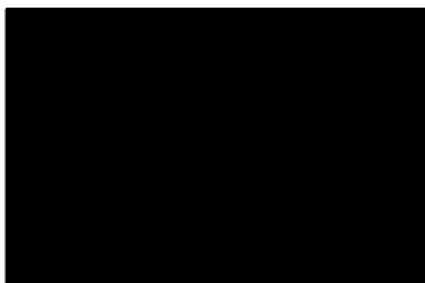




ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDD 45/15-16



Dear [REDACTED]

Freedom of Information Request - City Centre Marketing and Improvement Levy

I refer to your application under section 14 of the *Freedom of Information Act 1989* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 8 February 2016, in which you requested the following:

".... a copy of all documents, papers, minutes of meetings and supporting materials, relating to the administration of the City Centre Marketing and Improvement Levy (herein after referred to as 'CCMIL') for the period 18 October 2014 to the present day.

The documents, papers, minutes and notes of meetings, and supporting materials should include the following:

- 1. the minutes and notes for all meetings held between officers of CMTEDD and the Minister for Planning in relation to the CCMIL;*
- 2. the minutes and notes for all meetings held between officers of CMTEDD and the Treasurer in relations to consideration of the CCMIL;*
- 3. the minutes and notes for all meetings held between officers of CMTEDD and the Chief Minister in relations to consideration of the CCMIL;*
- 4. all briefing documents to the Minister for Planning by officers of CMTEDD in relations to consideration of the CCMIL;*
- 5. all briefing documents to the Treasurer by officers of CMTEDD in relations to consideration of the CCMIL;*
- 6. all briefing documents to the Chief Minister by officers of CMTEDD in relations to consideration of the CCMIL;*
- 7. all policy papers developed in the course of preparing the 2014 tender for the CCMIL (tender no. 25376.100);*

Chief Minister, Treasury and Economic Development

8. *all financial evaluations and analyses (including regulatory impact statements, comparative analysis) developed in the course of preparing and finalising the tender for the CCMIL;*
9. *all briefing materials provided to the CCMIL administrator Canberra CBD Ltd (CCBD), Levy Payers and the Property Council by officers of CMTEDD, together with minutes and notes of meetings held between officers of CMTEDD and employers and representatives of providers of CCBD in relation of the CCMIL;*
10. *all documents, assessments and analyses in relation to the advocacy, lobbying or proposals from Canberra CBD Ltd (CCBD) relating to the 2015 Budget or any lobbying activity undertaken by CCBD that make reference to the CCMIL between 18 October 2014 to the present day."*

The dot points of your request have been amended to numbered items for ease of reference.

Decision Maker

I am authorised under section 22 of the Act and have been appointed to make a decision as to the imposition of charges and the provision of access to documents that fall within the scope of your request. I would like to apologise for the time it has taken to provide you with a response to your application.

Identification of documents

Officers of CMTEDD have conducted searches of paper and electronic files and email accounts. Documents that are relevant to your request have been located and are listed on the attached schedule.

As indicated in my letter to you of 24 March 2016, consultation on the release of information regarding the business affairs of third parties was undertaken under section 27 of the Act.

Charges

I have decided, under section 29 of the Act, not to impose processing charges for this request.

Decision on Access

I have interpreted your request with specific reference to the numbered items listed. Documents and portions of documents that are considered to fall outside the scope of your request have been excluded from release consideration.

This includes portions of documents from:

- Folio 2
- Folio 6
- Folio 7
- Folio 9

In relation to items one to five, item eight and item ten of your request, no relevant documents have been identified. From the advice I have received from CTMEDD staff I am satisfied that no documents are held by the Directorate.

The Directorate has identified nineteen documents in its possession that fall within the scope of the remaining items of your request. In accordance with section 21 of the Act, I have decided to fully release some documents, partially release some documents, and fully exempt some documents. My reasons for not providing access to these documents are outlined in the following statement of reasons and in the attached schedule. The consultation and consideration process in regards to folio 41 is unfortunately still underway, as reflected in the schedule. I will advise you regarding the release of this document by 20 May 2016.

Exemptions claimed

In relation to item six of your request, documents have been identified for which the following exemptions have been applied.

Section 35 - Executive documents

Folios 16, 19, 45-46

Section 35 of the Act 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 fully exempt from release, under section 35 (1)(a) and (1)(d) of the Act, folios 16 and 19. These documents have been submitted to Cabinet for consideration and their release would reveal deliberations or decisions of the Executive. I have partially exempted folio 45-46 as the redacted information refers to a Cabinet decision.

Section 42 – Documents subject to legal professional privilege

Folios 22-25 and 40

Section 42 of the Act provides:

- (1) *A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.*
- (2) *A document of the kind referred to in section 8 (1) is not an exempt document under subsection (1) of this section only because of the inclusion in the document of matter that is used or to be used for the purpose of the making of decisions or recommendations referred to in section 8 (1).*

I have decided to exempt from release components of folios 22-25, and folio 40 in its entirety, on the grounds that they are protected by legal professional privilege and their disclosure would diminish our capacity to undertake full and frank discussion with our lawyers.

Section 43 - Documents relating to business affairs

Folios 22-25, 45-46

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.*

I have decided to exempt from release portions of documents that contain material relating to information concerning a person's business, as I am satisfied that the information falls within the exemption set out under section 43 of the Act. It is my view that the disclosure of this information would reasonably be expected to have an adverse affect on the organisation by making public information on its business undertakings.

Section 36 - Internal working documents
Folios 37, 47 and 48

Section 36 of the Act 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.**
- (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.*

I have decided to exempt draft iterations of a proposed funding agreement considered during the development of the final document. The documents reflect the process of drafting and redrafting that was pursued in the preparation of the agreement, the final version of which is to be published on Canberra CBD's website in the coming weeks: (<http://www.inthecitycanberra.com.au>). These documents contain information that changes over time and in light of the responses and negotiations with other parties. They do not necessarily constitute the concluded agreement executed by the Directorate.

I consider that it is clearly in the public interest that ACTPS officials should be able to prepare draft agreement documentation, make amendments and provide advice freely while in the process of working towards a final position. Additionally, release of these

documents may create unnecessary confusion. I therefore consider that it is not in the public interest that intermediate drafts of the agreement document be released.

In relation to item seven of your request I have decided to release the identified document to you in full with no exemption. No other relevant documents were identified within the date range specified.

In relation to item nine of your request I have decided to release to you in full two of the identified documents, and partially release the relevant content of the third.

Section 42 – Documents subject to legal professional privilege

Section 43 - Documents relating to business affairs

(refer provisions provided on pages 3 and 4 above)

Folios 20-21

I have exempted from release, under section 43 of the Act, information contained in folios 20-21 pertaining to operations of a business. It is my view that the release of this information would reasonably be expected to have an adverse affect on the organisation.

I have also decided, under section 42 of the Act, to exempt components of these folios that contain legal advice provided to the Directorate concerning a contractual matter.

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 the Directorate. If you wish to seek a review you should write to:

The Director-General
Chief Minister and Treasury Directorate
C/- Freedom of Information Officer
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 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

Online FOI Policy

I have assessed your request for information under the ACT Government's Online Freedom of Information Publication Policy and have determined that the documents relevant to your request, not including your original application, will be published online.

Personal Information or business information will not be made available under this policy. 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](http://www.cmd.act.gov.au/data/assets/pdf_file/0016/250333/FOI_Web_Release_Policy_-_Final.pdf).

If you have any queries in relation to this matter, please contact me on (02) 6207 6196.

Yours sincerely



Karen Wilden

Director

Office of the Coordinator General, Urban Renewal

11 May 2016