



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 2022-362

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)	32
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: [JACS FOI](#)
To: [CMTEDD FOI](#)
Subject: RE: FOI request - Conflict of interest - Fair Trading Commissioner-CMTEDDFOI 2022-362
Date: Thursday, 17 November 2022 1:14:08 PM

OFFICIAL

Good afternoon Emma

Per our conversation, I confirm this request will be transferred in full to CMTEDD.

Kind regards

Angelique Delahaye | A/g Assistant Director – Freedom of Information
Governance, Coordination and Reporting | Justice and Community Safety Directorate
☎ 6205 9975 | ✉ angelique.delahaye@act.gov.au | 📮 GPO Box 158, Canberra ACT 2601

From: [REDACTED]
Sent: Friday, 11 November 2022 10:49 AM
To: JACS FOI <JACSFOI@act.gov.au>
Cc: [REDACTED]
Subject: FOI request - Conflict of interest - Fair Trading Commissioner

Good morning

On behalf of [REDACTED] I write to request under the *Freedom of Information Act 2016*:

- The conflict of interest declaration made by the Fair Trading Commissioner Ms Derise Cubin, referred to in correspondence from the Attorney-General, Shane Rattenbury, dated 13 October 2022, in response to an email of 9 October 2022.
- Any briefings, correspondence, emails, text messages or other documents regarding the conflict of interest identified by Ms Cubin referred to above

Thank you

[REDACTED]







FREEDOM OF INFORMATION REQUEST

refer to your request submitted under section 30 of the Freedom of Information Act 2016 (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 17 November 2022. Specifically you sought:

- *The conflict of interest declaration made by the Fair Trading Commissioner Ms Derise Cubin, referred to in correspondence from the Attorney-General, Shane Rattenbury, dated 13 October 2022, in response to an email of 9 October 2022.*
- *Any briefings, correspondence, emails, text messages or other documents regarding the conflict of interest identified by Ms Cubin referred to above.*

Authority

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

Timeframes

The Act requires a decision and response be given within 20 working days of the access application being received. In accordance with section 40 of the Act, CMTEDD was required to provide a decision on your access application by 15 December 2022.

Following third-party consultation as required under section 38 of the Act, the due date for a decision was rescheduled to **05 January 2023**.

Decision

Searches were completed for relevant documents based on information provided by you.

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

I have decided to grant partial access to the information relevant to your request. I have decided to refuse access to some information as I consider it to be information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

My access decisions are detailed further in the following statement of reasons, in accordance with section 54(2) of the Act. The documents released to you are provided as **Attachment B** to this letter.

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 interested 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 those documents are as follows:

Contrary to the public interest information under Schedule 1 of the Act

Folio 6 - 8 of the identified documents contains information that is considered to be contrary to the public interest under Schedule 1 of the Act. This document contains information specific to:

1.2 Information subject to legal professional privilege

Information that would be privileged from production or admission into evidence in a legal proceeding on the ground of legal professional privilege.

Information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act

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 nondisclosure.

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 [public interest] 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 the documents is within the 'public interest'.

Factors favouring disclosure in the public interest under Schedule 2, section 2.1:

(a) *disclosure of the information could reasonably be expected to do any of the following:*

- promote open discussion of public affairs and enhance the government's accountability.*
- contribute to positive and informed debate on important issues or matters of public interest.*

Having considered the factors identified as relevant in this matter, I consider that release of the information contained in the documents may contribute to positive and informed debate on important issues of public interest, including how the government handles matters of conflict of interest.

I consider the public disclosure of this information could also reasonably assist with promoting open discussion regarding government transparency and accountability when dealing with businesses and enforcing Australian Consumer Law.

I am satisfied that these are relevant considerations favouring disclosure in this case, and in the interests of enhancing transparency and accountability, I afford them significant weight.

I also note the FOI Act has an express pro-disclosure bias which reflects the importance of public access to government information for the proper working of a representative democracy. This concept is promoted through the objects of the FOI Act. I have considered this overarching concept in making my decision in relation to access.

