

Department of Premier and Cabinet

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Meg Webb MLC
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Email: Meg.webb@parliament.tas.gov.au

Dear Ms Webb MLC

I write in response to your request made under the *Right to Information Act 2009* (the Act) seeking the following information from the Department of Premier and Cabinet (the Department):

Any documentation including, but not limited to, briefings, correspondence and advice regarding:

- 1. The implementation of both the Recovery Taskforce and State Recovery Coordinator role (as provided for under the Emergency Management Act 2006), in relation to the government's response to the COVID-19 pandemic*
- 2. The establishment of the Premier's Economic and Social Recovery Advisory Council, including its membership, terms of reference and operation; and*
- 3. Any future appointment of a State Recovery Coordinator and/or the establishment of a Recovery Taskforce, as provided by section 24B of the Act.*

Thank you for kindly agreeing to extend time for me to make my decision.

Assessment summary

In response to your request, I have been provided with 9 records in the possession of the Department which I have assessed are relevant to your request in accordance with the Act. I have determined that of these:

- One document is released in full;
- One document is released in part, with exempt information under section 31 (legal professional privilege) redacted; and
- Seven documents are exempt in full from disclosure under sections 27 (internal briefing information of a Minister), 31 or 35 (internal deliberative information) of the Act.

The attached schedule (Attachment 1) contains my detailed assessment of each record, including the release status of each record, and details of any exemption categories I have applied.

Please note that any redactions that have been made to the records in the information released are marked in black.

Where information is exempt from release, my reasons are set out below.

Statement of Reasons

Exemptions not subject to the public interest test

Internal briefing information of a Minister (section 27)

I have determined not to release items 3 and 9 in the attached schedule in accordance with section 27 of the Act.

Section 27 of the Act states:

Information is exempt information if it consists of –

(a) an opinion, advice or recommendation prepared by an officer of a public authority or a Minister; or

(b) 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.

Section 27 does not include purely factual information unless its disclosure would reveal the nature or content of the opinion, advice, recommendation, consultation or deliberations.

Items 3 and 9 are exempt as the documents consist of opinion, advice or recommendation prepared by officers of the Department for the Premier as well as a record of consultations or deliberations between officers of the Department and the Premier in the course of and for the purpose of providing the Premier with briefings in connection with the official business of the Department, the Premier and in connection with the Premier's parliamentary duty.

Notwithstanding that some of the information contained in the record may be considered as factual, the process by which the information is prepared and presented is deliberative, consultative, opinion, advice or recommendation. Relevantly, the material of a factual nature is not information of a *purely factual nature* in that the factual and opinion/advice/recommendation/consultations/deliberations are inextricably linked and it would not be practicable to differentiate purely factual information from that which is not.

Legal professional privilege (section 31)

I have determined not to release item 2 and part of item 8 in the attached schedule in accordance with section 31 of the Act.

Information is exempt information if it is of such a nature that the information would be privileged from production in legal proceedings on the ground of legal professional privilege. The records under item 2 were brought into existence for the sole or dominant purpose of giving or receiving legal advice. The parts of item 8 exempted and redacted is privileged legal information which was provided internally to Government and which, if released, would result in the disclosure of a confidential communication between the Solicitor-General and the Government.

The exemptions applied under sections 27 and 31 of the Act are not subject to the public interest test.

Exemptions subject to public interest test

The exemption under section 35 of the Act is subject to the public interest test.

Section 33 of the Act provides that:

(1) In this Division, information is exempt information if the principal officer of the public authority or Minister considers, after taking into account all relevant matters, that it is contrary to the public interest to disclose the information.

(2) The matters which must be considered in deciding if the disclosure of the information is contrary to the public interest are specified in Schedule 1 but are not limited to those matters.

Schedule 1 of the Act sets out the matters which must be considered in deciding if the disclosure of information is contrary to the public interest, but the matters which may be considered are not limited to the ones in the list.

Internal deliberative information (section 35)

Section 35(1) of the Act provides that:

Information is exempt information if it consists of –

(a) an opinion, advice or recommendation prepared by an officer of a public authority; or

(b) a record of consultations or deliberations between officers of public authorities; or

(c) 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

Section 35 requires that the exempt information does not include purely factual information.

I have determined that the whole of items 1 and 5-7, in the attached schedule are within scope of your Right to Information request, but are exempt under section 35 of the Act as those records are opinion, advice or recommendations prepared by officers in a public authority in the course of internal deliberative processes relating to the official business of the public authority, and are not purely factual.

