



TRS20D2626

Hon Stephen Mullighan MP
Member for Lee
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Dear Mr Mullighan

APPLICATION UNDER THE *FREEDOM OF INFORMATION ACT 1991*

I refer to your application made under the *Freedom of Information Act 1991* (the Act), dated 5 August 2020.

Your application seeks access to:

“All minutes, briefings and correspondence titled ‘Remuneration Tribunal – 2020 Review of Remuneration – Statutory Office Holders’ as described on the Objective document management system, between 9 April and 5 August 2020.”

The prescribed legislative timeframe to determine this application has expired and is deemed as refused access to documents relevant to your application. I refer to my letter dated 18 August 2020 where I sought additional time to make my determination.

The purpose of this letter is to advise you of my determination. An extensive search was conducted within this office. A total of 3 documents were identified as answering the terms of your application.

I refuse you access in full to 3 documents.

Documents Refused in Full

Documents 1, 2 and 3

Document 1 is a briefing which was prepared by the Industrial Relations and Policy Branch (IRAP) DTF, seeking approval on the proposed submission to the Remuneration Tribunal.

Document 2 is a minute from myself as Treasurer, to the Premier seeking his approval as the Minister responsible for the *Remuneration Act 1990*.

Document 3 is the submission to the Remuneration Tribunal.

IRAP provides advocacy, representation, negotiation and advisory services at a whole of Government level and to public sector agencies on matters relating to industrial relations, enterprise bargaining provisions and negotiations, industrial disputes and litigation, and related matters, including employment arrangements within agencies and the public sector generally. These functions include submissions to be made to the Remuneration Tribunal about the remuneration for non-judicial office-holders.

Documents 1, 2 and 3 contain advice and recommendations which were considered for the purpose of decision making relating to the functions of Government. IRAP provides advice to the Treasurer about submissions to be made to the Remuneration Tribunal about the review of remuneration for Statutory Office Holders.

On balance, it is not in the public interest to disclose the content of these documents as it is important for the Government to receive frank and comprehensive advice and opinions, including the expression of views which may be contentious. The prospect that unknown third parties may obtain access to those documents by way of an FOI application may inhibit the provision of full and open opinions and recommendations on such matters in the future.

These documents are provided to me on the basis that they are both forthright and candid. If disclosed, such advice and commentary would not be provided in a candid and forthright manner. Disclosure may also lead to confusion and unnecessary debate resulting from the disclosure of possibilities that are being considered.

Whilst there is a strong public interest in government accountability and transparency, there is the competing public interest to ensure that full and frank advice can occur in confidence. It is necessary that I'm appropriately informed and updated on these matters.

It is my submission that disclosure would, on balance, be contrary to public interest. This is because a Minister of the Crown, as one of the highest offices of a Government, should be able to communicate sensitive matters without subsequent promulgation of opinion and advice deliberated in pre-decisional communications. Disclosure would inhibit frankness and candour in future pre-decisional communications at the highest level of Government and lead to confusion and unnecessary debate resulting from disclosure of possibilities considered. This is the longstanding legal position and there is no reason to depart from that in this matter.

I therefore determine that the information contained in Documents 1, 2 and 3 should not be released for the reasons outlined above, pursuant to clause 9(1)(a)(i)(ii) of the FOI Act.

Exemptions

Clause 9 — Internal Working Documents

- (1) *a document is an exempt document if it contains matter—*
- (a) *that relates to—*
 - (i) *any opinion, advice or recommendation that has been obtained, prepared or recorded; or*
 - (ii) *any consultation or deliberation that has taken place, in the course of, or for the purpose of, the decision-making functions of the Government, a Minister or an agency; and*
 - (b) *the disclosure of which would, on balance, be contrary to the public interest.*

Please note, in compliance with Premier and Cabinet Circular PC045 - *Disclosure Logs for Non-Personal Information Released through Freedom of Information* (PC045), the Department of Treasury and Finance is now required to publish a log of all non-personal information released under the Act.

In accordance with this Circular, any non-personal information determined for release as part of this application, may be published on the DTF website. A copy of PC045 can be found at the following address: <https://dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars>. Please visit the website for further information.

If you require any further information, please contact Ms Vicky Cathro, Ministerial Liaison Officer, by telephone on 8226 9769 or by email to vicky.cathro@sa.gov.au.

Yours sincerely



Hon Rob Lucas MLC
Principal Officer

25 April 2021

Att.

Schedule of Documents

TRS20D2626 - Remuneration Tribunal - 2020 Review of Remuneration - Statutory Office Holders

| Doc. No. | Date | Description of Document | # of pages | Determination Recommendation | Exemption Clause | Reason |
|----------|------------|--|------------|------------------------------|--|--------|
| 1 | 8/05/2020 | Briefing to Treasurer from Executive Director, Industrial Relations and Policy Branch, DTF | 2 | Refused in full | 9(1)(a)(i) - Contains matter relating to opinion, advice or recommendation prepared for decision-making of the Government, a Minister or an agency & contrary to public interest | |
| 2 | 16/05/2020 | Minute to the Premier from the Treasurer | 2 | Refused in full | 9(1)(a)(i) - Contains matter relating to opinion, advice or recommendation prepared for decision-making of the Government, a Minister or an agency & contrary to public interest | |
| 3 | | Submission to Remuneration Tribunal | 5 | Refused in full | 9(1)(a)(i) - Contains matter relating to opinion, advice or recommendation prepared for decision-making of the Government, a Minister or an agency & contrary to public interest | |