



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 2021-346

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)	18 days
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: 2021-346 Freedom of Information Application - CMTEDDFOI 2021-257
Date: Monday, 6 December 2021 10:08:45 AM

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.

Dear sir/madam,


[REDACTED] seeks access to the following information under s7 of the *Freedom of Information Act 2016*:

- 1) Any records or documents produced or held by CMTEDD in relation to FOI application CMTEDDFOI 2021-257, including but not limited to:
 - a. Correspondence between officers of the SLJC and CMTEDD in relation to the application
 - b. Correspondence between officers of CMTEDD and the ACT Government Solicitor in relation to the application.

In relation to s7 of the *Freedom of Information Act 2016*, [REDACTED] considers that factors favouring the disclosure of the information include:


- 1) As they comprise decisions taken by a government agency, release of this information would enhance the government's accountability in line with Schedule 2, 2.1(a)(i);
- 2) As they comprise decisions taken under a piece of legislation that has been the subject of ongoing debate, release of this information would enhance the public debate in line with Schedule 2, 2.1(a)(II);
- 3) As they comprise decisions and processes taken to arrive at decisions under a piece of legislation applying to dealings of the government with members of the community, release of this information would enhance the public understanding of government processes in line with Schedule 2, 2.1(a)(iii);
- 4) As they comprise decisions and processes taken to arrive at decisions under a piece of legislation applying to the disclosure obligations of the government, their release would enhance effective oversight in line with Schedule 2, 2.1(a)(iv);
- 5) As they comprise decisions and processes taken to arrive at decisions which have been the subject of ongoing concern around the administration of a government agency, their release would allow or assist inquiry into possible deficiencies in the conduct or administration of said agency in line with Schedule 2, 2.1(a)(v);
- 6) As they comprise decisions and processes taken to arrive at decisions which are arrived at on a case-by-case basis with little ability to compare outcomes, documents allowing a comparison between cases would advance the fair treatment of individuals and other entities in line with Schedule 2, 2.1(a)(v);
- 7) This information would reveal the reason for one or more government decisions and any background or contextual information that informed the decision in line with Schedule 2, 2.1(a)(viii);

Contact details to respond to this request are:




If there are any queries or concerns about this request, or any way I can assist further, please give me call.

Yours sincerely,



I acknowledge the traditional Aboriginal owners of country throughout the ACT and pay my respect to them, their culture and their Elders past, present and future.

Disclaimer: The information in this e-mail may be confidential and/or legally privileged. It is intended solely for the addressee. Access to this e-mail by anyone else is unauthorised. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful.



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ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDDFOI 2021-346



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 6 December 2021, in which you sought access to:

- 1) *Any records or documents produced or held by CMTEDD in relation to FOI application CMTEDDDFOI 2021-257, including but not limited to:*
 - a. *Correspondence between officers of the SLJC and CMTEDD in relation to the application*
 - b. *Correspondence between officers of CMTEDD and the ACT Government Solicitor in relation to the application.*

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 6 January 2022.

Decision on access

In relation to point (a) of your request, I have decided to refuse to deal with part of your application under section 43(1)(d) and section 45(c) of the Act because some of the information you are seeking is publicly available.

Section 43(1)(d) states:

(1) A respondent may refuse to deal with an access application wholly or in part only if—

(d) the government information is already available to the applicant (see section 45).

Section 45(c) states:

*For section 43(1)(d), government information is already available to the applicant only if the information—
(c) is available as part of a public register established under a territory law.*

The decision relating to CMTEDDFOI2021-257 is available at <https://www.cmtedd.act.gov.au/functions/foi>

Searches were completed for relevant documents and five documents were identified that fall within the scope of your request.

Of the remaining information in relation to point (a) I have decided to grant access in full to three documents and partially release two documents.

Regarding point (b) of your request, I can confirm legal advice was not sought in relation to the application.

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 *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 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 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 (Schedule 2 section 2.1)

(a) disclosure of the information could reasonably be expected to do any of the following:

(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 the documents identified contain information relating to FOI application CMTEDDFOI2021-257 which could reveal the reason for the decision and provide any background or contextual information that is or has informed a government decision

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 any other right under the Human Rights Act 2004.

