

## ***Alistair Coe and Canberra Health Services [2020] ACTOFOI 6 (20 February 2020)***

### **Decision and reasons for decision of ACT Ombudsman, Michael Manthorpe PSM**

|                           |  |
|---------------------------|--|
| <b>Application Number</b> | AFOI-RR/19/10026   |
| <b>Decision Reference</b> | [2020] ACTOFOI 6   |
| <b>Applicant</b>          | Mr Alistair Coe MLA  |
| <b>Respondent</b>         | Transport Canberra and City Services Directorate   |
| <b>Decision Date</b>      | 20 February 2020   |
| <b>Catchwords</b>         | <i>Freedom of Information Act 2016 (ACT)</i> – deciding access – whether disclosure of information is contrary to the public interest – prejudice an individual’s right to privacy or any other right under the <i>Human Rights Act 2004</i> – prejudice the management function of an agency or the conduct of industrial relations by an agency – prejudice a deliberative process of government |

### **Decision**

1. Under s 82(2)(b) of the FOI Act, I **vary** the decision of the Transport Canberra and City Services Directorate (**respondent**), dated 28 August 2019.

### **Background of Ombudsman review**

2. On 18 June 2019, the applicant applied to the respondent for access to:

... documents related to Major Projects Canberra ... [including but not limited to] Ministerial briefs, Ministerial correspondence or other correspondence within Ministerial offices, Ministerial directions or directions from within Ministerial offices, internal correspondence within the ACT Government, correspondence to any external agencies, any reports by the consultants or contractors, analysis or recommendations, internal planning for the body, media plans and announcements, costs analysis and modelling, internal documents or materials, presentations, meeting agendas and minutes, notes, call logs, organisational charts, budget materials, strategy documents, transfers of responsibility or assets, selection criteria, job advertisements, whole of government emails, and any other types of documents.

3. On 25 July 2019, the applicant agreed to an extension of time for the respondent to make a decision to 2 August 2019, and to refine the scope of the access application to exclude certain types of documents confirming:

... we are not seeking documents related to administrative human resources or personnel matters. We would still like to receive documents related to the new structure or summaries of transfers, but we do not require documents discussing personal information such as leave entitlements or individual transfers.

We are also happy to exclude duplicate documents and other administrative documents such as requests for IT.

4. The respondent requested subsequent extensions of time to process the access application, with the applicant agreeing to a final decision date of 28 August 2019.
5. On 28 August 2019, in its decision notice, the respondent advised the applicant it had identified 235 pages of documents as falling within the scope of the access application. No reference was made to the number of documents.
6. As discussed below, it is unclear from the schedule of documents to the respondent's decision, how many documents the respondent disclosed to the applicant in full, in part and refused access in full.
7. In making its decision, the respondent relied on the factors for nondisclosure outlined in Schedule 2, s 2.2(a)(ii), (xv) and (xvi) of the FOI Act.
8. On 25 September 2019, the applicant sought Ombudsman review of the respondent's decision under s 73 of the FOI Act. All required information was received to proceed with this review application on 2 October 2019.
9. On 13 January 2020, preliminary views about the respondent's decision were provided to the parties in a draft consideration, dated 10 January 2020.
10. The applicant did not provide a response to the draft consideration.
11. On 21 January 2020, the respondent provided further submissions to the draft consideration.

## Scope of Ombudsman review

### Schedule of documents

12. As a preliminary issue, I have considered whether the schedule of documents has been correctly prepared. While the FOI Act does not require the respondent to provide a schedule of documents, it is my view that where provided, the information contained in the schedule of

documents should be accurate and of assistance to the applicant in understanding the decision that has been made. This may include information such as the number and type of documents within the scope of the access application, the number of pages, and the applicable factors the respondent has relied on to refuse access to particular information within the scope of the access application.

13. I have reviewed the schedule of documents provided to the applicant, which lists 122 documents, totalling 294 pages.
14. Upon closer examination, I have found the schedule is misnumbered in several places. This makes it difficult to identify which documents are being referred to, and on what basis the decision was made to refuse access to particular information within the scope of the access application.
15. As a result, I have created a new updated schedule of documents, which I have used and referenced in this draft consideration.
16. A copy of this schedule is at **Appendix A** to this decision.
  - It lists 115 documents, totalling 315 pages that were provided to my Office by the respondent.
  - 46 of these documents were partially redacted by the respondent, either on the basis that they contained contrary to the public interest information or information that was out of scope of the access application.
  - 69 of these documents were released in full.

#### Scope of access application

17. As another preliminary issue, I have considered whether the respondent has correctly determined the scope of the access application.
18. The approach to interpreting the scope of an FOI access application was considered by the Administrative Appeals Tribunal (AAT) in *Re Timothy Edward Anderson and Australian Federal Police*<sup>1</sup> where the AAT explained:

[A] request for access to documents containing information on a specified subject matter should be construed as a request for access to documents or parts of documents that can fairly be characterised as containing information of that type.<sup>2</sup>
19. There is a need for a common sense approach to the identification of the documents.<sup>3</sup> In its decision notice, and in relation to the scope, the respondent said:

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<sup>1</sup> [1986] AATA 79 (*Anderson*).

<sup>2</sup> *Ibid*, at [19].

<sup>3</sup> *Ibid*, at [17].

I have taken the scope of your request to be documents about the recently announced machinery of government changes which create a new ACT government agency that will cover major projects.

