

# Tourism Tasmania

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Hon Meg Webb MLC  
PO Box 694  
KINGSTON TAS 7051

via e-mail: [meg.webb@parliament.tas.gov.au](mailto:meg.webb@parliament.tas.gov.au)

Dear Ms Webb,

I refer to your Application for Assessed Disclosure made in accordance with the *Right to Information Act 2009* ('the Act'), to Tourism Tasmania on 21 July 2020, seeking information relating to the Welcome Back Campaign. I note on 26 August 2020, you agreed to limit the scope of the RTI as outlined below.

As the Chief Executive Officer of Tourism Tasmania I am responsible for responding to your application. You requested waiver of the application fee on the basis that you are a Member of Parliament acting in connection with your official duty. I made the decision to waive the fee on this basis and accepted your application accordingly.

Specifically, you requested:

*“Information and documentation related to the proposal, planning, development and finalisation of the ‘Welcome Back’ campaign (launched on 16 July 2020) including but not limited to:*

1. *Correspondence relating to specifically:*
  2. *Campaign proposal and project plans*
  3. *Stakeholder consultation*
  4. *Premier’s Economic and Social Recovery Advisory Council consultation*
  5. *Budget, and actual costs for development and implementation of all components of the campaign, including but not limited to:*
    - a. *Consultants, contractors and advertising agencies fees*
    - b. *Television, print and digital campaign and advert design and production costs*
    - c. *Television, print and any other advertising placement costs.”*

I have assessed the information and have made the decision to release a number of documents in part and withhold the remaining information pursuant to s27, s35, s36 and s37 of the Act.

A statement of reasons (Attachment A) for my decision detailing my reasons for non-disclosure and document schedule (Attachment B) and the information released in response to this application (Attachment C) are attached to this letter.

## **Review Rights**

If you are dissatisfied with my decision, s45 of the Act provides you with the right to apply for a review. Application for a review of my decision must be made in writing to the Ombudsman within 20 working days of the receipt of this letter. An application for a review should be addressed to:

Ombudsman Tasmania  
GPO Box 960  
HOBART TAS 7001

Alternatively, an application can be e-mailed to [ombudsman@ombudsman.tas.gov.au](mailto:ombudsman@ombudsman.tas.gov.au), or an online form is available on the Ombudsman's website: <https://www.ombudsman.tas.gov.au/right-to-information>.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'John Fitzgerald', with a long, sweeping horizontal stroke extending to the right.

John Fitzgerald  
**Chief Executive Officer**

24 September 2020

## STATEMENT OF REASONS

**Reference:** RTI 20-21-3

**Applicant:** Hon Meg Webb MLC

**Subject:** Welcome Back Campaign

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1. By Application for Assessed Disclosure in accordance with the *Right to Information Act 2009* (“the Act”), you sought:

*“Information and documentation related to the proposal, planning, development and finalisation of the ‘Welcome Back’ campaign (launched on 16 July 2020) including but not limited to:*

1. *Correspondence relating to specifically:*
  2. *Campaign proposal and project plans*
  3. *Stakeholder consultation*
  4. *Premier’s Economic and Social Recovery Advisory Council consultation*
  5. *Budget, and actual costs for development and implementation of all components of the campaign, including but not limited to:*
    - a. *Consultants, contractors and advertising agencies fees*
    - b. *Television, print and digital campaign and advert design and production costs*
    - c. *Television, print and any other advertising placement costs.”*

2. I have made the decision to withhold information pursuant to the following sections of the RTI Act:

- a. s27 – internal briefing information of a Minister
- b. s35 – internal deliberative information
- c. s36 – personal information of a person
- d. s37 – information relating to business affairs of third party.

### **Exemption provisions**

#### ***Section 27 – internal briefing information of a Minister***

3. Section 27 of the Act provides that information is exempt from disclosure if it consists of opinion, advice or recommendation prepared by an officer of a public authority or a Minister, or is a record of consultations or deliberations between officers of public authorities and Ministers, in the course of, or for the purpose of, providing a Minister with a briefing in connection with the official business of a public authority, a Minister or the Government and in connection with the Minister’s parliamentary duty. It does not apply to information that is more than 10 years old, nor to information that was not brought into existence for submission to a Minister for the purposes of a briefing, nor to purely

factual information unless its disclosure would reveal the nature or content of the opinion, advice, recommendation, consultation or deliberations of the briefing.