However, when considering this finding against the factors favouring nondisclosure, I am satisfied that the protection of an individual's right to privacy is a significant factor. The access applicant of FOI application CMTEDDFOI2021-257 have provided their personal information for the purposes of corresponding with the ACT Government. This information includes names and identifying information that are not publicly available. This, in my opinion, outweighs the benefit which may be derived from releasing the personal information of this individual. These individuals are entitled to expect that their non-public personal information that they have supplied as part of this process will be dealt with in a manner that protects their privacy.

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

Pursuant to Freedom of Information (Fees) Determination 2018 processing charges are applicable for this request because the total number of pages to be released to you exceeds the charging threshold of 50 pages. However, the charges have been waived in accordance with section 107(2)(b) of the Act.

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 January 2022



FREEDOM OF INFORMATION REQUEST SCHEDULE

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-34	Email chain (FOI Document Search)	Various	Partial release	Sch 2 s2.2 (a)(ii) Section 45(a)	Yes
2	35-39	Emails - FOI document search	Various	Full release	N/A	Yes
3	40-46	Email/attachment	3 Nov 2021	Partial release	Sch 2 s2.2 (a)(ii)	Yes
4	47-50	Email – FOI document search – Draft Decision	3 Nov 2021	Full release	N/A	Yes
5	51-54	Email – FOI document search – Draft Decision	4 Nov 2021	Full release	N/A	Yes

From: "James, Jordan" <Jordan.James@act.gov.au>
Sent: 11/10/2021 3:25 AM
To: "CMTEDD FOI" <CMTEDDFOI@act.gov.au>
Cc: "Robertson, David" <David.Robertson@act.gov.au>; "Stuart, Katharine" <Katharine.Stuart@act.gov.au>
Subject: FW: CMTEDDFOI2021-257 - FOI Document Search - Due 8 October 2021
Attachments: Freedom of Information request.pdf, INV00017_BMD Consturctions Pty Ltd_Notice of Decision_Conditions.pdf, INV00020_GLO Electrical & Data Services Pty Ltd_Decision_Conditions.pdf, INV00058_Notice of Decision_Higgins Coatings Pty Ltd_00204.pdf, INV00065_Notice of Decision_Olympic Fencing (NSW) Pty Ltd_00093.pdf, INV00077_Notice of Decision_Belford Building & Construction Pty Ltd.pdf, 20210326 - Notice of Decision_sanctions imposed FINAL.pdf, INV00016_000344_Able Landscaping_Notice of Decision.pdf

OFFICIAL

Good Afternoon,

Further to the information provided below.

Can you please ensure that CMTEDDFOI2021-257 is consulted with David Robertson and Jordan James prior to being progressed for finalisation.

This FOI has potential impact on a number of matters, beyond the scope of FOI, that are linked and we need to ensure we are approaching matters in a consistent manner.

Regards

Jordan

Jordan James | Director Compliance

jordan.james@act.gov.au | Phone 02 6207 4484

Secure Local Jobs Code | Chief Minister, Treasury and Economic Development Directorate | **ACT Government**

GPO Box 158 CANBERRA ACT 2601 | www.act.gov.au



I acknowledge the traditional custodians of the ACT the Ngunnawal people, and their continuing connection to land and community. I pay my respect to them, and to the Elders both past and present.

From: James, Jordan

Sent: Monday, 11 October 2021 11:36 AM

To: CMTEDD FOI <CMTEDDFOI@act.gov.au>

Cc: Prowse, Fay <Fay.Prowse@act.gov.au>; Robertson, David <David.Robertson@act.gov.au>; West, Damian <Damian.West@act.gov.au>

Subject: FW: CMTEDDFOI2021-257 - FOI Document Search - Due 8 October 2021

OFFICIAL

Good Morning,

Please find attached and below documents and information in support of CMTEDDFOI2021-257.

The information has been reviewed and cleared through David Robertson – Registrar and Executive Branch Manager – Secure Local Jobs Code Branch.

Should you have any further queries please feel free to contact me. I would appreciate if I can be copied into correspondence for final release when it is sent to Damian West and Fay Prowse.