20. Fourteen of the documents partially released appear to have had information redacted on the basis that it was determined to be out of scope (documents 19, 22-26, 29-32, 39, 43 and 45-46).
21. Document 19 (pages 53 and 54) is an email dated 13 June 2019, containing dot points on the machinery of government changes. I agree that the two redactions on page 53 of the document comprise information that is not within scope of the access application, as it relates, respectively, to a project that is unrelated to the machinery of government changes, and individual staff transfers.
22. Two further redactions have been applied on page 54. I consider the information redacted is, however, within scope of the access application, as it relates to the creation of Major Projects Canberra (MPC) and does not appear to relate to individual personnel matters.
23. Documents 22-26 (pages 58-77), 29-32 (pages 81-107) and 45-46 (pages 130-139) comprise various versions of the same email chain, all dated 14 June 2019, relating to a media enquiry about the machinery of government changes, and the process through which a response was prepared. I will call these documents the “media enquiry emails”.
24. I have reviewed the media enquiry emails. I consider the information redacted is within the scope of the access application, as it relates to the creation of MPC.
25. Document 39 (pages 121 and 122) is an email, dated 17 June 2019, relating to the day’s media issues. I agree the information redacted is out of scope as it describes coverage by the media of other portfolio matters not related to the creation of MPC.
26. Document 43 (pages 126 and 128) is an email, dated 17 June 2019, relating to a staff briefing about moving staff to Woden. I agree the information redacted is out of scope as it relates to human resources or personnel matters.
27. For the same reasons, I also find the redacted information listed below to be out of scope of the access application, even though the respondent did not specify this was the reason for the redactions:
  - Documents 66-67 – the information redacted on pages 181 and 183
  - Document 71 – the information redacted on page 194
  - Document 74 – the information redacted on page 198
28. In submissions to the draft consideration, the respondent contended documents 88-90, 98 and 100-101 also contain information relating to an ACT Government employee that is out of scope of

the access application.<sup>4</sup> These documents are not, however, at issue in this Ombudsman review, as the respondent decided to disclose these documents in full to the applicant in their decision dated 28 August 2019. Therefore, I have not reviewed these documents further.

29. For the same reasons as above, the respondent further contended information contained in documents 54 and 58 is outside the scope of the access application. The respondent partially released these documents to the applicant:

- document 54 – for the same reasons as discussed at [26], even though the respondent did not specify this was the reason for the redaction, I find the paragraph contained in document page 155 is outside the scope of the access application.
- document 58 – the respondent contends, for the same reasons as submitted at [28], the information on page 162 is outside the scope of the access application. I have reviewed the marked up, unredacted copy of page 162 as provided by the respondent to my Office. The content of the email discusses “administrative human resources or personnel matters”, which is outside the scope of the access application. However, it appears the respondent has already disclosed this information to the applicant. The respondent did, however, redact the name of an ACT Government employee, but did not specify the reason for the redaction. It is unclear whether the respondent redacted the staff name on the basis it decided it was outside the scope of the access application or because disclosure of the staff name is contrary to the public interest. For the same reasons discussed at [70], I consider these staff names should not be redacted as they relate wholly to the individuals’ day-to-day-functions.

30. I note that arguably the number of documents within the scope of this access application could have been reduced significantly, with the applicant agreeing that duplicate copies could have been removed from the scope in order to simplify processing. As the information officer did not elect to remove the duplicates, to avoid further confusion, I have considered all remaining documents as in scope of this review, even where they contain duplicate information.

#### Disclosure Log

31. I note in the draft consideration it was considered whether the respondent has met its obligations regarding its disclosure log.
32. Section 28 of the FOI Act requires agencies to keep a record of access applications made to the agency in the form of a disclosure log, except for access applications which are requesting access to personal information. This is to ensure that information obtained by a particular person in response to an access application is also available to the public more generally.

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<sup>4</sup> See [3].

33. Information must be published on the disclosure log no earlier than three and no longer than 10 working days after the day the decision notice is given to the applicant.<sup>5</sup>
34. At the date of the draft consideration, my Office reviewed and noted that the respondent's disclosure log had not met these disclosure log obligations. At the time, it was apparent the respondent had not published any information in relation to this access application. This was despite the decision notice being given to the applicant on 28 August 2019, and the FOI Act requiring the information be published no later than 11 September 2019.
35. Section 74(1)(a)(i) of the FOI Act provides that an application for Ombudsman review must be made within 20 working days after the day notice of the decision was published on the disclosure log. By not publishing a decision on its disclosure log, an applicant may find themselves unsure whether they are within the time period in which they can apply for Ombudsman review. In the interests of good administrative practice and fairness, my Office saw no merit in refusing to accept the review application.
36. Following the draft consideration, the respondent acknowledged my Office's comments in relation to the disclosure log and in submissions to the draft consideration, the respondent advised it is working on bringing their disclosure log into compliance.
37. At the time of this decision, my Office has reviewed the respondent's disclosure log and acknowledge that it appears to be up to date.

## Information at issue

38. The remaining information at issue in this Ombudsman review is information within scope of the access application that the respondent decided to redact from 46 documents.<sup>6</sup> That is, documents 4, 6-9, 13-19, 22-26, 29-34, 39, 43, 45-46, 47, 49, 52-55, 58-61, 64, 66-67, 72, 74, 77, 80 and 83-84. These documents relate to MPC and the machinery of government changes establishing MPC.
39. The issue to be decided in this Ombudsman review is whether giving the applicant access to the information at issue would be contrary to the public interest.
40. In making my decision, I have had regard to:
  - the applicant's access application and review application
  - the respondent's decision
  - the FOI Act, in particular ss 7, 16, 17, 35, 50, 72 and Schedule 2

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<sup>5</sup> S 28(4) of the FOI Act.