4. Some of the information includes briefs provided to the Minister in connection with his official business and his parliamentary duty. The purpose for which the information was provided was to give the Minister an opinion, advice and recommendation. I am satisfied that the information was brought into existence for the purposes of submission to the Minister for a briefing and that the briefing was in connection with the official business of the Minister. I am satisfied that the information is not more than 10 years old.
5. I note the Ombudsman has dealt with the question of what constitutes 'purely factual information' in a number of decisions, stating that in order for purely factual information to fall within the exclusion set out in s27, it would need to be information 'capable of standing alone...and not so closely linked or intertwined with the deliberative process so as to form part of it.'<sup>1</sup>
6. With this in mind, I have reviewed the information to identify whether it contains factual information that could be released without revealing anything more about its nature or content than would otherwise reasonably assumed to be known by the general public. I have not identified any factual information of this character. It is therefore exempt under this section.
7. The public interest test does not apply to this provision.

### **Section 35 – internal deliberative information**

8. Section 35 of the Act provides that information is exempt if it consists of opinion, advice, or recommendation prepared by an officer of a public authority, or a record of consultations or deliberations between officers of public authorities, or a record of consultations or deliberations between officers of public authorities and Ministers in the course of, or for the purpose of, the deliberative processes related to the official business of a public authority, of a Minister or of the Government. It does not include purely factual information, nor to information that is more than 10 years old.
9. Some of the information consists of advice relating to the drafting of contractual information and internal marketing program objectives.
10. I am satisfied that the relevant information in this case is not more than 10 years old.
11. As noted in paragraph 5 above, 'purely factual information' must be able to stand alone as such. Furthermore, the Ombudsman has noted that 'even though a document's

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<sup>1</sup> Mr Damon Smith and Tasmania Police, 28 October 2019, <[https://www.ombudsman.tas.gov.au/\\_\\_data/assets/pdf\\_file/0005/548537/Damon-Smith-and-Tasmania-Police.pdf](https://www.ombudsman.tas.gov.au/__data/assets/pdf_file/0005/548537/Damon-Smith-and-Tasmania-Police.pdf)>, paragraph 28.

contents might be primarily factual this does not of itself mean that the document falls outside the deliberative process exemption'.<sup>2</sup>

12. This leaves information that consists of opinion, advice or recommendation not otherwise known to the applicant, and factual information that is not separable from the deliberative process.
13. It is my view that the information is opinion and advice. The context in which that opinion and advice were provided was a deliberative one related to the official business of a public authority. While some of the documents contain factual information, their purpose is to inform the drafting of contractual documents, internal marketing program objectives or for the assessment of contractual obligations. The factual information in the documents is inextricably linked to the formulation and articulation of advice and recommendations.
14. I am therefore satisfied that the information contained in the documents is deliberative information that falls within section 35 of the Act.

### ***Section 36 – personal information of a person***

15. I have also identified third party personal information through the information. The personal information consists of names, position titles, email addresses, work phone numbers, mobile phone numbers and qualifications where applicable, of:
  - members of the general public; and
  - non-executive<sup>3</sup> officers of Tourism Tasmania and Ministerial office staff.
16. Section 36 of the Act provides that 'information is exempt information if its disclosure under this Act would involve the disclosure of the personal information of a person other than the person making the application'. 'Personal information' is defined in section 5 of the Act to be any information or opinion in any recorded format about an individual whose identity is apparent or is reasonably ascertainable from the information or opinion. The definition does not extend to an individual who has been dead for more than 25 years.
17. It is clear that the information in issue includes third party personal information of individuals from which the identity of the person is apparent (e.g. a person's name and associated contact details).
18. I am satisfied that none of the personal information relates to individuals who have been dead for more than 25 years.
19. Section 36 also provides that if an application for third party personal information is made and the public authority decides that disclosure of the information may be

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<sup>2</sup> Ibid, paragraph 29.

<sup>3</sup> Officers of Tourism Tasmania below Senior Executive Service (SES) level; and Ministerial office staff below Chief of Staff level.

reasonably expected to be of concern to the third party, it is to, if practicable and before deciding whether disclosure should occur, seek the views of the third party concerned.

20. Due to the number of individuals identified, I was of the view that it would not be practicable to obtain each of their views as to whether the information should be provided.

### **Section 37 – information relating to business affairs of third party**

21. Section 37 of the Act provides that information is exempt if its disclosure would disclose information related to business affairs acquired by a public authority or a Minister from a person or organisation other than the person making an application under section 13 and the information relates to trade secrets; or the disclosure of the information would be likely to expose the third party to competitive disadvantage.

