



ACT
Government

Chief Minister and Cabinet

Our ref: FOI CMD 38/11-12

Dear

I am writing regarding your request addressed to the Chief Minister and Cabinet Directorate (CMCD) made under the *Freedom of Information Act 1989* (the Act). You are seeking access to all documents relating to submissions for the **Public Interest Disclosure (PID) Bill 2011 exposure draft**:

Decision Maker

I am authorised under section 22 of the Act 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.

Decision on Access

Officers of CMCD have conducted thorough searches of paper and electronic files and email accounts. Documents that are relevant to your request have been located in the business units of Public Sector Management, Communications and Engagement, Cabinet and the office of the Commissioner for Public Administration.

I have interpreted the scope of your request to include:

- both accepted and unaccepted submissions;
- decisions on publishing submissions;
- deliberations on decisions;
- guidelines and policies for accepting submissions; and
- PID Bill developments/ changes from exposure draft/ commencement date:

With regards to the first point of your request, you are seeking "...all documents that purport to be submissions but are not..." including late/insufficient/irrelevant submissions. All submissions received by the Directorate were accepted, therefore, there are no documents identified under this category.

Under your second point, you have requested all documents that contain deliberations on publishing accepted and unaccepted submissions. All submissions

received were accepted and all submissions received were made publicly available. Therefore, there are no documents held under this portion of your request. However, email correspondence on arranging the public release of the submissions was located and I have provided these documents to you.

The majority of the documents identified by CMCD as relevant under the scope of your request are email exchanges of Government officials which include submissions/recommendations to, and communicate deliberations of, the Executive/agency and I have decided to exempt these documents. All identified documents, together with my decision on each, have been listed on the accompanying schedules.

Copies of documents which I am releasing in full are attached to the relevant schedules. Duplicate documents are listed on the schedules however, where applicable only one copy has been included with the released documents.

Executive documents

Section 35 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.*

I have decided to exempt from release, under section 35 of the Act, draft and final Cabinet submissions and material describing the content of Cabinet documents; the deliberations of the Cabinet that would not have been otherwise subsequently disclosed; and comments from agencies that constituted part of the process of drafting those Submissions. Such comment is found primarily in email correspondence and also in a letter and annotated copy of a draft document. Copies and extracts of submissions for consideration by Cabinet have been exempted under section 35(1)(c) and information that would disclose the confidential deliberations and decisions of Cabinet have been exempted under section 35(1)(d).

Internal working documents

Section 36 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.

I have decided to exempt a number of documents on the basis that they constitute internal working documents under section 36(1) of the Act. This material contains advice, opinions and recommendations of various individuals including CMCD officers as well as the views of officers in other ACTPS agencies.

These drafts reflect the process of drafting and redrafting that was pursued in the preparation of the revision of the Public Interest Disclosure Bill 2011 exposure draft. Documents in this group contain the views of individual officers some of which change over time and in light of the responses of others. They do not necessarily constitute the conclusive views of ACTPS directorates, or of senior officials in those directorates. They comprise documents not seen by the relevant ministers.

I consider that it is clearly in the public interest that ACT officials should be able to prepare briefing documents, make amendments and provide advice freely while in the process of working towards a final submission for publication. I therefore consider that it is not in the public interest that such correspondence and draft documents be released.

It is manifestly in the public interest that ACT officials participate in confidential discussions with their jurisdictional counterparts in the framing of legislation. I consider the openness with which information is shared with ACT Officials would be undermined if such material were to be released under 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 Director-General. Your request should be addressed to:

Director-General
Chief Minister and Cabinet 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 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.

In ongoing commitment to open and transparent practices, the Government provides access to information through various means. Individuals are encouraged, as I encourage you, to contact us to discuss the information or clarification you seek. The *Freedom of Information Act 1989* provides legislative requirements to ensure the right, as far as possible, of access to information – in document form – in the possession of the Territory. This is the formal process by which information is obtained.

I would be happy to elaborate on this decision with you and my initial offer to discuss various aspects of the PID policy process, and address any specific concerns or questions you may have, still stands. I am contactable on (02) 620 50296.

Yours sincerely



Liesl Centenera
Director, Public Sector Management

17 August 2012