

# Department of State Growth

BUSINESS SERVICES DIVISION

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Your Ref                      Our Ref    RTI21-22-50 098020



Mr Robert Hogan  
3 McLachlan Crescent  
WEETANGERA ACT 2614

Via email: [harveyr35@aol.com](mailto:harveyr35@aol.com)

Dear Mr Hogan

I refer to your Application for Assessed Disclosure dated 4 May 2022, made to the Department of Premier and Cabinet (DPaC), in accordance with the *Right to Information Act 2009* (the Act) seeking information relating to the University of Tasmania's proposed move to the Hobart CBD.

On 27 May 2022, DPaC wrote to advise you that part of the subject matter of points 1, 2 and 3 of your application are more closely connected with the functions of the Department of State Growth. Accordingly, part of points 1, 2 and 3 were transferred to the Department of State Growth pursuant to s14(1) of the Act.

I am a delegated officer pursuant to s21 of the Act and am responsible for assessing your application.

I am advised you paid the application fee and I have accepted the transfer of part of your application accordingly.

Specifically, you requested:

*The following records in relation to the period 1 January 2015 to 4 May 2022:*

- 1. All briefs provided to senior officers (Executives) and the Premier/Ministers of the Departments of Premier and Cabinet, Education and Infrastructure (or such names as these departments were known in the relevant period) in relation to the proposed move of UTAS into the Hobart CBD and/or redevelopment of the Sandy Bay campus;*
- 2. All analysis undertaken by the Departments of premier and Cabinet, Education and Infrastructure in relation to the proposed move of UTAS into the Hobart CBD and/or redevelopment of the Sandy Bay campus;*
- 3. All records relating to the inclusion of UTAS in the Hobart City Deal.*

The Department has undertaken a search of its records and has identified information that falls within the scope of your request. I have extracted the relevant information relating to the scope of the request and assessed the information accordingly.

I have made the decision to withhold some of the information pursuant to sections 35 and 36 of the Act. A statement of reasons for my decision is attached, along with a document schedule and released information.

If you are dissatisfied with my decision, section 43 of the Act provides you with the right to apply for an internal review. Application for a review of my decision must be made in writing within 20 working

days of the receipt of this letter. No particular form is required, but it is desirable that you set out the grounds on which you consider the decision should be reviewed.

An application for review should be addressed to: The Secretary, Department of State Growth, GPO Box 536, Hobart TAS 7001.

Alternatively, you can email an application to: [rti@stategrowth.tas.gov.au](mailto:rti@stategrowth.tas.gov.au).

I trust this information is of assistance.

Yours sincerely

*ttomac*

Tiahna Tomac  
**ACTING MANAGER LEGAL SUPPORT  
DELEGATE OF SECRETARY**

29 July 2022

## STATEMENT OF REASONS

**Reference:** RTI 21-22-50

**Applicant:** Robert Hogan

**Subject:** UTAS/Hobart City Deal

**Decision maker:** Tiahna Tomac, Delegate of Secretary

**Decision date:** 29 July 2022

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1. By Application for Assessed Disclosure in accordance with the *Right to Information Act 2009* (the Act), you have sought information relating to the University of Tasmania's proposed move into the Hobart CBD.
2. I have made the decision to withhold some information relevant to your request, pursuant to sections 35 and 36 of the Act.

### **Section 35 – internal deliberative information**

3. Section 35 of the Act relevantly provides that information is exempt if it consists of an opinion, advice or recommendation prepared by an officer of a public authority, or a record of consultations or deliberations between officers of public authorities, in the course of, or for the purpose of, the deliberative processes related to the official business of a public authority.
4. The information identified as relevant to this exemption is the draft Hobart City Deal publication.
5. I am satisfied that this information was prepared by officers of the Department of State Growth, intended to provide opinion and recommendation as to the contents to be included in the publication. The context in which that opinion and recommendation was provided was a deliberative one related to the official business of the Department and other public authorities.

### **Section 36 – personal information of a person**

6. Section 36 of the Act provides that information is exempt information if its disclosure under the Act would involve the disclosure of the personal information of a person other than the person making the application.
7. Personal information is defined by s5 of the Act to be 'any information or opinion in any recorded format about an individual whose identity is apparent or is reasonably ascertainable from the information or opinion.' The definition does not extend to an individual who has been dead for more than 25 years.
8. I have identified information of this kind in various documents. The personal information consists of names and position titles of non-executive officers of public authorities.<sup>1</sup>

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<sup>1</sup> Officers of the Department of State Growth, Tasmanian Councils, University of Tasmania below Senior Executive Service (SES) level not exercising a delegation or decision-making power, and Ministerial office staff below Chief of Staff level.

9. I have also identified information belonging to external third parties including of Commonwealth Government employees. This personal information consists of names, position titles, mobile numbers and email addresses.
10. I am satisfied that none of the personal information relates to individuals who have been dead for more than 25 years.
11. Section 36 also provides that if an application for third party personal information is made and the public authority decides that disclosure of the information may reasonably be expected to be of concern to the third party, it is to, if practicable, and before deciding whether disclosure should occur, seek the views of the third party concerned.
12. I formed the view that the third parties involved may be reasonably concerned if their personal information was released and therefore conducted the required consultation.
13. In making my decision, I have taken the outcome of the consultation into consideration.

