



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: FOI CMTD 20/13-14

Dear

Request for information relating to *The Skywhale* hot air balloon

I refer to a request from your office, stated in conversation with Mr Andrew Kefford (when in his capacity as Deputy Director-General, Workforce Capability and Governance), for information following your appeal for an internal review of charges that were imposed under s 29 of the *Freedom of Information Act 1989* (the Act) when seeking all documents relating to the *Skywhale* hot air balloon.

In discussion with your office, it was clarified that the documents you sought to access are as follows.

Documents that show:

- which community groups requested *Skywhale* appearances;
- which of these requests were accepted; and
- what advice and allowances were provided and what were the conditions and costs.

I apologise for the delay in providing you with a response and appreciate your patience through this process, following the disbandment of the Centenary of Canberra administrative unit.

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 of the Chief Minister, Treasury and Economic Development Directorate (CMTEDD).

Identification of Documents

In considering your request under the Act, I have interpreted the scope of relevant documents to cover that which your office discussed with Mr Kefford as listed above. I also note that your request covers, but is not limited to, records of correspondence, meetings, telephone conversations, documents on file (including, but not limited to, letters, file notes, emails, media releases, minutes, briefings, submissions, invitations; contracts, etc.).

Under the contractual arrangements for the *Skywhale*, Global Ballooning, as the contractor, managed bookings and associated fees. In responding to queries concerning the *Skywhale*, the Centenary of Canberra unit provided information and advice where possible. Therefore, the documents located are not a fully comprehensive view of the bookings and requests

taken for *Skywhale* appearances. Where it is unclear if a community group requested a *Skywhale* appearance but where there is discussion of possible arrangements, I have included these documents in my deliberations.

Decision on Access

I have deliberated on the release of the 48 documents that fall within the scope of your request as set out above. 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.

I have decided to release to you all of these documents in part or in full as outlined in the attached schedule and a copy of each is enclosed.

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 partially release documents that contain in part, information exempt under s 41, s 43, and s 45 as explained below.

Exemption Claimed

Documents affecting personal privacy

Section 41 of the Act provides:

- (1) *A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*
- (2) *Subject to subsection (3), subsection (1) does not apply to a request by a person for access to a document only because of the inclusion in the document of matter relating to that person.*
- (3) *Where—*
 - (a) *a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information of a medical or psychiatric nature concerning the person making the request; and*
 - (b) *it appears to the principal officer of the agency, or to the Minister, as the case may be, that the disclosure of the information to that person might be prejudicial to the physical or mental health or wellbeing of that person;**the principal officer or Minister may direct that access to the document, so far as it contains that information, that would otherwise be given to that person is not to be given to that person but is to be given instead to a doctor to be nominated by that person.*

Under section 41(1) of the Act, I have exempted personal information that does not appear to have been communicated publicly; such as signatures and the name and contact details of an individual external to the ACT Public Service.

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.*

Under section 43(1)(c)(i) of the Act, I have exempted excerpts of correspondence that would potentially have an adverse affect on a particular organisation if disclosed. The release of the figures exempted may disclose costing methodology not generally known to the public, and would potentially provide an advantage to competitors in the development of strategic costings. It is also not known if these figures represent the company's current costing approaches and; therefore, may be misleading.

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;**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—*
 - (d) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or*
 - (e) an agency or the Territory.*

Under s 45(1), costing figures have been exempted from release where there is an explicit expectation that the information is to remain confidential. It is my view that to release this information would constitute a breach of confidence for the following reasons:

- the information that is confidential is specifically identified;
- the information is known to a limited class of parties;
- there is a mutual understanding that the information is to be treated with confidence;
- no apparent authorisation has been provided in disclosing this information beyond its stated commercial in confidence; and
- disclosure of the information would reasonably be expected to cause the confider to suffer a detriment as they have stated.

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) 620 50238.

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 in relation to this matter, please contact me on 620 50035.

Yours sincerely



Ms Anita Perkins
A/g Director
Communications, Engagement and Protocol

9 October 2014