

Department of Premier and Cabinet

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Hon Meg Webb MLC
Member for Nelson
Parliament House
HOBART TAS 7000
Email: meg.webb@parliament.tas.gov.au

Dear Ms Webb

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

All documentation, including but not limited to, correspondence between involved Ministers and departments, including Environment and Planning portfolios, relating to the Tasmanian State of the Environment Report, as defined under the State Policies and Projects Act 1993, specifically relating to:

- 1. The development and production of any state of the state [State of the Environment] reports subsequent to the 2009 report; and*
- 2. The funding of, and responsibility for, any state of the state [State of the Environment] reports subsequent to the 2009 report.*

I am a delegated Right to Information Officer for the Department under section 24 of the Act.

As already advised, the Delegated Right to Information Officer at the Department of Natural Resources and Environment Tasmania (NRET) has advised that they received the same request from you and therefore a transfer was not necessary. Consequently, I have assessed your application in relation to the State Planning Office and the Department up to the date of receiving your application on 21 July 2022.

Thank you for agreeing to extend the time for me to provide you with my response and I apologise for the delay.

Assessment summary

In response to your request for information, I have been provided with 29 records that are within the scope of your request which I have assessed in accordance with the Act.

Of these records, I have determined that:

- Thirteen documents are released in part, with Cabinet information (section 26 of the Act), internal briefing of a Minister (section 27 of the Act), internal deliberative information (section 35 of the Act) and/or personal information (section 36 of the Act) redacted;
- Five documents are released in full;

- Five documents are exempt in full as Cabinet information (section 26) and/or internal deliberative information (section 35 of the Act), and/or personal information (section 36);
- Three documents are publicly available so are not required to be provided; and
- Three documents are out of scope of your request.

The attached schedule (Attachment 1) contains my detailed assessment of each record, including the release status of each record and any exemption categories I have applied. Where information is exempt from release, my reasons are set out below.

Documents for release are provided at Attachment A. Please note that the redactions that have been made to the information for release are marked in grey with the relevant section of the Act noted.

Statement of Reasons

Exemptions not subject to the public interest test

I have determined not to release all or parts of certain items, as detailed in the attached schedule, in accordance with section 26 of the Act.

Cabinet information (section 26)

Section 26 of the Act provides:

Information is exempt information if it is contained in –

- (a) the official record of a deliberation or decision of the Cabinet; or*
- (b) a record proposed by a Minister for the purpose of being submitted to the Cabinet for consideration; or*
- (c) a record that is a copy of, or a copy of part of, a record referred to in paragraph (a) or (b); or*
- (d) a record, the disclosure of which would involve the disclosure of a deliberation or decision of the Cabinet, other than a record by which a decision of the Cabinet was officially published.*

Section 26 does not include information solely because it was submitted to the Cabinet for consideration; or is proposed by a Minister to be submitted to the Cabinet for consideration, if the information was not brought into existence for submission to the Cabinet for consideration.

Parts of items 4, 9, 18, 23 and 24 are exempted as they disclose a deliberation or decision of the Cabinet other than a record by which a decision of the Cabinet was officially published.

Internal briefing information of a Minister (section 27)

I have determined not to release parts of certain items, as detailed 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.

Items 2, 11, and 17 in the attached schedule are a Minute and Question Time Briefs prepared by the Department of Justice for the Minister for Planning and the Department of Premier and Cabinet for the Premier, and I am satisfied that they are internal briefing information of a Minister within the meaning of

section 27 and were brought into existence solely for submission to a Minister for the purposes of a briefing and in connection with the Minister's parliamentary duty.

Section 27(4) provides that exempt information does not include purely factual information unless its disclosure would reveal the nature or content of the opinion, advice, recommendation, consultation or deliberations of the briefing.

In *Re Waterford and the Treasurer of the Commonwealth of Australia (No 1)*¹ the Commonwealth Administrative Appeals Tribunal observed that the word 'purely' in this context has the sense of 'simply' or 'merely'. Therefore, the material must be factual in fairly unambiguous terms. To be excluded from exemption, the material must not be inextricably bound up with the decision-makers deliberative processes and must be capable of standing alone.

