



ACT
Government

Chief Minister, Treasury and
Economic Development

Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2020-078

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
4. Additional information identified	No
5. Fees	N/A
6. Processing time (in working days)	6
7. Decision made by Ombudsman	N/A
8. Additional information identified by Ombudsman	N/A
9. Decision made by ACAT	N/A
10. Additional information identified by ACAT	N/A

FOI Request

FOI Team
Transport Canberra and City Services

Dear FOI Team

I refer to your FOI response dated 25 October 2019.

Thank you for the Freedom Of Information (FOI) results.

I note that the FOI search result failed to identify any information, documentary evidence or proof that workers were ever provided with the Workplace Privacy Policy 2011.

You have confirmed this in various parts of your findings, with the main confirmation being on page 1.

(Decision on access - page 1)

“No documents were identified,”

Audit of workers signing a document (page 3)

“I have not identified any record of workers signing a document that they have been provided with the Workplace Privacy Policy 2011.”

Operational Guidance on the Workplace Privacy Policy 2011 (page 3)

“No documentation within the scope of your request has been identified for the period 2011 - 2016 covering the former Territory and Municipal services directorate (TAMS)”

“No operational guidance documents since 2016 or an explanatory reference to this policy have been identified”

FOI Request

I also note that there does not appear to be any documentary evidence or proof that workers were ever notified of the nature and purpose of **workplace** surveillance operating within workplaces.

I do not believe that the use of optical devices at Depots have been explained to workers.

I do not believe that covert surveillance has been explained to workers and Depot managers. I have reason to believe that Managers at a Depot were using covert surveillance to entrap workers. They may have even terminated their work.

I refer to the following legislative statement that does not appear to have been done especially in 2016 to 2017 when the majority of surveillance tracking devices were fitted to vehicles and mowers.

This is a requirement by law.

*“The Act requires that ACT employers notify workers of the nature and purpose of **workplace** surveillance operating within workplaces. The **Workplace Privacy Policy** and **Notice to Workers** sets out the type and purpose of surveillance operating in ACT Government workplaces”*

FOI Request

I would like to point out that you added a statement (Listed below) in your FOI results that is not constant with the findings. You have not provided any evidence to confirm that your statement is true or that the action has been done. It can only be seen as speculation based on conjecture as it contradicts the search results in the FOI request.

“As far as can be ascertained, all workers in ACT government were notified of the Workplace Privacy Act 2011 and the whole of government policy in 2011.”

This statement needs some form of proof as it may mislead the public into believing that this action was done when they read the disclosure log. Statement such as this should not be made without proof as it contradicts the findings in this FOI request. *“No documents were identified,”*.

When I made an enquiry about your statement, (listed above) you responded with the following statement in your letter dated 22nd November 2019.

“The Workplace Privacy Policy statement and notice were addressed to all staff and was circulated by the Head of Service, Chief Ministers and Cabinet Directorate in 2011”.

Again you have not provided any documentary evidence or proof to confirm that your statement is true or that the action has been done. Again, it can only be seen as speculation based on conjecture as it contradicts the search results in the FOI request.

I am not sure if these two statements comply with the following section of the Freedom of Information Act 2016 as they may not be accurate and they may be misleading. There is no evidence or proof to confirm that they are true and that the action has been done.

“6 Objects of Act“

“(g) ensure that personal information held by the Territory is accurate, complete, up-to-date and not misleading”.

FOI Request

I draw your attention to the fact that the Workplace Privacy **Policy** 2011 is addressed to the **Directors General, HR Directors, Managers, Shared Services.**

These recipients and stakeholders are within Transport Canberra and City Service (TCCS), (Territory and Municipal Services (TAMS) in 2011) so they must take responsibility and management of this policy and comply with law.

I also draw your attention to the **Territory Records Act 2002.**

“The Territory Records Act 2002 establishes that each agency is required to develop and maintain a Records Management Program that includes requirements for the creation, management, protection, preservation, storage and disposal of, and access to records of the agency”

The Director General, HR Director, Managers and Shared Services must comply with the Territory Records Act 2002 as the Workplace Privacy **Policy** 2011 was addressed to them which in turn falls under their control and management.

