



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 2019-287

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)	24
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: Request for statistics - FOI
Date: Sunday, 29 December 2019 10:59:31 PM
Attachments: [FOI CMTEDD MotorRepairer.docx](#)

Team,

Please find attached request for FOI.

Kindly send a confirmation once this is lodged.

Thanks

To whom it may concern,

FOI Section

Chief Minister,

Treasury and Economic Development Directorate (**CMTEDD**)

My name is



I am requesting the following statistics from Access Canberra, Community Industry Trader Licence CITL section.

1. How many current “MVR motor vehicle repairers” and “MVDL motor vehicle dealer” or any other licensees granted a licence under the Trader’s “licence” act have a recorded conviction against their name or a related entity.
2. A list of the types of offences which the current licence holders with a conviction have.

Please note I had previously requested this information in FOI – 076 but it was deemed an unnecessary diversion of resources and denied. Recently I have had my Discrimination matter heard at ACAT and Mr Richard Binks made claims under oath addressing the above statistics. I would suggest seeking the information above from CITL.

Thankyou



via email:



Dear



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 29 January 2018, in which you sought access statistical information from Access Canberra, Community Industry Trader Licence section.

Specifically, you requested:

1. How many current "MVR motor vehicle repairers" and "MVDL motor vehicle dealer" or any other licensees granted a licence under the Trader's "licence" act have a recorded conviction against their name or a related entity.
2. A list of the types of offences which the current licence holders with a conviction have.

On 13 January 2020 you clarified your request to include:

"Could we please add an additional criterion which is for multiple convictions in which case just add another column "type of conviction" and include the additional conviction under that relevant business/entity. I have provided an example below.

Please also capture the licence numbers for the licensees.

	<i>Conviction</i>	<i>Type of Conviction</i>	<i>Type of Conviction</i>	<i>Licence number</i>
<i>Business 1 "ABC repairs"</i>	<i>Yes</i>	<i>DUI</i>	<i>Assault</i>	
<i>Business 2 "BBC Works"</i>	<i>No</i>	<i>N/A</i>	<i>N/A</i>	

On 13 January 2020 you also agreed to a 20-working day extension due to the amount of information that will have to be compiled. The due date your request was extended to is 26 February 2020.

On 22 January 2020 a letter proposing to refuse to deal with this access application under s 43(1)(a) of the Act was sent to you giving you the opportunity to amend your application.

On 23 January 2020 you amended the scope of your request to only include the 122 motor vehicle dealer licence category licences with the same search applied.

On 29 January you requested the addition of the five wholesalers dealers licences to be included in the statistics which was agreed to.

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

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application by 26 February 2020.

Decision on access

Searches were completed for relevant documents and one document was identified that falls within the scope of your request.

I have decided to grant partial to that one document. The information redacted in the document I consider 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.

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.

My access decision is detailed further in the following statement of reasons and the document 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 decision is below.

Statement of Reasons

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; and
- the *Human Rights Act 2004*.

Exemption claimed

My reasons for deciding not to grant full access to the identified document and components of this document is 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 the document 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:*
 - (xiii) *contribute to the administration of justice generally, including procedural fairness.*

Having considered the factors identified as relevant in this matter, I consider that the release of the information contained in the document may contribute to the administration of justice generally, including procedural fairness by allowing you to have a list of motor vehicle and wholesale dealers that have a recorded conviction against their name.

Factors favouring nondisclosure in the public interest:

- (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.*

However, when considering this finding against the factor favouring non-disclosure, I am satisfied that the protection of an individual’s right to privacy, especially in the course of applying for a motor vehicle dealer/wholesaler’s licence is a significant factor as all parties involved have provided their personal information which includes copies of a criminal history check for the purposes of meeting obligations under relevant legislation. The information you have requested is considered “sensitive personal” information which significantly increases the weight of this factor. CMTEDD has a higher obligation to

protect this type of information and, in my opinion, protecting this type of information far outweighs the benefit which may be derived from releasing the sensitive personal information of the individual's and associated businesses involved in this matter.

Personal information is defined by the *Information Privacy Act 2014* as "information or an opinion about an identified individual, or an individual who is reasonably identifiable (i) whether the information or opinion is true or not; and (ii) whether the information or opinion is recorded in a material form or not." I am satisfied that information which allows for an individual to be identified is personal information. Having reviewed the document within the scope of the request, I note that details such licence number, licensee and trading names of all motor vehicle dealer/wholesale licence holders, if released could allow for the individuals involved to be identified. I consider that disclosing such information would cause significant intrusion into privacy of these individuals which would impact their rights under the *Human Rights Act 2004*. Given the sensitive nature of the information, I have given significant weight to this factor.

I am satisfied that the information is not publicly available, and that the relevant businesses may or may not be aware that their personal information appears in the document in this context. I am also satisfied that these businesses would hold a reasonable expectation that such information would not be disclosed in response to a request made under the FOI Act. Therefore, they would likely object to such disclosure.

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) of the Act.

Charges

Pursuant to *Freedom of Information (Fees) Determination 2017 (No 2)* processing charges are not applicable for this request because the total number folio's 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 the documents released to you in response to your access application will be published in the CMTEDD disclosure log 3 days after the date of my decision. Your personal contact details will not be published. You may view the CMTEDD disclosure log at:

<https://www.cmtedd.act.gov.au/functions/foi/disclosure-log>.

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 me by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely,



Philip Dachs
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate

4 February 2020



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

NAME	WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.
[REDACTED]	Motor Vehicle Dealer Statistics	CMTEDDFOI2019-287

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-2	Statistics	24 Jan 2020	Partial release	Sch 2 s2.2 (a)(ii)	Yes
Total No of Docs						
1						

	LicenceNo	Licensee	Trading Name	Disclosable Court Outcome	Offence
1	2.2(a)(ii)			Yes	Drive Motor Vehicle with Alcohol in Blood/Breath
2				Yes	Drive Motor Vehicle with Alcohol in Blood/Breath
3				No	
4				No	
5				No	
6				No	
7				No	
8				No	
9				No	
10				No	
11				No	
12				No	
13				No	
14				No	
15				No	
16				No	
17				No	
18				No	
19				No	
20				No	
21				No	
22				No	
23				No	
24				No	
25				No	
26				No	
27				No	
28				No	
29				No	
30				No	
31				No	
32				No	
33				No	
34				No	
35				No	
36				No	
37				No	
38				No	
39				No	
40				No	
41				No	
42				No	
43				No	
44				No	
45				No	
46				No	

47	2.2(a)(ii)		No	
48			No	
49			No	
50			No	
51			No	
52			No	
53			No	
54			No	
55			No	
56			No	
57			No	
58			No	
59			No	
60			No	
61			No	
62			No	
63			No	
64			No	
65			No	
66			No	
67			No	
68			No	
69			No	
70			No	
71			No	
72			No	
73			No	
74			No	
75			No	
76			No	
77			No	
78			No	
79			No	
80			No	
81		No		
82		No		
				current as at 24 January 2020