



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 2022-355

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)	20
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: [TCCS_FreedomOfInformation](#); [EPSDFOI](#); [CMTEDD FOI](#)
Subject: Fwd: Information - Planning Bill 2022 - occurrence of frivolous & vexatious CAOs.
Date: Thursday, 3 November 2022 5:53:06 PM

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Good afternoon,

I lodged an information request to Planning and Development last Wednesday 26th of October. The request is regarding the prevalence of vexatious Controlled Activity Orders and Controlled Activity Complaints over the past 5 years.

I received a response stating that EPSD are looking to allocate the request, but since then, I haven't heard if it's been allocated. I am worried that it isn't being processed and has slipped through the cracks.

I know that there is some overlap between the TCCS, CMTEDD and EPSDD Directorates, especially when it comes to planning and development and possibly handling complaints (eg the RRRT who respond to Controlled Activity Complaints is part of the CMTEDD, yet the form for Controlled Activity Orders & complaints are lodged to TCCS), so I thought maybe the CMTEDD or the TCCS teams are the ones who I should contact.

Thank you so much for your help and the work that you do,

[REDACTED]
----- Forwarded message -----

From: [REDACTED]
Date: Thu, 3 Nov 2022 at 15:06
Subject: Re: Information - Planning Bill 2022 - occurrence of frivolous & vexatious CAOs.
To: EPSDFOI <EPSDFOI@act.gov.au>

Good afternoon,

I'm seeking an update, could you please let me know if this request has been allocated and is being processed?

I'm worried, as I haven't received confirmation that the request is lodged, and haven't heard anything from the directorate after it was pending allocation,

Thank you so much for all your help,

[REDACTED] On Wed, 2 Nov 2022, 7:52 am [REDACTED] wrote:

Hi EPSDFOI,

I wanted to follow up to please see if this request was allocated, and if everything is fine

for it to be processed.

Thank you for letting me know,

I hope to hear from you soon,

[redacted]

On Fri, 28 Oct 2022, 7:58 am EPSDFOI, <EPSDFOI@act.gov.au> wrote:

Good morning [redacted]

EPSDD has received your email of the 26 October 2022 and we are currently in the process of allocation, someone will be in touch with you directly.

Kind regards,

Libby Hill

From: [redacted]

Sent: 28 October 2022 07:45

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

Subject: Re: Information - Planning Bill 2022 - occurrence of frivolous & vexatious CAOs.

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Good morning EPSDD information management team,

I wanted to reach out and check if this request for information about the occurrence of 'Controlled Activity Orders' has been received and if it is being processed.

Any updates would be very much appreciated,

Thank you for your hard work,

On Wed, 26 Oct 2022, 12:34 pm [REDACTED] wrote:

Good afternoon EPSDD Information Management Team,

I am reviewing the [Planning Bill 2022](#) and am interested in gaining a better understanding of the key changes from the Planning and Development Act. I am particularly interested in 'issue 12' and the rationale for removing the public's ability to submit a Controlled Activity Order (CAO) as part of the Planning Bill 2022.

The rationale provided in the '[key changes from the Planning and Development Act document](#)' is that the authority isn't able to dismiss frivolous & vexatious CAOs from the public.

I would like to better understand the occurrence of frivolous & vexatious CAOs, and how burdensome this is on the authority and government.

I am seeking some high level data, over two broad areas: Complaints and COAs.

Complaints submitted:

- How many compliments were submitted to the authority concerning an illegal development or development behaviour over the past 5 years? Please provide the number of complaints per year (calendar or financial).
 - How many of these complaints were seeking a Controlled Activity Complaint (CAC) or seeking a Controlled Activity Order (CAO), or were about an activity within scope of a COA (see part 11.3 of the planning and development act).
 - How many of these complaints progressed to a controlled activity order, whether on the authority's own initiative or on application, (refer to s345(e) and s348 and part 11.3 of the act).

- How many times did the Government officially decide to take no action, and specifically not action a CAO for the reason that the complaints were deemed frivolous, vexatious or not made honestly (please see s346(b) of the act).

CAOs submitted:

- How many applications were made to the authority for Controlled Activity Orders, under part 11.3 of the act, by a person in the past 5 years.
- Of these, how many times did the planning and land authority decide to (s351 of the act):
 - to make a controlled activity order of the kind sought; or
 - to make a controlled activity order (including a different kind of order) that is not more burdensome than the order
 - not to make a controlled activity order.
- What were the reasons for the Government deciding to 'not make a controlled Activity Order'?
- How many of the CAOs submitted by a member of the public would the Government have considered to be frivolous, vexatious or not made honestly.

Would you please be able to provide this information,

Thank you so much for your help,

[REDACTED]

[REDACTED]

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Our ref: CMTEDD FOI 2022-355



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 14 November 2022 in which you sought access to high level data, relating to complaints and Controlled Activity Orders over the past 5 years. Specifically, you have requested the following information:

Some high level data, over two broad areas: Complaints and Controlled Activity Orders.

