



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 2022-226

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	Waived
6. Processing time (in working days)	61
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]
Sent: Thursday, 28 July 2022 1:10 PM
To: CMTEDD FOI
Cc: [REDACTED]
Subject: CMTEDDFOI 2022-226 - FOI request 2 from [REDACTED]

This is a request in writing under the ACT Freedom of Information Act 2016 for documents. This email address, [REDACTED] is the contact email address for the purposes of the request.

My request is for every Memorandum of Understanding since 2010, between the ACT Government and

- Canberra Racing Club Incorporated; and/or
- Canberra Harness Racing Club Inc; and/or
- ACT Racing Club Inc; and/or
- Thoroughbred Park;

[REDACTED] is happy to discuss or clarify this request if necessary.

If it is easier to release it via any other administrative processes such as an email response [REDACTED] is also happy for this.



ACT
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Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI2022-226



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 28 July 2022, in which you sought access to Memorandums of Understanding between the ACT Government and racing clubs.

Specifically, you wrote *“My request is for every Memorandum of Understanding since 2010, between the ACT Government and*

- *Canberra Racing Club Incorporated; and/or*
- *Canberra Harness Racing Club Inc; and/or*
- *ACT Racing Club Inc; and/or*
- *Thoroughbred Park.”*

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 was required to provide a decision on your access application by 25 August 2022. However, following third-party consultation as required under section 38 of the Act, this date was revised to 15 September 2022.

Decision on access

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

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

I have decided to grant partial access to the document relevant to your request as I consider it to contain 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 decision is detailed further, in accordance with section 54(2) of the Act, in the following statement of reasons and the information released to you are provided as **Attachment B** to this letter.

Statement of Reasons

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

- the Act
- the content of the information that falls within the scope of your request
- the views of consulted third parties (in accordance with section 38)
- the *Information Privacy Act 2014*

Exemption claimed

My reasons for deciding not to grant full 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

What is the '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 these documents is within the 'public interest'.

Factors favouring disclosure in the public interest under Schedule 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*
- (iv) *ensure effective oversight of expenditure of public funds*

Having considered the factors identified as relevant in this matter, I consider the release of the information contained in this document would reasonably be expected to promote

open discussion of public affairs, especially those pertaining to the racing industry, in addition to contributing to debate on matters important to the public.

I also consider that disclosure of this information could assist in ensuring effective oversight of expenditure of public funds and contribute to enhance the transparency of government.

I weigh these factors in favour of disclosure significantly.

Factors favouring nondisclosure in the public interest under Schedule 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*

Having reviewed the information, I consider that the protection of an individual's right to privacy, including protection of their signatures, for the purposes of working with the ACT Government as also a significant factor.

Having applied the test outlined in section 17 of the Act and deciding that release of personal information, such as signatures, 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).

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 information identified as of concern to an affected third party. This third party may apply for review of my release decision within 20 working days, or a longer period allowed by the Ombudsman. I will write to you to advise when access is no longer deferred.

Charges

Processing charges are not applicable for this request because less than 50 pages are 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, my decision and documents released to you in response to your access application will be published on the CMTEDD disclosure log between three and 10 days after my decision is made. 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

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 CMTEDDFOI2022-226 or email CMTEDDFOI@act.gov.au.

Yours sincerely,



Allan McLean
Information Officer
Workforce and Information Services
Chief Minister, Treasury and Economic Development Directorate

15 September 2022



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST		Reference NO.
My request is for every Memorandum of Understanding since 2010, between the ACT Government and <ul style="list-style-type: none">- Canberra Racing Club Incorporated; and/or- Canberra Harness Racing Club Inc; and/or- ACT Racing Club Inc; and/or- Thoroughbred Park;		CMTEDD2022-226

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-11	Memorandum of Understanding: Australian Capital Territory and Canberra Racing Club Canberra Harness Racing Club Canberra Greyhound Racing Club	December 2013	Partial / Deferred	Deferred under s38 (6). Schedule 2.2 (a)(ii)	Yes
Total No of Docs						
1						



ACT
Government

Economic Development

MEMORANDUM OF UNDERSTANDING



Dated	December 2013
Parties	AUSTRALIAN CAPITAL TERRITORY CANBERRA RACING CLUB CANBERRA HARNESS RACING CLUB CANBERRA GREYHOUND RACING CLUB
Prepared by	Economic Development Directorate GPO Box 158 Canberra ACT 2601 Ph: 02 6207 1763 Fax: 02 6207 0123
Version	Final

CONTENTS

1. Interpretation.....	3
1.1 Definitions.....	3
1.2 General.....	3
2. Intention.....	4
3. Variation.....	4
4. Term.....	4
5. Termination.....	4
6. Budget Funding.....	4
6.1 2013-14 Appropriation.....	4
6.2 Payment Timings.....	4
6.3 Indexation.....	5
6.4 Allocation.....	5
6.5 Future Funding.....	5
6.6 Goods and Services Tax (GST).....	5
7. Performance Reporting Objectives.....	6
8. Multi-Year Contractual Arrangements.....	6
9. Structure and Governance.....	6
10. Maintaining Strong Integrity.....	7
11. Changes to the ACT Race Field Information Charge.....	7
12. Racing Appeals Tribunal.....	7
13. Notices.....	8
SCHEDULE 1.....	9

PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988 (Cth)* (**Territory**) represented by the Economic Development Directorate.

