

26 June 2018

Mr Lachlan Bell

By email: [foi+request-4553-398a215c@righttoknow.org.au](mailto:foi+request-4553-398a215c@righttoknow.org.au)

Dear Mr Bell

**Re: Freedom of Information Request**

I refer to your request dated 2 May 2018, received by Council on that day, where you sought access to documents under the *Freedom of Information Act 1982* (FOI Act).

Specifically, you advised that you are seeking access, as follows:

"I request the following information under the Freedom of Information Act (1982):

- 1) All documents relating to the Maitreya Festival from the period of 12th April 2018 to 2nd May 2018.

a) Including, but not exclusively:

- \* Plans
- \* Reports
- \* Meeting notes / Minutes
- \* Internal memos / Directions / Advice
- \* Intranet / Newsletter content
- \* Social media communication
- \* Emails, Notices, Letters, Communications sent:

To / from / cc'd:

- CEO,
- Mayor,
- Councillors,
- Directors,
- Managers,
- Planning staff,
- Council's media / website and social media staff,
- Executive assistants,
- Internal legal,
- Other staff

With:

- Internal council staff,
- External agencies including but not exclusively (VicPol, CFA, Ambulance Vic, St Johns, Parks Vic, DELWP, Aboriginal Affairs, State government ministers and their staff, Other agencies)
- Local businesses,
- External media organisations,

ALL CORRESPONDENCE TO:

WYCHEPROOF  
367 Broadway, PO Box 1  
Wycheproof VIC 3527

ALL ENQUIRIES:

Ph: (03) 5478 0100  
Fax: (03) 5493 7395

Email: [buloke@buloke.vic.gov.au](mailto:buloke@buloke.vic.gov.au)

-- Promoters and their representatives

- b) Any general or partial legal notes / directions / communications that are not excluded by FOI (1982) s42."

### Clarification

I have examined the terms of your request and have determined that I require clarification in order to process your application. Section 17(2) of the FOI Act requires that a request for access to documents contain sufficient information concerning the documents to which access is sought to enable an officer to identify the relevant documents.

An applicant under the FOI Act must define with as much precision as possible the documents sought. If a request is ambiguous or otherwise ill defined, it may not comply with the FOI Act and may not be processed.

In its present form, I consider that your request does not meet the requirement provided for in section 17 of the FOI Act. Without further clarification it may not be possible to identify all of the documents which you are seeking to access.

Under section 17(3) of the FOI Act I have a duty to help you frame your request in such a way that it complies with section 17(2). Accordingly, I invite you to clarify your request so as to enable this office to identify the documents sought.

To assist you with the clarification of the terms of your application, the following information has been provided and questions posed:

- You have requested access to "all documents relating to the Maitreya Festival from the period of 12th April 2018 to 2nd May 2018". Although you have listed a variety of different documents I note that effectively you have requested all documentation. While it is clear what you are seeking, that is "all documents"; I require further advice from you so as to assist me with identifying and locating the material.
- This clarification is being requested as in some instances it might be possible to locate documents based on keyword searches which usually work with documents such as emails, however this is not the case with correspondence which is received, scanned, saved and then named based on naming conventions. Therefore, would you please provide me with the following clarification:
  - You have asked that a search be conducted for all communications sent or received from all staff. Would you please advise of the specific staff members you are referring to? Are you able to provide their names? If not, then please advise me of the area of Council they work in. By seeking documents relating to all staff you are requesting that every individual, including Councillors, search for documents. Please be mindful when clarifying this point that under section 25A(1) of the FOI Act, Council may refuse access to documents on the grounds that the work involved in processing the request would divert the resources of the agency substantially and unreasonably from its other operations. At this stage, I am only drawing your attention to this provision.
  - You have referred to "External agencies including but not exclusively". Would you please be specific and advise me of the names of the agencies which are relevant? It would also assist greatly if you could provide the names of the individuals so that keyword searching could be undertaken of emails.
  - You have stated you are seeking documents concerning "State government ministers". Would you please advise me of the specific Ministers? In



addition, you have referred to their staff. Please advise me of the names of the individuals.

