



**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 2023-311

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)	30
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:** [no-reply@act.gov.au](mailto:no-reply@act.gov.au)  
**To:** [CMTEDD FOI](#)  
**Subject:** Freedom of Information request-CMTEDDFOI 2023-311  
**Date:** Wednesday, 30 August 2023 12:05:06 PM

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**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. [Learn why this is important](#)

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:

A large grey rectangular box redacting the contact information fields.

### 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):

- I am seeking all correspondence between the ACT Chief Minister and Attorney General and the head of the Inquiry into the ACT's Criminal Justice System, Walter Sofronoff, in relation to the leaking of his final report to the media. - I am also seeking any correspondence between the head of the ACT's Public Service, Kathy Leigh, and the ACT Chief Minister and Attorney General about the leaking of material by Mr Sofronoff to journalists.

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

Thank you.  
Freedom of Information Coordinator



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDDFOI 2023-311

## 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 30 August 2023, in which you sought access to Board of Inquiry – Criminal Justice System’s records.

Specifically, you are seeking:

*I am seeking all correspondence between the ACT Chief Minister and Attorney General and the head of the Inquiry into the ACT’s Criminal Justice System, Walter Sofronoff, in relation to the leaking of his final report to the media. - I am also seeking any correspondence between the head of the ACT’s Public Service, Kathy Leigh, and the ACT Chief Minister and Attorney General about the leaking of material by Mr Sofronoff to journalists.*

### 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 12 October 2023.

### Decision on access

Searches were completed for relevant documents and three additional documents were identified that fall within the scope of your request, not already available to you.

I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents and the documents released to you are provided as **Attachment B** to this letter.

I have decided to grant access in full to two documents relevant to your request. I have decided grant partial access to one document as I consider it to contain:

- contrary to the public interest information under schedule 1; or
- information that 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 decisions is below.

### **Statement of Reasons**

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

- the Act;
- *Inquiries Act 1991*
- *The Human Rights Act 2004*;
- the *Information Privacy Act 2014*.
- *Hogan v Hinch* [2011] 243 CLR 506;
- Your requested scope of information;
- *Non-publication order 26 – Board of Inquiry – Criminal Justice System*;
- ACT Ombudsman’s Guidelines - Freedom of Information; and
- CMTEDD Disclosure Log 2023, specifically FOIs CMTEDDFOI 2023-287, CMTEDD2023-283 and CMTEDD2023-289.

*Government information* is defined in section 14 of the Act to include information held by an agency or Minister. Under section 14(b) of the Act it does not include information relating to a Minister’s personal or political activities or information created or received by a Minister in the their capacity as a member of the Legislative Assembly. ‘Held’ is also defined in section 14 to be information contained in a record held by the agency or Minister or contained in a record that the agency or Minister is entitled to access.

As your requested information relates to the Board of Inquiry, this has been interpreted to refer to the Board of Inquiry – Criminal Justice System, under the *Inquiries Act 1991*. The Board of Inquiry is an agency under section 15(1)(k) of the Act. Accordingly, I find the Act applies to Board of Inquiry documents.

### **Exemption claimed**

As a decision maker, I am required to determine whether the information within scope is in the public interest to release. To make this decision, I am required to:

- assess whether the information would be contrary to public interest to disclose as per Schedule 1 of the Act, and
- perform the public interest test as set out in section 17 of the Act by balancing the factors favouring disclosure and factors favouring nondisclosure in Schedule 2.

I have determined that none of the information within the scope of your application contains information that is taken to be contrary to the public interest to disclose under Schedule 1 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 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, section 2.1 of the Act:

- (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;*
  - (iii) inform the community of the government’s operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community;*
  - (viii) reveal the reason for a government decision and any background or contextual information that informed the decision.*

Having considered the factors identified as relevant in this matter, I consider that release of the information within the scope of the request may promote open discussion of public affairs and enhance the government’s accountability. The release of the documents identified will provide contextual information to the public regarding Board of Inquiry - Criminal Justice System’s communications with the media and the public.

I am satisfied that these factors favouring disclosure carry considerable weight. I identified the following factor for non-release.

### Factors favouring nondisclosure in the public interest under schedule 2, Section 2.2 of the Act:

- (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, is a significant factor. Release of information concerning individuals working

within the ACT Public Service is generally not considered to prejudice the protection of an individual's right to privacy. However, where mobile phone numbers may be used for home and work purposes, this information is redacted, as it could or would reasonably be expected to prejudice an individual's right to privacy under the *Human Rights Act 2004*.

Document 3 contains information that I consider, on balance, to be contrary to the public interest to disclose under the test set out in section 17 of the Act.

### **Information Already Available to the Applicant**

On 22 September 2023 you were provided with a Notice of Decision for access application CMTEDDFOI 2023-287, which was published on the CMTEDD 2023 Disclosure Log under reference number CMTEDDFOI 2023-287, available here:

[https://www.cmtedd.act.gov.au/\\_data/assets/pdf\\_file/0011/2298494/2023-287.pdf](https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0011/2298494/2023-287.pdf)

Material within the scope of your requested information overlaps with material provided to you in response to that application. Accordingly, I refuse to deal with part of your application under section 43(1)(d) of the Act where the information is already available to you under section 45, sub-sections (a) and (f) and of the Act.

The CMTEDD Disclosure Log 2023 is available here:

<https://www.cmtedd.act.gov.au/functions/foi/disclosure-log-2023>.

Additional documents that may be considered within scope of your request have now been published on the CMTEDD 2023 disclosure log and are available here:

[https://www.cmtedd.act.gov.au/\\_data/assets/pdf\\_file/0011/2291384/2023-283-and-290.pdf](https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0011/2291384/2023-283-and-290.pdf)

These include a letter attachment from the Chief Minister and Attorney General dated 3 August 2023 to Mr Sofronoff and his letter in response to that correspondence, emailed on his behalf on 3 August 2023. Accordingly, I refuse to deal with parts of the request for information where material is publicly available under section 43(1)(d) and section 45(a) of the Act.