<sup>6</sup> Identified in the schedule at Appendix A.

- the respondent's FOI processing file relating to the access application
- an unedited copy of the information at issue
- relevant case law, including *Re Timothy Edward Anderson and Australian Federal Police*,<sup>7</sup> *Alistair Coe and ACT Health Directorate*,<sup>8</sup> 'OB' and *Australian Building and Construction Commission*.<sup>9</sup>

## Relevant law

41. Section 7 of the FOI Act provides every person with an enforceable right of access to government information. This right is subject to other provisions of the FOI Act, including grounds on which access may be refused.
42. Contrary to the public interest information is defined in s 16 of the FOI Act as:  
  
information—
  - (a) that is taken to be contrary to the public interest to disclose under schedule 1; or
  - (b) the disclosure of which would, on balance, be contrary to the public interest under the test set out in section 17.
43. The public interest test set out in s 17 of the FOI Act involves a process of balancing public interest factors favouring disclosure against public interest factors favouring nondisclosure to decide whether, on balance, disclosure would be contrary to the public interest.
44. Section 35(1)(c) of the FOI Act provides that an access application may be decided by refusing to give access to the information sought because the information being sought is contrary to the public interest information.
45. Section 50 of the FOI applies if an access application is made for government information in a record containing contrary to the public interest information and it is practicable to give access to a copy of the record from which contrary to the public interest information has been deleted.
46. Section 72 of the FOI Act provides that the person seeking to prevent disclosure of government information has the onus of establishing the information is contrary to the public interest information.
47. Schedule 2 of the FOI Act sets out the public interest factors that must be considered, where relevant, when determining the public interest.

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<sup>7</sup> [1986] AATA 79.

<sup>8</sup> [2018] ACTOFOI 4 (5 September 2018).

<sup>9</sup> [2018] AICmr 25.

## The contentions of the parties

48. In its decision notice, the respondent said:

Documents identified as relevant to your request contain information that I consider to be, on balance, contrary to the public interest to disclose under the test set out in section 17 of the Act. I have decided to grant access, under section 50 of the Act, to copies of documents with deletions applied to information that I consider would be contrary to the public interest to disclose.

...information about decisions leading to machinery of government changes may prejudice deliberative processes of government.

I identified a number of deliberative documents that I do not believe are in the public interest to release... [these documents] do not reflect the government's view but were prepared for deliberative contemplation by Government Executive and the Head of Service. I have decided that at this time in the creation of the new agency there is substantial weight against release in the public interest.

I also considered if information released might prejudice the management function TCCS or the conduct of industrial relations. This is because changes to directorate structures and where people work is inherently about the management of the directorate.

In weighing the public interest, I have decided that it is not in the public interest at this time to release [draft copies of staff notices and other communications] as it could affect the management functions of the agency. The drafts leading up to the accepted version do not contain the message as finally released. It is important that the publicly available messaging be that agreed by government. It is not in the public interest in this case to release the iterations of drafts.

49. In their application for Ombudsman review, the applicant said:

... the Information Officer did not give sufficient weight to the relevant factors in Schedule 2.1 and did not apply the public interest test appropriately.

...I also do not believe that the release of much of the redacted information would prejudice the deliberative processes of government.... I note that similar documents were released in full by CMTEDD in request CMTEDFOI2019-132, including the communications plans and business plans...

...I do not believe their release would prejudice planning or deliberations for Major Projects Canberra as... the arrangements have now been finalised... the restriction on the basis that the information "might prejudice the management function of TCCS or the conduct of industrial relations" would mean that critical changes of management structures should not or cannot be released... I believe there is little risk that the release of this information would prejudice ongoing deliberations about the management of TCCS given Major Projects is an entirely separate entity.

## Considerations

50. I have carefully considered an unedited copy of the information at issue together with the information provided by the applicant and respondent.



*Information that is taken to be contrary to the public interest to disclose under Schedule 1*

51. Neither party to this Ombudsman review has suggested the information sought contains information that is taken to be contrary to the public interest to disclose under Schedule 1 of the FOI Act. Therefore, for the information sought to be contrary to the public interest information, disclosure of the information sought must, on balance, be contrary to the public interest under the test set out in s 17 of the FOI Act.

*Public interest test*

52. To determine whether disclosure of information is, on balance, contrary to the public interest, s 17(1) of the FOI Act prescribes the following five steps:
- (a) identify any factor favouring disclosure that applies in relation to the information (a relevant factor favouring disclosure), including any factor mentioned in schedule 2, section 2.1;
  - (b) identify any factor favouring nondisclosure that applies in relation to the information (a relevant factor favouring nondisclosure), including any factor mentioned in schedule 2, section 2.2;
  - (c) balance any relevant factor or factors favouring disclosure against any relevant factor or factors favouring nondisclosure;
  - (d) decide whether, on balance, disclosure of the information would be contrary to the public interest;
  - (e) unless, on balance, disclosure would be contrary to the public interest, allow access to the information subject to this Act.
53. In addition, there is an initial step of ensuring that none of the irrelevant factors listed in s 17(2) of the FOI Act are considered.

