



**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 2020-141

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents	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:** [CMTEDD FOI](#); [JACS FOI](#)  
**Subject:** FOI - Occupational Disciplinary Action  
**Date:** Saturday, 25 July 2020 6:29:39 PM

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Good evening team,

I am requesting under FOI a summary of all disciplinary action taken or complaints made against the following employees between January 1st 2010 and present date July 25th 2020.



I am requesting all documents and communication on investigations, misconduct, both active/ongoing or closed.

Regards,






**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDDFOI 2020-141



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 27 July 2020 in which you are seeking access to information regarding complaints and any disciplinary actions taken against 17 employees within CMTEDD for the period 1 January 2010 to present. The Justice and Community Safety Directorate (JACS) will respond separately in relation to the three JACS employees listed in your request.

On 11 August 2020 you confirmed that you are only seeking a summary of the complaints and outcomes of disciplinary actions taken against these employees.

### **Authority**

I am an Information Officer appointed by the Director-General 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 24 August 2020.

### **Decision on access**

Searches were completed for relevant documents. A summary has been developed using information that was found and falls within the scope of your request.

I have decided to grant partial access to this summary. A copy of the summary is provided as **Attachment A** to this letter.

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

## Statement of Reasons

In reaching my access decision, I have taken the following into account:

- The Act;
- the content of the document that falls within the scope of your request; and
- the *Human Rights Act 2004*.

## Exemption claimed

My reasons for deciding not to grant access to the identified documents and components of these documents are 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 these documents is within the ‘public interest’.

### Factors favouring disclosure (Schedule 2 section 2.1)

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

- (vi) *reveal or substantiate that an agency or public official has engaged in misconduct or negligent, improper or unlawful conduct or has acted maliciously or in bad faith.*

Having considered the factors identified as relevant in this matter, I consider that release of information contained in the document may reveal or substantiate that an agency or public official has engaged in misconduct or negligent, improper or unlawful conduct or has acted maliciously or in bad faith. The release of the information would allow the public to have access to the types of misconduct that have occurred and the outcomes of each allegation. The release of this information would demonstrate the work that is undertaken to ensure that members of the ACT Public Service uphold the requirements of the *Public Sector Management Act 1994* during their employment.

Factors favouring non-disclosure (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 any other right under the Human Rights Act 2004.
- (b) the information:
  - (v) is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct and disclosure of the information could prejudice the fair treatment of an individual.

However, when considering this finding against the factor favouring non-disclosure, I am satisfied that the protection of an individual's right to privacy, is a significant factor especially in situations where information is unsubstantiated and could prejudice the fair treatment of that individual.

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." In undertaking the public interest test, I have reviewed the information which has been found to be within the scope of your request. The document contains the names of staff members and details (in summary form) of the complaints made against them. Noting the definition of personal privacy, I am satisfied that release of this information would disclose personal details about the staff member and their employment which would prejudice their right to privacy. In coming to this conclusion, I note that this information requested is not publicly available, and that the relevant officer's may or may not be aware that their personal information appears in document. Moreover, I am satisfied that the officers would hold a reasonable expectation that such information will not be disclosed in response to a request made under the FOI Act. 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*.

I have also considered the fact that the information associated with these individuals is unsubstantiated or not proven with no action being taken in all cases. In weighing this factor against the factors in favour of disclosure, I am not satisfied that release of this information along with the name of the employee would not serve to further the public interest as outlined in the factors in favour of disclosure. I am further satisfied that this information if released, could result further allegations or prejudice the fair treatment of the individual. I give this factor significant weight.

In accordance with the balancing test prescribed in section 17 of the Act, I am of the view that disclosure of the personal information of the individuals would be an unreasonable disclosure having regard to the nature and context of the information and I

am satisfied that the public interest in protecting personal information and privacy outweighs the public interest factors favouring disclosure in this instance.

Noting the objectives of the Act, I have chosen to redact the name of the officers, but release information in relation to the complaints made and their outcome as this provides a balance between privacy for the individuals involved while providing you with some information in response to 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 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-2020>.

### **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](mailto:actfoi@ombudsman.gov.au)

### **ACT Civil and Administrative Tribunal (ACAT) Review**

Under section 84 of the Act, if a decision is made by the Ombudsman under section 82(1), you may apply to the ACAT for a 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 02 6207 7754 or by email at [CMTEDDFOI@act.gov.au](mailto:CMTEDDFOI@act.gov.au).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Daniel Riley', written in a cursive style.

Daniel Riley  
Information Officer  
Information Access Team  
Chief Minister, Treasury and Economic Development Directorate

24 August 2020

**Summary of complaints and disciplinary action for CMTEDD staff  
between 1 January 2010 and 25 July 2020**

Staff Member	Summary/Outcome
2.2(a)(ii)	Complaint to the Public Sector Standards Commissioner - Issues with appointment/Did not proceed. (July 2017)
2.2(a)(ii)	Complaint to the Public Sector Standards Commissioner – Human Resources Matter/Matter resolved. (June 2019)
2.2(a)(ii)	Complaint to the Public Sector Standards Commissioner – Human Resources Matter/Matter resolved. (June 2019)
2.2(a)(ii)	Complaint to the Public Sector Standards Commissioner – Human Resources Matter/Matter resolved. (June 2019)
2.2(a)(ii)	Public Interest Disclosure/No Action required to be taken under Section 24 of the PID Act. (September 2019)
2.2(a)(ii)	No documents found
2.2(a)(ii)	No documents found
2.2(a)(ii)	No documents found
2.2(a)(ii)	No documents found
2.2(a)(ii)	No documents found
2.2(a)(ii)	No documents found
2.2(a)(ii)	No documents found
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