



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 2019-019

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)	31
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: Freedom of Information Request - [REDACTED] - 21Jan19
Date: Monday, 21 January 2019 8:29:28 PM
Attachments: [FOI - Request Letter - \[REDACTED\] 2019-01-210119 - Re Hale and Mary Documentation - 21Jan19.pdf](#)
[FOI - \[REDACTED\] Letter - Re Hale and Mary Kingston - 13Jun18.zip](#)
[FOI - Access Canberra Letter - Hale and Mary - \[REDACTED\] - 14Dec18.pdf](#)

Chief Minister, Treasury and Economic Development Directorate
The FOI Information Officer
GPO Box 158
CANBERRA ACT 2601

FREEDOM OF INFORMATION REQUEST – REQUEST FOR COPIES OF
DOCUMENTATION RELATED TO
MY LETTER DATED 13 JUNE 2018 AND
THE ACT GOVERNMENT LETTER DATED 14 DECEMBER 2018 –
REGARDING HALE AND MARY LIQUOR LICENSE, BUILDING REGULATIONS AND
LEASE CONDITIONS

Dear FOI Information Officer

Please find attached a letter in which I make a formal freedom of information request.

Respectfully submitted for your consideration and action.

Regards, [REDACTED].

[REDACTED]
[REDACTED]
KINGSTON ACT 2604

[REDACTED] 2019/01-210119

21st of January 2019

Chief Minister, Treasury and Economic Development Directorate
The FOI Information Officer
GPO Box 158
CANBERRA ACT 2601

**FREEDOM OF INFORMATION REQUEST –
REQUEST FOR COPIES OF DOCUMENTATION RELATED TO
MY LETTER DATED 13 JUNE 2018 AND
THE ACT GOVERNMENT LETTER DATED 14 DECEMBER 2018 –
REGARDING HALE AND MARY LIQUOR LICENSE, BUILDING REGULATIONS
AND LEASE CONDITIONS**

Dear FOI Information Officer

Introduction.

This request letter is an application for the purposes of the Freedom of Information Act in which I request to be provided with copies of documents related to an ACT Government, Chief Minister, Treasury and Economic Development letter dated 14 December 2018, signed by Access Canberra Regulatory Solutions and Compliance Deputy Director Ms Tanja Warre. This is in relation to a letter I sent dated 13 June 2018 in which I brought to Access Canberra's attention potential breaches of liquor licence, building regulations and lease conditions related to 'Hale and Mary Pty Ltd' – a commercial Unit 9 in The Griffin complex corner Giles and Tench Streets Kingston, ACT.

On 14 December 2018 I received a one page letter in which Deputy Director Ms Tanja Warre stated that, "*On review of the available information, Access Canberra is satisfied that Hale and Mary are trading under the correct liquor licence sub-class, being a restaurant licence, and consider this matter finalised.*" This letter only addressed the liquor licence matter.

In order for me to better understand what was covered by the Access Canberra review, I respectfully request, under the freedom of Information Act, to be provide with copies of documentation outlined in the following paragraphs.

Hale and Mary Liquor Licence.

With respect to the Hale and Mary liquor licence:

- A copy of the original application submitted by Hale and Mary for a liquor licence.
- A copy of the sign displayed by the Hale and Mary liquor licence applicant which was displayed at the premises detailing the new application and the proposed change of sub-class of licence.
- Copies of any subsequent changes to the Hale and Mary liquor licence, if any.
- Copies of all "*of the available information*" that was part of Access Canberra's 'review'. [I trust that six month's worth of deliberation - 13 June to 14 December - resulted in a wide range of 'information' being considered as part of the review process.]
- Copies of any reports, briefs and/or documents that were produced in response to my letter dated 13 June 2018, or in relation to this matter in general.

Building Regulations.

In my letter dated 13 June 2018 I raised concerns regarding whether the Kitchen Exhaust System that services the Hale and Mary Sports Bar complies with building regulations. I request to be provided of the building regulations that cover mechanical ventilation of buildings, specifically as they relate to commercial kitchen exhaust systems. I am especially interested in the following:

- How close can a commercial kitchen exhaust system be to a boundary? [Standards Australia AS1668.2?]
- How high off a flat roof does a commercial kitchen exhaust system need to be placed? [Standards Australia?]
- Noise regulations applicable to commercial kitchen exhaust systems? [Standards Australia?]
 - How loud?
 - Operating times on weekdays, weekends and public holidays?
- Air quality regulations applicable to commercial kitchen exhaust systems? [Standards Australia?]

Units Plan No 3845.