CANBERRA RACING CLUB
CANBERRA HARNESS RACING CLUB
CANBERRA GREYHOUND RACING CLUB

BACKGROUND

- A. This Memorandum of Understanding (**MoU**) details the structure and quantum of Territory funding provided in support of the local racing industry to the Canberra Racing Club, the Canberra Harness Racing Club and the Canberra Greyhound Racing Club (**Clubs**) to 30 June 2014 and budget funding estimates for the out years to 2016-17 as detailed in Budget Estimates 2013-14.
- B. Whilst it is intended to cover the period from 2013 to 2017, the parties acknowledge that there are a number of strategic decisions that are likely to be made during this period that may impact on the Clubs and that as a result, this MoU may need to be reviewed from time-to-time as agreed by the parties. These decisions may relate (but are not limited) to the following:
- future decisions made by the Territory in relation to ownership options for ACTTAB Limited; and
 - the outcome of investigations into co-location opportunities for the Territory's racing clubs.
- C. This MoU also identifies the medium to longer term policy objectives shared by the Territory and the Clubs and reflects the principles which will guide the ongoing working relationship of the parties.
-

IT IS AGREED by the parties as follows.

1. Interpretation

1.1 Definitions

The following definitions apply in this MoU, unless the context otherwise requires.

Representatives means, in relation to each party, the representatives whose names and contact details are specified in **Item 1 of Schedule 1 to this MoU**, or as notified in writing from time to time by one party to the other.

Term means the term specified in **Item 2 of Schedule 1 to this MoU**, and if extended, the initial term and the extended term.

Territory means:
(1) when used in a geographical sense, the Australian Capital Territory; and
(2) when used in any other sense, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth).

1.2 General

In this MoU, unless the context otherwise requires:

- (1) references to "Clubs" includes any employees, agents, contractors or sub-contractors of the Clubs;
- (2) references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation;
- (3) words importing a gender include the others; words in the singular number include the plural and vice versa; and where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (4) "include" is not to be construed as a word of limitation; and
- (5) headings have no effect on the interpretation of the provisions.

2. Intention

This MoU is a statement of intent and does not create legal obligations between the parties.

3. Variation

This MoU may be varied by the written agreement of all parties.

4. Term

This MOU is effective from the date signed by all parties to 30 June 2017.

5. Termination

This MoU may be terminated by the written agreement of all parties.

6. Budget Funding

6.1 2013-14 Appropriation

The parties agree that the estimate of budget funding provided to the Clubs over the 2013-14 financial year is \$7.827 million:

	Budget funding (\$m)	Half-yearly instalment (\$m)
Canberra Racing Club	5.871	2.9345
Canberra Harness Racing Club	0.978	0.48925
Canberra Greyhound Racing Club	0.978	0.48925
Total	7.827	3.913

6.2 Payment Timings

- (1) In accordance with clause 6.1 and subject to paragraph 6.2 (2) below, the parties agree that payments of budget appropriation funding will be made six-monthly in advance in July and January, upon receipt of a written request for payment.
- (2) The parties acknowledge that the provisions of the *Financial Management Act 1996*, relating to supply, do not permit the payment of a sum greater than 50% of the previous year's funding, prior to the passage of the Budget for the current year.

6.3 Indexation

The total budget funding provided to the Clubs may be subject to changes in the Consumer Price Index (CPI).

Indexation applied to funding from 2014-15 will be in accordance with the formula outlined in clause 6.5.

6.4 Allocation

The parties acknowledge that budget funding is currently being directly provided to the Clubs based on the allocation agreed by the Clubs.

The parties agree the allocation will continue to be determined by the three codes noting that in line with the Government's response to Independent Competition and Regulatory Commission's (ICRC) recommendations, allocation will be reviewed (if not done so beforehand) by the three codes and the Territory as part of the 2017-18 Budget cycle.

6.5 Future Funding

The model of budget funding suggested in the ICRC *Investigation into the ACT Racing Industry Final Report* (Report 2 of 2011, April 2011) in May 2012 is considered appropriate; however, the indexation applied to funding should be set at CPI minus 0.5 per cent from 2014-15 based on 2013-14 budget levels.

Noting the above caveats, the 2013-14 Budget Estimates show the following funding estimates for the out years to 30 June 2017:

Year	Funding
2014/2015	\$8.022m (estimate)
2015/2016	\$8.226m (estimate)
2016/2017	\$8.428m (estimate)

6.6 Goods and Services Tax (GST)

Budget funding provided to the Clubs under this MoU is not subject to GST.

7. Performance Reporting Objectives

The parties agree throughout the first year of this MoU, to work in partnership to establish a standard performance framework designed to provide assurance to the Territory on the ongoing viability, integrity, governance, accountability and efficiency of the Industry going forward.

