



ACT
Government

Chief Minister, Treasury and
Economic Development

Freedom of Information Disclosure Log Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

Application Details	
Ref. No.	CMTEDDFOI 2024-087
Date of Application	13 March 2024
Date of Decision	20 May 2024
Processing time (in working days)	45
Fees	N/A
Decision on Access	Partial Release
Information Requested (summary)	Correspondence between Chief Minister and any former or current director of the DPP sent or received between 1 April 2023 and 13 March 2024.
Publication Details	
Original application	<input checked="" type="checkbox"/> Published <input type="checkbox"/> N/A
Decision notice	<input checked="" type="checkbox"/> Published <input type="checkbox"/> N/A
Documents and schedule	<input checked="" type="checkbox"/> Published <input type="checkbox"/> N/A
Decision made by Ombudsman	N/A
Additional information identified by Ombudsman	N/A
Decision made by ACAT	N/A
Additional information identified by ACAT	N/A

From: [REDACTED]
To: [CMTEDD.FOI](#)
Subject: FOI Request- correspondence between chief minister and DPP
Date: Wednesday, 13 March 2024 6:15:29 PM

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Hello,

I wish to request under the FOI Act any correspondence between the Chief Minister and any former or current acting director of the Office of the Director of Public Prosecutions sent or received between 1 April 2023 and 13 March 2024, including official correspondence, emails, text messages, Signal messages and so forth.

Kind Regards

[REDACTED]



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDDFOI 2024-87



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 13 March 2024.

Specifically, you have sought access to ‘any correspondence between the Chief Minister and any former or current acting director of the Office of the Director of Public Prosecutions sent or received between 1 April 2023 and 13 March 2024, including official correspondence, emails, text messages, Signal messages and so forth’.

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.

As this matter required third party consultation, the decision due date was extended by 15 working days, in accordance with section 40(2) of the Act.

Therefore, a decision is due by **20 May 2024**.

Decision on access

Searches of CMTEDD records have identified 4 documents within the scope of your request.

I have decided to grant **partial access** to all documents.

The records identified as relevant to your application are listed in the schedule enclosed at **Attachment A**. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

Release of documents

The information being released to you is provided at **Attachment B**.

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
- third party views
- information already publicly available
- *the Human Rights Act 2004*.

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.

No **Schedule 1** provisions are applicable to the release of this information.

Exemptions claimed

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 lie. 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)(i) - promote open discussion of public affairs and enhance the government’s accountability.*
- *Section 2.1(a)(ii) - contribute to positive and informed debate on important issues or matters of public interest.*
- *Section 2.1(a)(viii) - reveal the reason for a government decision and any background or contextual information that informed the decision.*

I am satisfied that the release of this information can reasonably be expected to promote open discussion and debate on an issue that many in the ACT Community have opinions on. The release of this material aids in the transparent conduct of Government and may help reveal a reason or provide background for a course of action taken by Government.

I apply significant weight to these factors favouring disclosure. However, these factors are to be balanced against the factors favouring nondisclosure.

Factors favouring nondisclosure (Section 2.2)

- *Section 2.2(a)(ii) - prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004*

Having reviewed the information, I consider that the protection of an individual's right to privacy, is a significant factor. Having reviewed the documents, release of information concerning individuals working within the ACT Public Service is generally not considered to prejudice the protection of an individual's right to privacy.

However, when considering the disclosure of personal information, including contact information of non-ACT public servants, regarding this information, consideration must be given to the reasonableness or likelihood that the individuals could have their privacy, family, home or correspondence arbitrarily or unlawfully interfered with. I weigh this factor highly and have chosen to redact personal information of non-ACT Public Service individuals.

Having applied the test outlined in section 17 of the Act and deciding that release of personal information contained in the documents is not in the public interest to release, I have chosen to redact this specific information in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met and will provide you with access to the majority of the information held by CMTEDD within the scope of your request.

Charges

Processing charges are not applicable for this request because the number of pages released to you is below the charging threshold of 50.

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 published, 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

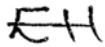
ACT Civil and Administrative Tribunal (ACAT) Review

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 the Information Access Team by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely,



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

20 May 2024



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST

Reference NO.

