



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDD 35/16-17



## **Freedom of Information Request**

### **Request for Executive documents – second release**

I refer to your request for access to documents on the above topic, made under the ACT *Freedom of Information Act 1989* (the Act) and received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 22 November 2016.

You have requested all documents (held by CMTEDD):

- “that are the subject of;
- that are related to;
- that were brought into existence because of; and
- that have been referred to or relied upon by any person during the course of the receipt, processing, and responding to the request for executive documents I made under the Territory Records Act 2002 on 17 March 2016 and the complaint I made to Ms Kathy Leigh on 30 August 2016.”

Clarification of the specific scope of your request was received via email dated 24 November 2016 and confirmed in an acknowledgement letter to you from Mr Sam Engele dated 8 December 2016.

### **Decision Maker**

I am authorised under section 22 of the Act to make decisions on access to documents and liability for charges. I wish to apologise for the delay in finalising your request.

### **Charges**

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

Chief Minister, Treasury and Economic Development

GPO Box 158 Canberra ACT 2601 | phone: 132281 | [www.act.gov.au](http://www.act.gov.au)

## Identification of Documents

I advised you on 8 December 2016 that the relevant documents would be released in two stages as searches were conducted and assessment processes completed. CMTEDD officials have now completed searches of paper and electronic records for documents that may relate to your Freedom of Information (FOI) request.

On 22 December 2016 Mr Geoffrey Rutledge provided you his release decision in regards to the majority of 'contemporary' documents relevant to your request. This letter advises my decision in regards to the 'historical' documents and all remaining contemporary documents. Please also note:

- Documents previously released to you as part of your Executive document request have not been included in this FOI release. This includes all relevant final Cabinet submissions and decisions, the memorandum for submission 1018, *Report and Ministerial Statement on the Medicinal Use of Cannabis* and the full Executive record for submission 1053, *Public Interest Disclosure Bill 2006: In-principle agreement*.
- Exposure drafts (the early version of each Cabinet submission) have not been included in this FOI release as per your scope clarification.
- Historical documents for submissions 1024, *Relationships Legislation: In-principle Agreement* and 1031, *Casino Control Bill 2005* have not been included in this FOI release as per your scope clarification.
- Documents identified as duplicates have not been included.

For submission 915, *Possible impact of deferral of land sales*, no historical documents were identified beyond those previously released to you. From the advice I have received from Directorate staff, I am satisfied that no further documents relevant to this submission are held by CMTEDD.

I wish to apologise that in Schedule One, folios 27, 206 and 213 have minor scanning errors that were only recently detected. The pages themselves are administrative in nature. As the documents are not currently in the possession of the Directorate I am providing you with the documents in their current form to avoid delay. I will recall the relevant files for rescanning at your request.

## Decision on Access

I have decided to fully release some documents, fully exempt some documents and partially release the remainder. My specific reasons for not providing access to some information are outlined below and in the document schedule.

As with the first release, references to unrelated Executive document requests contained within documents relevant to your request have been redacted. The schedule identifies information that is considered to be out of scope.

## Exemptions claimed

### Documents affecting relations with Commonwealth and States

Relates to: **Schedule 1 – folio 47**

**Schedule 2 – folio 3**

Section 34 of the Act provides:

- (1) Subject to subsection (2), a document is an exempt document if disclosure of the document under this Act—*
  - (a) would, or could reasonably be expected to, cause damage to relations between the Territory and the Commonwealth or the Territory and a State; or*
  - (b) would divulge information or matter communicated in confidence by or on behalf of the Commonwealth, a State or an authority of the Commonwealth or of a State to the Territory, to a Territory authority or to a person receiving the communication on behalf of the Territory or of a Territory authority.*
- (2) This section does not apply to a document in respect of matter in a document the disclosure of which under this Act would, on balance, be in the public interest.*

This exemption has been applied to information that was already deemed to be exempt by a decision of the Head of Service, Ms Kathy Leigh. I concur with the rationale provided for that decision and have decided that the same exemption applies where this information is repeated in the above listed folios.

### Documents concerning certain operations of agencies

Relates to: **Schedule 1 – Submission 952 – Restricted: Proposal to Change Governance of Calvary Public Hospital**

**Schedule 2 – folios 25-26**

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.*

The Head of Service has deemed that the Cabinet submission and decision for Submission 952 is exempt from release. I concur with the rationale provided for that earlier decision and consider that the remaining documents in the Executive record, and a letter from ACT Health about the content of the submission, are also exempt from release under section 40(1)(d) of the Act. The release of these documents, or any part thereof, could adversely affect the strong relationship between ACT Health and the Little Company of Mary (LCM) and ultimately impact on the proper and efficient conduct of the operations of ACT Health.

Documents subject to legal professional privilege

Relates to: **Schedule 1 – folio 87, 94 and 99.**

**Schedule 2 – folio 33**

Section 42 of the Act provides:

- (1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.*
- (2) A document of the kind referred to in section 8 (1) is not an exempt document under subsection (1) of this section only because of the inclusion in the document of matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in section 8 (1).*

Documents identified as relevant to your request concern legal advice provided to the Directorate. I have decided to exempt from release, under section 42(1) of the Act, these folios on the grounds that they are protected by legal professional privilege and their disclosure would diminish our capacity to undertake full and frank discussion with our lawyers.

Documents relating to business affairs

Relates to: **Schedule 1 – Submission 952 – Restricted: Proposal to Change Governance of Calvary Public Hospital**

**Schedule 2 – folios 25-26**

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.*
    - (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.*

As noted above, the Cabinet submission and decision for Submission 952 was already deemed to be exempt by a decision of the Head of Service. I concur with the rationale provided for that decision and consider that the remaining documents in the Executive record, and a letter from ACT Health about the content of the submission, are also exempt from release under section 43(1)(c) of the Act. The release of these documents, or any part thereof, would disclose information concerning the private business affairs of LCM.

Such disclosure could adversely affect the relationship between ACT Health and LCM, prejudicing the supply of information and, as noted earlier, ultimately impacting upon the proper and efficient conduct of the operations of ACT Health.

### **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 Freedom of Information 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**

I have assessed your request for information under the ACT Government's Online Freedom of Information Publication Policy and have determined that my response to your request and the documents released to you will be published online. Personal information contained within the documents will not be published.

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)

Should you have any queries regarding this matter, please contact me on (02) 6205 0230.

Yours sincerely



Sam Engele  
A/g Executive Director, Strategic Policy and Cabinet  
3 February 2017