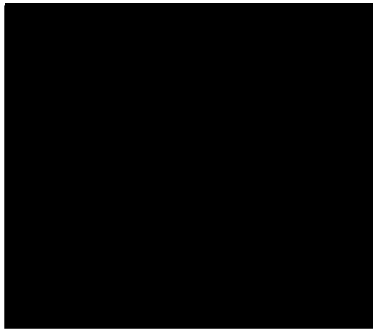




ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDD2017/2527



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 4 July 2017.

In your request you sought:

"... copies of documents prepared in 2015-16 and 2016-17 related to the obligations of the Chief Minister and Deputy Chief Minister as Voting Shareholders for Icon Water Limited, including for shareholder meetings."

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

On 12 July 2017 I wrote to you and provided a list of documents potentially relevant to the scope of your request. Via email your Office confirmed the documents that you wish to access, and processing of your request proceeded on this basis.

I note that the identified documents include those about the obligations of Minister Gentleman as a current Voting Shareholder for Icon Water Limited, in addition to those about the obligations of the Chief Minister, and of the Deputy Chief Minister as a former Voting Shareholder.

As advised to you on 21 July 2017, I decided to consult with a third party under sections 27 and 27A of the Act in relation to documents containing personal and business information. Consultation is now complete and I have given consideration to the third party's submission in making my release decision.

I have decided to release some documents in full and some in part, and to fully exempt the remaining documents. My reasons for not providing access to documents and components of documents are detailed in the below statement of reasons and in the attached schedule. Fully exempt pages and duplicate documents are excluded from the released document pack but the schedule identifies where these have been removed.

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)(a), documents that were prepared for and submitted to the Cabinet for consideration. If disclosed, these documents would prejudice the confidential nature of the considerations of Cabinet.

I have also decided to exempt from release, under section 35(1)(d) of the Act, components of documents that would reveal Cabinet deliberations that have not been officially published.

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 of the Act, components of documents that I consider to be deliberative in nature. This includes recommendations, opinion and advice prepared for the purpose of Icon Water's deliberative processes, including some unaudited financial figures.

Although there is general public interest in the operations of Icon Water and release may better inform the public about these operations, release is also likely to prejudice the ability of Icon Water to freely seek and receive advice and recommendations and prepare preliminary documents for discussion. I consider that there is a strong public interest in officers of Government corporations being able to prepare draft documents and provide advice and recommendations freely while in the process of determining the optimum course of action for the organisation and for the Territory.

On balance, I consider that it is not in the public interest to release this deliberative information.

Documents affecting financial or property interests of the Territory

Section 39 of the Act provides:

- (1) Subject to subsection (2), a document is an exempt document if its disclosure under this Act would have a substantial adverse effect on the financial or property interests of the Territory or of an agency.*
- (2) This section does not apply to a document the disclosure of matter in which under this Act would, on balance, be in the public interest.*

I have decided to exempt from release, under section 39(1) of the Act, information about the operations of ActewAGL likely to have a substantial adverse effect on the financial interests of the Territory if released. Icon Water is a 50 per cent partner in each of the ActewAGL Retail and ActewAGL Distribution partnerships and participates in the joint venture of those partnerships. Release of information about ActewAGL's operations is likely to affect its ability to effectively compete in the energy market. This would affect Icon's investment and ultimately reduce the dividend distribution returned to the Voting Shareholders and thus to the Territory.

I consider that this potential detriment to the Territory's financial interests outweighs the public interest in informing the public about ActewAGL's operations.

Documents concerning certain operations of agencies

Section 40 of the Act provides:

- (1) Subject to subsection (2), a document is an exempt document if its disclosure under this Act would, or could reasonably be expected to—*
 - (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency; or*
 - (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency; or*
 - (c) have a substantial adverse effect on the management or assessment of personnel by the Territory or by an agency; or*
 - (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency; or*
 - (e) have a substantial adverse effect on the conduct by or on behalf of the Territory or an agency of industrial relations.*
- (2) This section does not apply to a document the disclosure of matter in which under this Act would, on balance, be in the public interest.*

I have decided to exempt, under section 40 of the Act, components of documents that I consider would affect the operations of Icon Water. This includes information about the assessment of performance and remuneration of Icon Water employees and operational information about Icon Water.

Release of the redacted personnel information is likely to prejudice Icon Water's deliberative processes in relation to the assessment of personnel. I consider that it would also prejudice the right to privacy of the named individuals. The redacted operational

information includes details of Icon Water's dealings with external businesses and negotiations with other government jurisdictions. Release is likely to affect Icon Water's business and intergovernmental relations and ultimately inhibit the proper and efficient conduct of the organisation. This is likely to adversely impact the Territory through its impact on Icon Water dividends.

Although the release of the redacted information would inform the public about Icon Water's operations and management, I consider that any public benefit is outweighed by the potential detriment of release and therefore not in the public interest.

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).*

I have decided to exempt from release personal information contained in documents that I consider would be unreasonable to disclose. This includes the names of staff not publicly identified on Icon Water's website and other business associates of Icon Water. I have also decided to redact individual signatures. I consider that this personal information is immaterial to the scope of your request and its removal does not affect comprehension of the remaining content. I am satisfied that this information falls within the exemption set out under section 41(1) of the Act.

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 Icon Water.

The redacted information includes information that, if released, would adversely affect the competitive commercial activities and business affairs of Icon Water or its subsidiaries. Such information includes details of opportunities for Icon Water to provide competitive services or the competitive operations of the ActewAGL joint venture. Public disclosure of the information would make it available to competitors or potential competitors and is likely to diminish or destroy its commercial value. Further, I consider that release of the information may impact on Icon Water's ability to obtain such commercially valuable information in the future.

Some documents and components of documents contain information that is commercially valuable to organisations external to Icon Water and CMTEDD, particularly companies that have commercial relationships with Icon Water. I consider that release of this information and identification of these external organisations may adversely affect their business interests by making public their confidential business information. Further, release may affect Icon Water's continuing relationships with these organisations.

I note that copies of confidential audit reports are attached to two letters from Icon Water to the Voting Shareholders. The *Freedom of Information Regulation 1991* provides that documents of the auditor-general that relate to functions given to the Auditor-General under the *Auditor-General Act 1996* are exempt from the operation of the FOI Act. Further, these audit reports contain confidential financial and operational information about Icon Water that I consider is exempt from release under section 43(1)(c)(i) of the Act.

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.*

I have decided not to release, under section 45(1) of the Act, information that was provided to CMTEDD in confidence. This includes documents and information provided to

Icon Water by third parties and subsequently provided to CMTEDD. Release of this confidential information is likely to adversely affect these third parties and constitute a breach of confidence.

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.

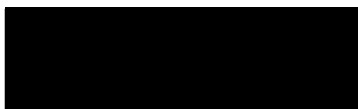
You can contact the Ombudsman either by telephone on 1300 362 072 or in writing to:
The Ombudsman
GPO Box 442
CANBERRA ACT 2601

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) 6207 0337.

Yours sincerely



Karen Doran
Executive Director
Economic and Financial Group

4 September 2017