Factors favouring nondisclosure in the public interest under Schedule 2 section 2.2:

(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.*

Having reviewed the documents, I consider that the protection of an individual's right to privacy, is a significant factor. 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 could prejudice their right to privacy under the *Human Rights Act 2004*.

Having applied the test outlined in section 17 of the Act and deciding that release of personal 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.

Access to documents

Pursuant to section 38(6) of the Act, I am required to defer access to information identified as of concern to an affected third party. Refer **Attachment B** for those pages that are deferred.

This third party may apply for review of my release decision within 20 working days, or a longer period allowed by the Ombudsman. I will write to you to advise when access is no longer deferred for this information.

Charges

Pursuant to *Freedom of Information (Fees) Determination 2017 (No 2)* processing charges are not applicable for this request.

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 in response to your access application will be published in the CMTEDD disclosure log. 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:

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:

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 by email at CMTEDDFOI@act.gov.au.

Yours sincerely



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

05 January 2023



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST

Reference NO.

On behalf of Elizabeth Lee, I write to request under the Freedom of Information Act 2016:

- The conflict of interest declaration made by the Fair Trading Commissioner Ms Derise Cubin, referred to in correspondence from the Attorney-General, Shane Rattenbury, dated 13 October 2022, in response to an email of 9 October 2022.
- Any briefings, correspondence, emails, text messages or other documents regarding the conflict of interest identified by Ms Cubin referred to above

CMTEDDFOI 2022-362

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-2	conflict of interest declaration made by the Fair Trading Commissioner	24/11/2021	Partial	Sch 2 s2.2 (a)(ii)	Y
2	3-5	Standard operating procedure relating to special arrangements for Acting Commissioner for Fair Trading	30/11/2021	Full	N/A	Y
3	6-8	1. Email - FOR INFO Control measures - potential conflict of interest - Commissioner for Fair Trading	26/11/2021-01/12/2021	Partial	Sch 1 s1.2	Y
4	9-11	1a [Email att] Standard operating procedure relating to special arrangements for Acting Commissioner for Fair Trading	30/11/2021	Exempt	Copy of folios 3-5	N
5	12-14	1b [Email att] Standard operating procedure relating to special arrangements for Acting Commissioner for Fair Trading (003)	30/11/2021	Exempt	Copy of folios 3-5	N
6	15	2. Email - Conflict of Interest declaration - Derise Cubin	30/11/2021	Full	N/A	Y
7	16-17	conflict of interest declaration made by the Fair Trading Commissioner	24/11/2021	Partial	Sch 2 s2.2 (a)(ii)	Y
8	18-20	3. RE Control measures - potential conflict of interest - Commissioner for Fair Trading	26/11/2021-30/11/2021	Exempt	Copy of folios 6-8	N
9	21-22	3a [Email att] Derise Cubin - Disclosure of perceived conflict of interest 24 Nov 2021 (004)	24/11/2021	Exempt	Copy of folios 1-2	N
Total No of Docs						
9						

Conflict of Interest Disclosure

Instructions

1. Read the *Conflicts of Interest Policy and Guidelines*
2. Once completed by the staff member and their manager, the form should be kept as a record within the business unit

