



ACT
Government

Territory and Municipal Services

Dear [redacted]

Freedom of information request

I refer to your request made under the *Freedom of Information Act 1989* (the Act) received by the Territory and Municipal Services Directorate (TAMS) on 3 December 2011, in which you sought access to:

1. Summary reports relating to the inappropriate behaviour of a company contracted to provide services on behalf of the ACT Government in 2006-07;
2. The internal audit report on urban open spaces procurement processes from 2006-07; and
3. Summary reports into the four proven instances of fraudulent behaviour within TAMS in 2010-11.

I am an officer authorised under section 22 of the Act to make a decision in relation to your request.

Decision

Six documents have been located in response to your request. I have decided to:

- partially release documents 1 to 5; and
- exempt from release document 6.

In order to assist you, I have included a schedule of documents at [Attachment A](#).

I have decided to exempt from release some material from document 1 pursuant to section 43(1)(c)(i) of the Act, which provides:

43 Documents relating to business affairs etc

- (1) A document is an exempt document if its disclosure under this Act would disclose—
[...]

- (c) information [...] concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, being information—
 - (i) the disclosure of which would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs.

The information removed from document 1 is the names of an organisation and registration numbers of vehicles involved in the incident that was the subject of the investigation. I have decided that to release this information could reasonably be expected to adversely affect that organisation's business affairs.

I have decided to exempt from release some material from documents 2 to 5 pursuant to the personal privacy provisions in section 41(1) of the Act, which provide:

41 Documents affecting personal privacy

- (1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

The material removed from documents 2 to 5 is the names and other identifying information regarding the staff members who were the subjects of the investigations.

Document 6 is an internal audit report. I have decided to exempt this document from release pursuant to sections 40(1)(a) and (b) of the Act, which provide:

40 Documents concerning certain operations of agencies

- (1) Subject to subsection (2), a document is an exempt document if its disclosure under this Act would, or could reasonably be expected to—
 - (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency; or
 - (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency.

I have decided that the release of the requested internal audit report could reasonably be expected to prejudice the audit process and the directorate's implementation of audit recommendations, and therefore be detrimental to the audit function within the directorate. For the audit function to work effectively,

cooperation between auditors and auditees is required. I have decided that there is the potential for audits to lose their integrity if auditees perceive that their advice or input could be used for a purpose for which it was not intended.

Section 40(2) of the Act requires me to consider the public interest when applying the exemptions in sections 40(1)(a) and (b). In considering the public interest, I have taken the following factors into account:

- - the general public interest in government-held information being accessible, particularly as expressed in the Act's object of extending as far as possible the right of the Australian community and, in particular, the citizens of the Territory, to access to information in the possession of the Territory;
 - the ACT Government's commitment to conducting an open government;
 - the public interest in knowing that the directorate's audit processes are working effectively;
 - disclosure of audit reports under the Act could lead to reduced frankness and candour from auditees, leading to less effective audit recommendations;
 - release of internal audit reports under the Act would lead to the risk of prejudicing the agency's ability to obtain information for future internal audits; and
 - the public interest in not undermining audit processes, where audit is an essential tool to ensure efficiency and effectiveness of directorate projects.

After weighing up the above factors, I have decided that, on balance, the public's best interest would be served by not releasing the report. I have decided that the public's best interest in having an effective internal audit function operating within a government agency exceeds the public's interest in obtaining this internal audit report.

Fees and charges

Freedom of information requests attract fees and charges for time spent searching and retrieving documents, decision-making time and photocopying. In relation to your request, no fee is payable as the time spent on processing your request, and the number of documents released were within the fee-free threshold.

Right of review

My decision is reviewable. This means that if you are dissatisfied with my decision, you have the right to seek a review under section 59 of the Act. The review process is explained for your information at [Attachment B](#).

You have 28 days from the date of this letter to seek a review of my decision, or such other period as the Director-General permits.

Yours sincerely

A handwritten signature in black ink, appearing to be 'AP', written in a cursive style.

Anthony Polinelli
Director
Governance

2 February 2012



ACT
Government

Territory and Municipal Services

Attachment A

FREEDOM OF INFORMATION SCHEDULE

FOI File Number: 2011/19136

Mr Phillip Thomson

Document number	Description	Status (full release, partial release, exempt)	Reason for exemption (where applicable)
1	Summary report – landfill recycling disposal	Partial	Section 43(1)(c)(i)
2	Disciplinary investigation direction	Partial	Section 41(1)
3	Notification of investigation	Partial	Section 41(1)
4	Minute – investigation and disciplinary investigation	Partial	Section 41(1)
5	Minute – notice of termination	Partial	Section 41(1)
6	Parks and Places, Urban Open Spaces – Review of Procurement Process – Internal Audit	Exempt	Sections 40(1)(a)-(b)

Freedom of Information Act 1989 – Review Processes

Internal Review

If you are dissatisfied with a decision made under the Freedom of Information Act 1989, you have a right to seek an internal review of the decision. If you wish to seek an internal review you should write to:

The Director-General
Territory and Municipal Services Directorate
C/- Freedom of Information Officer
GPO Box 158
CANBERRA ACT 2601

You have 28 days from the date of the decision letter to seek a review of the outcome or such other period as the Director-General permits.

ACT Civil and Administrative Tribunal

If you are still dissatisfied after the agency has conducted an internal review, you can seek an independent review of the decision by the ACT Civil and Administrative Tribunal. You have 28 days from the date of the internal review decision to seek a review from the Tribunal.

The Tribunal is an independent body. It can agree with, change or reject the original decision, substitute its own decision or send the matter back to the decision maker for reconsideration in accordance with Tribunal recommendations.

To apply to the Tribunal for a review you can obtain an application form from the Tribunal (www.acat.act.gov.au). The form outlines all the information needed by the Tribunal to process a review promptly. There is a fee for lodgment of an appeal with the Tribunal. This fee may be remitted under certain circumstances.

The postal address of the Tribunal is:

ACT Civil and Administrative Tribunal
GPO Box 370
CANBERRA ACT 2601

Ombudsman

You also have the right to complain to the Ombudsman about the processing of your request. If you wish to lodge a complaint you should write to:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Further information

For further information on your right to review of an FOI decision, please contact the directorate's FOI officer on 6205 5408 or tamsfoi@act.gov.au.