22. For information to be exempt under section 37, it must be likely to expose the undertaking or agency to not just any disadvantage, but a disadvantage that is characterised by competition. The concept of ‘competitive disadvantage’ has been held to be one which puts ‘an entity at a disadvantage in relation to a matter which affects its profit making capacity relative to its competitive rivals’. The likelihood of being exposed to competitive disadvantage must also be a ‘real or not remote chance or possibility, rather than more probable than not’.<sup>4</sup>

23. The information at issue consists of financial and creative proprietary information generated by third parties and provided in confidence.

24. Given the nature of the information at issue, I was of the view that its disclosure could be of substantial concern to the affected third parties. Accordingly, I sought their views regarding release, as required under the Act, and took their submissions into account when making my decision.

25. I am satisfied that the information is of a type that, if released, has a realistic and un-remote chance of harming a third party’s commercial position by revealing business and proprietary information that would not normally be available to competitors, and is therefore exempt from disclosure.

### **Public interest test**

26. Sections 35, 36 and 37 fall within Division 2 of Part 3 of the Act and are subject to the public interest test. The test provides that the information described in sections 34-42 of the Act is only exempt information if it is considered ‘after taking into account all relevant matters, that it is contrary to the public interest to disclose the information’.

27. The Ombudsman has noted that there is a difference between matters that may be of interest to the general public, and the ‘public interest’. As such, just because there is

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<sup>4</sup> Michael Atkin & Department of Primary Industries, Parks, Wildlife and the Environment, 1 March 2017, [http://www.ombudsman.tas.gov.au/\\_\\_data/assets/pdf\\_file/0010/392797/Michael-Atkin-and-Department-of-Primary-Industries-Parks-Water-and-the-Environment-March-2017.PDF](http://www.ombudsman.tas.gov.au/__data/assets/pdf_file/0010/392797/Michael-Atkin-and-Department-of-Primary-Industries-Parks-Water-and-the-Environment-March-2017.PDF), paragraph 28.

public and media interest in the Welcome Back campaign does not necessarily mean that disclosure of information relating to the project will be in the public interest.

28. The public interest requires me to take into account all relevant matters, including those specified in Schedule 1 of the Act, while disregarding those matters set out in Schedule 2 of the Act.
29. In this case, the Schedule 1 items, both for and against disclosure, I considered most relevant were:
- (a) the general public need for government information to be accessible;
  - (d) whether the disclosure would provide the contextual information to aid in the understanding of government decisions;
  - (m) whether the disclosure would promote or harm the interests of an individual or group of individuals;
  - (s) whether the disclosure would harm the business or financial interests of a public authority or any other person or organisation.
  - (w) whether the information is information related to the business affairs of a person which if released would cause harm to the competitive position of that person.
  - (x) whether the information is related to the business affairs of a person which is generally available to the competitors of that person.
30. I have taken into account that there may be general public interest in this campaign specifically, as well as in tourism projects more generally.
31. I have also taken into account the importance of the campaign and its overarching purpose, which is to assist Tasmanian hospitality businesses as a result of the impacts from the COVID-19 pandemic.
32. I have also taken into account the commercial and intellectual property issues associated with the development and delivery of this campaign.
33. I have also taken into account that the relevant contract for the campaign is released in full.
34. I have also taken into account the objects of the Act, which includes increasing 'the accountability of the executive to the people of Tasmania'. I have also noted that the Act does not distinguish between private individuals and public servants in its description of personal information exempt under the Act.
35. I have also considered Tourism Tasmania's obligations under the *Personal Information Protection Act 2004* to not disclose personal information for a purpose other than for which it was collected, as well as the Department's obligations as an employer to ensure the health and well-being of its staff.

### **Factors favouring disclosure and non-disclosure**

36. I am of the view that disclosure would be more likely to harm the interests of some individuals or groups than it would promote the interests of other individuals or groups. The disclosure of information provided in confidence would have a significant negative impact on Tourism Tasmania's reputation as a trustworthy organisation and have the likely effect of deterring third party engagement.
37. I am further of the view that release, given the significance of tourism to Tasmania, particularly in the recovery phase of COVID-19 pandemic, could well harm the financial interests of the State by hampering the agency's capacity to conduct robust commercial negotiations and develop innovative and engaging promotion strategies.
38. With regard to the personal information, it is my view that the 'accountability of the executive' may reasonably extend to identifying individuals in contexts where they have exercised statutory or other decision-making authority, or have the capacity to make, or influence the making, of government policy. On this basis, I have made the decision to withhold personal information, of Tourism Tasmania staff, where that information appears in connection with routine duties and tasks. I consider that non-executive officers are entitled to be concerned about being identified, as doing so leaves them open to being held personally accountable by the public (as opposed to being accountable to their employer for the proper and diligent performance of their duties), where there is no reasonable basis for doing so. There is no suggestion of impropriety or other misconduct in connection with any of the officers' work in this case.
39. Further, I do not consider that disclosing personal information could reasonably be expected to provide further contextual information of benefit to the public and could harm the interests of the affected individuals, as well as Tourism Tasmania's interests more broadly.
40. The remaining personal information identified belongs to members of the general public. As previously stated, a number of individuals were identified and I determined that it would not be practicable to seek their views in relation to releasing their personal information. However, it is also my view that it would be reasonable for the persons identified to be concerned with their information being released, particularly when the purpose of the campaign is to provide support to businesses experiencing hardship.
41. I am of the view that the need to avoid any further harm to businesses identified by the information, and to avoid any possibility of jeopardising the Government's strategies for managing the economy, outweighs any generic public interest in government accountability for in this instance.