Complaints submitted:

- *How many complaints were submitted to the authority concerning an illegal development or development behaviour over the past 5 years? Please provide the number of complaints per year (calendar or financial).*
 - *How many of these complaints were seeking a Controlled Activity Complaint (CAC) or seeking a Controlled Activity Order (CAO), or were about an activity within scope of a COA (see part 11.3 of the planning and development act).*
 - *How many of these complaints progressed to a controlled activity order, whether on the authority's own initiative or on application, (refer to s345(e) and s348 and part 11.3 of the act).*
- *How many times did the Government officially decide to take no action, and specifically not action a CAO for the reason that the complaints were deemed frivolous, vexatious or not made honestly (please see s346(b) of the act).*

CAOs submitted:

- *How many applications were made to the authority for Controlled Activity Orders, under part 11.3 of the act, by a person in the past 5 years.*
- *Of these, how many times did the planning and land authority decide to (s351 of the act):*
 - *to make a controlled activity order of the kind sought; or*
 - *to make a controlled activity order (including a different kind of order) that is not more burdensome than the order*
 - *not to make a controlled activity order.*
- *What were the reasons for the Government deciding to 'not make a controlled Activity Order'?*
- *How many of the CAOs submitted by a member of the public would the Government have considered to be frivolous, vexatious or not made honestly.*

On 21 November 2022, you agreed to refine the scope of the request, to the last 2 years.

Timeframes

In accordance with section 40 of the Act, CMTEDD was required to provide a decision on your access application by **12 December 2022**.

Decision on access

Searches were completed for relevant information, and statistical data that fall within the scope of your request, has been identified for the past 2 years

The information being released to you, is provided as **Attachment A**.

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 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:

- (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;*
 - (iii) *inform the community of the government’s operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community.*

I have placed substantial weight on the above factors favouring disclosure. I note that the above material relates to parking arrangements and shared public spaces which are issues that are of interest to the community. The release of this information can reasonably be expected to provide information that will inform the community and increase their understanding of government operations.

I did not identify any factor favouring non-release and have decided to release this information to you in full.

Charges

Processing charges are not applicable for this request because the total number of pages to be released to you does not exceed the charging threshold of 50 pages.

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 the Freedom of Information Coordinator on or email CMTEDDFOI@act.gov.au.

Yours sincerely,



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

12 December 2022

Request	Response
<p>1. How many complaints were submitted to the authority concerning an illegal development or development behaviour over the past 5 years? Please provide the number of complaints per year (calendar or financial).</p>	<p>"Illegal development or development behaviour" is interpreted to mean complaints related to developments and development approvals or applications. This excludes some controlled activities under Schedule 2 of the Planning and Development Act 2007 (the Act), such as failing to keep a leasehold clean.</p> <p>Complaints received regarding "illegal development or development behaviour" were as follows:</p> <ul style="list-style-type: none"> • 2020-2021 – 619 • 2021-2022 – 714 • 2022-2023 (to 20 November) - 316
<p>2. How many of these complaints were seeking a Controlled Activity Complaint (CAC) or seeking a Controlled Activity Order (CAO), or were about an activity within scope of a COA (see part 11.3 of the planning and development act).</p>	<p>Controlled activities are defined under Schedule 2 of the Act. While a complainant may not explicitly make reference to a Controlled Activity Complaint, Access Canberra may consider the complaint in this context where appropriate.</p> <p>Complaints received regarding 'planning matters' were as follows:</p> <ul style="list-style-type: none"> • 2020-2021 – 868 • 2021-2022 – 844 • 2022-2023 (to 20 November) - 407
<p>3. How many of these complaints progressed to a controlled activity order, whether on the authority's own initiative or on application, (refer to s345(e) and s348 and part 11.3 of the act).</p>	<p>Of the Controlled Activity Orders issued by the authority that related to development or development behaviour by a lessee:</p> <ul style="list-style-type: none"> - 2020-2021 – 4 - 2021-2022 – 3 - 2022-2023 (to 20 November) – 1
<p>4. How many times did the Government officially decide to take no action, and specifically not action a CAO for the reason that the complaints were deemed frivolous, vexatious or not made honestly (please see s346(b) of the act).</p>	<p>Determination of this number is not possible due to the constraints of Access Canberra's reporting systems, and manually identifying the outcome of over 1700 complaints is an unreasonable diversion of resources.</p>

<p>5. How many applications were made to the authority for Controlled Activity Orders, under part 11.3 of the act, by a person in the past 5 years.</p>	<p>The authority received Applications for Controlled Activity Orders as follows:</p> <ul style="list-style-type: none"> - 2020-2021 – 2 - 2021-2022 - 1 - 2022-2023 (to 20 November) – 3
<p>6. Of these, how many times did the planning and land authority decide to (s351 of the act):</p> <ul style="list-style-type: none"> a) to make a controlled activity order of the kind sought; or b) to make a controlled activity order (including a different kind of order) that is not more burdensome than the order sought in one case. c) not to make a controlled activity order. d) What were the reasons for the Government deciding to 'not make a controlled Activity Order'? e) How many of the CAOs submitted by a member of the public would the Government have considered to be frivolous, vexatious or not made honestly. 	<ul style="list-style-type: none"> a) The authority decided to make a Controlled Activity Order of the kind sought in one case. b) The authority decided to make a Controlled Activity Order that is not more burdensome than the order sought in one case. c) The authority decided not to make a Controlled Activity Order in four cases. d) The authority decided not to make a Controlled Activity Order (CAO) in these cases as there was insufficient evidence to support taking regulatory action. e) During the reporting period, the delegate of the planning and land authority considered none of the Controlled Activity Order Applications frivolous, vexatious or not made honestly.