



ACT
Government
Community Services

(Ref: 14/31)

FOI Act, s41

Dear FOI Act, s41

I refer to your application under the ACT *Freedom of Information Act 1989* (the FOI Act), received by the Directorate on 18 August 2014, in which you sought access to the following information:

"...all documents, information and correspondence held by the ACT Government in relation to procurement at the 2014 Multicultural Festival."

On 29 August 2014, FOI Act, s41 confirmed the revised scope to be as follows:

"...information held by the Community Services Directorate which is relevant to procurement for all eight of the major procurement services at the 2014 Multicultural Festival".

Mr David Matthews wrote to you on 15 September 2014 advising you may be liable to pay a processing fee due to the number of pages for consideration being approximately 4500.

The Directorate received your response to the proposed fees and charges on 19 September 2014, where you sought a remission of fees be waived under section 29 and 30 of the Act, for the reason that it is in the public interest.

On 25 September 2014, Mr Matthews agreed to waive the fees and charges for the processing of your request. Mr Matthews also advised the due date for this application is 3 October 2014.

I am an officer authorised to make a decision in respect of your request under the FOI Act, section 22. I understand Ms Ross wrote to you on 2 October 2014 advising of the delay in processing your application due to the size of the request. I apologise for this delay in providing you with the relevant documents relating to your FOI request.

Decision

Please find attached schedules of procurement documents identified in relation to your request. The attached schedules list my decisions regarding access to the documents. The terms used are either Full release, Partial release, Not released, Exempt in Full or Copy.

Exemptions

All documents referred to in the schedules have been considered with a view to releasing them to you. Where information is considered to be exempt and a deletion or exemption has been made, a reference is made in the schedule to the relevant section, or combinations of sections of legislation that apply to the particular information.

Attachment A has been provided as a summary of relevant sections referred to in the attached schedules and excerpts of legislation which have been referenced are provided at **Attachment B**.

Section 36, Internal working documents

A document within the scope of your request has been released with a deletion in reference to the Act, section 36. Exemptions under this section have been made, as the document if released would disclose information which would be contrary to the public interest.

Section 41, Personal information

Certain documents within the scope of your request have been released with deletions in reference to the Act, section 41. Exemptions under this section have been made where the documents within the scope of your request contained personal information relating to other individuals, the disclosure of which I consider to be unreasonable.

Section 43, Business Affairs

Certain documents within the scope of your request have been released with deletions or exempt in full under section 43 of FOI Act. Exemptions under this section have been made where documents if released would disclose information which relates to trade secrets, commercial value or disclosing information concerning a person would have an adverse affect in respect to the business, commercial or financial affairs.

Section 45, Documents containing material obtained in confidence

Certain documents within the scope of your request have been exempted under section 45, as I believe the disclosure of this information would be a breach of commercial in confidence.

Copy

You will note the decision in relation to some documents contain the term 'copy' and refer to the Schedule number and folio number. Such references have occurred to minimise the release of repetitious information to you.

Outside scope of the request

The term 'Outside Scope of the Request' has been used only when the information reviewed does not relate to the information you have applied for.

You will note on numerous folios (eg: Schedule 7, folio 34 and 35) a reference has been made to an attachment in an email, however, a copy of the attachment was not placed on file with the relevant folios. Further, you will note the attachment appears in a separate email (folios 6-31).

Review rights

My decision is appealable under the Act. This means 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 the Directorate.

If you wish to seek a review you can write to:

Executive Director
Service Strategy and Community Building
Community Services Directorate
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 Executive Director 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

Online FOI Policy

I have assessed your request for information under the ACT Government's Online Freedom of Information Publication Policy and have determined the documents relevant to your request will be published online. For more information about the ACT Government's Online Freedom of Information Publication Policy, a copy of the policy 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 the documents provided to you for the purpose of this FOI request (**Ref: 14/31**) please contact me on 6205 0753.

Yours sincerely



Melanie Saballa
Acting Director
Service Strategy

15 October 2014

Exemptions

As discussed above, all scheduled documents have been reviewed with a view to potential release.

Where this review of records has uncovered information that is 'exempt information' the record will be released with exempt information withheld (released with deletions) if possible. Alternatively, if no information can be released from the records, the record is "exempt in full". In either circumstance the schedule will reflect the type of information identified that is being withheld by reference to the legislative provision that enables the exemptions.

The following explanations apply to information withheld from records reviewed in response to your application. If you have any concerns or questions about these exemptions please call the contact officer identified in the Decision Letter.

Freedom of Information Act 1989

Section 36 – Internal working documents

A document is an exempt document if its disclosure relates to opinion, advice or recommendation on the deliberative or thought process of the Directorate and would be contrary to the public interest.

Section 41 – Personal Information

A document is an exempt document if its disclosure under the FOI Act would involve the "unreasonable" disclosure of personal information relating to another person. Certain documents within the scope of your request contained personal information that has been exempted in accordance with section 41 of the FOI Act. Decisions to exempt in full or make deletions under section 41 have been made in consideration of your right to information about yourself and your family and also the right of other parties to have their ongoing privacy protected.

Section 43 – Documents relating to Business Affairs

There are a number of documents which contain information relating to non government organisations. This information contains monetary information or information which may impact on future tender capabilities. The release of this information may diminish the commercial value of the information and compromise the organisations' and other organisations competitiveness in any future tender processes.

Section 45 – Documents containing material obtained in confidence

There are a number of documents which contains information provided to the Directorate under commercial in confidence. Releasing this information would constitute a breach of confidence owed to a person or organisation.

*Freedom of Information Act 1989***36 Internal working documents**

- (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.

41 Documents affecting personal privacy

- (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).
- (2) Subject to subsection (3), subsection (1) does not apply to a request by a person for access to a document only because of the inclusion in the document of matter relating to that person.
- (3) Where—
 - (a) a request is made to an agency or Minister for access to a document of the agency, or an official document of the Minister, that contains information of a medical or psychiatric nature concerning the person making the request; and

- (b) it appears to the principal officer of the agency, or to the Minister, as the case may be, that the disclosure of the information to that person might be prejudicial to the physical or mental health or wellbeing of that person;

the principal officer or Minister may direct that access to the document, so far as it contains that information, that would otherwise be given to that person is not to be given to that person but is to be given instead to a doctor to be nominated by that person.

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.
- (2) Subsection (1) does not apply to a request by a person for access to a document—
 - (a) only because of the inclusion in the document of information concerning that person in respect of his or her business or professional affairs; or
 - (b) only because of the inclusion in the document of information concerning the business, commercial or financial affairs of an undertaking where the person making the request is the proprietor of the undertaking or a person acting on behalf of the proprietor; or
 - (c) only because of the inclusion in the document of information concerning the business, commercial or financial affairs of an organisation where the person making the request is the organisation or a person acting on behalf of the organisation.
- (3) A reference in this section to an undertaking includes a reference to an undertaking that is carried on by, or by an authority of, the Territory, the Commonwealth, a State or by a local government authority.

Documents containing material obtained in confidence

(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;

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—

(d) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or

(e) an agency or the Territory.