Any correspondence between the Chief Minister and any former or current acting director of the Office of the Director of Public Prosecutions sent or received between 1 April 2023 and 13 March 2024, including official correspondence, emails, text messages, Signal messages and so forth.

CMTEDDDFOI 2024-087

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1	Drumgold SC_ Inquiry into the Criminal Justice System _ M&A Ref_ IDD_469369 [Email]	3/08/2023	Partial	Sch2.2 (a)(ii)	Yes
2	2	Letter to A Barr MLA dated 3.8.23	03/08/2023	Partial	Sch2.2 (a)(ii)	Yes
3	3	Media comments of 6 March 2024 [Email]	11/03/2024	Partial	Sch2.2 (a)(ii)	Yes
4	4-9	Letter to Rattenbury 11 March 24	11/03/2023	Partial	Sch2.2 (a)(ii)	Yes
Total No of Docs						
4						

From: Sch 2.2(a)(ii) on behalf of [Ian Denham](#)
To: [BARR Reception](#)
Subject: Drumgold SC | Inquiry into the Criminal Justice System | M&A Ref: IDD:469369
Date: Thursday, 3 August 2023 1:03:11 PM
Attachments: [image001.jpg](#)
[Letter to A Barr MLA dated 3.8.23.pdf](#)
Importance: High

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Dear Chief Minister

Please find **attached** our letter of today's date.

Regards

Ian

Ian Denham (He/Him/His)

Partner

E IDenham@moray.com.au

Sch 2.2(a)(ii)



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3 August 2023

Mr Andrew Barr MLA
Chief Minister
GPO Box 1020
CANBERRA ACT 2601

BY EMAIL ONLY: barr@act.gov.au

ABN 76 486 092 631

Contact
Ian Denham
Partner
idenham@moray.com.au

Partner
Ian Denham

Our reference
IDD:469369

Dear Chief Minister

**Shane Drumgold SC
Inquiry into the Criminal Justice System**

1. We act for Shane Drumgold SC.
2. Today the media has reported that a complete copy of the Inquiry's final report has been provided to at least one media representative.
3. The media has already begun publishing prejudicial comments in a way which was foreshadowed in Mr Drumgold's letter of 31 July 2023 addressed to the Attorney General. It is our fear, shared by our client, that the public comments will jeopardise any further process to which Mr Drumgold SC is entitled.
4. With a view to attenuating such risk, and to enable Mr Drumgold SC to understand and potentially respond to the media reports, we ask that we be provided with a copy of the final report.
5. If necessary, we are prepared to provide undertakings to not disclose the contents of the report beyond Mr Drumgold SC and his legal representatives.
6. We look forward to hearing from you as soon as practicable.

Yours faithfully

Sch 2.2(a)(ii)

From: [Shane Drumgold](#)
To: [RATTENBURY](#); [Rattenbury, Shane](#); [BARR](#); [Barr, Andrew](#)
Subject: Media comments of 6 March 2024
Date: Monday, 11 March 2024 9:11:20 AM
Attachments: [Letter to Rattenbury 11 March 24.pdf](#)

Some people who received this message don't often get email from **Sch 2.2(a)(ii)**. [Learn why this is important](#)

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Dear Attorney General

Please find enclosed letter in relation to media comments reported 6 March 2024.

As outlined, the comments were purported to be made on behalf of the Government, so I have extended the courtesy of cc'ing in the Chief Minister as head of the Government.

Kind regards

Shane Drumgold SC

Shane Drumgold SC

Sch 2.2(a)(ii)

Mr Shane Rattenbury MLA

Attorney- General for the ACT

By email: rattenbury@act.gov.au

CC: Chief Minister barr@act.gov.au

Dear Mr Rattenbury

I write to respectfully request information relating to comments attributed to you and purported to have been made on behalf of the ACT Government, in an article published in the Riot Act online on 6 March 2024 under the headline “*We have not changed our view*” .

It brings me no pleasure to write to you in this manner but for the reasons outlined below, the public utterances attributed to you leaves me no option.

