



Katy Gallagher MLA

CHIEF MINISTER

MINISTER FOR HEALTH

MINISTER FOR REGIONAL DEVELOPMENT

MINISTER FOR HIGHER EDUCATION

MEMBER FOR MOLONGLO

Dear

Further to my correspondence of 30 May 2013, which in part I informed you that I would advise you after the 24 June 2013, of the outcome of any appeal by a third party in relation to documents 21 and 22 which were additional documents discovered as part of my review of documents relating to your recent request under the ACT Freedom of Information Act 1989 (FOI Act).

I have not received any notification that any of the third parties involved in the documents have formally exercised their rights under the Act to appeal my decisions relating to these two documents.

Consequently, as the authorised decision maker, I am now declaring document 21 as exempt under S 43 and releasing document 22. A copy of the released document is attached to this correspondence.

You should also be aware that these documents and any other documents released under the Act will be posted on the government website at:

http://www.cmd.act.gov.au/open_government/report/freedom_of_information_requests

I have detailed below my formal decision in relation to both documents.

Document 21

5 April, 2013. Email M Norris to J Driscoll; S Scrivener, covering email for draft minutes and attached approved draft minutes of special meeting of 27 April, 2013.

The draft minutes are minutes of the meeting of the Board of ACTEW. Two parties objected under S43 in relation to the documents forming part of the company's records and should be treated as part of the business affairs of the company.

Decision: the document comprises draft minutes of a meeting of the Board of ACTEW. At company board meetings business, commercial and financial information is discussed between board members, as is the usual course in most companies. The commercial value of such information could reasonably be expected to be lost if disclosed, and it could be

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reasonably expected that the organisation would be unreasonably adversely affected in respect of its business if disclosed. For example, a commercial competitor might be forewarned about strategic decisions or particular innovations made by the Board and recorded in the minutes. Board members should feel free, at board meetings to discuss openly sensitive commercial information without apprehension that their discussions might be released to the public under the FOI Act.

For this reason I am satisfied that the document is exempt under section 43 and that access should not be granted.

Document 22

26 March 2013. Email threads J Mackay to S Scrivener and response from S Scrivener to J Mackay. No objections were received in relation to the release of this correspondence by third parties.

Full release

Right of Appeal

If you do not agree with my decision, then you may apply to the ACT Civil and Administrative Tribunal (ACAT) for review.

The following notes are provided in accordance with section 25(1)(c) of the *Freedom of Information Act 1989* and regulation 7 of the *ACT Civil and Administrative Tribunal Regulation 2008*.

Location	Contact Details
ACT Civil and Administrative Tribunal Level 4, 1 Moore Street CANBERRA ACT 2601	Website: www.acat.gov.au Email: tribunal@act.gov.au Telephone: (02) 6207 1740 Facsimile: (02) 6205 4855 Post: GPO Box 370 CANBERRA ACT 2601

Powers of the ACAT

The ACAT is an independent body. It can review on their merits a large number of decisions made by ACT Government ministers, officials and statutory authorities.

In general, an application may be made for review of a decision

- (a) refusing to grant, or deferring, access to a document in accordance with a request;
- (b) refusing to allow a further period for making an application for internal review; or
- (c) relating to a charge or fee for processing a request or giving access to a document.

The ACAT has the power to decide any matter in relation to the request which could have been decided or could now be decided by the respondent to the original request for access. The ACAT may not grant access to a document which it is satisfied is exempt.

Applications to the ACAT

To apply for a review, obtain an application form from the ACAT.

An application must be made within 28 days of receiving the Notice of Decision

Fees

Applications to the ACAT, ordinarily require payment of a filing fee of not less than \$264.00 (the ACAT Registry will advise of the current fee). You may apply to have the fee waived on the grounds of financial hardship, subject to approval of the ACAT.

Costs

You will have to pay any costs involved in preparing or presenting your case.

The ACAT has the power to award costs against a party including but not limited to:

- (a) expenses incurred by the successful party in the filing fee for the application;
- (b) costs incurred by one party associated with delay or obstruction by another party;
- (c) costs incurred by one party if another party contravenes an order of the ACAT, provided the ACAT considers it is in the interests of justice to make an award.

Procedures

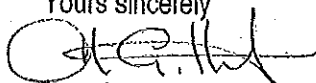
The procedures of the ACAT are outlined in its website. Contact the ACAT Registry for alternative ways to access information about its procedures.

In relation to the documents that you have submitted are exempt and should not be released, I am unable to provide copies of them to the applicant until you have had an opportunity to make an application to the ACAT for review of my decision. I am unable to provide the applicant with copies of the documents until after:

- (i) the time for you to apply to the ACAT under section 69 (Review of certain decision in respect of documents relating to business affairs etc) or section 69A (Review of certain decisions about documents relating to personal information) ends and no application is made; or
- (ii) an application is made, but the ACAT—
 - (A) dismisses the application; or
 - (B) makes a decision in relation to the application in accordance with terms agreed by the parties; or
- (iii) an application is made and the ACAT confirms the decision in relation to the application.

If you require further clarification on this matter, please feel free to contact me on 02 62050167 or by email: margaret.gillespie@act.gov.au

Yours sincerely



Margaret Gillespie
Chief of Staff
Office of the Chief Minister

25 JUN 2013

Scrivener, Sharon

From: Mackay, John [John.Mackay@actew.com.au]
Sent: Tuesday, 26 March 2013 4:42 PM
To: Scrivener, Sharon
Cc: Mackay, John; Sullivan, Mark
Subject: Re: |

I do not propose to release any correspondence to | but I do not object if the Chief Minister chooses to release my full responses to these letters

Sent from my iPhone

On 26/03/2013, at 3:00 PM, "Scrivener, Sharon" <Sharon.Scrivener@act.gov.au> wrote:

Hi John

I just tried to call you to let you know that the | has asked a series of questions of the Chief Minister this afternoon following on from his article on Saturday regarding the Managing Director's salary.

| specifically wanted to know if the CM had met with you/Mr Sullivan in relation to this matter and if there was any correspondence. The Chief Minister has provided a copy of both letters from CM/DCM to you regarding this matter (not your replies) and the letter from you dated 8 September 2011 to the CM.

I understand | may contact you for a response.

Let me know if you need further information.

S

Sharon Scrivener | Executive Officer to the Chief Minister | Office of the Chief Minister
 t: 620 50287 | f: 620 53030 | sharon.scrivener@act.gov.au | www.chiefminister.act.gov.au

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