Therefore, I refuse to deal with part of your application under sections 43(1)(d) and 45(a) and 45(f) of the Act where information is publicly available and or provided to you.

Having applied the test outlined in section 17 of the Act and deciding that release of personal information contained in the documents 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.

### **Charges**

Processing charges are not applicable for this request because the documents being released to you are less than 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 in the CMTEDD disclosure log after 17 October 2023. 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 on the 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 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  
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 the CMTEDD FOI team by telephone on 6207 7754 or email [CMTEDDFOI@act.gov.au](mailto:CMTEDDFOI@act.gov.au).

Yours sincerely,



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

12 October 2023



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

## FREEDOM OF INFORMATION REQUEST SCHEDULE

**WHAT ARE THE PARAMETERS OF THE REQUEST**

Reference NO.

*"I am seeking all correspondence between the ACT Chief Minister and Attorney General and the head of the Inquiry into the ACT's Criminal Justice System, Walter Sofronoff, in relation to the leaking of his final report to the media. - I am also seeking any correspondence between the head of the ACT's Public Service, Kathy Leigh, and the ACT Chief Minister and Attorney General about the leaking of material by Mr Sofronoff to journalists."*

CMTEDDFOI 2023-311

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1	Email – Subject: "Correspondence from the Chief Minister and Minister Rattenbury" –Note: attachment not provided	03/08/2023	Full		Yes
2	2	Email Chain: Subject: "Media Statement"	03/08/2023	Full		Yes
3	3	Email – "Correspondence from the Chief Minister and Minister Rattenbury to Mr Sofronoff " – Note: attachment not provided	03/08/2023	Partial	Sch 2 s 2.2 (a)(ii)	Yes
<b>Total No of Docs</b>						
3						



**From:** [BARR Reception](#)  
**To:** [Walter Sofronoff](#)  
**Cc:** [RATTENBURY](#)  
**Subject:** Correspondence from the Chief Minister and Minister Rattenbury  
**Date:** Thursday, 3 August 2023 11:44:00 AM  
**Attachments:** [image001.png](#)  
[Letter - Walter Sofronoff KC - Board of Inquiry - 3 August 2023.pdf](#)  
**Importance:** High

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Good morning

Please find the attached correspondence from the Chief Minister and Minister Rattenbury.

Kind regards

Rhys

**Rhys Thompson**

**Office Manager | Office of Andrew Barr MLA**

Chief Minister

Treasurer

Minister for Climate Action

Minister for Economic Development

Minister for Tourism

Member for Kurrajong



**Kramarzewski, Lisa**

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**From:** Banks, HelenP  
**Sent:** Thursday, 3 August 2023 7:37 PM  
**To:** Walter Sofronoff  
**Subject:** FW: Media Statement

OFFICIAL

Dear Walter

Please find **below** confirmed media release from the ACT Government.

Helen

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**From:** Croke, Leesa <Leesa.Croke@act.gov.au>  
**Sent:** Thursday, 3 August 2023 6:46 PM  
**To:** Banks, HelenP <HelenP.Banks@inquiry.act.gov.au>  
**Subject:** Media Statement

OFFICIAL

Hi Helen

The below was provided to media this evening.

*The ACT Government is disappointed that the Sofronoff Board of Inquiry Report has been released to select media outlets. The release of information about the Inquiry outside of the government procedures has affected the Inquiry process and harmed people involved. It further contributes to the ongoing public discussion of the matter that has been very difficult for all of the individuals impacted.*

*The ACT is confident the report, either in draft or final form, was not obtained by media from Government. The Government has sought advice from the Board of Inquiry, which has confirmed it provided a copy to some media outlets under an embargo. This release was not authorised by or communicated to Government prior to this release.*

*The Government has commenced the Cabinet process to enable proper consideration of the Report's findings and recommendations. The individuals identified in the Report and affected by its findings must be afforded procedural fairness, including the Director of Public Prosecutions (DPP). The ACT Attorney-General is in contact with the DPP in relation to the findings relating to him.*

*Following this, the ACT Government is preparing to release the report formally along with the Government's interim response to the recommendations early next week.*

Leesa

**Power, Leanne**

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**From:** Hodshon, Gerard on behalf of CMCD DLO  
**Sent:** Thursday, 3 August 2023 12:11 PM  
**To:** Leigh, Kathy; Power, Leanne  
**Cc:** Croke, Leesa; Tyler, Sam; CMTEDD MLO  
**Subject:** ! Correspondence from the Chief Minister and Minister Rattenbury to Mr Sofronoff  
**Attachments:** Letter - Walter Sofronoff KC - Board of Inquiry - 3 August 2023.pdf

**Importance:** High

**Categories:** KL

**OFFICIAL: Sensitive**

Dear Kathy and team,

For your information only, please find attached correspondence from the Chief Minister and Attorney-General to Mr Sofronoff.

MLOs - Can the attached please be saved to TRIM for noting only. Please allocate to CMTEDD Executive. No workflow is required, no further action.

Please contact me with any comments.

Kind regards,  
Gez

**Gerard Hodshon (Gez) | CMTEDD Directorate Liaison Officer**

Office of the Chief Minister | ACT Government

Ph: [Sch 2.2\(a\)\(ii\)](#) | [CMCDDLLO@act.gov.au](mailto:CMCDDLLO@act.gov.au) | MS Teams

ACT Legislative Assembly | GPO Box 158 CANBERRA ACT 2601 | [www.act.gov.au](http://www.act.gov.au)