



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2019-137

Sean

via email: foi+request-5481-6fcac7be@righttoknow.org.au

Dear Sean

FREEDOM OF INFORMATION REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 20 June 2019.

Specifically, you are seeking: *“copies of all documents held or produced by ACT Government related to the new home of football in Throsby announced in this year's budget - including, but not limited to:*

- *correspondence within ACT government about this budget measure;*
- *correspondence between Capital Football and ACT government about this budget measure;*
- *correspondence with any other party/ies and ACT government about this budget measure; and*
- *documentation about the proposed physical location within Throsby of this home of football.”*

Authority

I am an Information Officer appointed by the Director-General under section 18 of the Act to deal with access applications made under Part 5 of the Act.

Timeframes

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application by 8 August 2019.

Decision on access

Searches were completed for relevant documents and 88 documents were identified that fall within the scope of your request.

I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

I have decided to grant access in full to 26 documents partial access to 30 documents relevant to your request. I have decided to refuse access to 32 documents as I consider them to be:

- contrary to the public interest information under schedule 1; or
- information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided as **Attachment B** to this letter.

In accordance with section 54(2) of the Act a statement of reasons outlining my decisions is below.

Statement of Reasons

In reaching my access decisions, I have taken the following into account:

- the Act;
- the content of the documents that fall within the scope of your request;
- the views of the consulted third parties; and
- the *Information Privacy Act 2014*.

Exemption claimed

My reasons for deciding not to grant access to the identified documents and components of these documents are as follows:

Contrary to the public interest information under schedule 1 of the Act

Of the identified documents, 36 contain information that is considered to be contrary to the public interest under schedule 1 of the Act.

Information Subject to Legal Professional Privilege (Schedule 1 of the Act)

Documents 43, 73 and 79 contain advice sought from the ACT Government Solicitor. I consider that the advice is subject to legal professional privilege as it was brought into existence for the dominant purpose of seeking a legal opinion in relation to the Home of Football in Throsby. I am satisfied that the communications were made in circumstances of confidentiality and were provided to an independent legal adviser satisfying the requirements to attract legal professional privilege. For this reason, I have decided to exempt this information from release.

Cabinet Information (Schedule 1 of the Act)

Many documents found in the scope of your request are composed of information that is considered to be contrary to the public interest information under section 1.6 of Schedule 1 of the Act as it is Cabinet information. Under this provision, Cabinet information is exempt from release. The purpose of this exemption is to maintain the confidentiality of the Cabinet process and to uphold the principle of collective ministerial responsibility. This exemption was discussed in *The Commonwealth v Northern Land*

Council [1993] HCA 24; (1993) 176 CLR 604 (21 April 1993). Paragraph 6 of the decision, states that:

“ ... it has never been doubted that it is in the public interest that the deliberations of Cabinet should remain confidential in order that the members of Cabinet may exchange differing views and at the same time maintain the principle of collective responsibility for any decision which may be made”.

The Cabinet document falls within section 1.6 of the Act as it is information which has been commissioned by the Cabinet to guide it in its decision making and to assist it in its deliberations. It is therefore exempt from release under the Act.

Information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act

Public Interest

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interests lies. As part of this process I must consider factors favouring disclosure and non-disclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when ‘used in a statute, the term [public interest] derives its content from “the subject matter and the scope and purpose” of the enactment in which it appears’. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the ‘public interest’.

Factors favouring disclosure in the public interest:

- (a) *disclosure of the information could reasonably be expected to do any of the following:*
 - (ii) *contribute to positive and informed debate on important issues or matters of public interest; and*
 - (iv) *ensure effective oversight of expenditure of public funds.*

Factors favouring nondisclosure in the public interest:

- (a) *disclosure of the information could reasonably be expected to do any of the following:*
 - (ii) *prejudice the protection of an individual’s right to privacy or any other right under the Human Rights Act 2004; and*
 - (xi) *prejudice trade secrets, business affairs or research of an agency or person.*

Having considered the factor favouring release, I consider that the release of the requested documents associated with the Home of Football may contribute to positive and informed debate on important issues or matters of public interest by allowing you to see the work being done to provide a new facility that will be beneficial to the local community. The identified documents also provide details on how the Home of Football is

being funded by the ACT Government and external parties. I consider that the release of the identified documents could ensure effective oversight of expenditure of public funds by allowing you to see how the ACT government is spending money in relation to this project.

When considering the documents and factors in favour of non-disclosure I consider that it is unreasonable to release the names and contact information of non-government employees where the affected persons have not made this contact information otherwise publicly available. I am satisfied that release of this information may prejudice the protection of these individuals' right to privacy or any other right under the *Human Rights Act 2004*. Individuals are entitled to an expectation that their privacy will be maintained when dealing with a government agency and that information, especially when they have chosen not to release it publicly previously, will be adequately protected. I am satisfied that this factor favouring non-disclosure should be afforded significant weight as it relates to individuals' privacy. As a result, I have chosen to redact the names of non-ACT Government employees and contact details where that information is not publicly available.

The second factor I have identified as relevant in considering your access application is the prejudice that could occur in releasing trade secrets, business affairs or research of an agency or person. In the case of *Re Mangan and The Treasury* [2005] AATA 898 the term 'business affairs' was interpreted as meaning 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'.

Having reviewed the documents identified, I am satisfied that the documents contain information related to the business affairs of Capital Football. Several documents contain information about Capital Football's business affairs including their assets, financial condition and research conducted around this proposal. I consider the release of this information unreasonable. The identified documents also contain quotes from an external party. I consider that it is unreasonable to disclose these quotes as this information could be expected to prejudice the business affairs by revealing their rates to the public.

Having applied the test outlined in section 17 of the Act and deciding that release of personal information contained in the documents is not in the public interest to release, I have chosen to redact this specific information in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met and will provide you with access to the majority of the information held by CMTEDD within the scope of your request.

The attached schedule identifies documents which contain information that I consider, on balance, to be contrary to the public interest to disclose under the test set out in section 17 of the Act or they contain information which is out of scope.

Charges

Pursuant to *Freedom of Information (Fees) Determination 2017 (No 2)* processing charges are applicable for this request because the total number of pages to be released to you exceeds the charging threshold of 50 pages. However, the charges have been waived in accordance with section 107(2)(b) of the Act.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the CMTEDD disclosure three days after the date of decision. Your personal contact details will not be published.

You may view CMTEDD disclosure log at

<https://www.cmtedd.act.gov.au/functions/foi/disclosure-log>.

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the Ombudsman at:

The ACT Ombudsman

GPO Box 442

CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal

Level 4, 1 Moore St

GPO Box 370


Canberra City ACT 2601

Telephone: (02) 6207 1740

<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Daniel Riley', written in a cursive style.

Daniel Riley
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate

8 August 2019