I have determined that parts of items 2, 11, and 17 are exempt as those parts consist of opinion, advice or recommendation prepared by officers of the Department of Justice and the Premier and Cabinet for the purpose of providing Ministers with a briefing in connection with the official business of the Department of Justice and the Department of Premier and Cabinet, a Minister or the Government. I am satisfied that any factual information that may be included in those parts of items 2, 11, and 17 that I have exempted cannot be separated from the opinion, advice, or recommendation, and is inextricably linked with the opinion, advice or recommendation.

Where factual information can be separated from the opinion, advice, recommendation, consultation or deliberations, I have determined to release that information.

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

Exemptions subject to public interest test

The exemptions under section 35 of the Act are 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.

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 items 5 and 19 in the attached schedule are within scope of your Right to Information request, but are exempt in full under section 35 of the Act as draft documents or opinion, advice or recommendations prepared by officers in a public authority and Ministerial offices in the course of internal consultations and deliberations relating to the official business of the public authority and Ministers, and are not purely factual.

¹ [1984] AATA 518

Further, I have determined that items 3, 4, 15, 23, 25 and 27 in the attached schedule are within scope of your request, but are exempt in part under section 35 of the Act as these emails between officers are 'internal consultations and deliberative 'conversations' in formulating policy advice and item 24 which is a draft project plan that was not progressed. I have determined it is not in the public interest to release the information in these items.

Conversely, I have determined to release item 20 with some internal deliberative and minor personal information redactions, item 22 with minor personal information redacted, and items 21 and 28 in full because, although they are internal deliberative information under section 35 of the Act, in my view, it is in the public interest to release the information.

While it may be considered that some of the information contained in, particularly, the draft documents is factual, the process by which the information is prepared and presented is consultative and deliberative. Material of a factual nature is not information of a *purely factual nature* if that material would reveal the consultation and 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;*
- (l) *whether the disclosure would promote or harm the environment and or the ecology of the State; 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 factors weigh in favour of disclosure of the information not released:

- (a) *the general public need for government information to be accessible; and*
- (l) *whether the disclosure would promote or harm the environment and or the ecology of the State.*

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, releasing information about a report that assesses the state of the environment in Tasmania could be argued as promoting the environment and or ecology of the State, and weighs in favour of release.

There is likely to be public interest in the Tasmanian State of the Environment Report. This is evidenced by the number of media articles and media comment relating to the absence of the Tasmanian Report subsequent to the release of the Australian State of the Environment Report.

I consider that the release of the exempted information would promote the general object of the Act and promote the environment and ecology of the State.

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; and*
- (g) *whether the disclosure would enhance scrutiny of government administrative processes.*

I consider that these factors are of neutral weight in this instance because disclosure of the exempted information would not contribute to the debate on a matter of public interest; inform a person about the reasons for a decision; provide contextual information to aid in the understanding of government decisions; or enhance the scrutiny of government decision-making or administrative processes.

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.*

In terms of the documents listed in items 3, 4, 15, 23, 24, 25 and 27 that I have determined are exempt from release under section 35 of the Act, I have determined that releasing this information would prohibit the frank exchange of views and consultative and deliberative processes between officers of public authorities and Ministerial staff when deliberating on official business. In my view, the overriding public interest consideration is that there is a 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 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.

Personal information of a person (section 36)

Section 36(1) 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 an application under section 13.

I have redacted all mobile and direct personal telephone contact details in the listed items of information that I have released to you, on the grounds that the information is irrelevant and/or out of scope of your request. I note that, in the alternative, these redactions have been made in accordance with section 36 of the Act.

In making this decision, I have considered the matters relevant to assessment of the public interest provided under Schedule 1 of the Act. I have determined that there are no matters relevant to assessment of public interest that weigh positively in favour of release of the information, other than the general public need for government information to be accessible (Schedule 1(1)(a)). On balance, I consider that disclosing these personal details of individuals who are third parties to your request would harm the interests of those individuals (Schedule 1(1)(m)) and it is contrary to the public interest to release that information. I note that the redacted information is not material to your request.

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 about this can be found at <http://www.dpac.tas.gov.au/rti>

Review

Should you be dissatisfied with my decision, you have the right to seek an internal review under Section 43 of the Act for information relating to the Department. 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.

Should you have any questions in relation to this matter, please do not hesitate to contact me by email at Bridget.Hutton@dpac.tas.gov.au or by telephone on 6232 7142.

Yours sincerely

A handwritten signature in black ink, appearing to read 'B.J. Hutton' with a stylized flourish at the end.

Bridget Hutton

Delegated Right to Information Officer

December 2022