



**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 2022-372

| 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)              | 33        |
| 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:** [no-reply@act.gov.au](mailto:no-reply@act.gov.au)  
**To:** [CMTEDD FOI](#)  
**Subject:** 2022-372 - Freedom of Information request  
**Date:** Tuesday, 22 November 2022 10:29:54 AM

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**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](#)

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:

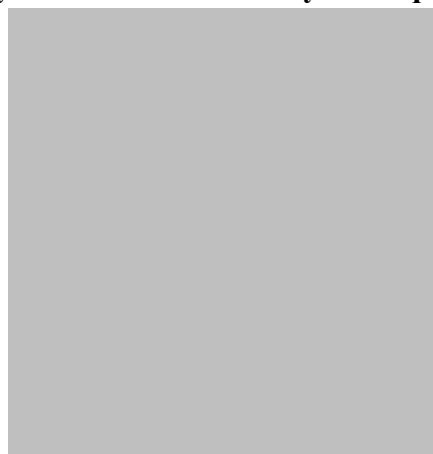
Suburb:

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):

A conflict of interest declaration by Ms Denise Cubin made on or around 26th November 2021.

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

Thank you.  
Freedom of Information Coordinator



## **FREEDOM OF INFORMATION REQUEST**

I 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 22 November 2022. Specifically, you sought:

*A conflict-of-interest declaration by Ms Denise[sic] Cubin made on or around 26th November 2021.*

### **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 20 December 2022.

Following third-party consultation as required under section 38 of the Act, the due date for a decision was rescheduled to **13 January 2023**.

### **Decision on access**

One document was found as relevant to your request, and I have decided to grant partial access to this document. Searches were completed based on information provided by you.

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

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

### **Statement of Reasons**

#### **Material considered**

In reaching my access decision, 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:

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:*

- (i) promote open discussion of public affairs and enhance the government’s accountability.*
- (ii) 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 document 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 all the identified documents as an affected third party has objected to disclosure. This third party may apply for review of my release decision within 20 working days after my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman. I will write to you to advise when access is no longer deferred.

#### **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](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:

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](mailto:CMTEDDFOI@act.gov.au).

Yours sincerely



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

11 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:<br><i>A conflict of interest declaration by Ms Denise Cubin made on or around 26th November 2021.</i> | CMTEDDFOI 2022-372 |

| 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                     |
| <b>Total No of Docs</b> |             |  |            |         |                      |                       |
| 1                       |             |  |            |         |                      |                       |

# 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 &amp; 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] Pty Ltd 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, <b>Derise Cubin</b> , 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.                                      | <b>Signature:</b><br>Sch 2.2(a)(ii) | <b>Date:</b><br>24/11/2021 |
| Manager Acknowledgement  |                                     |                            |
| I, <b>David Pryce</b> 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. | <b>Signature:</b><br>Sch 2.2(a)(ii) | <b>Date:</b><br>26/11/2021 |