Employee Details		
Name: Derise Cubin	Date: 24 November 2021	
Position: EBM/ Commissioner for Fair Trading	Supervisor name: David Pryce	
Branch: Licensing & Registrations	Sub Unit:	
Conflict of Interest / Circumstances		
<p>1. I refer to the recently filed ACAT matter [REDACTED] V Commissioner for Fair Trading & Ors.</p> <p>2. I am the current appointed ACT Commissioner for Fair Trading, Sch 2.2(a)(ii) [REDACTED]</p>		
Duties affected by the Conflict / Circumstances		
<p>1. Sch 2.2(a)(ii) [REDACTED]</p> <p>2. I hold no bias for or against [REDACTED] and will continue to fulfill my statutory role in line with my obligations and responsibilities under relevant legislation PSMA and comply with any other legislative requirements. All information will be managed with sensitivity.</p>		
The conflict of interest has been identified as (please tick the appropriate box)		
Actual <input type="checkbox"/>	Perceived <input checked="" type="checkbox"/>	Potential <input checked="" type="checkbox"/>
Pecuniary/financial <input type="checkbox"/>	Non-pecuniary <input checked="" type="checkbox"/>	
The risk of the conflict of interest has been identified as (please tick the appropriate box)		
High <input type="checkbox"/>	Medium <input checked="" type="checkbox"/>	Low <input checked="" type="checkbox"/>
Management Strategy (please tick the appropriate box)		
Register <input checked="" type="checkbox"/>	Restrict <input checked="" type="checkbox"/>	Recruit <input type="checkbox"/>
Remove <input checked="" type="checkbox"/>	Relinquish <input type="checkbox"/>	Resign <input type="checkbox"/>
Details of restrictions and strategies implemented		
<p>1. Sch 2.2(a)(ii) [REDACTED].</p> <p>2. Sch 2.2(a)(ii) [REDACTED] Engagement will occur via the EBM Fair Trading and Regulatory Strategy / ACT Government Solicitor.</p>		

Employee Acknowledgement		
I, Derise Cubin , hereby declare that the above details are correct to the best of my knowledge and I make the conflict of interest declaration in good faith.	Signature: Sch 2.2(a)(ii)	Date: 24/11/2021
Manager Acknowledgement		
I, David Pryce hereby declare that the above details are correct to the best of my knowledge and acknowledge my role in overseeing the management strategy of the conflict of interest as declared.	Signature: Sch 2.2(a)(ii)	Date: 26/11/2021

Standard operating procedure relating to *Fair Trading (Australian Consumer Law) Acting Commissioner Appointment 2021 (No 1)*, Notifiable Instrument NI2021-60

Date: 30 November 2021

Part 1: *Purpose*

1. Ms Derise Cubin has submitted a signed “Conflict of Interest Disclosure” form dated 24 November 2021.
2. Section 9(1)(a) and (b) of the *Public Sector Management Act 1994* requires that a public servant take all reasonable steps to avoid a conflict of interest and declare or manage a conflict of interest that cannot reasonably be avoided.
3. In order to mitigate and prevent the occurrence of actual or perceived conflict of interest, it is necessary to enact special arrangements as outlined in this Policy.

Part 2: *Scope of policy*

1. This Policy applies to, but is not limited circumstances to actual and potential situations whereby Ms Derise Cubin, in her capacity as an employed public servant and the Commissioner for Fair Trading, would be involved with, or in connection with the following individuals, entities, and/or Tribunal proceedings:
 - a. [REDACTED]; and
 - b. ACT Civil and Administrative Tribunal: Proceeding reference [REDACTED]; and
 - c. [REDACTED]; and,
 - d. [REDACTED]; and,
 - e. [REDACTED]; and,
 - f. [REDACTED].

Part 3: *Appointment of David Pryce as Acting Commissioner for Fair Trading*

1. Ms Derise Cubin is appointed as the Commissioner for Fair Trading: see *Fair Trading (Australian Consumer Law) Commissioner Appointment 2021 (No 1)*, Notifiable Instrument NI2021-31.
4. Having regard to the matters outlined in the “Conflict of Interest Disclosure” form dated 24 November 2021, it is decided that Mr David Pryce will act in the place of Ms Derise Cubin as the Acting Commissioner for Fair Trading in all matters referred to in Part 2 of this Policy.
2. The legal mechanism under which Mr David Pryce will act as the Acting Commissioner for Fair Trading is by *Fair Trading (Australian Consumer Law) Acting Commissioner Appointment 2021 (No 1)*, Notifiable Instrument NI2021-60. That legislative instrument provides that the occupant of the public servant position number [REDACTED] can act as Commissioner for Fair Trading in the event that Derise

Cubin is absent, unavailable or relevantly in these circumstance, is unable to exercise the functions of the Commissioner for Fair Trading.

