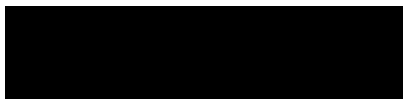


9 May 2019

Mr Clive M. Stott



By email: [cleanair@cleanairtas.com](mailto:cleanair@cleanairtas.com)

Dear Mr Stott

## **RIGHT TO INFORMATION ACT 2009 – APPLICATION FOR ASSESSED DISCLOSURE**

I refer to your application for assessed disclosure (**Application**) made pursuant to the *Right to Information Act 2009 (Act)* dated 16 March 2019 and received by TT-Line Company Pty Ltd (TT-Line) on 16 March 2019.

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### **1 REQUEST**

You have requested that TT-Line supply you with the following information in TT-Line's possession:

- a) *Please advise if there is an air monitoring program undertaken on-board the two Tasmanian vessels, Spirit of Tasmania I and Spirit of Tasmania II?*
- b) *If so, when did it commence*
- c) *Who undertakes it (name)?*
- d) *How often is it performed?*
- e) *Which applicable legislation and marine convention requirements (names) does Spirit of Tasmania comply with in relation to on-board air monitoring?*
- f) *Please provide me with the air monitoring results for both vessels for the last three years.*

Your request is comprised of five discrete questions and one request for documents – i.e. air monitoring results for TT-Line's vessels Spirit of Tasmania I and II in the 3-year period up to 16 March 2019 (i.e. the date of the Application).

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## 2 DELEGATION

Section 21 of the Act provides that a decision on the Application is to be made by the principal officer of TT-Line, or a delegated officer.

In making this decision, I am exercising powers delegated to me by TT-Line's principal officer under section 24 of the Act.

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## 3 ANSWERS TO QUESTIONS

See below answers to the questions set out in paragraphs a) to e) (inclusive) of the Application:

- a) Yes, testing is undertaken on the vehicle decks of Spirit of Tasmania I and II of carbon monoxide and diesel particulate levels during loading and unloading of the vessels.
- b) The testing commenced approximately ten (10) years ago.
- c) Testing is performed by Bureau Veritas HSE.
- d) Testing is performed every two (2) years.
- e) The testing is not required by legislation or marine convention requirements.

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## 4 REQUEST FOR DOCUMENTS

I have caused TT-Line's records to be searched for information that falls within the scope of paragraph f) of your request and which was in the possession of TT-Line as at the date of receipt of the Application (i.e. 16 March 2019).

That search has identified the following documents:

- (a) Bureau Veritas HSE – Carbon Monoxide and Diesel Particulate Assessment Report dated 2016; and
- (b) Bureau Veritas HSE – Carbon Monoxide and Diesel Particulate Assessment Report dated 2018.

For the purposes of this determination I will refer to these documents collectively as the 'Reports'.

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## 5 ASSESSMENT OF EXEMPTIONS

The Act provides that certain information is exempt from release.

### 5.1 Relevant sections of Act

I have assessed the Reports in accordance with the Act. As a result of that assessment, I regard the following exemptions as being relevant:

- (a) section 30 (Information relating to enforcement of law); and
- (b) section 38 (Information relating to business affairs of public authority).

The exemption in section 30 of the Act is not subject to the public interest test set out in section 33 of the Act. The exemption in section 38 of the Act is subject to the public interest test.

## 5.2 Assessment

### Section 30 (Information relating to enforcement of law)

- (a) Information is exempt from disclosure under the Act if its disclosure would, or would be reasonably likely to:
  - i. prejudice the investigation of a breach or possible breach of the law;
  - ii. prejudice the enforcement or proper administration of the law in a particular instance; or
  - iii. hinder, delay or prejudice an investigation of a breach or possible breach of the law which is not yet complete.
- (b) I have determined that the exemptions identified above apply to the Reports. This determination is based on the following considerations:
  - i. there is an ongoing investigation by Biosecurity Tasmania into the deaths of 16 polo ponies in January 2018 that travelled on a TT-Line vessel; and
  - ii. I consider that the public release of the Reports is reasonably likely to prejudice and/or hinder or delay the ongoing investigation and/or the outcome of that investigation.

### Section 38 (Information relating to business affairs of public authority)

- (c) Where a public authority engages in trade or commerce, information of a business, commercial or financial nature that would (if disclosed under the Act) be likely to expose a public authority to competitive disadvantage is exempt from disclosure.
- (d) For the purposes of the Act, TT-Line is a public authority which engages in trade or commerce. The Reports constitute information which is of a business,

commercial or financial nature.

- (e) TT-Line does not have a monopoly over the services it provides; TT-Line actively competes with companies that provide passenger, vehicle and general freight services between Victoria and Tasmania.
- (f) TT-Line will be exposed to competitive disadvantage in respect of its direct market competitors if those competitors are able to access sensitive information regarding the business operations of TT-Line. The Reports contain sensitive operating information which is of commercial value to TT-Line's market competitors.
- (g) Further, the Reports are complex and there is the risk that their contents may be misinterpreted/misconstrued by members of the public, which in turn may result in unfair criticism of, and damage to, TT-Line's brand. Such an outcome represents another form of competitive disadvantage.
- (h) I have determined that releasing the Reports would expose TT-Line to competitive disadvantage in the markets in which TT-Line operates because:
  - i. the Reports contain sensitive operating information that is of commercial value to TT-Line's market competitors and would not ordinarily be made publicly available; and
  - ii. there is a real risk that the contents of the Reports would be misinterpreted and then used in a manner that has the potential to unfairly damage TT-Line's reputation and commercial standing.

