



Freedom of Information Request – Elementus Due Diligence

I refer to your application under section 14 of the *Freedom of Information Act 1989* (the Act), received by the Environment and Planning Directorate (EPD) on 11 November 2014, in which you requested the following documents:

"Correspondence Information

In my previous FOI request 14/19080 I asked "What date were these documents presented to the executive?" The answer to this was May 2012. Please provide evidence of this correspondence including the dates of that correspondence.

Elementus Due Diligence

The minister and his department in the past and most recently <http://www.canberratimes.com.au/act-news/uriarra-solar-farm-applicants-linked-to-failed-nsw-green-electricity-retailer-20141110-11gpix.html> have advised due diligence was performed against the Elementus bid and their backgrounds. See quotes below:

A spokesman for Environment Minister Simon Corbell said significant due diligence had been applied to the solar bids. The ACT government had become aware of the Jackgreen relationship during the solar auction and sought independent advice on the matter from a financial advisory company.

"The advice satisfied the minister that the proponent had engaged experienced and capable contractors and was well progressed with financing arrangements with proven financiers." he said. "It is important to note that financiers also conduct their own due diligence of proponents in their consideration of providing finance for projects."

Based on that advice, "the minister did not consider the past association of Messrs Antflick and Smith with Jackgreen Limited to be material in relation to the One Sun project", he said. "The One Sun Capital Solar Farm is an infrastructure project that will not service a body of clients, whereas Jackgreen Ltd was a retailer which serviced several thousand customers across eastern Australia."

1. Please provide all information regarding this due diligence and any other investigations in to Elementus. Provide the correspondence with the minister, his department and the team/agency/out sourcer who performed these due diligence checks of Elementus. Ensure to include dates with all information.
2. Who was the financial advisory company?
3. What date were they engaged and when did they respond?
4. When was this response given to the auction committee, the minister and his department?
5. What response was given?
6. Were any other checks in to Elementus performed?

7. Were any checks made in to the relationship with Jack Green and Ashleigh Antflick?

If so what checks were they?

Please provide details of those checks.

8. Was there concern Elementus was run by one man out of his home office?

9. Was there concern in to unfair advantage or insider information regarding the fact that Elementus were on the Solar Auction advisory panel then awarded a Solar Feed-In tariff?

If so please provide details."

I am an officer authorised to make a decision in respect of a request for information, under section 22 of the Act.

The FOI Act deals only with documents already in existence. As your request includes questions, which are outside the provisions of the act, these will be responded to below. Where relevant documents exist, they will be listed in the schedule.

As much of your request relates to due diligence, it is important to note the clear distinction between the assessment of Solar Auction proposals and the development application process. In designing the form of the Solar Auction, a deliberate policy decision was made by the government that all risk associated with proposals would be borne by proponents, including obtaining development approval for their selected site. While successful proponents were awarded a Grant of Feed-in Tariff Entitlement, they accepted this in the full knowledge that their ability to receive payments was dependent on, amongst other things, a development application being granted. They were also aware that being successful in the Solar Auction would in no way impact on the normal development application process.

Responses to questions

Q: In my previous FOI request 14/19080 I asked "*What date were these documents presented to the executive?*" The answer to this was May 2012. Please provide evidence of this correspondence including the dates of that correspondence.

A: The Elementus Energy Pty Ltd solar auction prequalification proposal was submitted to the Directorate on 10 April 2012. The Elementus proposal is comprised of a binder containing approximately 150 pages considered commercial-in-confidence. The Minister received the Advisory Panel's Stage 1 prequalification recommendations on 21 May 2012, however he did not receive copies of, or specific details from any of the 22 proposals recommended for progression to Stage 2 of the auction, including the proposal from Elementus.

Q: Please provide all information regarding this due diligence and any other investigations in to Elementus. Provide the correspondence with the minister, his department and the team/agency/out sourcer who performed these due diligence checks of Elementus. Ensure to include dates with all information.

A: Please refer to the FOI documents

Q: Who was the financial advisory company? What date were they engaged and when did they respond?

A: Deloitte, Touche, Tohmatsu; 17/6/2013 and 18/6/2013 respectively

Q: When was this response given to the auction committee, the minister and his department? What response was given?

A: To the Directorate and the Minister's Office on 18/6/2013; refer to FOI documents

Q: Were any other checks in to Elementus performed?

A: Company searches were undertaken by the Secretariat. Contracted consultants also undertook due diligence in relation to the requirements of the Solar Auction Request for Proposals. Potential project financiers would also reasonably be expected to undertake their own due diligence investigations in line with normal practice for major projects.

Q: Were any checks made in to the relationship with Jack Green and Ashleigh Antflick? If so what checks were they? Please provide details of those checks

A: Research was undertaken by the Secretariat in June 2013; refer to FOI documents.

Q: Was there concern Elementus was run by one man out of his home office?

A: No

Q: Was there concern in to unfair advantage or insider information regarding the fact that Elementus were on the Solar Auction advisory panel then awarded a Solar Feed-In tariff? If so please provide details.

A: The independent Solar Auction Advisory Panel was comprised solely of four external, highly qualified industry leaders and one senior ACT government Treasury representative; namely Ross Bunyon AM (Panel Chair), Michael Dureau (Deputy Chair), Michael Sargent, Bruce Godfrey and Abrie Swanepoel. The Panel details, including a summary of their backgrounds, were published on the ACT government Solar Auction website during the entire Auction process.

Schedule detailing decisions

Please refer to the attached schedule that lists decisions regarding access to all documents, which have been identified as relevant to your request. The terms used on the schedule are either 'Release', 'Partial release' or 'Exempt'. Where an exemption is made, a reference will be made on the schedule to the relevant section or combinations of sections of legislation that apply to the decision.

Duplicate documents are listed on the schedules, however where possible I have included only one copy with the released documents.

Decision

The Directorate has identified twelve documents in its possession that meet the scope of your request, as identified in the schedule attached to this letter.

Under the Act, documents may be partially exempt or provided to applicants with deletions and I have decided to exempt some parts of some documents under sections 41 (Documents relating to personal privacy) and 43 (Documents relating to business affairs).

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).*

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; 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.

Review rights

My decision is appealable under the Act. This means that if you are dissatisfied with this outcome you have a right to seek a review under section 59 of the Act. This right of review extends to a review of the adequacy of the search for documents undertaken by EPD. If you wish to seek a review you should write to:

The Director-General
Environment and Planning Directorate
GPO Box 1908
CANBERRA ACT 2601

Email: EPDFOI@act.gov.au

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.

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

The Ombudsman
GPO Box 442
CANBERRA ACT 2601

Email: ombudsman@ombudsman.gov.au

Online FOI Publication Policy

Please be aware that under the ACT Government's "Online FOI Publication Policy" (the Policy), information released to you under this Freedom of Information Application may be released on the internet.

Personal information or business affairs information will not be made available under the policy. If you think the content of your request would contain such information, please inform our contact officer immediately.

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/open_government/report/freedom_of_information_online

If you have any queries in relation to this matter please contact EPD's Customer Service Centre on 6207 1923 and ask for the Information Management Team.

Yours sincerely



Ann Lyons Wright ✓
A/g Executive Director
Sustainability and Climate Change
3 February 2015

