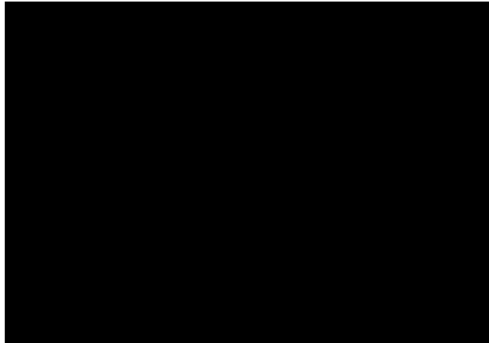




ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDD 55/15-16



Freedom of Information Request – Agreed Memorandum of Understanding (MOU) on Procurement of Works and Services with UnionsACT

I refer to your application under the ACT *Freedom of Information Act 1989* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 7 April 2016, in which you sought access to the following information:

“... all documents and any information held by the ACT Government in relation to the Agreed Memorandum of Understanding on Procurement of Works and Services by the ACT Government (MOU) signed by Mr. Barr and Unions ACT on 28 March 2016.”

Decision Maker

I am authorised under section 22 of the Act and have been appointed 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, as advised to you in my letter of 6 June 2016.

Identification of documents

As I have previously advised, officers of CMTEDD have conducted searches of paper and electronic files and email accounts. Numerous documents that are relevant to your request have been located.

As promised, this is the second release of identified documents, set out in the attached schedules. Where duplicates have been identified, they have been excluded from the schedule and one copy only of the document has been provided.

Decision on Access

For this second release of documents, I have decided to release some documents in full, partially release some documents and fully exempt some documents from release.

Chief Minister, Treasury and Economic Development

Some documents have not been scheduled or provided to you as they contain the business affairs of third parties. I have decided, under section 27 of the Act, that these third parties may reasonably wish to contend that these documents or portions of these documents should be exempt under section 43 of the Act. Consequently, CMTEDD is currently undertaking consultation with these third parties. I will provide you with my decision on the release of these consultation documents as soon as possible.

Further, CMTEDD is continuing to process your request and anticipates that a third release will be provided to you by 12 August 2016. I apologise for the delay and appreciate your patience with this matter.

Exemptions claimed

Internal Working Documents

Office of the Director-General and Head of Service Documents, Folios: 13-14, 15-17, 18-20, 23-24, 30-32, 33, 34-41, 47-51

Deputy Director-Director Procurement and Capital Works – emails from Dave Purser, Folios: 1-9, 11-19, 20, 21-29, 30-31, 32-39, 40-44

Section 36 of the FOI 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 these folios and components of these folios on the basis that they constitute internal working documents under section 36(1) of the Act. This material includes advice, opinion and recommendations to and from CMTEDD which have been used as part of deliberative processes. The exempted material includes different versions of documents. I consider that it is clearly in the public interest that ACT Government officials are able to seek and provide advice freely while drafting documents and policies for the Government. As substantial parts of these documents were not part of the final versions, disclosure of the exempted material could reasonably be expected to interfere with the ACT Public Service's capacity to effectively advise the Government of the day. I therefore consider that it is not in the public interest that this information is released.

Documents affecting financial or property interests of the Territory

Office of the Director-General and Head of Service Documents, Folios: 15, 18

Section 39 of the Act provides:

- (1) *Subject to subsection (2), a document is an exempt document if its disclosure under this Act would have a substantial adverse effect on the financial or property interests of the Territory or of an agency.*
- (2) *This section does not apply to a document the disclosure of matter in which under this Act would, on balance, be in the public interest.*

I have decided to exempt these folios from release, under section 39, on the grounds that they would have a substantial adverse effect on the financial interests of the Territory. The documents include information about the planning of a procurement process. Disclosure of this information could affect the Territory's ability to achieve value for money from its procurement.

Documents subject to legal professional privilege

Public Sector Workplace Relations Documents, Folios: 18-20, 26-37, 42-43, 44-50, 51-58

Office of the Director-General and Head of Service Documents, Folios: 53-64

Deputy Director-General Procurement and Capital Works – emails from Dave Purser, Folios: 40-44

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 these folios from release, under section 42, on the grounds that they are protected by legal professional privilege and their disclosure would diminish CMTEDD's capacity to undertake full and frank discussion with our lawyers. I have also exempted components of these folios on this basis.

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, Treasury and Economic Development 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


Online FOI Publication Policy

I have assessed your request for information under the ACT Government's Online Freedom of Information Publication Policy and have determined that my decision on 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)

Should you have any queries regarding my decision, please contact me on (02) 6207 8944.

Yours sincerely


George Tommins
Executive Director
Procurement and Capital Works

2 August 2016