



ACT
Government

Chief Minister, Treasury and
Economic Development

Open Access – Reasons for Withholding Access

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

Title: Cabinet Decision 19/499/CAB

Description of the information: A summary of a decision made by Cabinet on 29 October 2019 and the associated triple bottom line assessment (TBL).

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 *Freedom of Information Act 2016*; and
- the information considered by Cabinet and decision made.

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

- it is taken to be contrary to the public interest to disclose under schedule 1; or
- the disclosure would, on balance, be contrary to the public interest under the test set out in section 17.

Public Interest Test

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interests lie. 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:*
- (i) *promote open discussion of public affairs and enhance the government's accountability.*

I consider that release of the Cabinet Decision and the associated TBL may contribute to open discussion of public affairs and enhance the government's accountability. 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 contained within these documents is within the 'public interest':

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

- (viii) prejudice the economy of the Territory;*
- (x) prejudice intergovernmental relations;*
- (xiii) prejudice the competitive commercial activities of an agency;*
- (xvi) prejudice a deliberative process of government;*

The information considered by Cabinet will be subject to negotiation between the ACT Government and the Commonwealth Government. The decision made by Cabinet is an early agreement and indicates the government's position of how the matter should be addressed. The release of this information could preempt deliberations that adversely affect the ACT Government's ability to negotiate a competitive commercial arrangement with the Commonwealth.

Having reviewed the decision made by Cabinet, I am satisfied that all four non-disclosure factors apply.

Public Access decision

Having applied the test outlined in section 17 of the Act, I have decided to fully exempt from release the summary of Cabinet decision and the triple bottom line assessment as 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

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/>