



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 2023-320

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	N/A
4. Additional information identified	No
5. Fees	N/A
6. Processing time (in working days)	13
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
To: [CMTEDD FOI](#)
Subject: Freedom of Information request-CMTEDDFOI 2023-320
Date: Wednesday, 6 September 2023 5:19:19 PM

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[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:

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 request a copy of the Safe Work Australia Decision Regulation Impact Statement on the prohibition on the use of engineered stone provided to the Minister Gentleman's office on 16/8/23.

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: CMTEDDDFOI 2023-320

[REDACTED]
via email: [REDACTED]

Dear [REDACTED]

FREEDOM OF INFORMATION REQUEST – NOTICE OF DECISION

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 6 September 2023.

Specifically, you have sought access to the following information:

...a copy of the Safe Work Australia Decision Regulation Impact Statement on the prohibition on the use of engineered stone provided to the Minister Gentleman's office on 16/8/23.

Authority

I am an Information Officer appointed by the CMTEDD 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 is required to provide a decision on your access application within 30 days.

Therefore, a decision is due by **19 October 2023**.

Decision on access

Searches of CMTEDD records have identified one document within the scope of your request.

I have decided to refuse access to one document.

Statement of Reasons

In accordance with section 54(2) of the Act a statement of reasons outlining my decisions is below. In reaching my access decisions, I have taken the following into account:

- the Act
- the information that falls within the scope of your request.

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.
- perform the public interest test as set out in section 17 of the Act by balancing the factors favouring disclosure and factors favouring non-disclosure in **Schedule 2** of

the Act.

Exemptions claimed

Schedule 1: Information taken to be contrary to the public interest.

My reasons for deciding not to grant access to the identified documents and components of these documents are as follows:

- *No relevant sections identified.*

Public Interest Test

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.

Schedule 2: Factors to be considered when deciding the public interest.

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 (Section 2.1)

- *Section 2.1(a)(ii) - contribute to positive and informed debate on important issues or matters of public interest.*
- *Section 2.1(a)(xi) - reveal environmental or health risks or measures relating to public health and safety.*

The release of this report would provide the public with information about recommendations on prohibiting engineered stone and what measures governments are considering in relation to this issue from a health and safety perspective. I am satisfied that these factors favouring disclosure carry some weight. However, these factors are to be balanced against the factors favouring nondisclosure.

Factors favouring non-disclosure (Section 2.2)

- *Section 2.2(a)(x) - prejudice intergovernmental relations.*
- *Section 2.2(a)(xvi) - prejudice a deliberative process of government.*

However, I whilst I provide some weight to the favours in favour of release, I also note that the Safe Work Australia website states:

28 February 2023, WHS ministers asked Safe Work Australia to undertake further analysis and consultation on a prohibition on use of engineered stone.

On 16 August 2023, following extensive consultation, independent economic analysis and an expert review of evidence, Safe Work Australia provided a report

making recommendations to Commonwealth, state and territory WHS ministers on options to prohibit the use of engineered stone.

The site further states:

Safe Work Australia is unable to comment on the report while it is being considered by WHS ministers.

I note that a copy of this report is currently embargoed, to allow for Commonwealth, state and territory WHS Ministers time to review the recommendations. I have placed considerable weight on the above-mentioned factors as I consider that the release of this report would reasonably prejudice a deliberative process of government and prejudice intergovernmental relations. The Commonwealth, state and territory governments need to be able to rely on being able to share this type of information and trust that it will not be released prior to any decisions being made. I weight these factors more highly in favour of nondisclosure.

Charges

Processing charges are not applicable for this request as no documents 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 and my decision will be published on the CMTEDD disclosure log. Your personal contact details will not be published.

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 provided to you, 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

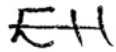
ACT Civil and Administrative Tribunal (ACAT) Review

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
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,



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

19 October 2023