



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 2023-378

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)	30
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
Date: Tuesday, 7 November 2023 10:02:05 PM

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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:

A large grey rectangular area 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):

On 16 October 2023 I lodged an FOI request (CMTEDDFOI 2023-356). You provided the number of Home Buyer Concession Notice of Reassessments for the previous 2 financial years and financial year to date. I am now requesting the number of Home Buyer Concession Notice Reassessments for FY 2022/23 and the financial year to date that have been: 1) formally contested; 2) from the cases formally contested (1), how many cases have resulted in the home buyer being absolved or partially absolved of the penalty tax or interest charges?; 3) from the cases that have resulted in the home buyer being absolved or partially absolved of the penalty tax or interest charges (2), what was the justification for these findings?

I do not want to access the following documents in relation to my request::

I am not seeking specific individual details of cases, I am only seeking the numbers for questions 1 and 2 and the broad categories to justify the findings for question 3.

Thank you.
Freedom of Information Coordinator



ACT
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Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2023-378



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 7 November 2023, in which you sought access to:

On 16 October 2023 I lodged an FOI request (CMTEDDFOI 2023-356). You provided the number of Home Buyer Concession Notice of Reassessments for the previous 2 financial years and financial year to date. I am now requesting the number of Home Buyer Concession Notice Reassessments for FY 2022/23 and the financial year to date that have been: 1) formally contested; 2) from the cases formally contested (1), how many cases have resulted in the home buyer being absolved or partially absolved of the penalty tax or interest charges?; 3) from the cases that have resulted in the home buyer being absolved or partially absolved of the penalty tax or interest charges (2), what was the justification for these findings?

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.

I am a tax officer for the purposes of the *Taxation Administration Act 1999* (TAA), and a delegate of the Commissioner of ACT Revenue for the purpose of section 96 of the TAA.

Timeframes

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application by 19 December 2023.

Decision on access

Searches were completed for relevant information and the ACT Revenue Office (ACTRO) has identified the following statistical data that fell within scope of your request.

I have decided to grant access to the identified statistical data as follows:

Access request	Number
(1) <i>the number of Home Buyer Concession Notice Reassessments for FY 2022/23 and the financial year to date that have been:</i> <i>1) formally contested</i>	73
(2) <i>from the cases formally contested (1), how many cases have resulted in the home buyer being absolved or partially absolved of the penalty tax or interest charges?</i>	1

Pursuant to section 54(2) of the Act, a statement of reasons outlining my decision follows.

Statement of Reasons

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

- the Act;
- the TAA, particularly the secrecy provisions under Division 9.4; and
- the statistical information that fell within the scope of your request.

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.

Exemption

Schedule 1 section 1.3(6) and (7)

1.3 Information disclosure of which is prohibited under law

(6) Any other information the disclosure of which is prohibited by a secrecy provision of the law.

(7) In this section:

secrecy provision — a provision of a law is a secrecy provision if it —

(a) applies to information obtained in the exercise of a function under the law; and

(b) prohibits people mentioned in the provision from disclosing the information, whether the prohibition is absolute or subject to stated exceptions or qualifications.

Division 9.4 of the TAA contains a 'secrecy provision' as defined in Schedule 1, sections 1.3(6) and (7) of the Act.

Any information that falls within the meaning of 'information obtained under or in relation to the administration of a tax law ("tax information") in section 95(2) of the TAA is prohibited by law from disclosure. Sections 96 and 97 allow for disclosure of tax information in certain circumstances, however, I am satisfied that none of these circumstances apply where documents or information have been withheld from release.

I have decided to refuse access to the information sought under item (3) of your access request for "justification for these findings". The decision to absolve or partially absolve a particular taxpayer of penalty tax or interest is information that is specific to that taxpayer and their tax affairs. As such this information would be subject to the secrecy provisions of the TAA as it has been obtained in the administration of tax laws, and would not be in the public interest to disclose under Schedule 1, sections 1.3(6) and (7) of the Act.

Should you require, general information on penalty tax and interest is available via the ACTRO website, please refer to:

<https://www.revenue.act.gov.au/rights-and-obligations/interest-and-penalty-tax>
https://www.revenue.act.gov.au/data/assets/pdf_file/0009/1455777/GEN009.4.pdf
https://www.revenue.act.gov.au/data/assets/pdf_file/0004/1388074/GEN006.3-Penalty-Tax.pdf

Public Interest under schedule 2 of the Act

Taking into consideration the information 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 identified statistical data (above) is within the 'public interest'.

Schedule 2 section 2.1(a)(ii) of the Act

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

(ii) contribute to positive and informed debate on important issues or matters of public interest;

It is reasonable to expect that information about this topic may be of interest to the Canberra community and could contribute to informed debate about issues of interest. Accordingly, I have decided to release the identified statistical data to you.

Charges

Processing charges are not applicable for this request because the number of pages released to you is below the charging threshold of 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 and my decision will be published on the CMTEDD disclosure log. 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-2023>.

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 on the disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may use this form [Applying for an Ombudsman Review](#) to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601
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
15 Constitution Avenue
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 6205 9626 or email ACTRO.FOI@act.gov.au.

Yours sincerely,



Shu-Yen Ee
Information Officer
Revenue Management
Chief Minister, Treasury and Economic Development Directorate
19 December 2023