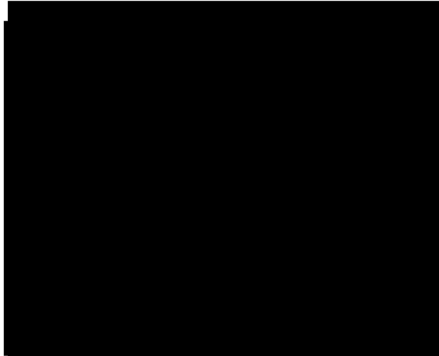




ACT
Government

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 third 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

As I advised in my letter of 2 August 2016, I have been undertaking consultation with relevant third parties and have now received their submissions. I have considered these submissions and I have made a decision to release information beyond what some third

Chief Minister, Treasury and Economic Development

parties want to be released. I am now obliged under section 27(2)(b) to allow 28 days before releasing any documentation to you containing information relating to the third parties' business affairs, affording them review rights.

Should the third party not seek review in the ACT Civil and Administrative Tribunal (ACAT) within a 28 day period, I will be in a position to release documents. Should the third party submit a review application to ACAT, I am required under the Act not to release any information to you until ACAT makes a decision in relation to the application. I have advised the third party of my decision on their submission and have also advised them of their review rights with ACAT.

I again apologise for the delay this has caused and appreciate your patience with this matter.

I have provided release decisions on all documents aside from those documents that remain subject to consultation. For this third release of documents, I have decided to release some documents in full, partially release some documents and fully exempt some documents from release. My reasons for not providing access to documents and components of documents are detailed in the following statement of reasons and in the attached schedule.

Exemptions claimed

Internal Working Documents

Director-General Economic Development Documents, Folios 1-2

Executive Director Procurement and Capital Works – Emails to/from Public Sector Workplace Relations, Folios: 10; 12; 13-14; 16-17; 18-21; 39-43; 51-55; 61; 62-66; 67-68; 76-82; 84-90; 96-100; 120; 126-127; 128-130; 131-134; 136-171; 178; 183; and 185-189

Executive Director Procurement and Capital Works inbox – emails to/from G Hammond, B Overton-Clarke, D Dawes and M Greenwood, Folios: 22-23

Senior Manager Social & Sustainable Procurement, Folios: 11-17; 33-34; 36-37; 39-40; 42-43; 48-49; 51-58; 62-63; 82-83; 97-98; and 99-100

Senior Manager Executive Support PCW – Emails 2016, Folios: 11-12; 16-19; 21-25 26; 30-36; 38-43; 65-71; 73-77; 80; 81-85; 89-95; 97-99; 100-103; 104-107; 108-112; 114-118; 123; 124-126; 142-146; 155-166; 174-192; 216-251; 263-264; and 274-278

Senior Manager Executive Support PCW – Emails 2015, Folios: 3-12; 27; 40-46; 52-53; 63-65; 66-68; 69-71; 72-75; 87; 88-89; 98-99; 101; 118-120; 126-129; 130; 141-142; 146; and 147-148

Senior Manager Executive Support PCW – Emails 2013-14, Folios: 37-43; and 45-53

Senior Manager Capital Contracts and Prequalification, PCW Documents, Folios: 2-6; 8-13; 54-58; and 60-64

Public Sector Workplace Relations Documents, Folios: 7-8; 12-15; 16; 33-34; 36-41; 42-43; 48-52; 56-58; and 59-61

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, or 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 drafts of documents and comments from ACT Government officials. 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 the 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 personal privacy

TRIM Documents, Folios 1-3

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).*

I have decided to exempt components of these folios from release under section 41 on the grounds that the material contains information about attributes of individuals and that its disclosure of this information would be a breach of the individuals' personal privacy.

Documents subject to legal professional privilege

Director-General Economic Development Documents, Folios 1-2

Executive Director Procurement and Capital Works – Emails to/from Public Sector Workplace Relations, Folios: 1; 2-3; 18-21; 24-26; 27-30; 31-34; 38; 39-43; 51-55; 61; 62-66; 67-68; 69-71; 72-74; 76-82; 84-90; 96-100; 101-112; 114; 115-116; 120; 121-122; 136-171; and 185-189

Executive Director Procurement and Capital Works inbox – emails to/from G Hammond, B Overton-Clarke, D Dawes and M Greenwood, Folios: 1-2; 3-5; 11-13; 14-17; and 18-21

Senior Manager Executive Support PCW – Emails 2016, Folios: 2-9; 38-43; 45-49; 50-59; 65-71; 73-77; 89-95; 97-99; 100-103; 104-107; 108-112; 114-118; 123; 124-126; 127; 128; 129-136; 137; 138; 139; 140; 142-146; 147-150; 155-166; 167-171; 174-192; 194; 195-196; 197-210; 211; and 216-251

Senior Manager Executive Support PCW – Emails 2015, Folios: 29; 30; 31-32; 33-34; 35-36; 37-38; 76-79; 82-84; 85; 86; 93-94; 95; 101; 102; 103-111; 112-113; and 124

Senior Manager Capital Contracts and Prequalification, PCW Documents, Folios: 14-15; 16; 17; 18-19; 20-21; 22-23; 27; 28-29; 30-32; 33; 34-41; 42; and 43-44

Public Sector Workplace Relations Documents, Folios: 9-11; 17-19; 21-24; 25-28; 33-34; 36-41; 48-52; and 56-58

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, or components of 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.

Documents relating to business affairs etc.

Director-General Economic Development Documents, Folios 1-2

Executive Director Procurement and Capital Works – Emails to/from Public Sector Workplace Relations, Folios: 1; and 2-3

Executive Director Procurement and Capital Works inbox – emails to/from G Hammond, B Overton-Clarke, D Dawes and M Greenwood, Folios: 1-2

Senior Manager Executive Support PCW – Emails 2015, Folios: 82-84; and 87

Senior Manager Capital Contracts and Prequalification, PCW Documents, Folios: 24-26

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 components of these folios from release, under section 43, on the grounds that disclosure could reasonably be expected to unreasonably affect the lawful business or professional affairs of a person or organisation that engages with or has engaged with the ACT Government, including through submitting tenders or being a contractor or subcontractor to the ACT Government.

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 Tomlins
Executive Director
Procurement and Capital Works

24 September 2016