*Irrelevant factors*

54. In submissions to this Ombudsman review, the applicant contends that:

The Information Officer has stated in the decision in relation to draft documents:

The drafts leading up to the accepted version do not contain the message as finally released. It is important that the publicly available messaging be that agreed by government.

I believe this inconsistent with the principles of the FOI Act [which] provides an enforceable right to access government information... That right is not qualified or restricted by the preferences of the current government, including their preferred messaging on announcements or policy... section 17 specifically lists factors, such as embarrassment or loss of confidence in the government or confusion, which cannot be considered in determining the public interest...

55. Section 17(2) of the FOI Act lists irrelevant factors that are not to be taken into account when deciding whether disclosure of the information would, on balance, be contrary to the public interest.

56. Relevantly, under s 17(2) of the FOI Act, consideration must not be given to whether access to the information:
- could result in embarrassment to the government, or cause a loss of confidence in the government (s 17(2)(a) of the FOI Act), and
  - could result in confusion or unnecessary debate (s 17(2)(d) of the FOI Act).
57. I have noted the irrelevant factors listed in s 17(2) of the FOI Act and I am satisfied that I have not considered any irrelevant factors.

*Factors favouring disclosure*

58. Schedule 2.1 of the FOI Act contains a non-exhaustive list of public interest factors favouring disclosure.
59. Additionally, the FOI Act has an express pro-disclosure bias which reflects the importance of public access to government information for the proper working of representative democracy.<sup>10</sup> This concept is promoted through the objects of the FOI Act.<sup>11</sup>
60. The respondent's decision identified two factors favouring disclosure of the information at issue. The respondent considered that disclosure could reasonably be expected to:
- promote open discussion of public affairs and enhance the government's accountability (Schedule 2, s 2.1(a)(i) of the FOI Act), and
  - reveal the reasons for a government decision and any background or contextual information that informed the decision (schedule 2, s 2.1(a)(viii) of the FOI Act).
61. I agree with the respondent that these factors are relevant. In the application for review, the applicant submitted that additional factors were relevant:

I believe that not all relevant factors in favour of release were considered, and that significant weight should have been given to factors in Schedule 2.1 in favour of release including:

- (i) promote open discussion of public affairs and enhance the government's accountability;
  - (ii) contribute to positive and informed debate on important issues or matters of public interest;
  - (iii) inform the community of the government's operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community;
  - (iv) ensure effective oversight of expenditure of public funds;
  - (v) allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or public official; and
  - (vi) reveal the reason for a government decision and any background or contextual information that informed the decision.
62. I agree with the applicant that an additional three factors (Schedule 2, 2.1(a)(ii), (iii) and (iv) of the FOI Act) are also relevant, as significant public interest arises in relation to the creation of

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<sup>10</sup> See s 17 of the FOI Act.

<sup>11</sup> See s 6(b) of the FOI Act.

MPC, with its remit to drive major infrastructure works in Canberra into the future.

Specifically, I consider the information would:

- contribute to informed debate on the relevant machinery of government changes
- inform the community about a new government entity which will be responsible for the delivery of significant projects and will affect how they are advanced by the government, and
- assist in revealing the costs and benefits of the new arrangements.

63. I do not, however, have sufficient information before me to demonstrate that releasing the information sought would assist with inquiries about the possible deficiencies of a government agency or public official.

#### *Factors favouring nondisclosure*

64. Schedule 2, s 2.2 of the FOI Act contains a non-exhaustive list of public interest factors favouring nondisclosure.

65. Of these factors, the respondent identified that disclosure of the information at issue could reasonably be expected to prejudice:

- the protection of an individual's right to privacy or any other right under the *Human Rights Act 2004* (HR Act) (Schedule 2, s 2.2(a)(ii) of the FOI Act),
- the management function of an agency or the conduct of industrial relations by an agency (Schedule 2, s 2.2(a)(xv) of the FOI Act), and
- a deliberative process of government (Schedule 2, s 2.2(a)(xvi) of the FOI Act).

#### Prejudice an individual's right to privacy

66. A factor favouring nondisclosure under Schedule 2, s 2.2(a)(ii) of the FOI Act is that disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy or any other right under the HR Act.

67. Information was redacted by the respondent from documents 22-26, 29-32 and 45-46 on the basis that this factor was relevant and should be afforded weight, despite the relevant factors for disclosure outlined above. The same information was not redacted by the respondent on page 59.

68. These documents comprise a series of emails related to a media enquiry received by the respondent regarding the creation of MPC.

69. I consider the personal information of a third party, including their name, telephone number and email address is information which, if disclosed could reasonably be expected to prejudice the protection of an individual's right to privacy or any other right under the HR Act. However, as the respondent was inconsistent in their redactions of this third party's information, during

the course of this Ombudsman review, my Office consulted with the third party regarding disclosure of their personal information. The third party has advised they did not have any concerns with the disclosure of their information.

70. I do not agree that the name of an ACT government employee or her email address should be redacted from page 59. This information is wholly related to the individual's routine day-to-day work activities. The respondent has also proposed this information be released elsewhere, by not redacting it from other duplicate documents.
71. Therefore, I do not consider Schedule 2, s 2.2(a)(ii) of the FOI Act to be a relevant factor in this review.