- You have referred to "Aboriginal Affairs" and I assume you are referring to Aboriginal Victoria? Please advise me if this interpretation is incorrect.
  - In your terms you have referred to "Local businesses". Would you please advise me of the names of the businesses to which you are referring?
  - You have stated you are seeking access to documents concerning "External media organisations". Would you please advise me of the names of these entities?
  - You have also requested access to documents concerning "Promoters and their representatives". Who are the promoters and who are their representatives?
- At point 1) b) of your application you have requested access to information "not excluded by FOI (1982) s42". Is it possible that a typographical error has occurred and that the section of the FOI Act that you meant to refer to is section 32? If not, then perhaps you are incorrectly referring to the Commonwealth Freedom of Information Act?
  - Under section 25 of the FOI Act, if a decision is made not to grant access to a document on the basis that it is an exempt document and/or it contains irrelevant material, Council is only required to provide you with an edited copy of that document (i.e. with the exempt material removed) if you have indicated that you would wish to receive an edited copy. Do you wish to receive edited copies of documents that would otherwise be exempt?

### **Freedom of Information process and timeframes**

In order to assist you, I have outlined below some of the provisions of the legislation and the various timeframes applicable to different steps in the procedure which will impact upon the processing of your matter.

#### Decision making

When the relevant documents have been identified they will then be assessed and a variety of exemptions will be considered. The main exemptions are:

- Documents affecting personal privacy;
- Material obtained in confidence (but not business, commercial or financial information);
- Law enforcement documents;
- Some internal working documents;
- Documents attracting legal professional privilege, such as legal advice; and
- Documents relating to trade secrets (both of Council and external entities).

After consideration of the exemptions under the FOI Act it could be that some or all of the relevant documentation cannot be provided to you.

#### Third parties

In Victoria, the FOI Act recently underwent considerable amendments. The result of which requires Council to now consult with all individuals, businesses and government agencies referred to in the requested documents before it is permitted to make a decision concerning access.

When conducting this extensive consultation the most common question which will be asked by third parties will be who is seeking their information. Do you give permission for me to advise the third parties that you are seeking access to the material?

Once consultation is completed, and if Council makes a decision in opposition to the views of the individuals and businesses, or where they have not consented, they are each entitled to seek a review of the decision by the Victorian Civil and Administrative Tribunal (VCAT). Although a decision may be made to release the material, it must be withheld for 60 days pending the expiry of the review period.

#### Access charges

Under section 22 of the FOI Act and the *Freedom of Information (Access Charges) Regulations* 2014 access charges are applicable to FOI requests. A summary of the charges is as follows:

Search charges	\$21.33 per hour or part thereof
Copying charges	20 cents per black and white A4 page
Other charges – including transcription and colour copying	Reasonable costs incurred by the agency

Under section 22(4) of the FOI Act, if it is estimated that the charges may exceed \$50.00, a deposit of \$25.00 is required (if the calculated charge does not exceed \$100.00) before the request is further processed.

If the calculated amount will exceed \$100.00, the required deposit amount is 50% of the charge. Documents are not provided until the applicable charges are paid.

Until you clarify your application a valid request does not exist under section 17 of the FOI Act and as a consequence the statutory timeframe to process this application has not commenced.

When clarification of your terms is received a search for documents relevant to your request will commence. Once the search is complete you will receive a further letter which will inform you of the requirement to pay a deposit towards the access charges applicable to the request.

If you have any enquiries in relation to your request, please contact me by telephone on 03 5478 0100 or at [buloke@buloke.vic.gov.au](mailto:buloke@buloke.vic.gov.au).

Yours sincerely



Hannah Yu  
**Director Corporate Services**  
(FOI Officer)