

Department of Treasury and Finance

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Doc reference 24/176399

The Honourable Meg Webb MLC
Member for Nelson
PO BOX 694
KINGSTON TAS 7051

Dear Ms Webb

Right to information - Assessed disclosure application

I refer to your request dated 3 June 2024 under the *Right to Information Act 2009* seeking:

All documentation, including but not limited to correspondence; briefing materials; meeting and meeting minutes; and submissions, pertaining to the development, consultation and all implementation stages of the proposed Universal Player Card gambling system for poker machines, between the Tasmanian Gaming and Liquor Commission and:

- 1. Department of Treasury and Finance;*
- 2. The Treasurer;*
- 3. The Minister for Finance;*
- 4. Industry stakeholders; and*
- 5. Community stakeholders.*

From 1 July 2023 to the date of the application.

For the purpose of this application, I have taken *universal player card gambling system for poker machines* to mean the player card gaming system (PCG) announced by the Tasmanian Government on 15 September 2022.

I have undertaken detailed searches of Treasury's electronic record management systems and I have identified a number of documents that contain information relevant to your request which are listed in Table 1 below.

Below is my assessment of each document, including any relevant exemption categories, and the release status of each document.

Reasons for decision

Document 1 is an extract of the Tasmanian Government Gazette containing a Ministerial Direction from the Treasurer to the Tasmanian Liquor and Gaming Commission. The information contained in this document is attached in full.

Document 2 is a 15-page document titled 'Player Card and Cashless Gaming *Preliminary consultation with industry*' which is attached in full.

Document 3 is an email attaching correspondence from the Chair of the Commission to a stakeholder that forms document 4. This document contains information which is in scope

information along with other information which is not in scope of the application. In accordance with s 18(3) of the RTI Act I have used a computer to extract the in-scope information from the information which is not in scope. This extract is attached in full.

Document 4 is correspondence from the Chair of the Commission to a stakeholder which is the attachment to document 3. This document contains information which is in scope information along with other information which is not in scope of the application. In accordance with s 18(3) of the RTI Act I have used a computer to extract the in-scope information from the information which is not in scope. This extract is attached in full.

Document 5 is correspondence from a member of the public whom I am satisfied is a community stakeholder for the purposes of this application and the Chair of the Commission. This email is a response to the email that is document 6. This document contains information which is in scope information along with other information which is not in scope of the application. In accordance with s 18(3) of the RTI Act I have used a computer to extract the in-scope information from the information which is not in scope. This extract is attached in full.

Document 6 is correspondence from the Chair of the Commission responding to a member of the public whom I am satisfied is a community stakeholder for the purposes of this application. This document contains information which is in scope information along with other information which is not in scope of the application. In accordance with s 18(3) of the RTI Act I have used a computer to extract the in-scope information from the information which is not in scope. This extract is attached in full.

Document 7 is correspondence from the Chair of the Commission to a stakeholder. This document contains information which is in scope information along with other information which is not in scope of the application. In accordance with s 18(3) of the RTI Act I have used a computer to extract the in-scope information from the information which is not in scope. This extract is attached in full.

Documents 8 and 9 are correspondence which attach Document 2 from the Department to industry stakeholders on behalf of the Commission. These documents contain information which is in scope information along with other information which is not in scope of the application. In accordance with s 18(3) of the RTI Act I have used a computer to extract the in-scope information from the information which is not in scope. These extracts are attached in full.

Document 10 is correspondence from the Chair of the Commission to a stakeholder in response to document 11. This document contains information which is in scope information along with other information which is not in scope of the application. In accordance with s 18(3) of the RTI Act I have used a computer to extract the in-scope information from the information which is not in scope. This extract is attached in full.

Document 11 is correspondence from a stakeholder to the Chair of the Commission. This document contains information which is in scope information along with other information which is not in scope of the application. In accordance with s 18(3) of the RTI Act I have used a computer to extract the in-scope information from the information which is not in scope. This extract is attached in full.

Document 12 is correspondence from the Department on behalf of the Chair of the Commission to a stakeholder who I have determined is a community stakeholder for the purposes of this application. This document contains information which is in scope information along with other information which is not in scope of the application. In accordance with s 18(3) of the RTI Act I have used a computer to extract the in-scope information from the information which is not in scope. This extract is attached in full.

For the purpose of assessing the information contained in the documents 13 to 41, I have:

- noted that the Commission is established under s 123 of the *Gaming Control Act 1993* and is therefore a public authority for the purposes of the RTI Act;
- noted that information prepared by an officer of a public authority under ss 35(1)(a)-(c) need not be prepared in the course of or for the deliberative processes related to the official business of the same public authority;
- used the meaning of *deliberative processes as an agency's thinking process* adopted by the Tribunal in *Re JE Waterford and Department of Treasury (No 2)*¹;
- determined that no final decision, order or ruling has been made in the exercise of an adjudicative function that would trigger s 35(3) of the RTI Act has occurred within the scope of this application; and
- noted that all information within the scope of this request was created within the last 10 years.

