



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 2023-010

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)	35
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](#); [REDACTED]
Subject: Freedom of Information FOI Act request
Date: Thursday, 19 January 2023 3:44:29 PM

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To Whom It May Concern,

I am writing on behalf of [REDACTED], we are a sub-contractor who currently undertaking construction works on the project below

Project Name: [REDACTED]
Principal Contractor: [REDACTED]
Project location: [REDACTED]

I understand there have been prohibition notices issued to the principal contractor by Worksafe ACT. Due to our involvement on worksite and under FOI Act, I would like to request access to the issued notices.

Please feel free to contact the undersigned should you require further information.

Regards,

[REDACTED]

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ACT
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Our ref: CMTEDD FOI 2023-010

[Redacted]

[Redacted]

Dear [Redacted]

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 **19 January 2023**, in which you sought access to:

“Project Name: [Redacted]

Principal Contractor: [Redacted]

Project location: [Redacted]

I understand there have been prohibition notices issued to the principal contractor by Worksafe ACT. Due to our involvement on worksite and under FOI Act, I would like to request access to the issued notices.”

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 of section 40 of the Act, CMTEDD was required to provide a decision on your access application by 17 February 2023. Following third party consultation, the due date for a decision is now due to you by **10 March 2023**.

Decision on access

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

I have included the schedule of the relevant document. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents. I have decided to grant full access to all relevant documents.

Material considered

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

- the Act
- *Work Health and Safety Act 2011*
- the content of the documents that fall within the scope of your request.

Public Interest Test under schedule 2 of the Act

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 factor is relevant to determine if release of the information contained within these documents is within the ‘public interest’.

Factors favouring disclosure (Schedule 2.1)

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

- (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.

The release of this document will provide contextual information about the regulatory action undertaken by Worksafe in relation to a particular matter. I note that Prohibition Notices are required to be displayed on site as per section 210 of the *Work Health and Safety Act 2011*. I did not identify any factors favouring non-disclosure.

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 on the CMTEDD disclosure log after **16 March 2023**. You may view CMTEDD disclosure log at <https://www.cmtedd.act.gov.au/functions/foi>.

Ombudsman Review

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 02 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely,



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

10 March 2023



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST		Reference NO.
Project Name:	[REDACTED]	CMTEDD FOI 2023-010
Principal Contractor:	[REDACTED]	
Project location:	[REDACTED]	
I understand there have been prohibition notices issued to the principal contractor by Worksafe ACT. Due to our involvement on worksite and under FOI Act, I would like to request access to the issued notices		

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-4	Prohibition Notice - 18/01/2023	2023	Full	N/A	Yes
Total No of Docs						
1						

PROHIBITION NOTICE

This is a Prohibition Notice issued under section 195 of the Work Health and Safety Act 2011

Information

Notice number N-000006861

Issued By: Tamara Teer ID number: P37224

To whom this notice is issued

Name of registered company: [REDACTED]

Business or trading name: [REDACTED]

ABN: 13163237509 ACN [REDACTED]

Registered Address [REDACTED]

Method of service: Email

Served on:

Date of issue: 18/01/2023

Description

The provision that the inspector believes is being, or is likely to be, contravened by the activity (s196(1)(c)) is **WHS Acts** Section number - **19**

You are prohibited from carrying on the following activity, or the carrying on of the activity in a specified way:

Cease use of all temporary switchboards until such time as they can be inspected by a competent person.

until the inspector is satisfied that the matters that give or will give rise to the risk have been remedied (s195(2)). The inspector reasonably believes that grounds for the issue of this notice exist (s195(1)), i.e. (a) an activity is occurring at a workplace that involves, or will involve, a serious risk to the health or safety of a person emanating from an immediate exposure to a hazard; or (b) an activity may occur at a workplace that, if it occurs, will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard.

Basis for belief (s196(1)(a))

Temporary switchboards were observed as out of date with some not having been inspected within the last calendar year. In addition, two boards had penetrations below where 'live' components could be reached posing a risk to workers.

Briefly, the activity that the inspector believes involves or will involve the risk, and the matters that gave or will give rise to the risk (s196(1)(b))

On 16 January 2023 at approximately 10:07am, Inspectors TEER and MERRITT attended a

residential construction site at, [REDACTED] in relation to a complaint - Unsafe work site.

The building work signage, located on the temporary security fencing at the front of the construction site, identified the principal contractor to be [REDACTED], trading as [REDACTED].

Temporary switchboards were observed as out of date with some not having been inspected within the last calendar year. In addition, two boards had penetrations below where 'live' components could be reached posing a risk to workers.