Workers within City Services must be notified of surveillance law before using vehicles and mowers that have been fitted with electronic surveillance tracking devices.

FOI Request

I request the following information under the Freedom of Information Act 2016 (FOI).

- I request documentary evidence as proof that workers were notified of the *Workplace Privacy Act 2011* to corroborate your claims listed below. (ie. file name, reference number, date sent to stakeholders, date workers were notified).

Your statement is based on conjecture in your FOI response Ref : 19-086 dated 25th October 2019

“As far as can be ascertained, all workers in ACT government were notified of the Workplace Privacy Act 2011 and the whole of government policy in 2011.”

- I request documentary evidence as proof that the *Workplace Privacy Policy statement and notice was circulated* to corroborate your claims listed below. (ie. file name, reference number, date sent to stakeholders, date workers notified, circulated to whom)


Your statement is based on conjecture in your letter Ref : 19-086 dated 22th November 2019

“The Workplace Privacy Policy statement and notice were addressed to all staff and was circulated by the Head of Service, Chief Ministers and Cabinet Directorate in 2011.”

- I also request information on “how” workers were notified of the Workplace Privacy Act 2011.

Thank you for the investigation.

My personal email is 

My work email is 

Yours Sincerely



15th March 2020



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI2020-078

[REDACTED]
via email: [REDACTED]

Dear [REDACTED]

FREEDOM OF INFORMATION REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 9 April 2020, in which you sought access to:

- Documentary evidence as proof that workers were notified of the Workplace Privacy Act 2011;
- Documentary evidence as proof that the Workplace Privacy Policy statement and notice was circulated.

Authority

I am an Information Officer appointed by the Director-General under section 18 of the Act to deal with access applications made under Part 5 of the Act.

Timeframes

In accordance of section 40 of the Act, CMTEDD was required to provide a decision on your access application by 12 May 2020.

Decision on access

Searches were completed for relevant documents and one document was identified that falls within the scope of your request.

I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of the document that falls within the scope of your request and the access decision for that document.

I have decided to grant full access to the relevant document.

Charges

Processing charges are not applicable for this request because the number of pages to be released to you is less than the charging threshold of 50 pages.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the CMTEDD disclosure log after 24 April 2020. Your personal contact details will not be published. You

may view CMTEDD disclosure log at
<https://www.cmtedd.act.gov.au/functions/foi/disclosure-log>.

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

We recommend using this form [Applying for an Ombudsman Review](#) to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
Level 4, 1 Moore St
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely,



Philip Dachs
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate

21 April 2020



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST						Reference NO.
Documentary evidence as proof that workers were notified of the Workplace Privacy Act 2011; Documentary evidence as proof that the Workplace Privacy Policy statement and notice was circulated.						CMTEDDFOI 2020-078
Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-3	Email chain	08-Apr-2020	Full release	N/A	Yes
Total No of Docs						
1						

From: [REDACTED]
To: TCCS_FreedomOfInformation
Subject: RE: Workplace Privacy Policy Statement and Notice REQ1393924
Date: Wednesday, 8 April 2020 10:22:38 AM

UNCLASSIFIED

Good morning Samantha,

As mentioned on previous email searching mailbox : “ HRMS.PAYSLIP@act.gov.au ” has failed to retrieve any results for that time period , I’ve double checked with our exchange team to advise any other ways to search the mailbox and I’m confident that there will no other way/tools to get this search done. Anything up to 2 years older that was deleted would be in deleted items and this is beyond even 7 years legal hold.

Please feel free to pass on my contacts for further discussion.

Regards

[REDACTED]

From: TCCS_FreedomOfInformation <TCCS.FOI@act.gov.au>

Sent: Wednesday, 8 April 2020 5:40 AM

To: [REDACTED]

Subject: RE: Workplace Privacy Policy Statement and Notice REQ1393924

Good morning [REDACTED],

Thank you for your quick assistance on this matter. This is the information we were hoping to locate.

Although I will relay this information to the Applicant, it is possible that they may wish for the inbox search you describe to be conducted. Can you please advise if they can contact you directly, or if there is a preferred generic email address?

