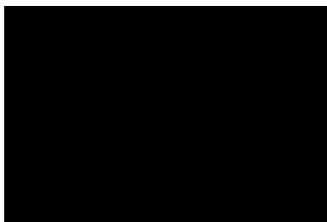




ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDD 37/15-16



Dear 

Request for documents

Further to my letter of 4 May 2016 I am writing in relation to your request received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 12 January 2016, and subsequently revised on 15 April 2016, in which you seek access to documents concerning the ACT Government, The Brumbies and Aquis Entertainment (Canberra Casino).

You are specifically seeking the following:

“Point 1

- *All documents submitted by Aquis Entertainment (Canberra Casino) to the ACT Government and all documents submitted by ACT Government to Aquis Entertainment (Canberra Casino) in relation to the unsolicited bid for the redevelopment of the Casino, the convention centre and related facilities for the previous 24 months.”*

“Point 2

- *All documents relating to the ACT Government, The Brumbies and Aquis Entertainment (Canberra Casino) relating to sponsorship or commercial arrangements or the procuring of such arrangements including but not limited to; the ability for Aquis and/or a related or associated entity being able or permitted to operate gaming Machines in the present or future casino operation for the previous 24 months.”*

I appreciate your patience during the delay in the processing of your request.

Decision Maker

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

Chief Minister, Treasury and Economic Development

Charges

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

Identification of Documents

In considering your application for information under the Act, I have interpreted your request to include the following for the specified period:

- In relation to Point 1, you seek access to documents exchanged between the ACT Government and Aquis Entertainment (Canberra Casino) in relation to the unsolicited bid for the redevelopment of the Casino, the convention centre and related facilities.
- In relation to Point 2, you seek access to all documents relating to the ACT Government, the Brumbies, and Aquis Entertainment, (that is, all three parties) relating to any sponsorship or commercial arrangements, or the procuring of such arrangements that include, but are not limited to the ability for Aquis and/or a related or associated entity being able or permitted to operate gaming machines in the present or future casino operation.

Officers of CMTEDD have conducted searches of paper and electronic files and email accounts for documents that may relate to your request, and 10 documents have been located in relation to Point 1. In relation to Point 2 the Directorate did not identify any documents in its possession. From the advice I have received from CMTEDD staff, I am satisfied that no documents relevant to Point 2 are held by CMTEDD.

Consultation

In my letter of 4 May 2016 I explained that I would provide my decision on access to documents after consultation with relevant third parties who may wish to contend that documents should be exempt from release. Although I am not bound by third party submission, I have considered any submissions received in making my decision on access.

Decision on Access

In accordance with section 21 of the Act I have decided to fully release some documents to you, release portions of some documents and exempt the remaining portions, and fully exempt from release the remaining documents.

My reasons for not providing access to particular documents, and to component of others are outlined in the following statement of reasons and in the attached schedule of documents.

Exemptions claimed

Section 36 - 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.*

Relates to folios 27-31

Documents identified as Internal Working Documents contain preliminary draft information prepared to inform deliberation processes that occur prior to a final deliberation being made by the responsible ACT Government officers, as part of the ordinary business of government.

I consider that it is clearly in the public interest that ACT officials are able to prepare internal documents containing opinion, advice, or recommendations in the course of, or for the purpose of, these deliberative processes. Disclosure of this information would not be in the public interest as it would serve to confuse debate and affect the ordinary business of government through adverse impact on the quality and breadth of advice provided to government in the future. I believe in this instance the documents falls within the provisions of section 36(1)(a) of the Act and therefore I have decided to exempt them from release.

Section 41 - Documents Affecting Personal Privacy

Section 41 of the Act provides:

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

Relates to folios 27-31, 58-61

I have exempted from release personal information as I am satisfied that the release of details of private interests would constitute a breach of privacy and falls within the exemption set out under section 41 of the Act.

Section 43 - 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.*

Relates to folios 26, 27-31, 32-57, 58-61, 62-63, 64-119

I have decided to exempt from release entire documents and components of others that contain commercially sensitive information, including financial and operational information of an organisation.

Information of this nature is not typically made available to the public and its release could have a serious impact on the competitive operations of the organisation. It is my view that the disclosure of business information such as forecasts, costings and modelling, and the release of information considered to be the intellectual property of an organisation, would reasonably be expected to diminish or destroy commercial value. Access to the documents by competitors may allow exploitation of this commercial information, regardless of the time that has passed since the creation of the documents.

I am satisfied that the information falls within the exemption set out under section 43 of the Act and that disclosure of this information would reasonably be expected to have an adverse effect on an organisation. I am also satisfied that the release of the information could reasonably be expected to prejudice the future supply of information to the Territory, in that organisations may be discouraged from voluntarily providing information in regards to investment and development proposals.

Section 45 - Documents Containing Material Obtained in Confidence

Section 45 of the Act provides:

- (1) *A document is an exempt document if its disclosure under this Act would constitute a breach of confidence.*
- (2) *Subsection (1) does not apply to any document to the disclosure of which section 36 (1) (a) applies or would, but for section 36 (2), (3) or (4), apply, being a document prepared by—*
 - a) a Minister; or*
 - b) a member of the staff of a Minister or an officer of an agency in the course of his or her duties; or*
 - c) a prescribed authority in the exercise of its functions;*
 - d) for purposes relating to the affairs of an agency or the official affairs of a Minister unless the disclosure would constitute a breach of confidence owed to a person or body other than—*
 - e) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or*
 - f) an agency or the Territory.*

Relates to folios 26, 27-31, 32-57, 58-61, 62-63, 64-119

The folios listed contain information provided in confidence by external parties. Under section 45 (1) the Act this information has been exempted from release as there is an explicit expectation that the information is to remain confidential. The information was provided by the organisation and accepted by the Territory on the basis of a mutual understanding that it is to be treated with confidence, in accordance with the ACT Government Treatment of Confidential Information Policy as indicated in the *Invest Canberra Investment Proposal Guidelines for Investors (Non-Public Infrastructure and Business Opportunities)*, which also reminds applicants of the Government's obligations under the *Freedom of Information Act 1989*. No authorisation has been provided in disclosing this information beyond that understanding.

It is manifestly in the public interest that ACT officials, in the course of their activities, should be able to receive information and proposals, and engage with organisations concerning those proposals, in confidence. It is reasonable to determine that the freedom of exchanges and the preparedness of organisations to openly engage with the Territory in the future would be undermined by those interchanges subsequently becoming public.

It is my view that disclosure of the information would constitute an unreasonable release of information that was obtained in confidence, in line with section 45 (1) of the Act.

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 Chief Executive Officer.

Your request should be addressed to:

Director-General
Chief Minister, Treasury and Economic Development Directorate
GPO Box 158
CANBERRA ACT 2601

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 Freedom of Information 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 Freedom of Information 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

Should you have any queries regarding this matter, please contact me on (02) 6207 2004.

Yours sincerely



Ian Cox
Executive Director
Innovate Canberra

31 May 2016