



## Open Access – Reasons for Withholding Access

**Document Category (s23):** Open Access Information of a Minister.

**Title:** Cabinet Decision 20/276/BUD

**Description of the information:** A summary of a decision and Triple Bottom Line Assessment (TBL) agreed by Cabinet on 17 August 2020.

### Decision

I have decided to not release the Cabinet Decision and TBL. This decision has been made under sections 24(2)(b) and (c) of the *Freedom of Information Act 2016 (FOI Act)* on the basis that it is contrary to the public interest to disclose.

### Statement of reasons

In reaching my access decision, I have taken the following into account:

- the FOI Act; and
- the information considered by Cabinet and the Cabinet Decision.

Sections 24(2)(b) and (c) allow for the Decision to be withheld on the basis that:

- the disclosure would, on balance, be contrary to the public interest under the test set out in section 17.

### Public Interest Test – Section 17

The FOI Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interests lies. As part of this process I must consider factors favouring disclosure and non-disclosure.

Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and schedule 2 of the Act.

#### Factors favouring disclosure (Schedule 2 section 2.1)

Taking into consideration the information contained in the Cabinet Decision and associated TBL, I have identified that the following public interest factors in favour of disclosure are relevant to determine if release of the information is within the ‘public interest’:

(a) *disclosure of the information could reasonably be expected to do any of the following:*

- promote open discussion of public affairs and enhance the government’s accountability; and*
- ensure effective oversight of expenditure of public funds.*

I consider that release of the Cabinet Decision and associated TBL may contribute to open discussion of public affairs and enhance the government’s accountability and would also allow the expenditure of public money to be scrutinised. I consider there is a public

interest in the subject of this information and I am satisfied that its release would increase transparency and accountability of the government.

*Factors favouring non-disclosure (Schedule 2 section 2.2)*

As required in the public interest test set out in section 17 of the Act, I have also identified the following public interest factors in favour of non-disclosure that I believe are relevant to determine if release of the information is within the 'public interest':

*(a) disclosure of the information could reasonably be expected to do any of the following:*

- (xiii) prejudice the competitive commercial activities of an agency; and*
- (xvi) prejudice a deliberative process of government.*

Having reviewed the decision made by Cabinet and the associated TBL and noting the matters that were considered, I am satisfied that the release would disclose confidential information that would significantly disadvantage the Territory in relation to future commercial negotiations. I am satisfied there is a reasonable chance that this information if released could prejudice the Territory. I am further satisfied that release of this information would also prejudice the deliberative process of government as release of this information may limit the options and decisions which may be required to be made at a future time. These factors carry significant weight when considered against the factors in favor of disclosure.

**Public Access decision**

Having applied the test outlined in sections 17 of the Act, I have decided to fully exempt from release the summary of Cabinet decision and TBL for 20/276/BUD as required by section 24(1) of the Act. On balance, the factors favouring non-disclosure outweigh the factors favouring disclosure.

**Authorised by:**



Andrew Barr  
Chief Minister

## **Decision review options**

### *Ombudsman review*

The decision to withhold this document is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day the decision is published on <https://www.act.gov.au/open-access> or a longer period allowed by the Ombudsman.

We recommend using this form [Applying for an Ombudsman Review](#) to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman  
GPO Box 442  
CANBERRA ACT 2601  
Via email: [actfoi@ombudsman.gov.au](mailto:actfoi@ombudsman.gov.au)

### *ACT Civil and Administrative Tribunal (ACAT) review*

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision.

Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal  
Level 4, 1 Moore St  
GPO Box 370  
Canberra City ACT 2601  
Telephone: (02) 6207 1740  
<http://www.acat.act.gov.au/>