Part 4: Process for Access Canberra

1. For the purpose of the matters referenced above at Part 2 of this policy, Mr David Pryce will exercise the functions of the Acting Commissioner for Fair Trading.
2. In order to prevent the occurrence of actual or perceived conflict of interest in relation to the matters referenced above at Part 2 of this Policy, Access Canberra employees should ensure that Ms Derise Cubin:
 - a. is not copied into any written correspondence, updates, and/or advice that is distributed, and instead, this is provided directly to Mr David Pryce by his direct email address and Mr Josh Rynehart, Ms Alex McPherson and Mr Damien Kelly by their respective email addresses only;
 - b. is not included in, and present for any discussion about, or in connection to the matters referenced above at Part 2 of this Policy.
3. Management decisions on this matter will continue to be made within the Fair Trading and Compliance Branch processes. In the circumstances where instruction from the Commissioner is required, Mr Josh Rynehart will seek instruction from Mr David Pryce.
4. Access Canberra will take reasonable steps as documented to ensure that Ms Derise Cubin is not able to access electronic or hard-copy records relating to any matter referenced above at Part 2 of this Policy. Ms Cubin's access to any Objective files relating to the matters outlined at Part 2 of this Policy will be removed.

Part 5: Process for ACTGS

1. For the purpose of the matters referenced above at Part 2 of this policy, Mr David Pryce will exercise the functions of the Acting Commissioner for Fair Trading.
2. In order to prevent the occurrence of actual or perceived conflict of interest in relation to the matters referenced above at Part 2 of this Policy, ACTGS should ensure that Ms Derise Cubin:
 - a. is not copied into any written correspondence, updates, and/or advice that is provided, and instead, this is provided directly to Mr David Pryce by his direct email address and Mr Josh Rynehart, Ms Alex McPherson and Mr Damien Kelly by their respective email addresses only;
 - b. is not included in, and present for any discussion about, or in connection to the matters referenced above at Part 2 of this Policy.

Stuart, Katharine

From: Pryce, David
Sent: Wednesday, 1 December 2021 9:26 AM
To: McKinnon, Margaret
Cc: AC - Office of the DDG
Subject: FOR INFO: Control measures - potential conflict of interest - Commissioner for Fair Trading
Attachments: Standard operating procedure relating to special arrangements for Acting Commissioner for Fair Trading.docx; Standard operating procedure relating to special arrangements for Acting Commissioner for Fair Trading.pdf

OFFICIAL: Sensitive - Personal Privacy

FYI

Sch 1 1.2

Sch 1 1.2

Sch 1 1.2

From: Pryce, David <David.Pryce@act.gov.au>

Sent: Friday, 26 November 2021 1:17 PM

To: Sch 1 1.2; Rynehart, Josh <Josh.Rynehart@act.gov.au>

Cc: AC - Office of the DDG <ACOfficeoftheDDG@act.gov.au>

Subject: Control measures - potential conflict of interest - Commissioner for Fair Trading

OFFICIAL: Sensitive

Hi Sch 1 1.2 and Josh,

I refer to our previous discussions earlier this week following our Legal Briefing meeting.

So as to sign-off and finalise a Conflict of Interest declaration for Derise Cubin as the Commissioner for Fair Trading with regards to [REDACTED], appreciate if you could forward to me the agreed decision making measures we are to put in place to restrict and remove the Commissioner from any decisions or instructions relating to this matter.

I would like to ensure we have a clear record of these arrangements as well as to record along with the Conflict of Interest declaration (which Derise has submitted).

Please provide this to me by no later than COB Monday, 29 November 2021.