In considering the term 'purely factual information' under s 35(2) of the RTI Act I have noted the reasoning in *Re John Edward O'Brien Waterford and the Treasurer*² as applied by the Ombudsman in *Meg Webb and Department of Treasury and Finance (2024)* however I have found Tribunal's subsequent view in *Secretary, Department of Prime Minister and Cabinet and Secretary, Department of Infrastructure and Regional Development & Sanderson*³ gives slightly more weight to the need for any opinion, advice or recommendation to not be included.

In discussing *Waterford* the Tribunal held⁴:

I would approach the matter from a slightly different view of the role of the word "purely". In my view, it is intended to emphasise that the material must be "... wholly ... [or] entirely ..." comprised of factual material and cannot incorporate any material that is not factual material.

Document 13 is briefing material prepared by officers of the Department for the Chair of the Commission. It consists of opinion, advice and recommendations for the purpose of the deliberative process of the Commission's official business.

The RTI Act does not apply to some of the information contained in this document however the information within this document to which it does apply is internal deliberative information which I have determined is prima facie exempt information under s 35 of the RTI Act.

Documents 14, 15 and 16 are briefing material prepared by officers of the Department for the Commission. Each of these briefings consist of opinion, advice and recommendations. I consider that this information was prepared for the purpose of the Commission's deliberative process in undertaking its official business..

I have determined that all the information within these documents is prima facie exempt information under s 35 of the RTI Act.

Document 17 is a joint political statement from 24 bodies and individuals regarding poker machines. I have conducted internet searches and found this information to be publicly available. In the context of the scope of this application however, the information in this document was used as briefing material by an officer of the Department in the course of the deliberative processes related to the official business of the Commission. The information was provided for the Commission to

¹ [1984] AATA 67 at 58.

² [1984] AATA 518 at 14.

³ [2015] AATA 361 at 106.

⁴ *Ibid.*

inform itself of the position that several community stakeholder groups held in relation to its implementation of PCG.

I have determined therefore that the information, in the context that it was used, is prima facie exempt information under s 35 of the RTI Act.

Documents 18, 19 and 20 are minutes of meetings of the Commission. The information within these documents which is in the scope of this application consists of records of deliberations between Commission members and officers of the Department in the course of the deliberative processes related to the official business of the Commission.

Some information within these documents may be exempt pursuant to s 31 of the RTI Act and all the in-scope information within these documents is internal deliberative information which I have determined is prima facie exempt information under s 35 of the RTI Act.

Documents 21 to 40 are briefing materials prepared by officers of the Department for the Commission. Each of these documents consist of opinion, advice and recommendations prepared by, and record consultations and deliberations between, officers of a public authority in the course of, or for the purpose of, the deliberative processes related to the official business of the Commission.

I have been unable to sever any purely factual information from the other information which is in scope of this application contained within these papers due to each piece of factual information being intrinsically wound up in the opinion, advice or recommendation within the papers.

Additionally, these papers contain a significant amount of information that has been provided by a third party in relation to its business affairs. I have considered this information in my reasons listed below for Document 41.

I have determined that all the in-scope information within these documents it is prima facie exempt under ss35, 37 of the RTI Act.

Document 41 is briefing material produced by a third party. This document was provided to the Commission as an attachment to the briefing material that is Document 37.

This document entirely consists of information related to the third party's business affairs and I have considered material provided by the third party in under s 37 of the RTI Act. This information is commercially sensitive and is likely to expose the third party to a competitive disadvantage if disclosed.

I have determined that all of the in-scope information within this document is prima facie exempt information pursuant to s 37 of the RTI Act.

Section 33 - Public interest test

Section 33 of the RTI Act prescribes that information is exempt under ss 35, 37 if, after taking into account all relevant matters, I determine that it is contrary to the public interest to disclose the information. The matters which I must be consider in deciding if the disclosure is contrary to the public interest are specified in Schedule 1 of the RTI Act but are not limited to those matters.

As the information requested that is subject to the public interest test has all been compiled for the same purpose, I have determined to apply a global public interest test. In relation to the material that is prima facie exempt under ss 35 and 37 of the RTI Act, I have considered the following matters under schedule one:

