



**Government
of South Australia**

TRS20D2633

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Stephen

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 6 August 2020.

Your application seeks access to:

"All minutes, briefings and correspondence titled 'Update – Independent Commissioner Against Corruption Matters' as described on the Objective document management system, between 9 April and 5 August 2020."

The legislative prescribed timeframe to determine this application has expired and is now deemed to have refused you access to all 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 2 documents were identified as answering the terms of your application.

I refuse you access in full to two documents.

Both documents contain information currently active with the Independent Commissioner Against Corruption (ICAC).

Clause 12(1) of Schedule 1 of the Act states that a document is exempt from disclosure if 'it contains matter the disclosure of which would constitute an offence against an Act', being sections 54 and 56 of the *ICAC Act 2012*.

Documents 1 and 2 contain information relating to matters currently active with the ICAC. For this reason, they are exempt pursuant to clauses 4(1)(b) and 4(2). It is not

in the public interest to release any of the information relating to active matters, as to do so may be prejudicial to ongoing proceedings.

I advise that both documents were prepared internally and contain advice and recommendations which were considered for the purpose of decision making relating to the functions of Government. 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 briefings are provided to me on the basis that they are both forthright and candid. If these briefings were to be 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.

On the balance, it is my submission that the information contained in document 1 and 2 should not be released for the reasons outlined above, pursuant to clause 9 of the Act.

Exemptions

Clause 4 – Law enforcement and public safety

- (1) *A document is an exempt document if it contains matter the disclosure of which—
could reasonably be expected—

(b) to prejudice the fair trial of any person or the impartial adjudication of any case;*

- (2) *A document is an exempt document if it contains matter the disclosure of which—

(a) Could reasonably be expected—

(i) To prejudice the investigation of any contravention or possible contravention of the law (including any revenue law) whether generally or in a particular case; or*

- (ii) *To enable the existence or identity of any confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or*
- (iii) *To prejudice the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law (including any revenue law); or*
- (iv) *To prejudice the maintenance or enforcement of any lawful method or procedure for protecting public safety; or*
- (v) *To endanger the security of any building, structure or vehicle; or*
- (vi) *To prejudice any system or procedure for the protection of persons or property; and*

(b) *Would, on balance, be contrary to the public interest.*

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.*

Clause 12 – Secrecy Provisions

- (1) *A document is an exempt document if it contains matter the disclosure of which would constitute an offence against an Act.*

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.

As I am determining this application as Principal Officer, section 29(6) of the Act does not provide for an internal review. If you are dissatisfied with my determination you are entitled to exercise your rights of external review with the Ombudsman.

Alternatively, you can apply to the South Australian Civil and Administrative Tribunal. If you wish to seek a review, section 39(3) of the Act states you must do so within 30 calendar days of receiving the determination.

If you require any further information, please contact Vicky Cathro on 8226 9769.

Yours sincerely

A handwritten signature in black ink that reads "Rob Lucas". The signature is written in a cursive style.

Hon Rob Lucas MLC
Principal Officer

13 November 2020