Initial key performance indicators include:

- efficient administration, promotion and maintenance of racing activities;
- maintenance of integrity services including, but not limited to, adherence to the *Australian Rules of Racing, Local Rules of Racing, the Racing Act 1999 (ACT)* stewarding services and drug detection;
- provision of optimum quality services and facilities to encourage participation by participants and spectators;
- coverage of local and interstate race meetings through TAB agencies, quality of race meetings, stake monies and overall promotion to maximise the interest of offcourse investors;
- specific opportunities taken to increase returns from wagering on racing activities; and
- optimisation of external income streams.

8. Multi-Year Contractual Arrangements

To provide greater funding certainty to the Clubs, the Government agreed in its response to the ICRC report, to investigate the development of multi-year contractual arrangements with reporting requirements in consultation with the industry.

The Territory and Clubs agree to work together to develop these contractual arrangements throughout the first year of this MoU in readiness for implementation from the 2014-15 financial year.

9. Structure and Governance

The parties agree to participate in a detailed feasibility investigation into co-locating two or more of the three Clubs at the one location.

The parties agree to work together to complete this investigation in a timely manner.

The parties agree to continue working together to realise economies of scale in administrative arrangements between the Clubs in line with findings contained in the ICRC report. A recent example of this in practice is the administration of Race Field Information product fees.

10. Maintaining Strong Integrity

The Clubs agree to continue conducting their races and discharge their duties in line with the requirements of relevant legislation and regulations in the Territory throughout the term of this MoU.

The Clubs also agree to continue conducting their races and discharge their duties in line with the requirements of the *Australian Rules of Racing* for their respective codes throughout the term of this MoU.

11. Changes to the ACT Race Field Information Charge

The parties acknowledge the legislative changes which came into effect on 1 March 2013, which allow the Clubs to directly set and administer an appropriate race field information charge for the Industry. The Clubs agree to administer the core elements of the scheme, which became their responsibility from 1 March 2013, in accordance with the legislative requirements in the *Racing Act 1999 (ACT)* and associated regulations and in accordance with the transitional arrangements agreed to with the Territory and the ACT Gambling and Racing Commission (GRC).

From 1 July 2013, the Clubs have had full administration responsibility for the scheme within the legislative requirements in the *Racing Act 1999 (ACT)* and associated regulations. The Clubs acknowledge the specific reporting requirements placed on them under these arrangements and agree to provide the necessary information to the Territory within the timeframes required.

The Territory and GRC agree to provide support and guidance to the Clubs throughout this period when and if required.

At time of commencement of this MoU, the Canberra Harness Racing Club and the Canberra Greyhound Racing Club have agreed to appoint as their agent the Canberra Racing Club for the purposes of the scheme's administration. The Canberra Racing Club agrees to maintain an appropriate and current written authority with the Clubs in line with requirements outlined in the *Racing Act 1999 (ACT)* for the duration of the agency period.

12. Racing Appeals Tribunal

As agreed prior to the signing of this MoU, the quantum of operational costs in relation to the Racing Appeals Tribunal will be borne in the first instance by the Territory as a matter of expediency in paying members and other providers.

Where costs relating to the activities of the Racing Appeals Tribunal are to be shared, the Clubs will be invoiced based on the same split agreed for the distribution of government funding.

Any cost relating to a specific appeal matter (such as sitting fees for a tribunal member) will be borne by the Club for which the appeal relates.

13. Notices

Any notice, including any other communication, required to be given or sent to either party under this MOU must be in writing and given to the relevant Representative. A notice will be deemed to have been given:

- (1) if delivered by hand, on delivery;
- (2) if sent by prepaid mail to the last reported mailing address, on the expiration of two business days after the date on which it was sent;
- (3) if sent by facsimile, on the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address; or
- (4) if sent by electronic mail, on the other party's acknowledgment of receipt by any means.

SCHEDULE 1

Item 1. Representatives

For the Territory:

Joy Burch MLA
Minister for Racing and Gaming
ACT Government

For the Clubs:

Dr Chris Ward
Chairman
Canberra Racing Club Inc
PO Box 275
MITCHELL ACT 2911

Mr Ray Redman
Chairman
Canberra Harness Racing Club
PO Box 588
DICKSON ACT 2602

Mr Ashley Dwyer
Chairman
Canberra Greyhound Racing Club Inc
PO Box 647
FYSHWICK ACT 2609

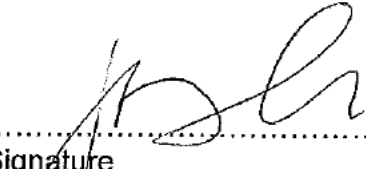
Item 2. Term

From the date of this MOU until 30 June
2017.

DATE OF THIS MoU13th December 2013.....

SIGNED for and on behalf of the
**AUSTRALIAN CAPITAL
TERRITORY:**

)
)
) Signature



JOY BURCH
.....
Print name

SIGNED by or for and on behalf of
Canberra Racing Club:

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Sch 2.2(a)(ii)



SIGNED by or for and on behalf of the
Canberra Harness Racing Club:

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Sch 2.2(a)(ii)



SIGNED by or for and on behalf of the
Canberra Greyhound Racing Club:

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Sch 2.2(a)(ii)