ACCESS REQUEST CHECKLIST FOR BUSINESS AREAS

Action Required	Action completed? Yes/No	Additional Information
Comprehensive search of all relevant databases and in accordance with the guidance* set out below.	Yes	NIL
Any information identified in the search completed above that is deemed within the scope of the request is provided to the Information Access Team.	Yes	See attachments. Note Certificate No. 00090 does not align to the entity name provided.
Details of any other business area or external parties who may hold information in respect of this request provided.	Yes	SLJC does not believe any other business area would hold information relating to this request. Each of the entities listed would hold a copy of the notice.
Information about any external parties who may need to be consulted about the release of any of the information.	Yes	Each of the parties listed may need to be consulted as there is commercially sensitive information contained in the letters

Concerns about the release of the identified information have been provided. <i>Note – If no concerns or sensitivities are listed, the Information Access Team will accept the information on its face value.</i>	Yes	Information contained in the Notice of Decisions includes commercial in confidence information, information that may impact future business for the entity and information that may impact future SLJC investigations by disclosing processes and procedures related to the compliance and enforcement of the code.
Relevant Executive Branch or Executive Group Manager has been notified of the access request.	Yes	David Robertson - SLJC Registrar and EBM.

*All electronic and non-electronic record keeping databases, systems and files should be searched. Information can, but is not limited to, the following, in electronic or non-electronic forms and in draft or final forms:

Notes and correspondence; records of meetings and telephone conversations; files; emails; Cisco Jabber files; Teams Message logs; media releases; minutes; briefings; meeting minutes; submissions; invitations; tenders; external consultation documentation; contracts; notebooks; diaries; photos; sound and visual recordings; maps; diagrams; drawings; and plans.

Regards

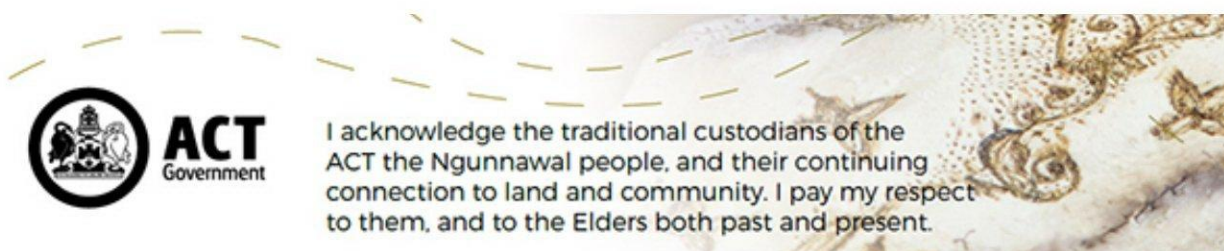
Jordan

Jordan James | Director Compliance

jordan.james@act.gov.au | Phone 02 6207 4484

Secure Local Jobs Code | Chief Minister, Treasury and Economic Development Directorate | **ACT Government**

GPO Box 158 CANBERRA ACT 2601 | www.act.gov.au



From: West, Damian <Damian.West@act.gov.au>

Sent: Thursday, 30 September 2021 2:48 PM

To: James, Jordan <Jordan.James@act.gov.au>

Cc: Prowse, Fay <Fay.Prowse@act.gov.au>

Subject: FW: CMTEDDFOI2021-257 - FOI Document Search - Due 8 October 2021

OFFICIAL

FYI and action.

From: Yule, Kelly-Jane <Kelly-Jane.Yule@act.gov.au> **On Behalf Of** CMTEDD FOI

Sent: Thursday, 30 September 2021 1:15 PM

To: West, Damian <Damian.West@act.gov.au>; Prowse, Fay <Fay.Prowse@act.gov.au>
Subject: CMTEDDFOI2021-257 - FOI Document Search - Due 8 October 2021

OFFICIAL

Hi Damian/Fay

The Information Access Team has received the attached freedom of information request for all information in the possession of CMTEDD in relation to the Notice of Decision relating to imposition of infringement notices. Specifically the request sought:

- **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.**

Next Steps:

The Information Access Team would be grateful if you could undertake the necessary searches to locate any documents within the scope of the request. The Information Access Team requires **only information held by your area which fall within the scope of the request.**

To assist you in this process, please refer to the Access Request Checklist for Business Areas (below). It would be appreciated if you could **complete and return** to checklist to the Information Access Team.

If no documents are located within the scope of the request within your business area, please provide a "nil" return.

Due to statutory timeframes under the *Freedom of Information Act 2016* the Information Access Team requires your response by **8 October 2021.**

I will be the Information Access Team point of contact for this request. If you require any further information, please do not hesitate to contact me.

Please let me know if this email also needs to be forwarded to other areas.

