



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 2021-257

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	No
4. Additional information identified	No
5. Fees	N/A
6. Processing time (in working days)	25
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



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.

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):

Notice of Decision relating to the imposition of infringement notices issued and/or applicable findings relating to the following Code Covered Entities under the Government Procurement (Secure Local Jobs Code) 2020: 00090 Olympic Fencing (NSW) Pty Ltd 00126 GLO Electrical and Data Services Pty Ltd 00204 Higgins Coatings Pty Ltd 00247 BMD Constructions Pty Ltd 00344 Able Landscaping Pty Ltd 00752 Belford Building & Construction Pty Ltd 01399 WIZCON Pty Ltd

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

Thank you.
Freedom of Information Coordinator



ACT
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Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2021-257



FREEDOM OF INFORMATION DECISION

I am writing to you in response to your access application under the *Freedom of Information Act 2016 (FOI Act)*, dated 29 September 2021.

Specifically, the request stated:

"Notice of Decision relating to the imposition of infringement notices issued and/or applicable findings relating to the following Code Covered Entities under the Government Procurement (Secure Local Jobs Code) 2020: 00090 Olympic Fencing (NSW) Pty Ltd 00126 GLO Electrical and Data Services Pty Ltd 00204 Higgins Coatings Pty Ltd 00247 BMD Constructions Pty Ltd 00344 Able Landscaping Pty Ltd 00752 Belford Building & Construction Pty Ltd 01399 WIZCON Pty Ltd."

Authority

I am an Information Officer appointed by the Director-General of the Chief Minister, Treasury and Economic Development Directorate (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 was required to provide a decision on your access application by 28 October 2021 however, following third-party consultation the due date is now 18 November 2021.

Decision on access

Searches were completed for relevant documents and seven (7) documents were identified that fall within the scope of your request.

I have decided to refuse access to all seven (7) documents in their entirety as I consider the information would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

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

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 the relevant third parties,
- the *Human Rights Act 2004*, and
- the *Information Privacy Act 2014*.

Exemption claimed

My reasons for deciding not to grant access to the identified documents is as follows:

Information Contrary to 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 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 these documents is within the 'public interest'.

Factors favouring disclosure in the public interest (Schedule 2.1):

I consider that there are no factors favouring disclosure. The 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. I have considered this overarching concept in making my decision in relation to access.

Factors favouring nondisclosure (Schedule 2.2(a))

(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;*

(xi) *Prejudice trade secrets, business affairs or research of an agency or person.*

I have examined the material relevant to your request which includes (but is not limited to) the names of individuals found to be non-compliant, details relevant to the nature of the non-compliance, and personal circumstances relevant to the non-compliance. I am satisfied this material is personal information for the purposes of s 2.2(a)(ii). I have also considered the impact that releasing information would have on those identified.

Individuals who provide personal information to the ACT Government for the purposes of corresponding concerns relating to potential breaches under the ACT's *Government Procurement (Secure Local Jobs) Code 2019* are entitled to expect that their personal information will be dealt with in a manner that protects their privacy. I believe the release of this information may prejudice the protection of this individuals' right to privacy under the *Human Rights Act 2004*, particularly section 12, and I am not satisfied that releasing the information and prejudicing their right to privacy overrides this expectation or is in the public interest.

I have also considered the impact of disclosing information which relates to business affairs. In the case of *Re Mangan and The Treasury* [2005] AATA 898 the term 'business affairs' was interpreted as meaning 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'. Schedule 2 section 2.2(a)(xi) allows for government information to be withheld from release if disclosure of the information could reasonably be expected to prejudice the trade secrets, business affairs or research of an agency or person.

I find that disclosing the information that is contained in the material of the findings of the investigation of each business could have unreasonable adverse effect on the businesses involved. I am satisfied that the release of information about the businesses could be expected to have an adverse effect of having a business' name, reputation or standing in the community damaged if they are associated with any alleged wrongdoing. I note that this information you are seeking is also not publicly available (excluding the minimal information available at [Code Certified Entities - Procurement \(act.gov.au\)](https://www.act.gov.au/procurement/code-certified-entities)).

Finally, I note that most of the third parties consulted did not give their express consent to the release of their personal or business information. In the absence of express consent, my decision remains of the view that the disclosure of the personal or business information would be unreasonable.

Accordingly, I have decided to withhold from disclosure the documents in full.

Charges

Pursuant to *Freedom of Information (Fees) Determination 2017 (No 2)* processing charges are not applicable for this request as no information is being released to you.

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 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 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
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,



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

4 November 2021