Kind regards,

Samantha Irons | Manager

Phone: 6207 9242 | Email: TCCS.FOI@act.gov.au

Freedom of Information | TCCS Legal & Contracts | Transport Canberra and City Services Directorate | ACT Government

Level 1, 496 Northbourne Avenue, Dickson 2602 |

From: Clayton, Sharryn <Sharryn.Clayton@act.gov.au>

Sent: Tuesday, 7 April 2020 5:30 PM

To: TCCS_FreedomOfInformation <TCCS.FOI@act.gov.au>

Subject: FW: Workplace Privacy Policy Statement and Notice REQ1393924

Importance: High

UNCLASSIFIED

Hi Samantha

Please see the below response. Is this what you were after?

If you need anything else, please let us know- or you may contact Chris directly if you need a staff inbox checked.

Kind regards

Sharryn

Sharryn Clayton | Communications and Engagement Officer

Phone: 02 6205 7606 | Mobile: 0423 556 423 | Email: Sharryn.Clayton@act.gov.au

Whole of Government Communications and Engagement | Chief Minister, Treasury and Economic Development Directorate | ACT Government

Level 5, Canberra Nara Centre, 1 Constitution Avenue, Canberra City | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

From: [REDACTED]

Sent: Tuesday, 7 April 2020 4:27 PM

To: Clayton, Sharryn <Sharryn.Clayton@act.gov.au>

Subject: RE: Workplace Privacy Policy Statement and Notice REQ1393924

UNCLASSIFIED

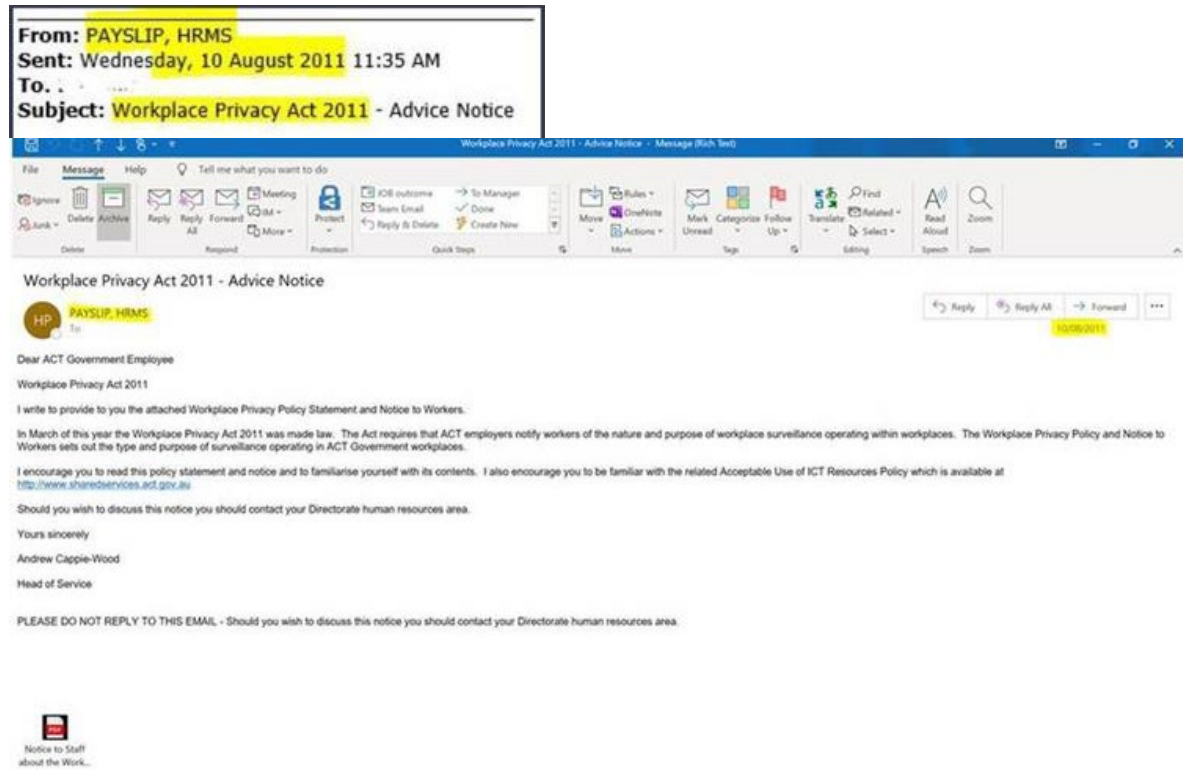
Good afternoon Sharryn,

I’ve conducted e-discovery on our mail exchange based on the keyword “ Workplace Privacy Act 2011” for the month August 2011 and