Prejudice the management function of an agency or the conduct of industrial relations by an agency

72. Schedule 2, s 2.2(a)(xv) of the FOI Act provides that if disclosure of the information could reasonably be expected to prejudice the management function or the conduct of industrial relations by an agency, disclosure of that information is contrary to the public interest.
73. While the respondent raised this as a relevant factor in their decision notice and their schedule of documents, they did not indicate any specific information that had been redacted on this basis or provide reasons for this.
74. As noted above, in its decision notice, the respondent merely stated that:
- I also considered if information released might prejudice the management function of TCCS or the conduct of industrial relations. This is because changes to directorate structures and where people work is inherently about the management of the directorate.
75. In *'OB' and Australian Building and Construction Commission*,<sup>12</sup> the Commonwealth Information Commissioner considered a similar provision in the *Freedom of Information ACT 1982 (Cth)*, turning to the FOI Guidelines issued by the Office of the Australian Information Commissioner:

An agency cannot merely assert that an effect would occur following disclosure. The particulars of the predicted effect should be identified during the decision making process, including whether the effect could reasonably be expected to occur.<sup>13</sup>

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<sup>12</sup> [2018] AICmr 25.

<sup>13</sup> *Ibid*, at [34].

76. Based on the information before me, I consider the respondent has not discharged their onus under s 72 of the FOI Act to sufficiently explain how disclosure of the information at issue could prejudice the management function of an agency or the conduct of industrial relations by an agency.
77. In addition, in submissions to this review, the respondent advised of a change of view:
- Now that the new agency, Major Projects Canberra has been set up, it is likely that the decision maker would now release in full many of the documents such as the draft staff notices. At the time that the documents were being examined for release, the new agency had not yet been settled. For example, the staff bulletins had only just been provided to staff and it seemed in the public interest to only release the final messaging.
78. As a further consideration, the applicant made a similar access application to the Chief Minister, Treasury and Economic Development Directorate (CMTEDD). CMTEDD published its decision and released information on its disclosure log on 22 July 2019. Similar documents, including an email from the Head of Service to all staff of the ACT Public Service, an email providing a draft structure and strategic priorities, a 'communications on a page' briefing document and talking points, were published on the CMTEDD disclosure log. As a result, this information is already publicly available.<sup>14</sup> Consequently, I have placed no weight on this factor.

#### Deliberative process of government

79. Schedule 2, s 2.2(a)(xvi) of the FOI Act provides that if disclosure of the information could reasonably be expected to prejudice a deliberative process of government, disclosure of that information is contrary to the public interest.
80. I consider that not every document generated by a policy area of an agency can be assumed to be 'deliberative', rather specific information must be considered. The information should relate to a decision that is being considered by an agency and has been prepared as a basis for intended deliberations. A deliberative process is considered to be a 'thinking process' of government.<sup>15</sup>
81. Information was redacted by the respondent from documents 4, 6-9, 13-18, 22-26, 29-34, 45-46, 52-55, 77-78, 80 and 83-84 on the basis that this factor was relevant and should be afforded weight, despite the factors for disclosure outlined above.

<sup>14</sup> See [https://www.cmtedd.act.gov.au/\\_data/assets/pdf\\_file/0004/1389946/2019-132.pdf](https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0004/1389946/2019-132.pdf).

<sup>15</sup> *Eccleston and Department of Family Services and Aboriginal and Islander Affairs* (1993) 1 QAR 60 [28]-[30], cited in *Alistair Coe and Chief Minister, Treasury and Economic Development Directorate* [2019] ACTOFOI 3 (29 January 2019) [38].

82. Based on the information before me, I consider the respondent has not discharged their onus under s 72 of the FOI Act to sufficiently explain how disclosure of this information could prejudice a deliberative process of government. The respondent has simply stated that:

information about decisions leading to machinery of government changes may prejudice deliberative processes of government.

83. Consequently, I have placed no weight on this factor.

## Conclusion

84. For the reasons outlined above, with respect to the information at issue, I confirm the following aspects of the respondent's decision:

- Document 19 – the information redacted on page 53 is out of scope
- Document 39 – the information redacted on pages 121-122 is out of scope
- Document 43 – the information redacted on page 126 is out of scope
- Document 54 – the information redacted on page 155 is out of scope
- Document 66 – the information redacted on page 181 is out of scope
- Document 67 – the information redacted on page 183 is out of scope
- Document 71 – the information redacted on page 194 is out of scope
- Document 74 – the information redacted on page 198 is out of scope

85. I consider the remaining information at issue is, on balance, not contrary to the public interest to disclose. This information is specified in the schedule at **Appendix A**.

