

23 November 2011

Mr Paul French  
Brisbane CBD Bug  
GPO Box 2104  
Brisbane QLD 4001

Dear Mr French

**Right to Information Access Application – Section 41 Notice - 135/00825**

I refer to your Information Access Application to the Department of Transport and Main Roads (the department) requesting access to documents under the *Right to Information Act 2009* (the Act).

In your application you requested access to:

*“Information relating to the planning, design, budgeting, negotiation and implementation of the Northern Veloway, also known as the U11 and/or Northern Cycleway, referred to at page 27 of the Queensland Cycle Strategy 2011-2021 as providing a high quality cycle corridor from the CBD to Kedron and ultimately Chermside.”*

I also refer to your telephone discussion with Lucas Clarke on 23 November 2011 regarding the current status of the application, and I note your intention to consider the administrative release option with Matt Johnson.

However, the department is required to work within time frames of the Act in processing a Right to Information application. As a result, I issue this section 41/42 notice to allow the clock to stop with your application so that you can continue with the consideration of the administrative release option.

As discussed, in the process of dealing with your application, I have obtained a preliminary estimates of the number of documents relevant to the scope of your request that may be held by this department. The details of which are as follows:

- Approximately 902 files (an estimated 6600 pages);
- Approximately 65 hours required to search for all files and miscellaneous documents, and collate and copy all relevant documents;
- Approximately three (3) hours required to undertake consultation with each of the affected third parties (allowing only 20 minutes per consultation).

Based on these estimates it would take approximately 200 hours to process your application. Allowing for a 7 hour 15 minute working day, it would take approximately 28 whole days for one person to process this application.

The Act allows for an application to be processed within 25 business days with an additional 10 business days allowed if consultation with any third parties is required, giving a total of 35 business days to process your request.

By these calculations it would take the equivalent of one person working full time to deal with your application within the statutory timeframes.

Section 41 of the Act, clearly sets out that if the process of dealing with an application would substantially and unreasonably divert the resources of the department, then the department may refuse to deal with that application (Attachment A).

In this instance, I consider that it would be an unreasonable diversion of the department's resources to undertake the processing of this application in its current format.

However, under section 42 of the Act, the department can only refuse to deal with your application after providing you written notice of the intention to refuse to deal with your application (this letter) and providing you a timeframe in which to respond in writing to this letter (10 business days after you receive this letter) varying your application in a way to remove the grounds for refusal.

Section 42 of the Act also requires that I advise you of the effects of subsection 2, 3, 4, 5 and 6 of this section. For ease of reference, I have listed these issues below.

*(2) Following any consultation, the applicant may give the agency or Minister written notice either confirming or narrowing the application.*

- Should you narrow the scope of your application in a way to remove the grounds for refusal, your application will be reconsidered. Should you not vary the scope of your application to remove the grounds for refusal, your application will be refused.

*(3) If the application is narrowed, section 41 applies in relation to the changed application but this section does not apply to it.*

- In the event of you varying the scope of your application but failing to remove the ground for refusal, there is no requirement for the department to notify you again under section 42 of the Act.

*(4) If the applicant fails to consult after being given notice under subsection (1), the applicant is taken to have withdrawn the application at the end of the prescribed consultation period.*

- Should you choose not to respond, 10 business days after receiving this letter, your application will be considered to be withdrawn.

*(5) Without limiting subsection (4), the applicant is taken to have failed to consult if, by the end of the prescribed consultation period, the applicant has not given the named officer or member written notice under subsection (2).*

- Any response to this letter must be in writing.

<p><b>Privacy statement</b> – Department of Transport and Main Roads is authorised to collect certain information under the Information Privacy Act 2009. The information collected will be used to process your application and may be disclosed to various officers within Department of Transport and Main Roads.</p>
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(6) In this section prescribed consultation period, for a written notice under subsection (1)(a), means—

(a) the period of 10 business days after the date of the notice; or

(b) the longer period agreed by the agency or Minister and the applicant whether before or after the end of the 10 business days mentioned in paragraph (a).

