



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 conducted searches of paper and electronic records and numerous relevant documents were located.

This is the fourth 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.

The large volume of documents to review and schedule and the need to consult on a range of documents has meant that processing your request has taken longer than expected. I wish to apologise once again for the time taken to finalise your request, and I thank you for your patience with this matter.

Chief Minister, Treasury and Economic Development

Decision on Access

As I advised in my letter of 21 September 2016, I have consulted with relevant third parties and received their submissions on the disclosure of documents. The time for these parties to seek a review in the ACT Civil and Administrative Tribunal (ACAT) has elapsed and I am now able to release the documents to you, with exemptions as noted below.

My letter of 21 September 2016 also advised that further documents had been identified for consultation with relevant third parties. I have now received submissions on the final consultation round.

I have considered the submissions and I have made a decision to partially release information that a third party considers to be exempt from release. 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 party's 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 the information. 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.

For this release of documents, I have decided to release some documents in full, partially release some documents and fully exempt some documents from release. As noted above, I have made a decision to partially release a document that cannot be released before the expiration of the third party's review period. This document is an email trail dated 5-15 February 2015 and titled *New Applicants applying for prequalification in the Territory*. My reasons for deciding to exempt material in this document and in the remaining documents are detailed in the following statement of reasons and in the attached schedules.

Some components of documents that mention the MOU in part also contain information unrelated to the scope of your request. The attached schedules indicate where irrelevant information has not been released.

I have now provided release decisions on all documents relevant to the scope of your request.

Exemptions claimed

Internal Working Documents

Executive Director Procurement and Capital Works Inbox Documents, Folios 5-13

Senior Manager Social and Sustainable Procurement Inbox Documents, Folios 4-12

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 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 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 relating to business affairs etc.

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 the document titled *New Applicants applying for prequalification in the Territory* (5-15 February 2015) from release under section 43 of the Act. Disclosure of this redacted information could reasonably be expected to 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

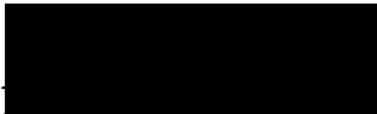
Online FOI Publication Policy

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

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

November 2016