From observations and information collected during the inspection, I formed the belief that, [REDACTED], as a duty holder must comply with Work Health and Safety Act 2011, Section 19 Primary duty of care, to maintain the work environment without risks to health and safety.

A person conducting a business or undertaking at a workplace must ensure that electrical equipment is regularly inspected and tested by a competent person.

This Notice may include directions concerning the measures to be taken to remedy the risk or contravention. You must comply with the direction

You must ensure so far as reasonably practicable that temporary switchboards are inspected by a competent person and penetrations below are covered so 'live' components can not be reached posing a risk to workers.

The inspector recommends that you:

WorkSafe ACT Code of Practice Managing electrical risks in workplaces
WorkSafe ACT Code of Practice Construction Work
AS/NZS 3012 Temporary construction wiring
AS/NZS 3076 Inspection and testing of electrical equipment.

See over for important information on your rights and responsibilities.

Prohibition Notice issued under section 191 of the Work Health and Safety Act 2011 - further information

If you have any questions you may contact the inspector who issued this notice.

Display of Notices

A person to whom a notice is issued must, as soon as possible, display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being carried out that is affected by the notice (s 210(1)). A person must not intentionally remove, destroy, damage or deface a notice displayed under s 210(1) while the notice is in force (s 210(2)). The maximum penalty for failing to comply with these provisions is \$5,000 for an individual or \$25,000 for a corporation.

Compliance with direction or notice

The person to whom a Prohibition notice is issued must comply with the notice (s197). The maximum penalty for failing to comply with this requirement is \$100,000 for an individual or \$500,000 for a corporation.

Regulator may carry out action

If a person to whom a prohibition notice is issued fails to take reasonable steps to comply with the notice, and after giving written notice of its intentions and the persons liability for the costs, the regulator (WorkSafe ACT) may take any remedial action it believes reasonable to make the workplace or situation safe (s 211). The regulator may then recover the reasonable costs of taking this remedial action (s213).

Contents of Notice

This Notice may state one or more of the following: (a) a workplace, or part of a workplace, at which the activity is not to be carried out; (b) anything that is not to be used in connection with the activity; (c) any procedure that is not to be followed in connection with the activity (s196(3)).

Directions and recommendations

A direction may refer to a code of practice and may offer the person a choice of ways in which to remedy the contravention (s 204). A Prohibition notice may include recommendations. It is not an offence to fail to comply with recommendations in a notice (s205).

Changes to notice by inspector

An inspector may make minor changes to a notice for clarification, to correct errors or references, or to reflect changes of address or other circumstances (s206).

Privacy statement

WorkSafe ACT may obtain personal information about you in connection with this notice. The information may be collected and stored using the powers, and to carry out functions or activities, under the *Work Health and Safety Act 2011* and related work safety laws. Under that Act, the information can be disclosed to other ACT Government agencies or non-government organisations, and other Australian work safety enforcement agencies.

WorkSafe ACT is obliged to handle your information openly, transparently and in accordance with the Territory Privacy Principles set out in the *Information Privacy Act 2014*. For more information about how WorkSafe ACT will collect, use, share, and store your personal information and how you can access and correct the information, please see the Privacy Statement at www.act.gov.au/privacy.

Review of this *Work Health and Safety Act* notice

If you have any questions or need more information you may contact the inspector who issued this notice, or email worksafe@act.gov.au.

You, or another person whose interests are affected by the decision, may apply for an internal review of the decision to issue this notice.

A review may be sought within 14 days. You may also make an application for the reviewer to stay the operation of the Prohibition notice.

Please ensure you include the notice number in your application for a review, together with the applicant's name and address, and the reason you are seeking the review.

An application for a review can be made in writing to: The Work Health and Safety Commissioner WorkSafe ACT, GPO Box 158 Canberra City ACT 2601 or by email: worksafe@act.gov.au

You may then seek a review of an internal reviewer's decision in the ACT Civil and Administrative Tribunal (ACAT). Information about that process can be found at www.acat.act.gov.au.

The decision to issue this notice is also reviewable under the *Administrative Decisions (Judicial Review) Act 1989* on application to the ACT Supreme Court. Further, a person may make a complaint to the ACT Ombudsman about the issue of this notice.

WorkSafe ACT contact details

PO Box 158, Canberra ACT 2601

Email: [Worksafe @act.gov.au](mailto:Worksafe@act.gov.au)

Phone: (02) 6207 3000

Fax:(02) 6205 0336.

Translating and Interpreting Service

Phone: 131 450