**Michael Manthorpe PSM**

**ACT Ombudsman**

**20 February 2020**

**APPENDIX A**
**REVIEW APPLICATION (AFOI-RR/19/10026) – SCHEDULE OF DOCUMENTS**

| Ref No | Folio No | Description                            | Date         | Status          | Apparent reason for non-release or deferral provided by the original decision maker | Ombudsman decision |
|--------|----------|--|--------------|-----------------|---|--------------------|
| 1.     | 1-2      | Email                                  | 16 June 2019 | Full release    | N/A   | Full release       |
| 2.     | 3-4      | Email                                  | 14 June 2019 | Full release    | N/A   | Full release       |
| 3.     | 5-7      | Email                                  | 14 June 2019 | Full release    | N/A   | Full release       |
| 4.     | 8-9      | Email                                  | 13 June 2019 | Partial release | Schedule 2, s 2.2(a)(xvi)   | Full release       |
| 5.     | 10-14    | Email and attachments (talking points) | 13 June 2019 | Full release    | N/A   | Full release       |
| 6.     | 15-19    | Draft talking points                   | June 2019    | Partial release | Schedule 2, s 2.2(a)(xvi)   | Full release       |
| 7.     | 20-22    | Communications on a page               | 13 June 2019 | Partial release | Schedule 2, s 2.2(a)(xvi)   | Full release       |
| 8.     | 23-25    | Draft message TCCS DG                  | 13 June 2019 | Partial release | Schedule 2, s 2.2(a)(xvi)   | Full release       |
| 9.     | 26-27    | Email                                  | 13 June 2019 | Partial release | Schedule 2, s 2.2(a)(xvi)   | Full release       |
| 10.    | 28-29    | Email - and copy of mp3 interview      | 17 June 2019 | Full release    | N/A   | Full release       |

| Ref No | Folio No | Description           | Date         | Status          | Apparent reason for non-release or deferral provided by the original decision maker | Ombudsman decision   |
|--------|----------|-----------------------|--------------|-----------------|---|--|
| 11.    | 30-31    | Email                 | 16 June 2019 | Full release    | N/A   | Full release   |
| 12.    | 32-33    | Email                 | 14 June 2019 | Full release    | N/A   | Full release   |
| 13.    | 34-36    | Email                 | 14 June 2019 | Partial release | Schedule 2, s 2.2(a)(xvi)   | Full release   |
| 14.    | 37-41    | Email                 | 18 June 2019 | Partial release | Schedule 2, s 2.2(a)(xvi)   | Full release   |
| 15.    | 42-45    | Email and attachments | 13 June 2019 | Partial release | Schedule 2, s 2.2(a)(xvi)   | Full release   |
| 16.    | 46-48    | Email                 | 13 June 2019 | Partial release | Schedule 2, s 2.2(a)(xvi)   | Full release   |
| 17.    | 49-50    | Email                 | 13 June 2019 | Partial release | Schedule 2, s 2.2(a)(xvi)   | Full release   |
| 18.    | 51-52    | Email                 | 13 June 2019 | Partial release | Schedule 2, s 2.2(a)(xvi)   | Full release   |
| 19.    | 53-54    | Email                 | 13 June 2019 | Partial release | Out of scope  | The information redacted on page 53 is out of scope; all other information should be released. |
| 20.    | 55-56    | Email                 | 13 June 2019 | Full release    | N/A   | Full release   |
| 21.    | 57       | Email                 | 13 June 2019 | Full release    | N/A   | Full release   |
| 22.    | 58-60    | Email                 | 14 June 2019 | Partial release | Out of scope<br>Schedule 2, s 2.2(a)(ii)<br>Schedule 2, s 2.2(a)(xvi)               | Full release   |
| 23.    | 61-64    | Email                 | 14 June 2019 | Partial release | Out of scope<br>Schedule 2, s 2.2(a)(ii)  | Full release   |



| Ref No | Folio No | Description | Date         | Status          | Apparent reason for non-release or deferral provided by the original decision maker | Ombudsman decision |
|--------|----------|-------------|--------------|-----------------|---|--------------------|
|        |          |             |              |                 | Schedule 2, s 2.2(a)(xvi)   |                    |
| 24.    | 65-68    | Email       | 14 June 2019 | Partial release | Out of scope<br>Schedule 2, s 2.2(a)(ii)<br>Schedule 2, s 2.2(a)(xvi)               | Full release       |
| 25.    | 69-72    | Email       | 14 June 2019 | Partial release | Out of scope<br>Schedule 2, s 2.2(a)(ii)<br>Schedule 2, s 2.2(a)(xvi)               | Full release       |
| 26.    | 73-77    | Email       | 14 June 2019 | Partial release | Out of scope<br>Schedule 2, s 2.2(a)(ii)<br>Schedule 2, s 2.2(a)(xvi)               | Full release       |
| 27.    | 78       | Email       | 14 June 2019 | Full release    | N/A   | Full release       |
| 28.    | 79-80    | Email       | 14 June 2019 | Full release    | N/A   | Full release       |
| 29.    | 81-86    | Email       | 14 June 2019 | Partial release | Out of scope<br>Schedule 2, s 2.2(a)(ii)<br>Schedule 2, s 2.2(a)(xvi)               | Full release       |
| 30.    | 87-93    | Email       | 14 June 2019 | Partial release | Out of scope<br>Schedule 2, s 2.2(a)(ii)<br>Schedule 2, s 2.2(a)(xvi)               | Full release       |
| 31.    | 94-100   | Email       | 14 June 2019 | Partial release | Out of scope<br>Schedule 2, s 2.2(a)(ii)<br>Schedule 2, s 2.2(a)(xvi)               | Full release       |
| 32.    | 101-107  | Email       | 14 June 2019 | Partial release | Out of scope<br>Schedule 2, s 2.2(a)(ii)<br>Schedule 2, s 2.2(a)(xvi)               | Full release       |