ACCESS REQUEST CHECKLIST FOR BUSINESS AREAS

Action Required	Action completed? Yes/No	Additional Information
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Details of any other business area or external parties who may hold information in respect of this request provided.		
Information about any external		

parties who may need to be consulted about the release of any of the information.		
<p>Concerns about the release of the identified information have been provided.</p> <p><i>Note – If no concerns or sensitivities are listed, the Information Access Team will accept the information on its face value.</i></p>		
Relevant Executive Branch or Executive Group Manager has been notified of the access request.		
<p>*All electronic and non-electronic record keeping databases, systems and files should be searched. Information can, but is not limited to, the following, in electronic or non-electronic forms and in draft or final forms:</p> <p>Notes and correspondence; records of meetings and telephone conversations; files; emails; Cisco Jabber files; Teams Message logs; media releases; minutes; briefings; meeting minutes; submissions; invitations; tenders; external consultation documentation; contracts; notebooks; diaries; photos; sound and visual recordings; maps; diagrams; drawings; and plans.</p>		

Thanks - Kel

From: 2.2(a)(ii)
To: [CMTEDD FOI](#)
Subject: Freedom of Information request
Date: Wednesday, 29 September 2021 12:41:34 PM

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:

2.2(a)(ii)

A large grey rectangular box redacting the contact details provided in the form.

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

From: "CMTEDD FOI"
Sent: 11/10/2021 3:38 AM
To: "James, Jordan" <Jordan.James@act.gov.au>
Cc: "Robertson, David" <David.Robertson@act.gov.au>; "Stuart, Katharine" <Katharine.Stuart@act.gov.au>
Subject: RE: CMTEDDFOI2021-257 - FOI Document Search - Due 8 October 2021

OFFICIAL

Thanks James. I will definitely be in touch. Just working a few other big ones I have at the moment but hope to get to this one in the next couple of days.

Kel

From: James, Jordan <Jordan.James@act.gov.au>
Sent: Monday, 11 October 2021 2:25 PM
To: CMTEDD FOI <CMTEDDFOI@act.gov.au>
Cc: Robertson, David <David.Robertson@act.gov.au>; Stuart, Katharine <Katharine.Stuart@act.gov.au>
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Sent: Thursday, 30 September 2021 2:48 PM

To: James, Jordan <Jordan.James@act.gov.au>

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From: Yule, Kelly-Jane <Kelly-Jane.Yule@act.gov.au> **On Behalf Of** CMTEDD FOI
Sent: Thursday, 30 September 2021 1:15 PM
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Next Steps:

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Information Access Team.		
Details of any other business area or external parties who may hold information in respect of this request provided.		
Information about any external parties who may need to be consulted about the release of any of the information.		
<p>Concerns about the release of the identified information have been provided.</p> <p><i>Note – If no concerns or sensitivities are listed, the Information Access Team will accept the information on its face value.</i></p>		
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Thanks - Kel

From: "CMTEDD FOI"
Sent: 03/11/2021 9:56 PM
To: "Prowse, Fay" <Fay.Prowse@act.gov.au>; "James, Jordan" <Jordan.James@act.gov.au>
Cc: "West, Damian" <Damian.West@act.gov.au>
Subject: RE: CMTEDDFOI2021-257 - FOI Document Search - Due 8 October 2021 - Draft Decision
Attachments: Decision letter to applicant.docx

OFFICIAL

Hi Fay/James

The attached draft decision is scheduled to be sent to the Information Officer for signing today. Can you advise if you have any final views. I note no information is being released.

If you could get back to me by 12:00PM today that would be great.

Thanks

Kel

From: Prowse, Fay <Fay.Prowse@act.gov.au>
Sent: Monday, 11 October 2021 10:49 AM
To: CMTEDD FOI <CMTEDDFOI@act.gov.au>
Cc: West, Damian <Damian.West@act.gov.au>
Subject: RE: CMTEDDFOI2021-257 - FOI Document Search - Due 8 October 2021

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The response should be with you shortly from Jordan James

Fay Prowse | Executive Officer to Deputy-Director General – Dr Damian West

Workforce Capability and Governance, Workplace Safety and Industrial Relations | Phone: 02 6205 0358 |
Email: Fay.Prowse@act.gov.au;

Chief Minister, Treasury and Economic Development Directorate (CMTEDD) | ACT Government

Level 5, 220 London Circuit, Canberra City ACT 2601 | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

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Can I get an update on the progress of the document search for this request please.

