



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 2023-115

| 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) | 43 |
| 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](#)
Cc: [REDACTED]
Subject: [REDACTED] - request for information
Date: Tuesday, 28 March 2023 9:31:49 AM
Attachments: [image001.png](#)
[Worksafe ACT Authority.pdf](#)

You don't often get email from jwilliams@mej.com.au. [Learn why this is important](#)

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. [Learn why this is important](#)

Dear Colleagues

We act for [REDACTED], who instructs us that he suffered injuries in a workplace incident on 30 March 2021 whilst working for [REDACTED] and [REDACTED]. We **attach** our client's Authority.

Pursuant to the *Freedom of Information Act 1982* (the Act), we request all documents relating to the investigation of the incident, including reports, video footage, photographs, diagrams and any other related documentations held by WorkSafe ACT in this matter be released to us.

We also request details of the company that employed the driver of the forklift involved in [REDACTED] incident.

We thank you for assistance in this regard and look forward to hearing from you.

Kind regards



If our bank details change, we will notify you by letter, phone call or in person, but never by email. If your bank details change, please observe the same policy.

The information contained in this e-mail and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient, any use, disclosure or copying of this e-mail is unauthorised. If you have received this e-mail in error, please notify the sender immediately by reply e-mail and delete the original. Many thanks.



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2023-115



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 28 March 2023.

Specifically, you are seeking: "... [REDACTED] *who suffered injuries in a workplace incident on 30 March 2021 while working for [REDACTED] and [REDACTED]. We request all documents relating to the investigation of the incident, including reports, video footage, photographs, diagrams and any other related documentations held by WorkSafe ACT in this matter be released to us. We also request details of the company that employed the driver of the forklift involved in [REDACTED] incident.*"

On 26 April 2023, we sought a 10 working day extension from you to properly assess the information provided by the business unit. You stated all that was required at this time is the name of the company that employed the forklift driver involved in the incident. You agreed to amend the scope of your request to the following:

"... documents confirming the name of/details of the company that employed the fork lift driver that was driving the fork lift that injured [REDACTED]."

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 28 April 2023, however, following on from an extension and third party consultations, the due date is now 2 June 2023.

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 document. 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 partial access to one document.

My access decisions are detailed further in the following statement of reasons and the document released to you is 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 *Human Rights Act 2004*.

Exemption claimed

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 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 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 the document is within the ‘public interest’.

Factors favouring disclosure in the public interest under Schedule 2.1:

- (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 the documents may contribute to procedural fairness by allowing you to have a copy of the documents that fall within the scope of your request.

Factors favouring nondisclosure in the public interest under Schedule 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 any other right 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 as the party 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 identity of the individual 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 identity of the individual involved. I therefore weight the factor for non-disclosure more highly than the factor in favour of release in this instance. As a result, I have decided that release of this information (name, along with information that is out of scope) 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 document 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

Processing charges are not applicable for this request because the number of pages to be released to you is below 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 document released to you in response to your access application will be published on 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

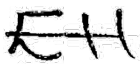
ACT Civil and Administrative Tribunal (ACAT) Review

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
15 Constitution Avenue
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



Emma Hotham
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate

1 June 2023



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

| WHAT ARE THE PARAMETERS OF THE REQUEST | Reference NO. |
|--|--------------------|
| Documents confirming the name of/details of the company that employed the fork lift driver that was driving the fork lift that injured [REDACTED]. | CMTEDDFOI 2023-115 |

| Ref No | Page number | Description | Date | Status | Reason for Exemption | Online Release Status |
|-------------------------|-------------|---------------------------|-------------|-----------------|---|-----------------------|
| 1 | 1, 6, 7 | Transcript of Proceedings | 30 Mar 2021 | Partial Release | Sch 2 s2.2 (a)(ii) Out of Scope <i>(Fully redacted pages removed)</i> | Yes |
| Total No of Docs | | | | | | |
| 1 | | | | | | |

Out of scope

TRANSCRIPT OF PROCEEDINGS

Out of scope

WORKSAFE ACT

INTERVIEWERS:

**INSPECTOR JEFFREY BEAVER
INSPECTOR JAMIE WILLIAMS**

INTERVIEWEE:

Sch 2.2(a)(ii)

12.25 PM, TUESDAY 30 MARCH 2021

Sch 2.2(a)(ii)

Out of scope

Sch 2.2(a)(ii), Out of scope

35 INSPECTOR BEAVER: And what's your current occupation?

Sch 2.2(a)(ii): Forklift driver, or yeah just put forklift driver. I do all sorts from lunch breaks to working on machines to cleaning up, you know, the grounds and odd jobs like that.

40 INSPECTOR BEAVER: Okay.

Sch 2.2(a)(ii): Yeah, so forklifts are a small part of it, but it is part of it.

45 INSPECTOR BEAVER: And it's correct that you work for [REDACTED] [REDACTED] ?

Sch 2.2(a)(ii): Sorry?

INSPECTOR BEAVER: You work for [REDACTED] ?
5

Sch 2.2(a)(ii): Yes, I do.

INSPECTOR BEAVER: So not for ---

10 Sch 2.2(a)(ii): Sorry, that's incorrect. I worked for Programmed, that's a hire company and then they hire me out to [REDACTED].

Sch 2.2(a)(ii), Out of scope