| Ref No | Folio No | Description | Date         | Status          | Apparent reason for non-release or deferral provided by the original decision maker | Ombudsman decision   |
|--------|----------|-------------|--------------|-----------------|---|--|
| 33.    | 108-109  | Email       | 14 June 2019 | Partial release | Schedule 2, s 2.2(a)(xvi)   | Full release   |
| 34.    | 110-112  | Email       | 14 June 2019 | Partial release | Schedule 2, s 2.2(a)(xvi)   | Full release   |
| 35.    | 113-114  | Email       | 14 June 2019 | Full release    | N/A   | Full release   |
| 36.    | 115-116  | Email       | 16 June 2019 | Full release    | N/A   | Full release   |
| 37.    | 117-118  | Email       | 17 June 2019 | Full release    | N/A   | Full release   |
| 38.    | 119-120  | Email       | 17 June 2019 | Full release    | N/A   | Full release   |
| 39.    | 121-122  | Email       | 17 June 2019 | Partial release | Out of scope  | The information redacted on pages 121-122 is out of scope; all other information should be released. |
| 40.    | 123      | Email       | 18 June 2019 | Full release    | N/A   | Full release   |
| 41.    | 124      | Email       | 18 June 2019 | Full release    | N/A   | Full release   |
| 42.    | 125      | Email       | 19 June 2019 | Full release    | N/A   | Full release   |
| 43.    | 126-128  | Email       | 19 June 2019 | Partial release | Out of scope  | The information redacted on pages 126 is out of scope; all other information should be released.     |
| 44.    | 129      | Email       | 19 June 2019 | Full release    | N/A   | Full release   |
| 45.    | 130-132  | Email       | 14 June 2019 | Partial release | Out of scope<br>Schedule 2, s 2.2(a)(ii)  | Full release   |

| Ref No | Folio No | Description | Date         | Status          | Apparent reason for non-release or deferral provided by the original decision maker | Ombudsman decision  |
|--------|----------|-------------|--------------|-----------------|---|---|
|        |          |             |              |                 | Schedule 2, s 2.2(a)(xvi)   |   |
| 46.    | 133-139  | Email       | 14 June 2019 | Partial release | Out of scope<br>Schedule 2, s 2.2(a)(ii)<br>Schedule 2, s 2.2(a)(xvi)               | Full release  |
| 47.    | 140-141  | Email       | 18 June 2019 | Partial release | Schedule 2, s 2.2(a)(xvi)   | Full release  |
| 48.    | 142      | Email       | 18 June 2019 | Full release    | N/A   | Full release  |
| 49.    | 143-145  | Email       | 18 June 2019 | Partial release | Not provided  | Full release  |
| 50.    | 146-149  | Email       | 18 June 2019 | Full release    | N/A   | Full release  |
| 51.    | 150      | Email       | 19 June 2019 | Full release    | N/A   | Full release  |
| 52.    | 151-152  | Email       | 7 June 2019  | Partial release | Schedule 2, s 2.2(a)(xvi)   | Full release  |
| 53.    | 153-154  | Email       | 12 June 2019 | Partial release | Schedule 2, s 2.2(a)(xvi)   | Full release  |
| 54.    | 155      | Email       | 12 June 2019 | Partial release | Schedule 2, s 2.2(a)(xvi)   | The information redacted on page 155 is out of scope; all other information to be released. |
| 55.    | 156-157  | Email       | 12 June 2019 | Partial release | Schedule 2, s 2.2(a)(xvi)   | Full release  |
| 56.    | 158-159  | Email       | 13 June 2019 | Full release    | N/A   | Full release  |
| 57.    | 160-161  | Email       | 14 June 2019 | Full release    | N/A   | Full release  |

| Ref No | Folio No | Description | Date         | Status          | Apparent reason for non-release or deferral provided by the original decision maker | Ombudsman decision  |
|--------|----------|-------------|--------------|-----------------|---|---|
| 58.    | 162-164  | Email       | 19 June 2019 | Partial release | Not provided  | Full release  |
| 59.    | 165-168  | Email       | 19 June 2019 | Partial release | Not provided  | Full release  |
| 60.    | 169-170  | Email       | 21 June 2019 | Partial release | Not provided  | Full release  |
| 61.    | 171-172  | Email       | 13 June 2019 | Partial release | Not provided  | Full release  |
| 62.    | 173      | Email       | 13 June 2019 | Full release    | N/A   | Full release  |
| 63.    | 174-175  | Email       | 13 June 2019 | Full release    | N/A   | Full release  |
| 64.    | 176-178  | Email       | 14 June 2019 | Partial release | Not provided  | Full release  |
| 65.    | 179-180  | Email       | 16 June 2019 | Full release    | N/A   | Full release  |
| 66.    | 181-182  | Email       | 13 June 2019 | Partial release | Not provided  | The information redacted on page 181 is out of scope; all other information to be released. |
| 67.    | 183-184  | Email       | 13 June 2019 | Partial release | Not provided  | The information redacted on page 183 is out of scope; all other information to be released. |
| 68.    | 185-186  | Email       | 13 June 2019 | Full release    | N/A   | Full release  |
| 69.    | 187-188  | Email       | 13 June 2019 | Full release    | N/A   | Full release  |
| 70.    | 189-191  | Email       | 13 June 2019 | Full release    | N/A   | Full release  |

