



ACT
Government

Economic Development

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Dear [REDACTED]

I am the officer authorised under section 22 of the ACT *Freedom of Information Act 1989* (the Act) to make a decision in relation to your request (the request) dated 10 July 2013, in which you seek information in relation to the light rail project.

The request

The request was revised by your office on 24 July 2013 seeking documentation in relation to light rail created since 1 January 2012, covering reports, financial information about the Capital Metro Agency and the light rail project and information about governance issues.

On 9 October 2013, all fees and charges in relation to the request were waived on the grounds of the public interest. Due to the large amount of material identified within the scope of the request an extension of time was granted by your office to provide you with this decision on access to documents.

Decision

I would like to advise that the Directorate has identified a number of documents relevant to your request as outlined in the attached schedules. I have determined that many of the documents identified are considered exempt under the Act, and I have therefore decided not to release all of the identified documentation to you in accordance with the following exemption provisions and subsequent reasoning:

1. The information relates to the personal affairs of a third party;
2. The identified material is subject to legal professional privilege;
3. Documents relate to the business affairs of a third party;
4. The documents are considered Executive working documents;
5. The documents are considered internal working documents and not in the public interest to release; and
6. The information within the document is out of scope of the request.

For ease of use, I have included both the full schedules identifying all documents and any exemption provisions, as well as a schedule identifying only the released documents.

Section 41 Documents affecting personal privacy

(1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person).

I have not exempted any document under this provision, however material has been redacted from some of the released documents due to the information relating to the personal affairs of a third party. The redacted information includes mobile phone numbers, signatures and information concerning the identity of third parties.

42 Documents subject to legal professional privilege

(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 grounds of legal professional privilege.

The identified documents are email correspondence between the Acting Project Director and the ACT Government Solicitor. The purpose of the email was to seek legal advice regarding the recruitment process for the Capital Metro Board.

Section 43 Documents relating to business affairs etc

(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; or
 - (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.

Multiple documents relate to the financial and commercial affairs of a third party. These documents include a tender submission which is considered 'commercial-in-confidence'. It would be unreasonable to release such documents.

35 Executive documents

(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.

The documents exempt from release under this provision are done so under sections 35(1)(a)(b) and (d) of the Act. These documents are considered Executive documents as they were brought into existence for the purpose of creating a submission to Cabinet and in turn the resulting Cabinet decision. These documents include draft Cabinet submissions, background papers, emails and briefs together with comments from representatives from EDD, and other directorates across the ACT Government.

Releasing these documents would disclose the deliberation process of the Executive.

Section 36 Internal working documents

(1) A document is an exempt document if its disclosure under this Act—

- (a) would disclose matters 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.

The material exempt under this provision has been removed on the grounds that they are considered an internal working document as described under section 36 (1) of the Act. It would not be in the public interest to release this information as it is part of an ongoing deliberative process, either in draft form or the opinion of individual officers.

These documents include internal briefing notes and emails, as well as draft documents submitted to the Capital Metro Board for review. Disclosure of these documents may create unnecessary debate and/or confusion about the subject matter and in turn may adversely affect further deliberations on these matters. For these reasons it is not in the public interest to release this information.

Out of Scope

Some information has been removed or redacted from particular documents, as outlined in the attached schedules due to the information not pertaining to the subject matter of the request and therefore considered out of scope. Any document or correspondence created after the original submission date of the request (10 July 2013) is also considered out of scope of the request and not captured under the FOI Act.

Please Note: All documentation relating to QON 66 was identified within the scope of this request. A decision on access to documents relating to this subject was provided to you by Glenn Bain on 11 May 2013. Therefore all documentation identified and which subsequently came into existence in relation to your previous application has been excluded from the content of this request.

Review rights

You have the right to seek a review of any decision made by the Directorate under section 59 of the Act. This right of review extends to a review of the adequacy of the search for documents undertaken by the Directorate. If you wish to seek a review you should write to:

The Director-General
Economic Development Directorate
C/- Freedom of Information Officer
GPO Box 158

CANBERRA ACT 2601

You have 28 days from the date of this letter to seek a review of the outcome or such other period as the Director-General permits.

Ombudsman

Under section 54 of the Act, if you are concerned about the processing of your request or related administrative matters, you may contact the Ombudsman, who may conduct an independent investigation into any complaint you may have. There is no fee for this, and the contact details are as follows:

The Ombudsman
GPO Box 442
CANBERRA ACT 2601

Online Freedom of Information (FOI) Policy

Please be aware that under the ACT Government's Online FOI Publication Policy, information released to you under this Freedom of Information Application will be released on the internet. 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 have any queries in relation to this matter, please contact the Economic Development Directorate Freedom of Information Coordinator, Matthew Neilsen on 6207 5833 or at EDDfreedomofinformation@act.gov.au

Yours sincerely



Daniel Stewart
Deputy Director-General
Land Development, Strategy and Finance
6 December 2013