



Andrew Barr MLA

DEPUTY CHIEF MINISTER

TREASURER

MINISTER FOR ECONOMIC DEVELOPMENT

MINISTER FOR COMMUNITY SERVICES

MINISTER FOR SPORT AND RECREATION

MINISTER FOR TOURISM AND EVENTS

MEMBER FOR MOLONGLO

Dear

Request under the Freedom of Information Act 1989

I refer to your application under section 14 of the *Freedom of Information Act 1989* (the Act), received by the Office of the ACT Treasurer (the Office) on 22 January 2014 in which you requested the following documents:

“..... all documents falling within any of the following categories. To the extent any of the following categories overlap, such overlap is for abundant caution and each category should be read without limitation to each other category.

1. Documents, dated between 1 July 2010 and present day, in any way connected with any waiver of payroll tax, whether under section 131 of the *Financial Management Act 1996* (ACT) or otherwise, including:-
 - a. Any submission or application for a payroll tax waiver; and
 - b. Any document in any way relating to consideration of a payroll tax waiver; and
 - c. Any communication or record of communication in any way relating to a payroll tax waiver or application or submission therefore; and
 - d. Any policy document in any way relating to payroll tax waivers; and
 - e. Any agreement between the Territory and any other entity by which a payroll tax waiver was granted; and
 - f. Any document evidencing or in any way relating to the exercise by the Treasurer of the Treasurer's power under section 131 of the *Financial Management Act 1996* (ACT), which exercise of power relates in any way to payroll tax.”

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

ACT LEGISLATIVE ASSEMBLY

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Decision

The Office has identified 15 documents in its possession that meet the scope of your request, as identified in the schedule attached to this letter.

I have considered all documents identified as relevant to your request and I have decided to release, most of these documents. My decisions concern the relevant portions of these documents; the remaining information in the documents is beyond the scope of your request and has been excluded.

All relevant items identified are listed on the attached schedule with a summary of my decision in relation to each and copies of the material that I have released are attached.

Exemptions claimed

Exemptions have been claimed to protect the private affairs of businesses, personal affairs, the considerations of Cabinet, internal working documents and material obtained in confidence.

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.*

In respect of the confidential nature of the considerations of Cabinet, I have decided to exempt from release a Cabinet in Confidence submission.

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 one document under section 36(1) of the Act on the basis that it was provided for internal deliberation. The final version of the document was a speech presented to the ACT Legislative Assembly on 22 August 2012 – on a motion in relation to payroll tax. A copy of the final speech can be found at www.parliament.act.gov.au

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 speech.

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.*

Under section 43 of the Act, I have exempted three documents that relate to commercial-in-confidence discussions.

As advised on 19 February 2014, under section 27 of the Act, I have undertaken consultation with third parties on the information containing their business affairs to allow them a reasonable opportunity to content that this information be publicly released.

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).*
- (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.

Under section 41(1) of the Act, I have exempted a private email address.

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;*
- 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.*

It is my view that the release of information in one document would reasonably constitute a breach of confidence owed to an external party.

Review rights

You are entitled under section 59 of the Act to request a review of my decision. This right of review extends to a review of the adequacy of the search for documents undertaken by the Office. If you wish to seek a review you should write to:

Mr Andrew Barr MLA
Deputy Chief Minister
London Circuit
GPO Box 1020
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 Treasurer 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

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

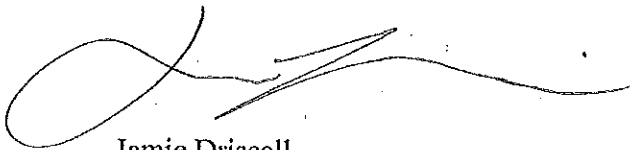
Personal information or business affairs information will not be made available under this policy. If you think the content of your request would contain such information, please inform me immediately.

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/data/assets/pdf_file/0016/250333/FOI_Web_Release_Policy_-_Final.pdf

I am more than happy to discuss with you any aspect of this request. I can be contacted on (02) 6205 0011.

Yours sincerely



Jamie Driscoll
Chief-of-Staff

20/3/2014