your request. These documents are held by the Economic and Financial Policy Group.

Decision on Access

Under s 26(1) of the Act, a decision to grant access to the Memorandum of Understanding at Attachment B of the Tender Evaluation Report must not be made unless consultation has taken place. In support of the deliberative processes, The National Capital Authority (NCA) was provided an opportunity to contend that information relating to their involvement in the Parking Ticket Machine Procurement process be treated as exempt from release. I may now advise that the NCA has no objection to the release of any portion of this Memorandum of Understanding to you; a copy is enclosed with this letter.

I have deliberated on release of the documents that fall within the scope of your request as set out above and note you have confirmed that you are acting, and have placed this request, on behalf of [redacted]. Given this, I have decided to release to you all information in the Report that relates to [redacted] directly. I have not released the Report attachments that constitute the deliberative processes undertaken in evaluating the tenders received for contract LMZ:RS624088; I am of the view that the Report and signed brief satisfy part four of your request without the inclusion of attached supporting documents.

In accordance with s 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 and have decided to release to you information in the report that is not exempt under s 40 (see item 6 on the enclosed schedule) as outlined in my claims below; a copy is enclosed.

In accordance with Part 4 of the Act, I am satisfied that 12 of the documents (or portions of documents) identified are exempt from disclosure for the following reasons.

Exemptions Claimed

Some of the identified documents contain 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 draft internal documents, deliberate and provide advice freely while in the process of working towards formal advice and assessment. I therefore consider that it is not in the public interest that those varied considerations which served as preliminary contributions to the deliberative process be released.

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.*

CMTEDD engages external contractors and consultants to perform a range of activities in response to the need for evaluations and specialist requirements for delivering government services.

Information exempted under section 40(1)(c) refers to matters for which disclosure is reasonably expected to diminish the ability of the Government to efficiently conduct its operations. I have decided to exempt from release the assessment of tenders that were provided to the Government in confidence. The careful evaluation of tender submissions is an essential part of the procurement process and the information identified contains an examination of the business claims put forward in response to a specific tender request. I am satisfied that this information would not be otherwise subsequently disclosed.

I consider that disclosure of this information would have a substantial adverse effect on the proper conduct of the Directorate in maintaining entrusted confidence in the management of information received in the procurement process.

I am of the view that it is in the public interest that the processing of tender assessments enables effective proceedings in confidence, and that those providing input to such

processes are able to do so in the knowledge that elements will not be made public unless they are reflected and addressed in the final outcomes.

Documents concerning certain operations of agencies

Section 40 of the Act provides:

- (1) *Subject to subsection (2), a document is an exempt document if its disclosure under this Act would, or could reasonably be expected to—*
 - a. *prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency; or*
 - b. *prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency; or*
 - c. *have a substantial adverse effect on the management or assessment of personnel by the Territory or by an agency; or*
 - d. *have a substantial adverse effect on the proper and efficient conduct of the operations of an agency; or*
 - e. *have a substantial adverse effect on the conduct by or on behalf of the Territory or an agency of industrial relations.*
- (2) *This section does not apply to a document the disclosure of matter in which under this Act would, on balance, be in the public interest.*

Under sections 43(1) and 45(1) of the Act, I have exempted from release the tender submitted by Duncan Solutions and the Parking Ticket Machines Tender Analysis, authored by Parking and Traffic Consultants, in respect of their business affairs. I believe that the unwarranted disclosure of this information would potentially prejudice the future supply of information to the Territory and would be an unreasonable breach of confidence.

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.*

Documents containing material obtained in confidence

Section 45 of the Act provides:

- (1) *A document is an exempt document if its disclosure under this Act would constitute a breach of confidence.*
- (2) *Subsection (1) does not apply to any document to the disclosure of which section 36 (1) (a) applies or would, but for section 36 (2), (3) or (4), apply, being a document prepared by—*
 - a. a Minister; or*
 - b. a member of the staff of a Minister or an officer of an agency in the course of his or her duties; or*
 - c. a prescribed authority in the exercise of its functions;*
 - d. for purposes relating to the affairs of an agency or the official affairs of a Minister unless the disclosure would constitute a breach of confidence owed to a person or body other than—*
 - e. a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or*
 - f. an agency or the Territory.*

Your right of review

Internal Review

Under section 59 (1) of the Act, you may request a review of my decision. 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, Treasury and Economic Development 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 will conduct an independent investigation into your complaint.

You can contact the Ombudsman either by telephone on 1300 362 072 or in 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 on (02) 6205 0238.

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 (02) 6205 0772.

Yours sincerely



Ms Kathy Goth
Director
Economic and Financial Analysis

14 August 2014