- the results shows (per attached screenshot) emails sent out from mailbox : “ HRMS.PAYSLIP@act.gov.au ” and received by using a distribution list as an example : # all staff CMTEDD ,
- This means the HRMS.PAYSLIP email could’ve been used for WhoG staff communication on 2011 instead of current publication mailbox and assuming all staff receiving their payslips from this mailbox should have received the privacy act2011 attached.
- Searching mailbox : “ HRMS.PAYSLIP@act.gov.au ” to recover the items in sent folder for that date has failed which could be the result of moving mailboxes to exchange O365 and it's now beyond the legal hold of 7 years and not recoverable after retention period.

However, it is possible to search a staff member’s actual mailbox and find the email to prove if the staff member

requesting the FOI has received the email in 2011 to go further with this, otherwise below screenshot's proves email has been sent out on 10/08/2011.



Feel free to contact me if you have any further questions please .
Regards



UNCLASSIFIED

From: TCCS_FreedomOfInformation <TCCS.FOI@act.gov.au>

Sent: Friday, 3 April 2020 4:33 PM

To: WholeofGovComms <WholeofGovComms@act.gov.au>

Subject: RE: Workplace Privacy Policy Statement and Notice

Hi Sharryn,

Thank you for your quick assistance.

We need to escalate our recommendation by 13 April 2020. Please let me know if you believe further time is required.

Kind regards,

Samantha Irons | Manager

Phone: 6207 9242 | Email: TCCS.FOI@act.gov.au

Freedom of Information | TCCS Legal & Contracts | Transport Canberra and City Services Directorate | ACT Government

Level 1, 496 Northbourne Avenue, Dickson 2602 |

From: Clayton, Sharryn <Sharryn.Clayton@act.gov.au> **On Behalf Of** WholeofGovComms

Sent: Friday, 3 April 2020 4:11 PM

To: TCCS_FreedomOfInformation <TCCS.FOI@act.gov.au>; WholeofGovComms <WholeofGovComms@act.gov.au>

Subject: RE: Workplace Privacy Policy Statement and Notice

UNCLASSIFIED

Hi Samantha

Thanks for your email.

We are currently looking into your request and will advise shortly.

What is your timeframe to respond please?

Thanks

Sharryn Clayton | Communications and Engagement Officer

Phone: 02 6205 7606 | Mobile: 0423 556 423 | Email: Sharryn.Clayton@act.gov.au

Whole of Government Communications and Engagement | Chief Minister, Treasury and Economic Development Directorate | ACT Government

Level 5, Canberra Nara Centre, 1 Constitution Avenue, Canberra City | GPO Box 158 Canberra City ACT 2601 | www.act.gov.au

From: TCCS_FreedomOfInformation <TCCS.FOI@act.gov.au>

Sent: Friday, 3 April 2020 11:38 AM

To: WholeofGovComms <WholeofGovComms@act.gov.au>

Subject: Workplace Privacy Policy Statement and Notice

Good morning team,

TCCS has received a FOI application in relation to the [Workplace Privacy Policy Statement and Notice to Workers](#) in 2011, reference 2011/7021.

The applicant is seeking evidence that this notice was circulated to all employees.

Can you please advise if Whole of Government Communication and Engagement hold a record of the email which the notice was attached to?

I understand this record is quite old, and may be held elsewhere. Any advice you can provide is greatly appreciated.

Thank you for your assistance,

Kind regards,

Samantha Irons | Manager

Phone: 6207 9242 | Email: TCCS.FOI@act.gov.au

Freedom of Information | TCCS Legal & Contracts | Transport Canberra and City Services Directorate | ACT Government

Level 1, 496 Northbourne Avenue, Dickson 2602 |