



**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 2022-207

| 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                                           | Waived    |
| 6. Processing time (in working days)              | 50        |
| 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       |

**From:** [REDACTED]  
**To:** [CMTEDD FOI](#)  
**Subject:** Requesting WorkSafe ACT documents - our reference 25660-22-01FC  
**Date:** Thursday, 7 July 2022 11:20:09 PM

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Good morning,

[REDACTED]

We are instructed to obtain the WorkSafe file relating to this incident and note that [REDACTED]  
[REDACTED] 1, 2  
and 3 relate.

We are seeking your assistance and advice in regards to obtaining these documents.

Kind regards

[REDACTED]

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**ACT**  
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Our ref: CMTEDDFOI 2022-207



## 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 7 July 2022.

Specifically, you are seeking: *An accident occurred on 28 August 2018 involving a forklift at the ACT Law Courts Construction project. Requesting the WorkSafe file relating to this incident and note that [redacted] received 3 x improvement notices, reference numbers IN [redacted] relate.*

### Authority

As an appointed Information Officer under section 18 of the Act, I am authorised to make a decision on access or amendment to government information in the possession or control of CMTEDD.

### Timeframes

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application by 4 August 2022 however, following an extension and third-party consultations, the due date is now 16 September 2022.

### Decision on access

Searches were completed for relevant documents and 13 documents were identified that fall 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 documents that fall within the scope of your request and the access decision for those documents.

I have decided to grant partial access to all documents.

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided as **Attachment B** to this letter.

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

## Statement of Reasons

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

- the Act;
- the content of the documents that fall within the scope of your request;
- the views of consulted third parties; and,
- the *Human Rights Act 2004*.

## Exemption claimed

My reasons for deciding not to grant access to the identified documents and components of these document(s) are 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 interests 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 documents 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 under schedule 2.1 of the Act:

- (a) *disclosure of the information could reasonably be expected to do any of the following:*
- (xiii) *contribute to the administration of justice generally, including procedural fairness.*

Having considered the factors identified as relevant in this matter, I consider that release of the information contained in these documents may contribute to the administration of justice generally by allowing you to have a copy of the documents relating to the WorkSafe ACT file relating to the incident that occurred on 28 August 2018 at the ACT Law Courts construction project. I am satisfied that this factor favouring disclosure carries some weight. However, this factor is to be balanced against the factors favouring non-disclosure.

### Factors favouring nondisclosure in the public interest under schedule 2.2 of the Act:

- (a) *disclosure of the information could reasonably be expected to do any of the following:*
- (ii) *Prejudice the protection of an individual’s right to privacy or other rights under the Human Rights Act 2004.*
  - (xi) *prejudice trade secrets, business affairs or research of an agency or person.*

Having reviewed the documents, I consider that the protection of an individual's right to privacy, especially in the course of dealings with the ACT Government is a significant factor as the parties involved have provided their personal information for the purposes of working with the ACT Government. This, in my opinion, outweighs the benefit which may be derived from releasing the personal information of the individual's involved in this matter.

Individuals are entitled to expect that the personal information they have supplied as part of this process will be dealt with in a manner that protects their privacy. Considering the type of information to be withheld from release, I am satisfied that the factors in favour of release can still be met while protecting the personal information of the individuals involved. I therefore weight the factor for nondisclosure more highly than the factor in favour of release in this instance. As a result, I have decided that release of this information (email addresses, phone numbers, signatures, identifying details and names of individuals not employed by the ACT Public Service) could prejudice their right to privacy under the *Human Rights Act 2004*.

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. The information withheld from release could reasonably be expected to unfairly prejudice the business affairs of [REDACTED].

Having applied the test outlined in section 17 of the Act and deciding that release of personal and business information contained in the documents is not in the public interest to release, I have chosen to redact this specific information in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met and will provide you with access to the majority of the information held by CMTEDD within the scope of your request.

### **Charges**

Pursuant to *Freedom of Information (Fees) Determination 2017 (No 2)* processing charges are applicable for this request because the total number of pages to be released to you exceeds the charging threshold of 50 pages. However, the charges have been waived in accordance with section 107(2)(b) of the Act.

### **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 on the CMTEDD disclosure log after 3 days from 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 date of my decision, 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:

The ACT Ombudsman  
GPO Box 442  
CANBERRA ACT 2601

Via email: [actfoi@ombudsman.gov.au](mailto: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](mailto:CMTEDDFOI@act.gov.au).

Yours sincerely



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

15 September 2022