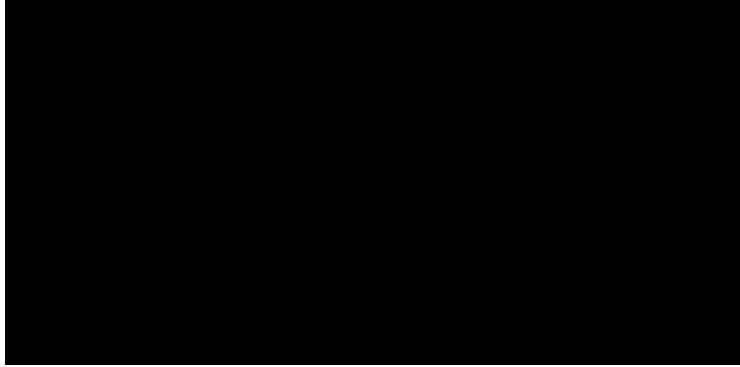




ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDD 26/16-17



Decision on Freedom of Information Request – decision to not progress Stage 2 Business Case - unsolicited bid, Manuka Oval

I am writing in relation to your request for documents made under the *ACT Freedom of Information Act 1989* (the Act) and received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 10 October 2016.

You have requested the following information “.... in relation to the Government's decision to not progress the Stage 2 Business Case in relation to the unsolicited bid by GWS and Grocon involving Manuka Oval:

- All briefing to Chief Minister Andrew Barr, his office, any advisor and all senior executives of any part of the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) notifying or explaining or mentioning or discussing the Government's decision to not progress the Stage 2 Business Case and/or the proponents' proposal not being successful;
- All correspondence sent from the ACT Government to GWS Giants notifying or explaining or mentioning or discussing the Government's decision to not progress the Stage 2 Business Case and/or the proponents' proposal not being successful;
- All correspondence sent from the ACT Government to Grocon notifying or explaining or mentioning or discussing the Government's decision to not progress the Stage 2 Business Case and/or the proponents' proposal not being successful;
- All notes, records or any document or summary that was generated to inform verbal discussions with GWS and/or Grocon notifying them about the Government's decision to not progress the Stage 2 Business Case and/or the proponents' proposal not being successful;

Chief Minister, Treasury and Economic Development

- All notes, records or any document or summary that was generated during or after the verbal discussions informing GWS and/or Grocon of the Government's decision to not progress the Stage 2 Business Case and/or their proposal not being successful. This includes any notes generated by senior staff aware of the proceedings of that discussion, whether they were present or not during that discussion.”

Decision Maker

I am authorised under section 22 of the Act 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.

Identification of Documents

Officers of CMTEDD have searched electronic and paper records for documents that may relate to your request. The identified documents are listed on the attached schedule.

Consultation

In my letter of 10 November 2016 I explained that I would provide my decision on access to documents after consultation with relevant third parties who may wish to contend that documents should be exempt from release. I have now received and considered submissions from these third parties.

Decision on Access

I have decided to fully exempt six documents from release, partially exempted two and fully release the remainder. My reasons for not providing access to these documents are detailed in the following statement of reasons and in the attached schedule.

Exemption claimed

Section 43 - Documents relating to Business Affairs

Relates to folios 1a-1d and 2a-2c

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.*
- (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 the above listed folios under section 43 of the Act as they contain commercially sensitive information. The information provided in folios 1b to 1d was obtained by CMTEDD as part of a 'Request for Quotation' process and was not intended for public release.

These folios contain sensitive details about a third party's business affairs, including intellectual property, procedures and pricing structures. The disclosure of this information would be a breach of confidence and would allow others to gain a competitive advantage.

I have exempted from release folio 1a on the same basis as it is a brief to the Chief Minister providing a comparison between the three proposals submitted in response to Invest Canberra's request for quotations.

I have also decided to exempt from release folio 2b, the analysis about the unsolicited proposal from GWS Giants. This analysis contains information about GWS Giants' business affairs and disclosure of this information is likely to significantly diminish its commercial value.

Release of this information would consequently be likely to adversely affect the lawful commercial, business and financial affairs of the consultant and/or its personnel and may prejudice the opportunity for future supply of information for analysis purposes.

I have also exempted content in folio 2a and folio 2c (content redacted). The briefs contain information about GWS Giants' business affairs and disclosure of this information is likely to significantly diminish its commercial value and would be a breach of confidence.

Section 36 - Internal Working Documents

Relates to folio 16.

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 from release the above listed folio under section 36 of the Act as it contains information that relates to preparation of an internal working document including opinion, and advice to assist in preparing a final communication piece.

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 Freedom of Information 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 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 and the documents released to you will be published online.

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 in relation to this matter, please contact me on (02) 6207 2004.

Yours sincerely



Ian Cox
Executive Director
Innovate Canberra

13 December 2016