



**Government
of South Australia**

TRS19D1379

Treasurer

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Hon Stephen Mullighan MP
Member for Lee
Unit 1, 62 Semaphore Road
SEMAPHORE SA 5019

lee@parliament.sa.gov.au

Dear Mr ^{Stephen}Mullighan

APPLICATION UNDER THE *FREEDOM OF INFORMATION ACT 1991*

I refer to your application made under the *Freedom of Information Act 1991* (FOI Act), dated 22 May 2019.

Your application seeks access to:

“All minutes, briefings and correspondence titled ‘Equifax Contract Variation’ as described on the Objective document management system, between 12 July 2018 and 22 May 2019.”

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 26 May 2019 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 1 document was identified as answering the terms of your application

I grant you access in part to 1 document; a copy of which is enclosed.

This document is a briefing prepared by Super SA in relation to the Equifax contract variation.

Attached to the briefing there were also the following documents, which were provided as background information:

- Variation to Contract – Operation Bluedoor – Equifax Contract, dated 28 June 2018
- Copy of letter between Equifax and Super SA, dated 11 May 2018; and
- Copy of an email between Department of Treasury and Finance (DTF) staff.

I determine the briefing, variation to contract and the letter (as described above) are all fully exempt pursuant to the clauses below.

I determine the internal email between DTF staff can be released in part. This email contains financial values relating to the contract and disclosure could compromise the bidding process for similar work. I therefore determine this exempt pursuant to clause 7(1)(c).

The briefing, in addition to the variation contract, letter and email contains financial values relating to the contract. Disclosure of these amounts would be contrary to the public interest as it could be used in procurement of future contracts. This would compromise the bidding process and compromise the Government's negotiation position. I therefore determine this exempt pursuant to clause 7(1)(c) to the FOI Act.

The briefing and variation contract were prepared internally and contains 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 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.

I therefore determine both documents exempt pursuant to clause 9(1)(a)(i).

If both the briefing and variation contract are disclosed, this is also likely to affect the Government's ability to negotiate the most cost effective implementation of the project for the state. Given the commercial nature of these projects, this could reasonably be expected to have a substantial (and ongoing) adverse effect on the financial interests of the agency and, depending on the magnitude of the effect, could also potentially be expected to result in a substantial adverse effect on the financial interests of the state.

The harm to the state's reputation in managing procurement of this type that is likely to result from disclosure of these documents at this time would also have a substantial adverse effect on the ability of the agency and the state to undertake and effectively manage projects of this nature in the future which could also be reasonably expected to have a significant adverse effect on the financial and/or property interests of the agency and the State. I therefore determine both documents exempt pursuant to clause 15(a)(b).

Contact was made with Equifax seeking their views on whether they would be happy to disclose their correspondence, and despite numerous attempts to obtain consent, no reply has been received.

Exemptions

Clause 7 – Documents affecting business affairs concerning

- (1) *A document is an exempt document—*
- (b) *if it contains matter—*
 - (i) *consisting of information (other than trade secrets) that has a commercial value to any agency or any other person; and*
 - (ii) *the disclosure of which—*
 - (A) *could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to the Government or to an agency; and*
 - (B) *would, on balance, be contrary to the public interest; or*
 - (c) *if it contains matter—*
 - (i) *consisting of information (other than trade secrets or information referred to in paragraph (b)) concerning the business, professional, commercial or financial affairs of any agency or any other person; and*
 - (ii) *the disclosure of which—*
 - (A) *could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to the Government or to an agency; 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 15 – Financial and property interests

A document is an exempt document if it contains matter the disclosure of which—

- (a) *could reasonably be expected to have a substantial adverse effect on the financial or property interests of the State or an agency.*
- (b) *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 *Freedom of Information Act 1991*.

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



Hon Rob Lucas MLC
Principal Officer

22 May 2020

RELEASE IN PART

Crowe, Terry (DTF)

From: Miller, Leigh (DTF)
Sent: Monday, 16 July 2018 1:41 PM
To: Crowe, Terry (DTF)
Subject: RE: Variation to Contract - Super SA

Hi Terry,

I am good - how are you?

I have had discussions with Super SA about the procurement approval requirements for this contract - fortunately for Super SA, these requirements were simplified following the increase to the DTF procurement authority!

In accordance with the State Procurement Board *Contract Management Policy*, an assessment of the variation must firstly be undertaken in line with the guidelines contained within the policy - as the outcome of this assessment was that the variation was 'minor' (as noted on page 6 of the variation to contract), the minimum requirement is for a file note to be completed and recorded on the relevant file. Super SA has chosen as its record of this variation to use the standard variation to contract template (which is fine) - given the outcome of this assessment (which I agree with) and, in accordance with the *APU Procurement Process Approvals Guideline*, there is no requirement for this variation to be considered by the APU.



Let me know if you want to discuss this further or if my explanation does not make sense!

Thanks,
Leigh.

-----Original Message-----
From: Crowe, Terry (DTF)
Sent: Monday, 16 July 2018 12:06 PM
To: Miller, Leigh (DTF)
Subject: Variation to Contract - Super SA

Hi Leigh,

How are you - good weekend I hope!

Per the attached document, Super SA is seeking the TR approval for a variation to an existing contract.

It mentions in there that no APU endorsement is required - can you please confirm that and any other issues that need raising? I just have to advise the CE if this is all good to send through to the TR.

Please do not hesitate to contact me with any queries on the above.

Terry Crowe

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-----Original Message-----

From: ricoh@sa.gov.au [mailto:ricoh@sa.gov.au]
Sent: Monday, 16 July 2018 12:01 PM
To: Crowe, Terry (DTF) <Terry.Crowe@sa.gov.au>
Subject: Message from "SAC08-N-01"

This E-mail was sent from "SAC08-N-01" (MP C6004ex).

Scan Date: 07.16.2018 12:00:41 (+0930)
Queries to: ricoh@sa.gov.au