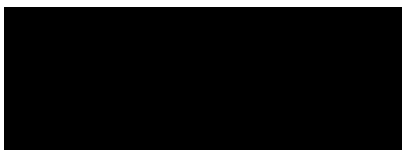




ACT
Government

Chief Minister, Treasury and
Economic Development



Dear 

Freedom of Information Request –ArtSound FM funding status.

The purpose of this letter is to give you a decision about access to documents that you requested under the *ACT Freedom of Information Act 1989* (FOI Act).

Summary

I, David Whitney, Director artsACT, Chief Minister, Treasury and Economic Development Directorate (CMTEDD) am an officer authorised under section 22 of the FOI Act to make decisions on access to documents held by the Directorate.

You requested access to documents relating to ArtSound FM's funding status. Specifically you sought access to information relating to the following:

In late 2013, ArtSound FM, a licensed community radio broadcaster, was removed from the list of Key Arts Organisations by ArtsACT. I understand that a "peer assessment" panel recommended this change in funding status. I therefore seek access to:

- 1. all documents relevant to the members of this panel, including but not limited to their individual qualifications for membership, and all documents relevant to their recommendation to remove ArtSound FM from the list of Key Arts Organisations.*
- 2. all documents created by ArtsACT including but not limited to: reports, recommendations, memoranda, and records of decisions relevant to this change in funding status.'*

On 30 July 2014 the Economic Development FOI Coordinator advised you via letter that, under the FOI Act, when a request for information has been received by a Directorate, and the documents identified by the Directorate contain information that may affect the personal or business affairs of a third party, the agency is required to consult third parties in accordance with section 27 of the Act. Section 27 of the Act allows for third parties to make submissions regarding the release of information under sections 41 and 43(1) of the Act.

As the decision maker in relation to this request, I am not bound by the contentions of the third parties may make in their submission, but have given them consideration in making my final decision.

With regard to the documents you requested, the Directorate identified sixteen (16) documents which fell within the scope of your request. The attached schedule of documents provides a description of each document that falls within the scope of your request and the access decision for each of those documents. More information, including my reasons for my decision, is set out below.

Decision and reasons for decision

With regard to the documents identified in the attached schedule, I have decided:

- to grant access in full to ten (10) documents as outlined in the attached to this letter;
- to grant access in part to four (4) documents as outlined in the schedule attached to this letter with exempt material redacted under section 21(1)b and exempt under section 41 of the FOI Act as the information relates to the personal affairs of a third party; and
- to refuse access in full to two (2) documents as outlined in the schedule attached to this letter with the documents exempt under sections

Please note: Some information has been removed from one (1) document as outlined in the schedule attached to this letter as the information is deemed not within the scope of your request.

Material taken into account

I have taken the following material into account in making my decision:

- the content of the documents that fall within the scope of your request;
- the FOI Act;
- the Privacy Act 1988; and
- the views of third parties consulted by the under section 27 & 27A of the FOI Act.

The attached schedule indicates each document to which access is refused either in full or part. The terms used are either 'Full release' 'Partial release' or Exempt. My reasons for refusing access are given on the following page:

Decision – Documents Exempt - Partial Release

Section 41 - Documents affecting personal privacy

- (1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person).

Documents partially released under this provision have been redacted due to the information relating to the personal affairs of third party individuals. It would be unreasonable to disclose the redacted information as it was collected by artsACT in confidence, and without consent from each identified individual would be a breach of privacy under the Privacy Act 1988 (Privacy Act). The redacted material includes information relating to the employment status and/or employment history and art forms in which members of the Arts Fund Assessment Panel are affiliated with.

Other personal information redacted under this provision includes the signatures of ACT Government employees.

Decision – Documents Exempt

Section 36 – Internal Working Document

- (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.

Section 40 – Documents concerning certain operations of agencies

- (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 or 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.

I have determined that documents 2 and 3 (folios 74-81) are exempt documents pursuant to sections 36(a) and (b) and 40 (1)(d) and (2) of the Act. Firstly, I consider the documents as 'working information' for internal consideration of the peer assessment panel only. This material does not represent the collective view of the peer assessment panel and therefore could be subject to misinterpretation. Accordingly, I do not believe it is in the Public Interest to have access to these working records and they reflect the opinion of third party individuals.

Secondly, I believe that releasing this material may have a substantial adverse effect on the proper and efficient conduct of the operations of artsACT in the future. artsACT relies heavily on peer assessors and their expertise in undertaking duties as required by such assessment panels. The information and opinion provided by the peer assessment panel members is communicated on the basis of a mutual understanding of confidence between all parties involved. This understanding of confidence is clearly outlined in the guidelines and code of conduct provided to peer assessment panel members. Therefore, releasing this information may prevent the future establishment of peer assessment panels for artsACT.

The collective position of the peer assessment panel was recorded by artsACT as a consolidated response to ArtSound FM's submission. Accordingly, I believe that this information may be in the Public Interest and have released this information to you (folios 90-93). I note that the content of the consolidated response to ArtSound FM's submission to artsACT has been communicated to ArtSound both at meetings and in writing, as part of our standard feedback procedures.

Review rights

You have the right to seek a review of any decision made by the Directorate under section 59 of the FOI Act. This right of review extends to a review of the adequacy of the search for documents undertaken by the Directorate. If you wish to seek a review you should write to:

The Director-General
Economic Development
Chief Minister, Treasury and Economic Development Directorate
C/- Freedom of Information Officer
GPO Box 158
CANBERRA ACT 2601

You have 28 days from the date of this letter to seek a review of the outcome or such other period as the Director-General permits.

Ombudsman

Under section 54 of the Act, if you are concerned about the processing of your request or related administrative matters, you may contact the Ombudsman, who may conduct an independent investigation into any complaint you may have. There is no fee for this, and the contact details are as follows:

The Ombudsman
GPO Box 442
CANBERRA ACT 2601

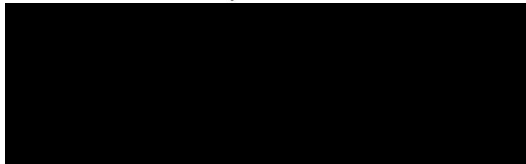
Online Freedom of Information (FOI) Policy

Please be aware that under the ACT Government's Online FOI Publication Policy, information released to you under this Freedom of Information Application will be released on the internet. 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](http://www.cmd.act.gov.au/data/assets/pdf_file/0016/250333/FOI_Web_Release_Policy_-_Final.pdf)

If you have any queries in relation to this matter, please contact the Economic Development FOI Coordinator on (02) 6207 5833 or email EDDFreedomofInformation@act.gov.au

Yours sincerely



David Whitney
Director
artsACT

1 September 2014

