



ACT
Government

Territory and Municipal Services

Dear

Freedom of information request – Correspondence between the Minister and TAMS

I refer to your application made under the *Freedom of Information Act 1989* (the FOI Act) received on 11 December 2012, in which you sought access to the following documents held by the Territory:

...all correspondence between the Minister for TAMS and the Directorate from 10 September 2012 to 20 October 2012.

Decision

I am an officer authorised under section 22 of the FOI Act to make a decision in relation to your request.

I have included a schedule of documents identified in relation to your request at Attachment A. In addition to the documents identified in the schedule, 169 letters from constituents were referred by the Minister to the Directorate for handling during the relevant period, in accordance with caretaker conventions. I have not included these documents within the scope of your request on the basis that they are primarily constituent inquiries that were merely referred by the Minister without input from the Minister's office.

The documents identified within the scope of your request are email traffic between officers of the Directorate and Ministerial staff or in response to Ministerial requests. I have decided to release all of these documents either in full or claiming only limited exemption mainly in relation to personal information. The exemptions claimed and reasons for my decisions are documented below.

Section 41 – Documents affecting personal privacy

Section 41 provides that:

A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person).

Many of the documents provided to you contain the personal information of constituents who contacted the Minister, including their names, addresses and other contact details. I have decided that this information should be redacted from the emails being released to you. These redactions should not affect the substance of the communications. Also removed are the private contact numbers for some staff and officers.

I have also exempted material from document 25 and 26 relating to specific details of injuries sustained by an individual in a work place accident and from document 46 which includes possible future employment arrangements of an employee. While the documents do not readily identify the people to whom this information relates, it may affect these people's personal privacy should their identity be recognised which is possible given the detail contained in the emails.

Section 43 – Documents relating to business affairs

Section 43 provides that;

- (1) A document is an exempt document if its disclosure under this Act would disclose—
 - [...]
 - (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 [...] 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[.]

I am claiming an exemption under section 43(1)(b) for information contained in document 6. The information relates to a private consortium and a proposal for a

new service and the possibility of utilising MyWay cards. The information relates to the business affairs of the consortium and has a commercial value that could be destroyed or diminished if the information was disclosed.

Document 85 and document 66 also concerns the business affairs of an organisation and ongoing contract negotiations which are subject to a tender process. The documents contain pricing and business information of a third party contractor, and I have decided that the release of this information would unreasonably affect that third party's business affairs along with the tender process currently underway. The relevant information has been removed under section 43(1)(c).

Section 35 – Executive documents

In addition to exemptions for business information contained in document 85, I am also claiming an exemption for information under section 35 (1)(d) Executive documents. Information contained in the Ministerial briefing included in document 85 relates to decisions of the Executive and contains information the disclosure of which would involve the disclosure of deliberations and decisions of the Executive.

Section 36 - Internal working documents

I have removed material in document 9 on the grounds that it is, in its current form, a draft and an internal working document under section 36 (1) of the Act. It would not be in the public interest to release this information which could cause confusion as it is inconsistent with what was subsequently cleared for release. I have however provided the released information which I have included as document 9A for your information.

Parts of document 39 and 40 have also been exempted for the same reasons. The final wording which relates to the exemption in these documents can be found in document 38.

I have decided to remove material in document 67 and an exemption is claimed under section 36. The material removed provides a speculative discussion about possible scenarios relating to upgrading shopping centres. The material is deliberative in nature and its release would be contrary to the public interest.

Section 40 – Documents concerning certain operations of agencies

I am concerned that information contained in document 92 relates to the operations of another agency and I have not been able to confirm whether the advice provided

is publicly available information or not. To this end I have decided to claim an exemption under section 40(1)(d). This subsection provides that where information could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency, the document is an exempt document. In this case, there is a question raised in the document as to the status of the information. To release the information without authority could have a substantial adverse effect on TAMS which relies on the cooperation of other agencies for the sharing of information.

Section 34 – Documents affecting relations with Commonwealth and States

Document 100 provides details about the Australian Alps partnership between the ACT, Victorian and the Commonwealth governments. The details of the agreement are not yet public and to divulge information in this context would not be in the public interest pending a formal announcement. To release the information may damage the relations between the ACT and other jurisdictions. I have therefore decided to exempt the information in question.

Fees and charges

Freedom of information requests attract fees and charges for time spent searching and retrieving documents, decision-making time and photocopying.

You have asked for remission of any applicable charges on the basis that the release of the documents is in the public interest. I accept that, in this instance, there is a public interest in the release of these documents and I have agreed to remit all charges incurred in relation to this request.

Right of review

If you are dissatisfied with my decision, you have the right to seek an internal review. If you wish to seek an internal review you should write to:

The Director-General
Territory and Municipal Services Directorate
C/- Freedom of Information Officer
GPO Box 158
CANBERRA ACT 2601

You have 28 days from the date of the decision letter to seek a review of the outcome or such other period as the Director-General permits.

ACT Civil and Administrative Tribunal

If you are still dissatisfied after the directorate has conducted an internal review, you can seek an independent review of the decision by the ACT Civil and Administrative Tribunal. You have 28 days from the date of the internal review decision to seek a review from the Tribunal.

The Tribunal is an independent body. It can agree with, change or reject the original decision, substitute its own decision or send the matter back to the decision maker for reconsideration in accordance with Tribunal recommendations.

To apply to the Tribunal for a review you can obtain an application form from the Tribunal (www.acat.act.gov.au). The postal address of the Tribunal is:

ACT Civil and Administrative Tribunal
GPO Box 370
CANBERRA ACT 2601

Ombudsman

You also have the right to complain to the Ombudsman about the processing of your request. If you wish to lodge a complaint you should write to:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Further information

If you have any questions in relation to your request please contact the Directorate's FOI Coordinator on 6205 5408 or tamsfoi@act.gov.au.

Yours sincerely



Kim Smith
Executive Director
Directorate Services Division

21 February 2013