



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 2022-026

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

From: no-reply@act.gov.au
To: [CMTEDD FOI](#)
Subject: 2022-026 Freedom of Information request
Date: Saturday, 5 February 2022 10:28:27 PM

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Please find online enquiry details below. Please ensure this enquiry is responded to within fourteen working days.

Your details

All fields are optional, however an email address OR full postal address must be provided for us to process your request. An email address and telephone contact number will assist us to contact you quickly if we need to discuss your request.

Title:
First Name:
Last Name:
Business/Organisation:
Address:
Suburb:
Postcode:
State/Territory:
Phone/mobile:
Email address:



Request for information

(Please provide as much detail as possible, for example subject matter and relevant dates, and also provide details of documents that you are not interested in.)

Under the Freedom of Information Act 2016 I want to access the following document/s (*required field):

I, hereby demand a current copy (via email) of the 'public liability insurance' policy and/or 'surety bond' instrument for the Chief Minister, Treasury and Economic Development Directorate (ACT Human Rights Commission) subject to the Freedom of Information Act (FOI Act). Under the FOI Act, the ACT Human Rights Commission is required to publicly release functional information including a statement setting out these particulars of the agency.

I do not want to access the following documents in relation to my request::

Thank you.
Freedom of Information Coordinator



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2022-026



FREEDOM OF INFORMATION DECISION

I am writing to you in response to your access application under the *Freedom of Information Act 2016 (FOI Act)*, received on 7 February 2022.

Specifically, the request stated:

“I, hereby demand a current copy (via email) of the 'public liability insurance' policy and/or 'surety bond' instrument for the Chief Minister, Treasury and Economic Development Directorate (ACT Human Rights Commission) subject to the Freedom of Information Act (FOI Act). Under the FOI Act, the ACT Human Rights Commission is required to publicly release functional information including a statement setting out these particulars of the agency.”

On 10 February 2022 you clarified the scope of your request to “A copy of the ‘reinsurance’ documents”.

Authority

I am an Information Officer appointed by the Director-General of the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) under section 18 of the Act to deal with access applications made under Part 5 of the Act.

Timeframes

In accordance with section 40 of the Act, CMTEDD was required to provide a decision on your access application by 7 March 2022.

Decision on access

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

I have decided to refuse access to this document in its entirety as I consider the information would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

In accordance with section 54(2) of the Act a statement of reasons outlining my decision is below.

Material considered

In reaching my access decision, I have taken the following into account:

- the Act, and
- the content of the document that falls within the scope of your request.

Exemption claimed

My reasons for deciding not to grant access to the identified document is as follows:

Public Interest

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interest lies. As part of this process, I must consider factors favouring disclosure and non-disclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when 'used in a statute, the term [public interest] derives its content from "the subject matter and the scope and purpose" of the enactment in which it appears'. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Taking into consideration the information contained in the document found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the 'public interest'.

Factors favouring disclosure in the public interest (Schedule 2.1):

- (a) *disclosure of the information could reasonably be expected to do any of the following:*
- (ii) *contribute to positive and informed debate on important issues or matters of public interest.*
 - (viii) *reveal the reason for a government decision and any background or contextual information that informed the decision.*

Having considered the factors identified as relevant in this matter, I consider that release of this information could promote informed public discussion of insurance-related issues for the ACT Government. It may also reveal decisions of Government in respect to insurance for the Territory. I am satisfied that these factors favouring disclosure carries some weight. However, this factor is to be balanced against the factors favouring non-disclosure.

Factors favouring nondisclosure (Schedule 2.2):

- (a) *disclosure of the information could reasonably be expected to do any of the following:*
- (xi) *prejudice trade secrets, business affairs or research of an agency or person.*
 - (xii) *prejudice an agency's ability to obtain confidential information.*

Having reviewed the document I find that it would be in the public interest that insurance documents such as these remain confidential. Breaching confidentiality of such documents could reveal financial capacity, which could cause an obvious prejudice for the ACT government.

The document contains highly confidential information and the expectation between the ACT Government and its Insurers is that the information remains confidential. I note that an agreement to treat documents as confidential does not need to be formal. A general understanding that communications of a particular nature will be treated in confidence will suffice. The understanding of confidentiality may be inferred from the circumstances in which the communication occurred, including the relationship between the parties and the nature of the information communicated. If this information were released in the public domain, it would potentially damage the ACT Insurance Agency's (ACTIA) relationships with its insurers and impact on ACTIA's ability to secure adequate and cost-effective insurance cover for the Territory in the future.

I refer you to: [Commonwealth Bank of Australia v ACN 076 848 112 Pty Limited](#) where access to documents relating to a company's insurance arrangements were refused on the grounds of a tactical advantage for the claimant and the insurers suffering a corresponding disadvantage. During the proceedings, the judge was noted as saying "It is for reasons such as this that the insurance arrangements of a defendant are generally regarded as confidential."

Finally, I have also considered the impact of disclosing information which relates to business affairs. In the case of *Re Mangan and The Treasury* [2005] AATA 898 the term 'business affairs' was interpreted as meaning 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'. Schedule 2 section 2.2(a)(xi) allows for government information to be withheld from release if disclosure of the information could reasonably be expected to prejudice the trade secrets, business affairs or research of an agency or person. I am satisfied that the release of this information would have significant impact on the business affairs of the ACT Government's insurers if released by disclosing the premium information and again I find there is no benefit to the public from disclosure of this information.

I further note this information is not in the public domain and only available to limited staff within ACTIA.

Charges

Pursuant to *Freedom of Information (Fees) Determination 2017 (No 2)* processing charges are not applicable for this request as no information is being released to you.

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 and my decision released to you in response to your access application will be published in the CMTEDD disclosure log 3 days after the date of my decision. Your personal contact details will not be published.

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

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,



Katharine Stuart
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate
21 February 2022