ACT Zoning and Unit Titles regulations specify what types of structures can be built, where and for what purpose. I request to be provided with copies of documentation that is applicable to Units Plan No 3845 as a whole – and Hale and Mary by default – as follows:

- A copy of the ‘zoning’ regulations applicable to Units Plan No 3845.
- A copy of the *Form 4, Land Titles (Unit Titles) Act 1970, Units Plan No 3845*, which provides a ‘schedule of provisions, covenants and conditions subject to which leases of units are held’ in relation to the site – Unit Plan No 3845.
- A copy of *Form 5, Land Titles (Unit Titles) Act 1970, Units Plan No 3845*, which provides a ‘schedule of provisions, covenants and conditions subject to which leases of units are held’ in relation to the site – Unit Plan No 3845.

Conclusion.

In order to better understand how Access Canberra reached the conclusion that they did in Ms T. Warre’s letter dated 14 December 2018 it would be useful for me to be provided with copies of all “*of the available information*” that was part of Access Canberra’s ‘review’.

I have also requested copies of other specific related documents which may, or may not, have been part of Access Canberra’s ‘review’, as they are applicable to the three matters raised in my letter dated 13 June 2018.

Respectfully submitted for your consideration and action.



Attachments:

1. Copy of my letter dated 13 June 2018.
2. Copy of Access Canberra letter signed by Ms T. Warre dated 14 December 2018.




ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2019-019



KINGSTON ACT 2604

via email: 

Dear 

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 21 January 2019, in which you sought access to documents regarding Hale and Mary. Specifically, regarding the granting of Hale and Mary's liquor licence, building regulations and Units Plan 3845.

Authority

I am an Information Officer appointed by the Director-General of 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 is required to provide a decision on your access application by 13 March 2019.

Decision on access

Hale and Mary liquor licence:

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

I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

Building regulations and Units Plan no 3845:

Noting that this information is available for a fee, I have decided to refuse to deal with these parts of your access application in accordance with section 43(1)(f) of the Act.

Building regulations are available for a fee at <https://www.standards.org.au>.

Zoning information can be found at <http://www.actmap.act.gov.au/>.

Third party consultation

In determining this access request, I identified that some of the information may reasonably be expected to be of concern of a third party. In accordance with section 38 of the Act, I have undertaken third party consultation. I have considered the contentions raised by the third party in making this decision.

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 views of the relevant third party; and
- the *Information Privacy Act 2014*.

Exemption claimed

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

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 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 (Schedule 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 that release of information contained in these documents may contribute to a positive and informed debate on important issues or matters of public interest by allowing you to have a

complete record of the documents generated or received by the ACT Government in relation to the granting and subsequent review of the Hale and Mary's liquor licence.

Factors favouring non-disclosure (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 right under the Human Rights Act 2004; and*
- (xi) *prejudice trade secrets, business affairs or research of an agency or person.*

When considering the documents and factors in favour of non-disclosure, I have considered the personal information contained in the documents, including names, signatures and contact information. I am satisfied that the names and contact information of ACT Government employees should be released as these individuals were acting in their official capacity and the personal information being released is done so in relation to these individuals exercising their delegations in a work related capacity.

However, I consider it unreasonable to release the names, contact details and other personal information of the directors and staff of Hale and Mary, as well as the members of Units Plan 3845. I am of the opinion that release of this information may prejudice the protection of these individuals' right to privacy or any other right under the *Human Rights Act 2004*. I am satisfied that this factor favouring non-disclosure should be afforded significant weight as it relates to the individuals' privacy.

The second factor I have identified as relevant in considering your access application is the prejudice that could occur in releasing trade secrets, business affairs or research of an agency or person. 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'.

Having reviewed the documents identified, I am satisfied that the documents contain information related to the business affairs of Hale and Mary. I am of the view that the information contained in the documents is sensitive in nature as they contain detailed sales figures.

Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that is not in the public interest to release, while releasing the rest of the documents will ensure the intent of the Act is met and will provide you with access to the majority of information held by CMTEDD within the scope of your request.

Access to documents

Pursuant to section 38(6) of the Act, I have decided to defer access to all the identified documents as an affected third party has objected to disclosure. This third party may apply for review of my release decision within 20 working days after my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman. I will write to you to advise when access is no longer deferred.

Charges

Pursuant to *Freedom of Information (Fees) Determination 2017 (No 2)* 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, my decision and documents released to you in response to your access application will be published in the CMTEDD disclosure log three 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/disclosure-log>.

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.

If you wish to request a review of my decision 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,

A handwritten signature in black ink, appearing to read 'Daniel Riley', with a stylized flourish at the end.

Daniel Riley
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate
6 March 2019



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

NAME	WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.
[REDACTED]	Hale and Mary's liquor licence, building regulations and Units Plan 3845	CMTEDDFOI 2019-019

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-76	Approved liquor licence application	12-Jan-16	Partial release	Schedule 2 2.2(a)(ii)	Yes
2	77-113	Approved liquor licence amendment	10-May-16	Partial release	Schedule 2 2.2(a)(ii)	Yes
3	114-223	Review of Hale and Mary Kingston's liquor licence category	9-Nov-18	Partial release	Schedule 2 2.2(a)(ii) Schedule 2 2.2(a)(xi)	Yes
Total No of Docs						
3						