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## **6 EXEMPTION NOT SUBJECT TO PUBLIC INTEREST TEST**

The exemption set out in section 30 of the Act is not subject to the public interest test set out in section 33 of the Act. It follows that my determinations with respect to section 30 are sufficient to exempt the Reports from disclosure in response to the Application.

However, for the sake of completeness I will consider the application of the public interest test in the context of my determination that the public release of the reports would expose TT-Line to competitive disadvantage in the terms contemplated by section 38 of the Act.

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## 7 PUBLIC INTEREST FACTORS

As previously noted, the exemption in section 38 of the Act is subject to the public interest test. In brief, the test is whether or not publicly releasing the Reports would be contrary to the public interest.

In accordance with section 33 of the Act I have considered all relevant matters, including the matters set out in Schedule 1 of the Act.

Each of the public interest matters set out in Schedule 1 of the Act are considered below.

(a) the general public need for government information to be accessible;

I accept that, in accordance with the objects of the Act, there is a general public need for government information to be accessible, particularly as it relates to matters of public interest.

However, in my opinion there is no general public need for access to the Reports.

Accordingly, I have determined that this factor mitigates against disclosure of the Reports.

(b) whether the disclosure would contribute to or hinder debate on a matter of public interest;

This factor is not considered relevant.

(c) whether the disclosure would inform a person about the reasons for a decision;

This factor is not considered relevant.

(d) whether the disclosure would provide the contextual information to aid in the understanding of government decisions;

This factor is not considered relevant.

(e) whether the disclosure would inform the public about the rules and practices of government in dealing with the public;

This factor is not considered relevant.

(f) whether the disclosure would enhance scrutiny of government decision-making processes and thereby improve accountability and participation;

This factor is not considered relevant.

- (g) whether the disclosure would enhance scrutiny of government administrative processes;

This factor is not considered relevant.

- (h) whether the disclosure would promote or hinder equity and fair treatment of persons or corporations in their dealings with government;

This factor is not considered relevant.

- (i) whether the disclosure would promote or harm public health or safety or both public health and safety;

This factor is not considered relevant.

- (j) whether the disclosure would promote or harm the administration of justice, including affording procedural fairness and the enforcement of the law;

Given that the investigation into the deaths of the polo ponies in January 2018 is ongoing and has the potential to reveal breaches or possible breaches of the law that may be pursued, in my opinion there is a risk that disclosing the Reports has the clear potential to prejudice or otherwise harm the administration of justice and the enforcement of law insofar as the ongoing investigation is concerned.

Accordingly, I have determined that this factor mitigates against disclosure of the Reports.

- (k) whether the disclosure would promote or harm the economic development of the State;

TT-Line is a significant contributor to the Tasmanian economy, both in absolute terms and as the sole provider of transport for people travelling with vehicles to and from Tasmania.

In light of the ongoing investigation into the deaths of the polo ponies in January 2018, and the real risk that TT-Line would be exposed to competitive disadvantage, releasing the Reports has the potential to harm TT-Line's commercial standing which, in turn, risks harm to the Tasmanian economy.

Accordingly, I have determined that this factor mitigates against disclosure of the Reports.

- (l) whether the disclosure would promote or harm the environment and or ecology of the State;

This factor is not considered relevant.

- (m) whether the disclosure would promote or harm the interests of an individual or group of individuals;

This factor is not considered relevant.

- (n) whether the disclosure would prejudice the ability to obtain similar information in the future;

This factor is not considered relevant.

- (o) whether the disclosure would prejudice the objects of, or effectiveness of a method or procedure of, tests, examinations, assessments or audits conducted by or for a public authority;

This factor is not considered relevant.

- (p) whether the disclosure would have a substantial adverse effect on the management or performance assessment by a public authority of the public authority's staff;

This factor is not considered relevant.

- (q) whether the disclosure would have a substantial adverse effect on the industrial relations of a public authority;

This factor is not considered relevant.

- (r) whether the disclosure would be contrary to the security or good order of a prison or detention facility;

This factor is not considered relevant.

- (s) whether the disclosure would harm the business or financial interests of a public authority or any other person or organisation;

In light of the ongoing investigation into the deaths of the polo ponies in January 2018, and the real risk that TT-Line would be exposed to competitive disadvantage, releasing the Reports has the potential to unfairly and unnecessarily harm TT-Line's business or financial interests.

Accordingly, I have determined that this factor mitigates against disclosure of the Reports.

- (t) whether the applicant is resident in Australia;

This factor is not considered relevant.

- (u) whether the information is wrong or inaccurate;

This factor is not considered relevant.

- (v) whether the information is extraneous or additional information provided by an external party that was not required to be provided;

This factor is not considered relevant.

- (w) whether the information is information related to the business affairs of a person which if released would cause harm to the competitive position of that person;

This factor is not considered relevant.

- (x) whether the information is information related to the business affairs of a person which is generally available to the competitors of that person;

This factor is not considered relevant.

- (y) whether the information is information related to the business affairs of a person, other than a public authority, which if it were information of a public authority would be exempt information.

This factor is not considered relevant.

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## **8 DETERMINATION**

Based on the above assessment I have determined that the Reports in their entirety are exempt from disclosure under the Act by operation of (jointly or severally) the exemptions in section 30 and section 38 of the Act.

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## **9 REVIEW**

As your request has been assessed under delegated authority you have the right to seek an internal review of my decision pursuant to section 43 of the Act.

If you would like to request such a review you may write to the Chief Executive Officer within twenty (20) working days from the date of this letter and request an internal



review of my decision.

You may write to the Chief Executive Officer at:

Chief Executive Officer  
TT-Line Company Pty Ltd  
PO Box 168E  
EAST DEVONPORT TAS 7310

Yours sincerely



**Kevin Maynard**

Company Secretary

TT-Line Company Pty Ltd