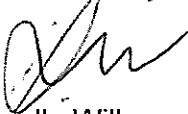
- I have allowed for 10 business days in which you must respond, however, should you require additional time please contact me directly to discuss.

As discussed in our telephone discussion on 21 November 2011, you may wish to vary the scope of the application by a specific time frame, i.e. last two years (November 2009 to November 2011).

If you wish to proceed with your application in its current format, a simple reply to this effect, stating that you do not wish to vary the scope of your application will be sufficient for me to provide you with a decision. This decision would be subject to review and I shall advise you of your review rights at that time.

Should you wish to discuss your application in any way, including ways of varying the scope of your request, please contact me on 07 3306 6728.

Yours sincerely



Danielle Wills

**RTI and Privacy Coordinator**

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## **Right to Information Act 2009**

### **41 Effect on agency's or Minister's functions**

(1) An agency or Minister may refuse to deal with an access application or, if the agency or Minister is considering 2 or more access applications by the applicant, all the applications, if the agency or Minister considers the work involved in dealing with the application or all the applications would, if carried out—

- (a) substantially and unreasonably divert the resources of the agency from their use by the agency in the performance of its functions; or
- (b) interfere substantially and unreasonably with the performance by the Minister of the Minister's functions.

(2) Without limiting the matters to which the agency or Minister may have regard in making a decision under subsection (1), the agency or Minister must have regard to the resources that would have to be used—

- (a) in identifying, locating or collating any documents in the filing system of the agency or the Minister's office; or
- (b) in deciding whether to give, refuse or defer access to any documents, or to give access to edited copies of any documents, including resources that would have to be used—
  - (i) in examining any documents; or
  - (ii) in consulting in relation to the application with a relevant third party under section 37; or
- (c) in making a copy, or edited copy, of any documents; or
- (d) in notifying any final decision on the application.

(3) In deciding whether to refuse, under subsection (1), to deal with an access application, an agency or Minister must not have regard to—

- (a) any reasons the applicant gives for applying for access; or
- (b) the agency's or Minister's belief about what are the applicant's reasons for applying for access.

### **42 Prerequisites before refusal because of effect on functions**

(1) An agency or Minister may refuse to deal with an access application under section 41 only if—

- (a) the agency or Minister has given the applicant a written notice—
  - (i) stating an intention to refuse to deal with the application; and
  - (ii) advising that, for the prescribed consultation period for the notice, the applicant may consult with the agency or Minister with a view to making an application in a form that would remove the ground for refusal; and
  - (iii) stating the effect of subsections (2) to (6); and
- (b) the agency or Minister has given the applicant a reasonable opportunity to consult with the agency or Minister; and
- (c) the agency or Minister has, as far as is reasonably practicable, given the applicant any information that would help the making of an application in a form that would remove the ground for refusal.

(2) Following any consultation, the applicant may give the agency or Minister written notice either confirming or narrowing the application.

(3) If the application is narrowed, section 41 applies in relation to the changed application but this section does not apply to it.

(4) If the applicant fails to consult after being given notice under subsection (1), the applicant is taken to have withdrawn the application at the end of the prescribed consultation period.

(5) Without limiting subsection (4), the applicant is taken to have failed to consult if, by the end of the prescribed consultation period, the applicant has not given the named officer or member written notice under subsection (2).

(6) In this section—

prescribed consultation period, for a written notice under subsection (1)(a), means—

- (a) the period of 10 business days after the date of the notice; or
- (b) the longer period agreed by the agency or Minister and the applicant whether before or after the end of the 10 business days mentioned in paragraph (a).

<p><b>Privacy statement</b> – Department of Transport and Main Roads is authorised to collect certain information under the Information Privacy Act 2009. The information collected will be used to process your application and may be disclosed to various officers within Department of Transport and Main Roads.</p>
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