

# THIRD PARTY CONSULTATION



## CMTEDD FOI FACTSHEET

### The ACT Freedom of Information Act 2016 (the FOI Act)

The FOI Act gives a legal right to:

- > access government information unless access to the information would, on balance, be contrary to the public interest;
- > request information concerning you to be changed if it is incomplete, out-of-date, incorrect or misleading; and
- > appeal against a decision to restrict access to a document or refuse to amend/annotate a personal record.

### What is Government Information?

Government Information is information held by an agency or Minister, excluding information relating to a Minister's personal or political activities or created or received by a Minister in the Minister's capacity as a Member of the Legislative Assembly.

Government Information can include papers and other materials on which there is writing and any other material from which sounds, images or writing are capable of being reproduced. This includes emails and other electronic records, texts, voice mail, maps, diagrams, plans, photographs, film, sound and video recordings, notebooks and diaries.

By its nature Government Information can include details about other persons or organisations, including other governments. This information is considered third party information for the purposes of the act.

### Is third party information releasable under FOI?

Section 30 of the *Freedom of Information Act 2016* allows for an FOI request to be made for any information defined as Government Information. The Agency's Information Officer will review all information within the scope of the request and make decisions on whether it should be released.

Where Government Information includes third party information and the Information Officer is of the opinion that the disclosure of the information *may reasonably be expected to be of concern to the third party*, the Information Officer must take reasonable steps to consult with the relevant third party.

Note the Act explicitly excludes *the Territory* from being considered a third party (section 38(1)(b)). The Territory includes other ACT government directorates or agencies and the staff of these entities to the extent the information relates to them carrying out their duties.

The disclosure of third party information may reasonably be expected to be of concern to the third party when:

- > it is personal information about an individual;
- > the disclosure could reasonably be expected to affect a person's rights under the *Human Rights Act 2004*;
- > the information concerns the affairs of another government or an agency of another government; or
- > the information concerns the trade secrets, business affairs or research of a relevant third party.

## Can the third party refuse to have the information released?

The Directorate will write to any third parties where it has been identified that the release of the information may reasonably be expected to be of concern. The correspondence will include details of the information requested, copies of documents relating to them, with any information not relating to them redacted, and information on what we require from them.

Details of the applicant will not be released to the third party.

The third party will be given 15 working days to either provide their agreement to the release of the information or provide their views as to why it would be contrary to the public interest to release the information.

## What if the Third Party is a deceased person?

Where information is identified that may reasonably be of concern to a third party and that person is known to be deceased then an eligible family member of the third party is consulted. The eligible family member would usually be the domestic partner of the deceased person, where they are not reasonably available, an adult child of the deceased person, if they are not available an adult sibling of the deceased person and if they are not available the next nearest adult relative who is reasonably available.

If the deceased person is known to be an Aboriginal or Torres Strait Islander and the domestic partner, adult child or adult sibling is not available then the Information Officer will consult a person who is the appropriate person according to the tradition or custom of the Aboriginal or Torres Strait Islander community to which the deceased person belonged.

## Does the Information Officer have to consider third parties views?

The Information Officer will consider any views of third parties, however they may decide to release information contrary to the view of the third party.

## Can a third party appeal the Information Officer's decision?

Where the Information Officer has decided to release information against the views of a third party, the Information Officer will write to the affected third party letting them know of the decision to release the information and providing them with an opportunity to appeal the decision. While this is happening the applicant will be given a copy of the decision but not the information requested.

The third party then has 20 working days during which they can:

- > give written notice that they don't intend to make an application for review; or
- > appeal to the Ombudsman for a review of the decision.

If at the end of the 20 working days neither has happened then the documents will be released to the applicant. If the third party has appealed to the Ombudsman then the documents will be withheld from the applicant until the Ombudsman has finished their review.

## Consultation with other ACT Government Entities

The Act only requires CMTEDD to consult with third parties that are not Territory entities. However as good practice the Information Access Team will inform FOI Teams in other ACT Government Directorates where it is making a decision on information relating to that Directorate.

## Further Information

Further information on this factsheet can be obtained from the Information Officer, Information Access Team.

Chief Minister, Treasury and Economic Development Directorate

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