| Ref No | Folio No | Description              | Date         | Status          | Apparent reason for non-release or deferral provided by the original decision maker | Ombudsman decision  |
|--------|----------|--------------------------|--------------|-----------------|---|---|
| 71.    | 192-193  | Email                    | 12 June 2019 | Full release    | N/A   | The information redacted on page 194 is out of scope; all other information should be released. |
| 72.    | 194-195  | Email                    | 13 June 2019 | Partial release | Not provided  | Full release  |
| 73.    | 196-197  | Email                    | 14 June 2019 | Full release    | N/A   | Full release  |
| 74.    | 198      | Email                    | 18 June 2019 | Partial release | Not provided  | The information redacted on page 198 is out of scope; all other information should be released. |
| 75.    | 199-200  | Email                    | 18 June 2019 | Full release    | N/A   | Full release  |
| 76.    | 201-203  | Email                    | 19 June 2019 | Full release    | N/A   | Full release  |
| 77.    | 204-211  | Email                    | 13 June 2019 | Partial release | Schedule 2, s 2.2(a)(xvi)   | Full release  |
| 78.    | 212-213  | Email                    | 13 June 2019 | Full release    | N/A   | Full release  |
| 79.    | 214-215  | Email                    | 21 June 2019 | Full release    | N/A   | Full release  |
| 80.    | 216-219  | Email                    | 18 June 2019 | Partial release | Schedule 2, s 2.2(a)(xvi)   | Full release  |
| 81.    | 220-222  | Talking Points and FAQs  | 13 June 2019 | Full release    | N/A   | Full release  |
| 82.    | 223-227  | Talking Points and FAQs  | 12 June 2019 | Full release    | N/A   | Full release  |
| 83.    | 228-230  | Communications on a page | 13 June 2019 | Partial release | Schedule 2, s 2.2(a)(xvi)   | Full release  |

| Ref No | Folio No | Description | Date         | Status          | Apparent reason for non-release or deferral provided by the original decision maker | Ombudsman decision |
|--------|----------|-------------|--------------|-----------------|---|--------------------|
| 84.    | 231-235  | Email       | 18 June 2019 | Partial release | Schedule 2, s 2.2(a)(xvi)   | Full release       |
| 85.    | 236-238  | Email       | 17 June 2019 | Full release    | N/A   | Full release       |
| 86.    | 239      | Email       | 17 June 2019 | Full release    | N/A   | Full release       |
| 87.    | 240-241  | Email       | 17 June 2019 | Full release    | N/A   | Full release       |
| 88.    | 242-243  | Email       | 17 June 2019 | Full release    | N/A   | Full release       |
| 89.    | 244-246  | Email       | 17 June 2019 | Full release    | N/A   | Full release       |
| 90.    | 247-249  | Email       | 17 June 2019 | Full release    | N/A   | Full release       |
| 91.    | 250-253  | Email       | 17 June 2019 | Full release    | N/A   | Full release       |
| 92.    | 254-255  | Email       | 17 June 2019 | Full release    | N/A   | Full release       |
| 93.    | 256      | Email       | 16 June 2019 | Full release    | N/A   | Full release       |
| 94.    | 257      | Email       | 16 June 2019 | Full release    | N/A   | Full release       |
| 95.    | 258-260  | Email       | 13 June 2019 | Full release    | N/A   | Full release       |
| 96.    | 261-262  | Email       | 13 June 2019 | Full release    | N/A   | Full release       |
| 97.    | 263-265  | Email       | 13 June 2019 | Full release    | N/A   | Full release       |
| 98.    | 266-268  | Email       | 17 June 2019 | Full release    | N/A   | Full release       |

| Ref No | Folio No | Description           | Date         | Status       | Apparent reason for non-release or deferral provided by the original decision maker | Ombudsman decision |
|--------|----------|-----------------------|--------------|--------------|---|--------------------|
| 99.    | 269-272  | Email                 | 17 June 2019 | Full release | N/A   | Full release       |
| 100.   | 273-277  | Email                 | 17 June 2019 | Full release | N/A   | Full release       |
| 101.   | 278-280  | Email                 | 17 June 2019 | Full release | N/A   | Full release       |
| 102.   | 281-283  | Email                 | 17 June 2019 | Full release | N/A   | Full release       |
| 103.   | 284-285  | Email                 | 17 June 2019 | Full release | N/A   | Full release       |
| 104.   | 286-287  | Email                 | 17 June 2019 | Full release | N/A   | Full release       |
| 105.   | 288-292  | Email and attachments | 17 June 2019 | Full release | N/A   | Full release       |
| 106.   | 293-296  | Email and attachments | 17 June 2019 | Full release | N/A   | Full release       |
| 107.   | 297-299  | Email                 | 17 June 2019 | Full release | N/A   | Full release       |
| 108.   | 300-301  | Email                 | 17 June 2019 | Full release | N/A   | Full release       |
| 109.   | 302-303  | Email                 | 17 June 2019 | Full release | N/A   | Full release       |
| 110.   | 304-305  | Email                 | 17 June 2019 | Full release | N/A   | Full release       |
| 111.   | 306      | Email                 | 16 June 2019 | Full release | N/A   | Full release       |
| 112.   | 307      | Email                 | 16 June 2019 | Full release | N/A   | Full release       |
| 113.   | 308-310  | Email                 | 13 June 2019 | Full release | N/A   | Full release       |

| Ref No   | Folio No | Description | Date         | Status       | Apparent reason for non-release or deferral provided by the original decision maker | Ombudsman decision |
|--|----------|-------------|--------------|--------------|---|--------------------|
| 114.   | 311-312  | Email       | 13 June 2019 | Full release | N/A   | Full release       |
| 115.   | 313-315  | Email       | 13 June 2019 | Full release | N/A   | Full release       |
| <b>Total number of documents 115 (315 pages)</b> |          |             |              |              |   |                    |