Relevant History:

It is necessary to put this letter into some historical context. It is also to be noted that my outline of the history of events up to 25 August 2023 outlined herein is in accordance with the events outlined by me in my affidavit that accompanied my Application filed in the ACT Supreme Court on that day and that resulted in the decision of Acting Justice Kaye (**Kaye AJ**) in the decision of *Drumgold v Board of Inquiry & Ors (No 3)* [2024] ACTSC 58 (**Drumgold No 3**).

As Director of Public Prosecutions (**the DPP**), I gave evidence before the Sofronoff Board of Inquiry (**Inquiry**) between 8-12 May 2023.

In a meeting with you and the Director General of JACS at your Legislative Assembly office at 4.30pm on Friday 30 June 2023, seven weeks after my oral evidence before the Inquiry had concluded, you advised me that in the event of adverse findings being made against me in the Final Report of the Board of Inquiry into the ACT Criminal Justice System (**Sofronoff Report**), the intention of Government was to appoint a person such as a retired Supreme Court Judge to advise the Government as to whether or not any adverse findings amounted to serious misconduct as required to enliven the provisions of section 28(1)(a) of the *Director of Public Prosecutions Act 1900* (ACT). I was further advised that the Sofronoff Report would be provided to the Chief Minister, who would consider it, and if needed, you would provide me the opportunity to respond to any adverse findings through the process described.

As you are well aware, the **Sofronoff Report** was served on the ACT Government on Monday 31 July 2023, and it contained a number of adverse findings against me within chapters 4, 5 and 6, which should then have triggered the previously stated intention of Government.

It has now been established through evidence tendered in the recent judicial review proceedings, that Mr Sofronoff personally provided annotated draft copies of the **Sofronoff Report** to Ms Albrechtsen from *The Australian* newspaper on 28 July 2023 and 30 July 2023, with a final copy provided to her on 31 July 2023. This arguably illegal and/or unorthodox behaviour on the part of Mr Sofronoff resulted in widespread reporting of the adverse findings made against me contained within chapters 4, 5 and 6 of the **Sofronoff Report**. All of this occurred before I had seen either the Sofronoff Report or its findings.

At 11.30am on Thursday 3 August 2023, also prior to me seeing the **Sofronoff Report** or its findings, you sought and gained a further meeting with me via the Teams platform. During this meeting attended by you, the Director General of JACS and me, you informed me that you were satisfied on the face of the Final Report that there had been misconduct and you felt you did not need to follow the process of sending the findings to a retired Supreme Court Judge for an opinion as previously stated in our meeting of Friday 30 June 2023. You further stated that as a result, you considered that my ongoing position as Director of Public Prosecutions was untenable, and that you were already satisfied that you had grounds to remove me from office. In light of that, I agreed to resign my position, and did so by letter attached to an email sent at 5.51am the following morning.

By letter from yourself dated Friday 4 August 2023, received by me the following day at 6.06pm (over 30 hours after our meeting) and enclosing a copy of the Sofronoff Report, you noted the "Report makes several serious findings in relation to your conduct concerning the investigation and prosecution of Mr Bruce Lehrmann" and that these findings "followed a rigorous process." You proceeded to outline six (6) findings within chapters 4, 5 and 6 of the report that were of "greatest concern," and you invited "any submission in relation to the findings of the Board of inquiry that pertain to your conduct".

In letter dated 25 August 2023, I declined to make any such submissions on the basis that I was filing an application for judicial review of the findings in the Sofronoff Report, advising that it would therefore be inappropriate for me to address the findings outside of the legal process.

As you are aware, my judicial review application was heard in the Supreme Court between 13-15 February 2024, and Kaye AJ handed down his decision and made resulting orders on 4 March 2024 in *Drumgold* (No 3). Those orders can be fairly summarised as follows:

- (a) The first declaration (order 2), the Court's key order, relates to a finding of Mr Sofronoff's apprehended bias and encompasses the whole of Chapters 4, 5 and 6 of the Sofronoff Report. This declaration covers all adverse findings against me within the Sofronoff Report. Consequently, all issues specified by paragraphs (c)(d) and (e) of section D of Mr Sofronoff's Amended Terms of Reference were ruled to be tainted by the apprehension of bias by Mr Sofronoff, and consequently none of them stand, having all been vitiated by this declaration.
- (b) The second declaration (order 3), which is **in addition to the first declaration**, is to the effect that the specific finding in the Sofronoff Report of alleged grossly unethical conduct in my cross-examination of Senator Reynolds (that was already vitiated by

the first declaration, and sits within chapter 5) was additionally legally unreasonable, in that “*a logical or rational decision maker*” could not have come to that conclusion.¹ The fact that a declaration was made in respect of the Senator Reynolds sub-ground for “legal unreasonableness”, but not others, does not mean the other grounds were not vitiated by the finding of apprehended bias; only that a further ground of their legal unreasonableness was not made out when viewed in isolation to the apprehended bias.

- (c) The third declaration (order 4), which is also **in addition to the first declaration**, relates to an alleged false statement to the chief police officer (that was also already vitiated by the first declaration, and sits within chapter 6) was additionally found to be the product of Mr Sofronoff’s failure to provide me natural justice during the conduct of the Board of Inquiry. All other natural justice sub-grounds were nevertheless already vitiated by the apprehended bias declaration.

Recent representation by the Attorney- General

In a joint media release on 5 March 2024, you acknowledged “*The Court’s decision yesterday was that **the Board’s adverse findings in relation to Mr Drumgold** were infected by a perception of bias arising from private communications between the Board of Inquiry and Ms Albrechtsen.*”

However, then in an article published in the Riot Act online the following day, being 6 March 2024, under the headline “*We have not changed our view*”, the following comments were attributed to you as the Attorney-General for the ACT, purported to have been made on behalf of the government:

*“Through the course of the Board of Inquiry, we saw Mr Drumgold **retract a series of statements that he’d made**, he **changed his view on a number of matters**, and so that collection of things is that basis on which **the government** formed the view that Mr Drumgold’s position was **untenable**.”*

The term “*untenable*” is a term that you have used somewhat loosely on a number of occasions, first at our meeting on 3 August 2023, further repeating it in a number of media statements, including a press conference televised on ABC News channel on 7 August 2023, when you were purporting to recount our meeting of 3 August 2023. This statement recounted the context of the term somewhat inaccurately, in that you claimed that we “agreed” my position was untenable. An accurate statement would have been that you had reached the view that an independent tribunal had made findings of serious misconduct, and on that basis, you were satisfied that the grounds for removal under s.28 *Director of Public Prosecutions Act 1990* were made out. The more accurate statement with regards to my state of mind, would have been that, on the basis that you had reached this position, I considered it untenable to remain in the position of Director of Public Prosecutions. This much is apparent from the fact that from my very first public media statement on, 6 August

¹ Paragraph 363 of the Judgment.

2023, I have consistently and publicly disputed the findings in the Sofronoff Report. This is further demonstrated by the fact that on 25 August 2023, a mere 22 days after our meeting of 3 August 2023, I had already instructed a legal team and filed an Originating Application for Judicial Review in relation to the findings of the Sofronoff Report in the Supreme Court of the ACT.

Your public statement as reported in the Riot Act on 6 March 2024, is a new and very serious statement for an Attorney-General to make, particularly as it is a statement alleged to have been advanced on behalf of the whole ACT Government. This reinstates an issue that had been concluded by the judgment of Kay AJ, and has very serious impacts on my public image, my reputation, and my current and future professional prospects.

The statement carries the following imputations:

- (a) In evidence before the Inquiry, I retracted "*a series*" of statements I had made.
- (b) In evidence before the Board of Inquiry, I changed "*my view*" on a "*number of matters.*"
- (c) In August 2023, the "government" made a finding on the basis of the above that these actions amounted to serious misconduct of a sufficient gravity to warrant my removal from office.

The only specific issues you have ever raised with me, and I have ever been given opportunity to comment upon, were the six (6) findings contained in the Sofronoff Report, all contained within chapters 4, 5 and 6 of the report, and listed in your letter of 4 August 2023. As outlined in my letter of 25 August 2023, I declined to do so specifically because these specific findings were to be included as the subject of dispute in legal proceedings.