## **Conclusion**

42. In conclusion, after due consideration of all relevant matters, I have formed the view that there are more factors weighing against disclosure than for it, and therefore it would be contrary to the public interest to disclose the information. Where information I have identified purely factual information, I have released this in part.



## RTI Summary of Documents

RTI Tourism Tasmania

APPLICANT: Hon Meg Webb MLC

SUBJECT: WELCOME BACK campaign

**Attachment B**

Doc. Ref No.	Date	Document Description	No. of Pages	Decision
1	16/7/20	Correspondence to Minister Courtney's Office	1	Released in part (s 36 personal information - withheld)
2	16/7/20	Campaign toolkit	25	Released in full
3	16/7/20	Internal Tourism Tasmania email	1	Released in part (s 36 personal information - withheld)
4	16/7/20	Correspondence to key stakeholders	1	Released in part (s 36 personal information - withheld)
5	16/7/20	Correspondence to industry stakeholders	1	Released in part (s 36 personal information - withheld)
6	6/07/20	Media Booking Authority for final media plan	1	Released in part (s 37 information relating to business affairs of a third party - withheld)
7	25/06/20	Contract between THA and TTas for the marketing campaign	40	Released in part (s 36 personal information - withheld)
8	16/06/20	Internal correspondence relating to drafting contract	2	Withheld in full s35 internal deliberative information
9	16/06/20	Internal correspondence relating to drafting contract	1	Withheld in full s35 internal deliberative information
10	11/06/20	Campaign presentation and itemised quote from Marcus Saunders	1	Withheld in full (s 37 information relating to business affairs of a third party)

<b>Doc. Ref No.</b>	<b>Date</b>	<b>Document Description</b>	<b>No. of Pages</b>	<b>Decision</b>
11	11/06/20	Email regarding the campaign presentation and itemised quote.	1	Withheld in part – s36 (personal information withheld)
12	22/05/20	Internal draft strategy development document	4	Withheld in full s35 internal deliberative information
13	27/05/20	TTas Welcome Back Marketing Project Plan	7	Withheld in part – s36 (personal information withheld) and s35 (internal deliberative information)
14	28/05/20	Campaign stakeholder communications plan	4	Withheld in part – s36 (personal information withheld)
15	28/05/20	TTas Welcome Back Risk Register	1	Released in full
16	03/06/20	Campaign client agency brief	4	Withheld in part – s36 (personal information withheld)
17	04/06/20	Campaign roles and responsibilities	4	Withheld in part – s36 (personal information withheld)
18	05/06/20	THA campaign Media Planning Brief	2	Withheld in part – s36 (personal information withheld)
19	22/06/20	Direct Source Exemption minute – to contract the THA to produce creative assets for the Welcome Back campaign	2	Withheld in part – s36 (personal information withheld)
20	16/7/20	Campaign presentation for East Coast Tourism Assoc.	15	Withheld in part – s36 (personal information withheld)
21	30/6/20	Internal correspondence – relating to briefing information of a minister	1	Withheld in full s27 (internal briefing information of a Minister)
22	29/6/20	Ministerial briefing note and sample creative	2	Withheld in full s27 (internal briefing information of a Minister)

<b>Doc. Ref No.</b>	<b>Date</b>	<b>Document Description</b>	<b>No. of Pages</b>	<b>Decision</b>
23	26/6/20	Email to PO re: approach to toolkit etc	1	Withheld in full s27 (internal briefing information of a Minister)
24	9/7/20	Internal correspondence – relating to briefing information of a minister	1	Withheld in full s27 (internal briefing information of a Minister)
25	4/8/20	Internal correspondence relating to assessment of additional costs	1	Withheld in full s35 (internal deliberative information)
26	29/7/20	Internal correspondence relating to contractual obligations.	1	Withheld in full s35 (internal deliberative information)