

03/11/2022

Our reference: OLA22-0187

Brenton Higgins

Via email only: Brenton.Higgins@cpsu.org.au

Dear Mr Higgins,

DECISION ON YOUR ACCESS APPLICATION

I refer to your access application made under the *Freedom of Information Act 2016 (FOI Act)*, dated the 10th of October 2022, and received by the Office of the Legislative Assembly on 10/10/2022.

This application requested access to:

‘information pertaining to the recent submission made by Bret Walker SC to the Select Committee on Privileges (including documents, emails, records or invoices) pertaining to:

- Was Mr Walker engaged by any person or office within the Legislative Assembly?
- If so, what was the cost?
- Is the ACT Government, or the Legislative Assembly meeting the Costs of Mr Walker’s submission to the Select Committee on Privileges.
- Any other information pertaining to this matter.

The time period for this search should span between today, and August 15, 2022’

Authority

I am an information officer appointed by the Clerk of the Office of the Legislative Assembly to make decisions about access to government information, in accordance with section 18 of the FOI Act.

Decision

I have identified seven documents containing information within the scope of your access application. These are outlined in the attached *Schedule of documents*.

I have decided to:

- grant full access to 4 documents
- grant part access to 3 documents
- refuse access to 1 document

Disclosure of information

The documents are attached.

Disclosure log

Please note that section 28 of the FOI Act requires publication of access applications and any information subsequently released on our [disclosure log](#).

This means that if access to the information is granted, it will also be made publicly available on our website, unless the access application is an application for your personal, business, commercial, financial or professional information.

Review rights

You may apply to the ACT Ombudsman to review my decision under section 73 of the FOI Act.

An application for review must be made within 20 days of receipt of this decision notice.

You may submit a request for review of my decision to the ACT Ombudsman by writing in one of the following ways:

Email (preferred): actfoi@ombudsman.gov.au

Post: The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

More information about ACT Ombudsman review is available on the ACT Ombudsman website at: <http://www.ombudsman.act.gov.au/improving-the-act/freedom-of-information>.

Yours sincerely

Stuart Row
Director Information and Digital Services
Office of the Legislative Assembly

Schedule of documents
Brenton Higgins – OLA22-0187

Document reference number	Page number	Date	Description	Decision	Category or Factor
1.	Email	18/08/2022	Confirmation from Ashurst they can act for the Speaker	Release in part	Schedule 2, section 2.2 (b)(ii)
2.	Email	19/08/2022	Approval from Acting Speaker to brief Mr Walker. Email trail includes discussion of Mr Waker's costs.	Release in full	
3.	Email	19/08/2022	Confirmation to proceed to brief Mr Walker	Release in full	
4.	Email	24/08/2022	Engagement letter from Ashurst	Release in full	
5.	Email	24/08/2022	Approval from Speaker to Deputy Clerk to proceed	Release in part	Schedule 2, section 2.2 (a)(xi)
6.	Email	25/08/2022	Speaker's approval from Deputy Clerk to Ashurst	Release in full	
7.	Email	6/09/2022	Clerk advising relevant OLA staff that legal costs will be incurred.	Release in part	Schedule 2, section 2.2 (b)(ii)

8.	Document	24/08/2022	Ashurst engagement letter.	Not release	Schedule 2, section 2.2 (b)(ii)
----	----------	------------	----------------------------	-------------	------------------------------------

Reasons for decision

What you requested

'information pertaining to the recent submission made by Bret Walker SC to the Select Committee on Privileges (including documents, emails, records or invoices) pertaining to:

- Was Mr Walker engaged by any person or office within the Legislative Assembly?
- If so, what was the cost?
- Is the ACT Government, or the Legislative Assembly meeting the Costs of Mr Walker's submission to the Select Committee on Privileges.
- Any other information pertaining to this matter.

The time period for this search should span between today, and August 15, 2022'

What I took into account

In reaching my decision, I took into account:

- your original access application dated 10th October 2022
- the documents containing the information that fall within the scope of your access application
- consultation with a third party about information concerning them
- consultations with OLA officers about:
 - the nature of the documents
 - OLA's operating environment and functions
- the FOI Act
- the ACT Ombudsman FOI Guidelines

Reasons for my decision

I am authorised to make decisions under section 18 of the FOI Act.

I have decided that some parts of documents that contain the information you requested contain information would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the FOI Act. My findings of fact and reasons are discussed below.

Schedule 2, section 2.2(a)(xi)

I have applied Schedule 2, section 2.2(a)(xi) to parts of document 5.

Schedule 2, section 2.2(a)(xi) is a factor favouring nondisclosure if:

disclosure of the information could reasonably be expected to prejudice trade secrets, business affairs or research of an agency or person.

Would disclosure of the information prejudice trade secrets, business affairs or research of an agency or person?

I am satisfied the disclosure of some information contained in document 5 could reasonably be expected to prejudice the trade secrets and business affairs of the third party.

The information I have decided not to disclose includes financial details relating to Ashurst's charge rates. In particular, I consider the information is not well-known or publicly available and the information was provided by the company to the agency as commercial-in-confidence.

On this basis, I am satisfied disclosure of some information contained in document 5 could reasonably be expected to prejudice the protection of the competitive commercial activities of an agency.

Public interest considerations

The public interest test set out in section 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.

When weighing up the public interest for and against disclosure under Schedule 2 of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would promote the objects of the FOI Act and promote open discussion of public affairs and enhance the government's accountability.

Based on the above, I have decided that in this instance, the public interest in disclosing the information in document 5 is outweighed by the public interest against disclosure because the disclosure of information of this nature would significantly prejudice trade secrets and business affairs of the third party.

I have not taken into account any of the irrelevant factors set out in section 17(2) of the FOI Act in making this decision.

Schedule 2, section 2.2 (b)(ii)

I have applied Schedule 2, section 2.2(b)(ii) to parts of document 1,7 and 8.

Schedule 2, section 2.2(b)(ii) is a factor favouring nondisclosure if:

The information would be privileged from production in a legal proceeding on the ground of legal professional privilege.

Would disclosure of the information breach legal professional privilege?

I am satisfied the disclosure of some information contained in document 1, 7 and 8 could reasonably be expected to be privileged from production in a legal proceeding on the ground of legal professional privilege.

The information I have decided not to disclose includes correspondence between the office of the Legislative Assembly and Ashurst. I consider the information is not well-known or publicly available and the information was provided by the company with a classification of 'Legal Privilege'.

On this basis, I am satisfied disclosure of some information contained in document 1, 7 and 8 could reasonably be expected to breach legal professional privilege.

Public interest considerations

The public interest test set out in section 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.

When weighing up the public interest for and against disclosure under Schedule 2 of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would promote the objects of the FOI Act and promote open discussion of public affairs and enhance the government's accountability.

Based on the above, I have decided that in this instance, the public interest in disclosing the information in document 1 and 7 is outweighed by the public interest against disclosure because the disclosure of information of this nature would breach legal professional privilege.

Based on the above, I have decided that in this instance, the public interest in disclosing the information in document 8 is outweighed by the public interest against disclosure because the disclosure of information of this nature would breach legal professional privilege and the document does not contain any information relating to Mr Bret Walker.

I have not taken into account any of the irrelevant factors set out in section 17(2) of the FOI Act in making this decision.

Summary of my decision

In conclusion, I have decided to:

- grant you full access to 4 documents (document 2, 3, 4, 6)
- grant you part access to 3 documents (document 1, 5, 7)
- refuse access to 1 document (document 8)