At no point, including at our personal meetings of 30 June and 3 August 2023, nor in your letter of 4 August 2023, nor any other time, in the almost 10 months between the conclusion of my evidence on 12 May 2023 and the reporting of the comment 6 March 2024, did you advise me, or give me an opportunity to provide you with submissions or comments on the issues you raised in your public statement of 6 August 2024.

It is of great importance that because these new allegations you are reported to have recently made have never been put to me, I have not had the opportunity to have them reviewed by the Supreme Court. As I am sure you are aware, the subject of the legal proceedings for review heard by Kaye AJ were limited to the Sofronoff Report findings. Your behaviour has been such that I have, to date, been denied any opportunity to seek review of your conclusions as outlined in your most recently reported comments.

Such a breach of procedural fairness on the part of the Territory's First Law Officer is deeply concerning, particularly in light of the fact that two days prior to those comments by you, there had been a finding by Kaye AJ that I had been denied procedural fairness by Mr Sofronoff during the Inquiry because of Mr Sofronoff's apprehended bias against me.

Further, all the adverse findings of Mr Sofronoff that you have previously stated privately, in writing, and publicly, were findings of an independent tribunal and formed the basis for the Government's findings of serious misconduct, had just been vitiated by the Supreme Court of the ACT, through order 2 of Kaye J on 4 August 2024 in *Drumgold* (No 3).

Legal significance of the latest statement

As the Territory's First Law Officer, with the resources of the ACT Government Solicitor's Office at your disposal, I have a reasonably held expectation that in making the statements reported on 6 March 2024, you would have been aware of the legal significance of these statements.

The findings in the Sofronoff Report were made under the *Inquiries Act 1991*. By virtue of schedule 1, item 11 of the *Administrative Decisions (Judicial Review) Act 1989 (ADJR Act)*, a merits review of such findings was not available. Accordingly, the application in *Drumgold v Board of Inquiry & Ors* [2024] ACTSC 58 was limited to a Supreme Court judicial review seeking declaration as to the legality of the findings rather than a merits review under the ADJR Act. Accordingly, in *Drumgold (No 3)* at paragraph 20, Kaye J noted that the prerogative writ of certiorari was not available to me as the plaintiff, and the only remedy available was the granting of declaratory relief, that was accordingly granted in relation to all findings against me in the Sofronoff Report.

I believe that a decision of the nature suggested by your comments published on 6 March 2024, is different, in that it is not in fact a decision under the *Inquiries Act 1991*, rather collateral to an Inquiry, specifically a decision based on observations of evidence given during the course of such an inquiry. Accordingly, had I been advised that such a decision had been made in August 2023, I would quite obviously have filed a collateral application under section 5 of the ADJR Act in relation to the merits of this decision, that would most likely have been heard in tandem with the application for declaration.

The consequence of this is significant. All previous imputations on my character have been quashed by the judgment of Kaye AJ on 4 August 2024. The stated findings in your public statement as reported in the Riot Act on 6 March 2024, introduces new allegations of the most serious kind, purported to be made on behalf of the ACT Government, and importantly are now the only standing allegation of serious misconduct against me.

I accordingly request the following information in relation to your public statement published in the Riot Act on 6 March 2024. I request that you provide:

- 1) All particulars including transcript references of the alleged evidence given by me encompassed by your statement.
- 2) How it is stated the above constitutes serious misconduct, of a nature warranting my removal from office under s28 *Director of Public Prosecutions Act 1990*.
- 3) The manner in which the above finding was reached, as in whether it was based on the subjective personal observation of one or more members of government, or whether it was the product of an assessment of the evidence independent of the political process, and if so, by who?
- 4) The reasons the above issues have not been raised with me either directly or indirectly in the almost 10 months since the conclusion of my evidence.

In light of the orders of Kay AJ of 4 August 2024, your public statement of 6 March 2024 currently stands as the only current imputation on my character, that is currently having the effect of causing serious harm to my character and reputation, as well as my current and future professional prospects. I accordingly seek a response with some urgency.

As outlined above, I regret having to write this letter to you, but your public comments have left me no option.

Regards

Shane Drumgold SC

11 March 2024