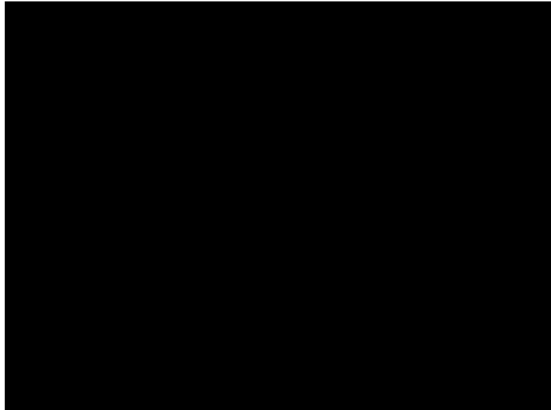




ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDD2017/4185



Freedom of Information Request

I refer to your access request under section 14 of the ACT *Freedom of Information Act* 1989 (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 29 September 2017.

In your request you sought:

"...documents relating to incoming Minister's briefs prepared for:

- 1. the Minister for the Arts and Community Engagement; and*
- 2. the Minister for the Arts in an incoming Liberal government."*

Decision Maker

I am authorised under section 22 of the Act and have been approved to make decisions on access to documents and liability for charges.

Charges

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

Identification of documents and decision on access

I have interpreted your request as seeking:

- the final incoming Minister briefs prepared for and provided to the Arts and Community Events Minister (being the title of the Labor Minister); and
- the most current incoming Minister briefs prepared for the Minister for the Arts in an incoming Liberal government.

Documents identified as relevant to your request are listed on the attached schedule and, where they have been released, included in the attached document package.

I have deliberated on the identified documents and decided to partially release some documents and fully exempt the remainder from release. My decision to exempt documents and/or components of documents from release is detailed further below, and redactions are identified in the attached schedule.

With regard to folios 1-6, the Arts and Community Events Portfolio Brief for the incoming Labor Minister, I note that it contains tracked changes. The final copy provided to the Arts and Community Events Minister was a hard copy with these mark-ups turned off but I have considered for release the final electronic record in the possession of CMTEDD. I have decided to remove the components of this document where text has been deleted using the tracked changes function as I do not consider this content to represent the final briefing to the Minister. I also consider this content to be of an internal working nature.

Exemptions claimed

Executive documents

Section 35 of the Act provides:

- (1) *A document is an exempt document if it is—*
 - (a) *a document that has been submitted to the Executive for its consideration or is proposed by a Minister to be so submitted, being a document that was brought into existence for the purpose of submission for consideration by the Executive; or*
 - (b) *an official record of the Executive; or*
 - (c) *a document that is a copy of, or of a part of, or contains an extract from, a document referred to in paragraph (a) or (b); or*
 - (d) *a document the disclosure of which would involve the disclosure of any deliberation or decision of the Executive, other than a document by which a decision of the Executive was officially published.*
- (2) *This section does not apply to a document (a **relevant document**)—*
 - (a) *that is referred to in subsection (1) (a); or*
 - (b) *that is referred to in subsection (1) (b) or (c) and is a copy of, or of part of, or contains an extract from, a document that is referred to in subsection (1) (a);*
 - (c) *to the extent that the relevant document contains purely factual material unless—*
 - (d) *the disclosure under this Act of that document would involve the disclosure of any deliberation or decision of the Executive; and*
 - (e) *the fact of that deliberation or decision has not been officially published.*
- (3) *A reference in this section to the Executive includes a reference to a committee of the Executive.*

I have decided to exempt from release, under section 35(1)(d), components of documents that would reveal Cabinet deliberations that have not been officially published. If disclosed, this information would prejudice the confidential nature of the considerations of Cabinet.

Internal working documents

Section 36 of the Act provides:

- (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.*
- (2) *In the case of a document of the kind referred to in section 8 (1), the matter referred to in subsection (1) (a) of this section does not include matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in section 8 (1).*
- (3) *This section does not apply to a document only because of purely factual material contained in the document.*
- (4) *This section does not apply to—*
 - (a) *reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters; or*
 - (b) *reports of a prescribed body or organisation established within an agency; or*
 - (c) *the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.*
- (5) *Where a decision is made under part 3 that an applicant is not entitled to access to a document because of this section, the notice under section 25 shall state the ground of public interest on which the decision is based.*

I have decided to exempt from release, under section 36(1)(a) of the Act, documents, and components of documents, that I consider to be deliberative in nature. This includes recommendations, opinion and advice contained in briefs provided to the successful incoming government, and draft briefings prepared for a potential incoming Liberal government.

Briefings prepared for an incoming Arts Minister in a Liberal government remain in a working draft format and were never finalised due to the election outcome. Whilst I have decided to fully exempt these deliberative documents from release, I have partially released the incoming Minister briefs provided to the current Arts and Community Events Minister. Many of these briefings contain general background information about the Arts and Events portfolio, much of which is similar in nature to the information that was drafted, but not finalised, for a potential Liberal Minister.

In addition to forming part of deliberative processes, I consider that release of the identified documents and components of documents would be contrary to the public interest. Although release would promote the Objects of the Act and government accountability, I consider that the likely detriment flowing from release significantly outweighs these factors.

Receiving a useful incoming government brief is an important part of enabling a newly elected Minister to quickly gain an understanding of their portfolio and commence their role in government without delay. Incoming government briefs should contain frank and honest advice on policy priorities, challenges and options for moving forward. It is crucial that the public service is able to maintain high standards of honest advice in incoming government briefs and this is likely to be impacted if such advice is expected to be made public soon after preparation. Further, if such communication between the Directorate and the Minister cannot remain confidential it is likely to affect the development of an effective relationship between the public service and the Minister and impact CMTEDD's ability to manage the transition from one government to another. There is significant public interest in ensuring a smooth and efficient transition between governments.

Documents relating to business affairs

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.*

I have decided to exempt from release, under section 43 of the Act, information that would disclose confidential business information about a third party. This information includes operational and financial information about businesses involved in arts and events in Canberra, in addition to information about the business activities of the Cultural Facilities Corporation. I consider that the redacted information, if released, would adversely affect the competitive commercial activities and business affairs of these organisations.

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
c/o Freedom of Information Co-ordinator
Chief Minister, Treasury and Economic Development Directorate
GPO Box 158
CANBERRA ACT 2601
Via email: CMTEDDFOI@act.gov.au

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

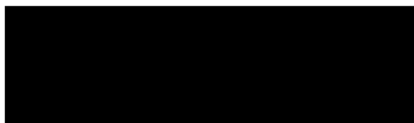
Online FOI Policy

I have assessed your request for information under the ACT Government's Online FOI Publication Policy and have determined that my decision on your request will be published online. Personal information or business information will not be made available under this policy. 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

If you would like to discuss this matter further please contact me on (02) 6205 0230.

Yours sincerely



Sam Engle
A/g Executive Director
Strategic Policy and Cabinet

3 November 2017