- In relation to matters (a) (d) and (g) I find that they weigh heavily on the side of disclosure, especially in light of the obligation under s 3(4)(a) to interpret so as to further the object set out in s 3 of the RTI Act. The general public need for government information to be accessible weighs in favour of disclosure however some of the information in this particular instance I do not consider to be 'government information' in the true sense. All of the information contained in Documents 21 to 41 that is prima facie exempt under s 37 of the RTI is information which I do not consider to be 'government information' and accordingly I find matter (a) does not weigh in favour of disclosure in relation to Documents 21 to 41.
- In relation to matter (b) I find that it would hinder debate on a matter of public interest as the information being disclosed may inhibit the ability to conduct meaningful public consultation if all the material before the Commission is disclosed.
- Considering matter (h) I find disclosure would hinder equity and fair treatment of corporations in their dealings with government as it would expose a third party to a competitive disadvantage.
- Noting matter(i) I find that disclosure would harm public health. The object of the *Gaming Control Act 1993* is to take a public health approach to protect people from gambling harm or being exploited by gaming operators. Disclosure of advice to the Commission on how best to implement a system would undermine its ability to protect the public.
- Considering matter (j) I find that disclosure would harm the administration of justice as it would disclose information that would otherwise be protected by law in relation to disclosure of commercially in confidence information.
- In regard to matter (m) I find that the disclosure may harm the interests of members of the Commission. As individuals who are appointed to a statutory role, for members to have all of the material before them with the benefit of hindsight put before the public may subject members to significant scrutiny in the public arena.
- Similarly in relation to matter (n) I find that if contributions from individual Commission members were to be disclosed it may have the effect of inhibiting participation in the future of similarly well qualified individuals for such an important statutory role. Additionally, the Commission may not be able to receive the same level of information that it has done from a third party if such information, which would harm its commercial interests, were to be disclosed and made available to its competitors.
- Noting matter (p) I consider that the disclose of some of the information would have a substantial adverse effect on the management by a public authority of the public authority's staff. Were the public authority's staff subject to retrospective review and public scrutiny of every piece of material that they prepare for the Commission, I take the view that this would pose a significant psychosocial harm on the public authority's staff for the public authority to manage.
- In relation to matter (s) I consider that the disclosure of some of the information would harm the business interests of the Commission in delivering this system as well as significant harm to both the business and financial interests of a third party.
- Considering matter (w) I find that disclosure of the information would cause harm to the competitive position of the third party.
- Similarly in relation to matter (y) I consider that, were it the information of a public authority, it is of the nature that it would be exempt information pursuant to s 38 of the RTI Act.
- Additionally, I consider that the inherent reasons for the s 35 and s 37 exemption weigh against the disclose of this information.

On balance I consider that it is contrary to the public interest to disclose the information to which ss 35, 37 of the RTI Act apply.

Review

Should you wish to lodge an application for an internal review of my decision, you may do so under s 43 of the RTI Act. An application for review must be made in writing within 20 working days of receipt of this letter. You will be taken to have received this letter via email on the date of this letter.

Should you have any queries or require any further information regarding this matter, please contact me on (03) 6166 4444 or email rti@treasury.tas.gov.au.

Yours sincerely



Brad Menzie
Delegated RTI Officer

19 August 2024

Encl.

Table 1. Schedule of documents

Document	Description	Determination
1	Document provided to Commission	Full Release
2	Document released to industry	Full Release
3	Email to stakeholder	Full Release Section 18(3)
4	Letter to stakeholder	Full Release Section 18(3)
5	Email exchange with stakeholder	Full Release Section 18(3)
6	Email from stakeholder	Full Release Section 18(3)
7	Email to stakeholder	Full Release Section 18(3)
8	Email to stakeholder	Full Release Section 18(3)

9	Email to stakeholder	Full Release Section 18(3)
10	Letter to stakeholder	Full Release Section 18(3)
11	Letter from stakeholder	Full Release Section 18(3)
12	Email exchange with stakeholder	Full Release Section 18(3)
13	Briefing material	Exempt in Full Section 35
14	Briefing material	Exempt in Full Section 35
15	Briefing material	Exempt in Full Section 35
16	Briefing material	Exempt in Full Section 35
17	Briefing material	Exempt in Full Section 35
18	Minutes	Exempt in Full Section 35
19	Minutes	Exempt in Full Section 31 and 35
20	Minutes	Exempt in Full Section 35
21	Briefing material	Exempt in Full Sections 35 and 37
22	Briefing material	Exempt in Full Sections 35 and 37
23	Briefing material	Exempt in Full Sections 35 and 37

24	Briefing material	Exempt in Full Sections 35 and 37
25	Briefing material	Exempt in Full Sections 35 and 37
26	Briefing material	Exempt in Full Sections 35 and 37
27	Briefing material	Exempt in Full Sections 35 and 37
28	Briefing material	Exempt in Full Sections 35 and 37
29	Briefing material	Exempt in Full Sections 35 and 37
30	Briefing material	Exempt in Full Sections 35 and 37
31	Briefing material	Exempt in Full Sections 35 and 37
32	Briefing material	Exempt in Full Sections 35 and 37
33	Briefing material	Exempt in Full Sections 35 and 37
34	Briefing material	Exempt in Full Sections 35 and 37
35	Briefing material	Exempt in Full Sections 35 and 37
36	Briefing material	Exempt in Full Sections 35 and 37
37	Briefing material	Exempt in Full Sections 35 and 37
38	Briefing material	Exempt in Full Sections 35 and 37

39	Briefing material	Exempt in Full Sections 35 and 37
40	Briefing material	Exempt in Full Sections 35 and 37
41	Briefing material	Exempt in Full Section 37