While it may be considered that some of the information contained in the documents is factual, the process by which the information is prepared and presented is deliberative. Material of a factual nature is not information of a *purely factual nature* if that material would reveal deliberation that has taken place in the course of the deliberative process involved in the functions of a public authority. The factual and deliberative information is inextricably linked and it would not be practicable to differentiate purely 'factual' information from that which is 'deliberative.'

The exemption in section 35 of the Act is subject to the public interest test. I have outlined my assessment of the public interest test below.

Applying the public interest test

I have carefully considered each of the matters in Schedule 1 as part of my assessment of the public interest test, including the following matters:

(a) the general public need for government information to be accessible;

(b) whether the disclosure would contribute to or hinder debate on a matter of public interest;

(c) whether the disclosure would inform a person about the reasons for a decision;

(d) whether the disclosure would provide the contextual information to aid in the understanding of government decisions;

- (f) whether the disclosure would enhance scrutiny of government decision-making processes and thereby improve accountability and participation;
- (g) whether the disclosure would enhance scrutiny of government administrative processes;
- (i) whether the disclosure would promote or harm public health or safety or both public health and safety; and
- (n) whether the disclosure would prejudice the ability to obtain similar information in the future.

Factors in favour of release

In relation to the matters listed in Schedule 1 of the Act, I consider that the following factor weighs in favour of disclosure of the information not released:

- (a) the general public need for government information to be accessible.

The object of the Act is to disclose information where possible and in particular to give members of the public the right to obtain information about the operations of Government and increase the accountability of the executive to the people of Tasmania.

As a general rule, disclosure is to be favoured over non-disclosure unless there are valid reasons for deciding that disclosure would be contrary to the public interest.

Clearly, there is very significant public interest in the COVID-19 pandemic emergency response measures being undertaken by the Tasmanian Government. It is self-evident that the Tasmanian Government's ongoing COVID-19 pandemic emergency response is of interest to all Tasmanians and other stakeholders.

In this respect, the release of the exempted information would promote the general object of the Act.

I have also considered whether the following factors weigh in favour of release:

- (b) whether the disclosure would contribute to or hinder debate on a matter of public interest;
- (c) whether the disclosure would inform a person about the reasons for a decision;
- (d) whether the disclosure would provide the contextual information to aid in the understanding of government decisions;
- (f) whether the disclosure would enhance scrutiny of government decision-making processes and thereby improve accountability and participation;
- (g) whether the disclosure would enhance scrutiny of government administrative processes; and
- (i) whether the disclosure would promote or harm public health or safety or both public health and safety.

I consider that these factors are of neutral weight because disclosure of the exempted information in question would not inform a person about the reasons for a decision, provide contextual information to aid in understanding of government decisions, enhance the scrutiny of government decision-making or administrative processes, nor would the disclosure either promote or harm public health and safety. In my view, the disclosure of the exempted information would not contribute to a debate relevant to a public interest consideration.

Factors against release

In relation to the matters listed in Schedule 1 of the Act, I consider that the following factors weigh against disclosure of the information:

- (n) whether the disclosure would prejudice the ability to obtain similar information in the future.

With respect to the documents that I have determined are subject to the exemption under section 35 of the Act, I have determined that releasing this information would prohibit the frank exchange of views and deliberative processes between officers when consulting and deliberating on official business.

As noted above, in reaching this determination I have considered the significant public interest in the Tasmanian Government's ongoing COVID-19 pandemic emergency response. However, I consider that the disclosure of the exempted information in question is contrary to the public interest as it would not contribute to this interest or discussion or further the public debate in any material way. Consequently, the overriding public interest consideration is the need to ensure a frank exchange of views between officers when consulting and deliberating on official business. The disclosure of consultations or deliberations between officers is contrary to the public interest as it would likely prevent such exchanges from occurring, with a consequent detrimental impact on good decision-making. Such documents also provide the basis for corporate knowledge management and information sharing.

Please note that certain information released in response to Right to Information requests will be published online within 48 hours of being released to the applicant. Further information in relation to this can be found at <http://www.dpac.tas.gov.au/rti>

Review

If you are dissatisfied with my decision, you have the right to seek an internal review under section 43 of the Act. You may wish to do this by writing to the Secretary, Department of Premier and Cabinet, at the address above within 20 working days of receipt of this letter.

Thank you again for your agreement to extend the time for me to respond to you in this matter. Should you have any questions in relation to this matter, please contact me by email at Carmen.Kelly@dpac.tas.gov.au or by telephone on 6232 7018.

Yours sincerely



PP · Carmen Kelly
Delegated RTI Officer
28 September 2020