### **Public Interest Test**

14. Before making a decision to withhold information, I must first consider the public interest test set out in s33.
15. Sections 35 and 36 fall within Division 2 of Part 3 of the Act and are subject to the public interest test. The test provides that the information described in sections 34-42 of the Act is only exempt information if it is considered 'after taking into account all relevant matters, that it is contrary to the public interest to disclose the information'.
16. The Ombudsman has noted that 'Australian courts and tribunals have drawn a distinction between the public interest in disclosure and matters that are of interest to members of the general public. The fact that there is a section of the public interested in a certain activity will not necessarily lead to the conclusion that disclosure of documents relating to it will be in the public interest'.<sup>2</sup>

### **Relevant Matters**

17. The public interest test requires consideration of the information in light of all relevant matters, including those specified in Schedule 1 of the Act, while disregarding all irrelevant matters specified in Schedule 2.
18. In applying the public interest test to the information in issue, the Schedule 1 items I considered most relevant were:
  - (a) *the general public need for government information to be accessible;*
  - (b) *whether the disclosure would contribute to or hinder debate on a matter of public interest;*

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<sup>2</sup> Michael Atkin and Department of Primary Industries, Parks, Water and the Environment, 20 April 2017, paragraph 61, <[https://www.ombudsman.tas.gov.au/\\_data/assets/pdf\\_file/0009/392796/Michael-Atkin-and-Department-of-Primary-Industries-Parks-Water-and-the-Environment-April-2017.PDF](https://www.ombudsman.tas.gov.au/_data/assets/pdf_file/0009/392796/Michael-Atkin-and-Department-of-Primary-Industries-Parks-Water-and-the-Environment-April-2017.PDF)>.

- (d) *whether the disclosure would provide the contextual information to aid in the understanding of government decisions;*
- (f) *whether the disclosure would enhance scrutiny of government decision-making processes and thereby improve accountability and participation; and*
- (m) *whether the disclosure would promote or harm the interests of an individual or group of individuals.*

19. With regards to personal information, I have also considered the objects of the Act, which includes increasing 'the accountability of the executive to the people of Tasmania' as well as the Department's obligations under the *Personal Information Protection Act 2004* to not disclose personal information for a purpose other than for which it was collected.
20. I have also taken into account that the information relates to a topic currently subject to significant public debate.

#### *Third party personal information*

21. With respect to third party personal information, it is my view that the 'accountability of the executive' may reasonably extend to identifying individuals in contexts where they have exercised statutory or other decision-making authority, or have the capacity to make, or influence the making, of government policy. On this basis, I have decided to disclose the personal information of public authority employees where that information appears in connection with such decision-making or policy influence duties.
22. However, I also consider that non-executive officers in particular are entitled to be concerned about being identified. Doing so leaves them open to being held personally accountable by the public (as opposed to being accountable to their employer for the proper and diligent performance of their duties), where there is no reasonable basis for doing so. There is no suggestion of impropriety or other misconduct in connection with any of the officers' work in this case.
23. I also consider that the public interest in maintaining personal privacy, outweighs the public interest in accountability and transparency in situations where identification of individual employees of organisations and departments contributes nothing to public understanding of decision-making or policy formation.
24. With regard to the external third parties identified, I have taken into account the outcome of the consultation. In my view, the third parties in questions are entitled to be concerned with the release of their personal information and I consider this to be a reasonable concern given the nature of information and the significant public interest in this topic. As such, I am of the view that release of the information in issue has potential to harm the interests of the affected individuals.
25. Further, I do not consider that disclosing certain personal information could reasonably be expected to provide further contextual information of benefit to the public, nor does it increase accessibility to information. On the contrary, disclosure of the personal information of third parties, is likely to harm the interests of the affected individuals and expose them to unwarranted public scrutiny.

*Internal deliberative information*

26. The information being withheld as internally deliberative is the draft Hobart City Deal publication. This information was considered by the Department and other public authorities for the purpose of providing a written framework to support finalisation of the Hobart City Deal.
27. The University of Tasmania's proposed move to the Hobart CBD is one of several projects captured by the Hobart City Deal. As such, there is limited information contained in the publication pertaining to the University of Tasmania. On this basis, it is my view that release of the publication presents limited value in terms of its contribution to the public debate on this topic.
28. I also consider that the public interest rests with protecting the deliberative process. Officers must feel free to provide their opinions, advice and recommendations, and to participate openly in consultative and deliberative processes, in order for decisions and actions resulting from those processes to be robust.
29. These discussions and deliberations need to be robust, candid and thorough. Release of this type of information may inhibit the flow of similar constructive and thorough information in future, thereby impacting the capacity of the Government to effectively make decisions on matters of a similar nature in future.
30. I also consider that the information is otherwise available on the Hobart City Deal website, including the final Hobart City Deal publication which provides the public with the relevant information pertaining to the University of Tasmania and the extent of its involvement as part of the Hobart City Deal. Therefore, in my view, additional disclosure of the details of the Department's internal 'thinking process' would not meaningfully enhance public understanding.

**Conclusion**

31. On balance, I am satisfied that the factors favouring non-disclosure of the information in issue outweigh the factors favouring disclosure. Accordingly, I find that disclosure of the information in issue is contrary to the public interest and is therefore exempt.