



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 2022-352

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)	26
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: 2022-352 Request for FOI
Date: Wednesday, 9 November 2022 5:25:36 PM

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Good afternoon team,

Id like to request under foi the following;

Position title, classification and salary for the following act officials,

[REDACTED]

As of todays date 9th nov 2022

Thankyou
[REDACTED]

Sent from my iPhone



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2022-352



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 9 November 2022, in which you sought access to:

- *As of 9th nov 2022, the position title, classification and salary for the following act officials:*
- [REDACTED]
- [REDACTED]

On 30 November 2022 you confirmed that you are seeking information on [REDACTED] substantive position with Access Canberra, and not the position he was acting in on 9 November 2022.

Authority

As an appointed Information Officer under section 18 of the Act, I am authorised to make a decision on access or amendment to government information in the possession or control of CMTEDD.

Timeframes

In accordance with section 40 of the Act, CMTEDD was required to provide a decision on your access application by 7 December 2022 however, following on from third party consultations, the due date is now 30 December 2022.

Decision on access

I note that in an email to you dated 5 December 2022, that the position titles for [REDACTED] [REDACTED] are publicly available and that the salaries for executives within the ACT Public Service (ACTPS) are published on the ACT Remuneration Tribunal website. However, I have chosen to include this information in this letter.

I have decided to refuse access to the classification of [REDACTED] as I consider that information 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.

My access decisions are detailed further in the following statement of reasons.

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

Statement of Reasons

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

- the Act
- the content of the information that falls within the scope of your request
- the availability of the information in the public arena
- the *Human Rights Act 2004*.

Exemption claimed

My reasons for deciding not to grant access to the identified information 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 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 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 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:*
- (i) *promote open discussion of public affairs and enhance the government’s accountability*

To determine which factors favouring disclosure apply to the information identified within the scope of the access request, I am required to be satisfied that these factor or factors ‘could reasonably be expected to’ occur.

I have reviewed the information within the scope of your request and have not identified any factors that favour disclosure as outlined in schedule 2.1 of the Act that I believe could ‘reasonably be expected to occur’ regarding this document.

The most relevant factor under schedule 2.1 that favours disclosure for this document, is (a)(i) “*disclosure of the information could reasonably be expected to do any of the*

following (a) promote open discussion of public affairs and enhance the government's accountability." I do not consider any other factors as relevant to this request.

The term 'could reasonably be expected to' is not unique to the *Freedom of Information Act 2016*. In considering this term as found in other jurisdictions' freedom of information legislation and case law precedent, the term 'could reasonably be expected to' requires me to assess the likelihood of a predicted or forecast event. In this case, I need to assess the likelihood that release of the information would 'promote open discussion of public affairs or enhance government accountability'.

While I note the term "could" is less stringent than the word "would", there still needs to be a reasonable expectation that the forecast event would occur. In *Re News Corporation Limited v National Companies and Securities Commission*¹ it was noted that the mere possibility or chance does not qualify as a reasonable expectation.

In helping to determine if the release of the identified information could reasonably be expected to 'promote open discussion of public affairs or enhance the government accountability', I have referred to previous matters where documents containing similar information have been discussed. Namely, I have considered the judgements in *Re Dyki and Federal Commissioner of Taxation*², *Department of Social Security v Dyrenfurth*³, and *Colakovski v Australian Telecommunications Corporation*⁴. In reviewing these cases, I note that while they were decided in relation to Commonwealth Freedom of Information legislation which has now been superseded or amended, many of the principles and judgement discussions remain relevant.

The release of this single piece of information in my opinion does not provide enough detail to allow for a discussion or could reasonably be expected to promote open discussion of public affairs and enhance the government's accountability.

Heerey J in *Colakovski v Australian Telecommunications Corporation*⁵ stated in regard to a request for documents that contained personal information of an individual that [the information requested is] 'of no demonstrable relevance to the affairs of government and [is] likely to do no more than excite or satisfy the curiosity of people about the personal affairs of the individual'. I believe that this statement is true in relation to this access request. Taking these issues into account I am not satisfied that there are any factors under schedule 2.1 of the Act that favour disclosure of the document within the scope of your request.

Additionally, when considering this finding against the factors favouring non-disclosure, I am satisfied that the protection of an individual's right to privacy, especially in the course of their employment, is a significant factor which, in my opinion, outweighs the benefit

¹ (1984) 5 FCR 88.

² (1990) 22 ALD 124

³ (1988) 15 ALD 232

⁴ (1991) 29 FCR 429

⁵ (1991) 29 FCR 429.

which may be derived from releasing the personal information of the individual's involved in this matter. These individuals are entitled to expect that their personal information will be dealt with in a manner that protects their privacy.

I have listed the information that is publicly available below for your ease on reading:



The ACT Remuneration Tribunal's website can be found here:

<https://www.remunerationtribunal.act.gov.au/>

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 other right under the Human Rights Act 2004*

As with the factors in favour of disclosure, for me to be satisfied that a factor(s) in favour of nondisclosure applies to the document identified to be within the scope of your request, I am firstly required to be satisfied that release of the document could 'reasonably be expected to' result in a prescribed outcome.

In considering the factors in favour of nondisclosure as found in Schedule 2.2, I consider that the only relevant factor in this matter is (a)(ii) – *Prejudice the protection of an individual's right to privacy or other right under the Human Rights Act 2004.*

In considering the application of this factor, I have taken into account the views of the relevant third parties as provided to me under section 38 of the Act. I have considered third party responses and am of the view that the release of the information within the scope of the request would be an unreasonable release of personal information.

In making this decision, I recognise that while salary information is freely and publicly available on the ACT Remuneration Tribunal's website this information does not tie specifically to an individual. To release the classification of an individual is to release that specific individual's income. I consider that release of the information within the scope of this request would either confirm or deny [redacted] salary. The release of this information would cause a significant intrusion into the privacy of these individuals which would impact their rights under the *Human Rights Act 2004*. Given the nature of the information, I have given significant weight to this factor.

Having applied the test outlined in section 17 of the Act and noting that there are no factors in favour of disclosure, I have decided that releasing personal information of [REDACTED] as contained in the information found to be within the scope of your request, is contrary to the public interest to release. Therefore, I have chosen to withhold this information from release in its entirety.

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 documents released to you in response to your access application will be published on 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,

A handwritten signature in black ink, consisting of the letters 'EH' in a stylized, cursive font.

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

15 December 2022