Thanks,

David Pryce | Deputy Director-General
Head of Access Canberra

Phone: 02 6205 9898 | Email: david.pryce@act.gov.au

Access Canberra | Chief Minister Treasury and Economic Development Directorate | ACT Government
GPO Box 158, Canberra City, ACT 2601 | www.act.gov.au/accessCBR



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Stuart, Katharine

From: Pryce, David
Sent: Tuesday, 30 November 2021 9:02 AM
To: AC - Office of the DDG
Cc: McKinnon, Margaret
Subject: Conflict of Interest declaration - Derise Cubin
Attachments: Derise Cubin - Disclosure of perceived conflict of interest 24 Nov 2021.pdf

OFFICIAL: Sensitive - Personal Privacy

Hi Madi,

Note I have updated this Conflict of Interest declaration form with some additional notes (see **attached**).

Please ensure this version is updated on objective and also provided to Derise Cubin.

Thanks,

David Pryce | Deputy Director-General
Head of Access Canberra

Phone: 02 6205 9898 | Email: david.pryce@act.gov.au

Access Canberra | Chief Minister Treasury and Economic Development Directorate | ACT Government
GPO Box 158, Canberra City, ACT 2601 | www.act.gov.au/accessCBR



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Conflict of Interest Disclosure

Instructions

1. Read the *Conflicts of Interest Policy and Guidelines*
2. Once completed by the staff member and their manager, the form should be kept as a record within the business unit

Employee Details		
Name: Derise Cubin	Date: 24 November 2021	
Position: EBM/ Commissioner for Fair Trading	Supervisor name: David Pryce	
Branch: Licensing & Registrations	Sub Unit:	
Conflict of Interest / Circumstances		
<p>1. I refer to the recently filed ACAT matter [REDACTED] Commissioner for Fair Trading & Ors.</p> <p>2. I am the current appointed ACT Commissioner for Fair Trading, Sch 2.2(a)(ii) [REDACTED]</p>		
Duties affected by the Conflict / Circumstances		
<p>1. Sch 2.2(a)(ii) [REDACTED]</p> <p>2. I hold no bias for or against [REDACTED] and will continue to fulfill my statutory role in line with my obligations and responsibilities under relevant legislation PSMA and comply with any other legislative requirements. All information will be managed with sensitivity.</p>		
The conflict of interest has been identified as (please tick the appropriate box)		
Actual <input type="checkbox"/>	Perceived <input checked="" type="checkbox"/>	Potential <input checked="" type="checkbox"/>
Pecuniary/financial <input type="checkbox"/>	Non-pecuniary <input checked="" type="checkbox"/>	
The risk of the conflict of interest has been identified as (please tick the appropriate box)		
High <input type="checkbox"/>	Medium <input checked="" type="checkbox"/>	Low <input checked="" type="checkbox"/>
Management Strategy (please tick the appropriate box)		
Register <input checked="" type="checkbox"/>	Restrict <input checked="" type="checkbox"/>	Recruit <input type="checkbox"/>
Remove <input checked="" type="checkbox"/>	Relinquish <input type="checkbox"/>	Resign <input type="checkbox"/>
Details of restrictions and strategies implemented		
<p>1. Sch 2.2(a)(ii) [REDACTED]</p> <p>2. Sch 2.2(a)(ii) [REDACTED] Engagement will occur via the EBM Fair Trading and Regulatory Strategy / ACT Government Solicitor.</p>		

Employee Acknowledgement		
I, Derise Cubin , hereby declare that the above details are correct to the best of my knowledge and I make the conflict of interest declaration in good faith.	Signature: Sch 2.2(a)(ii)	Date: 24/11/2021
Manager Acknowledgement		
I, David Pryce hereby declare that the above details are correct to the best of my knowledge and acknowledge my role in overseeing the management strategy of the conflict of interest as declared.	Signature: Sch 2.2(a)(ii)	Date: 26/11/2021

Note: SOP developed to address any decisions relating to this matter. SOP developed with assistance of AC Legal Team.

Any decisions or legal instructions involving this matter to be avoided by SOP through either Josh Lynchak or my position.

Sch 2.2(a)(ii)
30/11/2021

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