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Sent: Thursday, 30 September 2021 1:14 PM

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Subject: CMTEDDFOI2021-257 - FOI Document Search - Due 8 October 2021

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Hi Damian/Fay

The Information Access Team has received the attached freedom of information request for all information in the possession of CMTEDD in relation to the Notice of Decision relating to imposition of infringement notices. Specifically the request sought:

- **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.**

Next Steps:

The Information Access Team would be grateful if you could undertake the necessary searches to locate any documents within the scope of the request. The Information Access Team requires **only information held by your area which fall within the scope of the request.**

To assist you in this process, please refer to the Access Request Checklist for Business Areas (below). It would be appreciated if you could **complete and return** to checklist to the Information Access Team.

If no documents are located within the scope of the request within your business area, please provide a "nil" return.

Due to statutory timeframes under the *Freedom of Information Act 2016* the Information Access Team requires your response by **8 October 2021.**

I will be the Information Access Team point of contact for this request. If you require any further information, please do not hesitate to contact me.

Please let me know if this email also needs to be forwarded to other areas.

ACCESS REQUEST CHECKLIST FOR BUSINESS AREAS

Action Required	Action completed? Yes/No	Additional Information
Comprehensive search of all relevant databases and in accordance with the guidance* set out below.		
Any information identified in the search completed above that is deemed within the scope of the request is provided to the Information Access Team.		
Details of any other business area or external parties who may hold information in respect of this request provided.		
Information about any external		

parties who may need to be consulted about the release of any of the information.		
<p>Concerns about the release of the identified information have been provided.</p> <p><i>Note – If no concerns or sensitivities are listed, the Information Access Team will accept the information on its face value.</i></p>		
Relevant Executive Branch or Executive Group Manager has been notified of the access request.		
<p>*All electronic and non-electronic record keeping databases, systems and files should be searched. Information can, but is not limited to, the following, in electronic or non-electronic forms and in draft or final forms:</p> <p>Notes and correspondence; records of meetings and telephone conversations; files; emails; Cisco Jabber files; Teams Message logs; media releases; minutes; briefings; meeting minutes; submissions; invitations; tenders; external consultation documentation; contracts; notebooks; diaries; photos; sound and visual recordings; maps; diagrams; drawings; and plans.</p>		

Thanks - Kel




ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2021-257

2.2(a)(ii)



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 document that falls 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 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 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 and whilst the FOI 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 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* 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 by disclosing the investigation information contained in the material could have unreasonable adverse effect on a business by disclosing the findings of the investigation of each business. I am satisfied that the release of information about the business' 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 an 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/code-certified-entities-procurement)).

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, my decision and documents 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

From: "James, Jordan" <Jordan.James@act.gov.au>
Sent: 03/11/2021 9:59 PM
To: "CMTEDD FOI" <CMTEDDFOI@act.gov.au>
Subject: RE: CMTEDDFOI2021-257 - FOI Document Search - Due 8 October 2021 - Draft Decision

OFFICIAL

Hi Kelly,

Thanks I did see your email the other day I was just seeking input from my seniors.

I will follow up this morning and push to get a cleared response back to you asap.

Regards

Jordan

Jordan James | Director Compliance

jordan.james@act.gov.au | Phone 02 6207 4484

Secure Local Jobs Code | Chief Minister, Treasury and Economic Development Directorate | **ACT Government**

GPO Box 158 CANBERRA ACT 2601 | www.act.gov.au



I acknowledge the traditional custodians of the ACT the Ngunnawal people, and their continuing connection to land and community. I pay my respect to them, and to the Elders both past and present.

From: Yule, Kelly-Jane <Kelly-Jane.Yule@act.gov.au> **On Behalf Of** CMTEDD FOI
Sent: Thursday, 4 November 2021 8:56 AM
To: Prowse, Fay <Fay.Prowse@act.gov.au>; James, Jordan <Jordan.James@act.gov.au>
Cc: West, Damian <Damian.West@act.gov.au>
Subject: RE: CMTEDDFOI2021-257 - FOI Document Search - Due 8 October 2021 - Draft Decision

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Cc: "West, Damian" <Damian.West@act.gov.au>; "Campbell, JenA" <JenA.Campbell@act.gov.au>
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OFFICIAL

Hi Kelly,

Thank you. No further comments from our perspective.

We note the draft decision not to release any information.

Regards

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