



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 2024-215
Date of Application	3 July 2024
Date of Decision	26 August 2024
Processing time (in working days)	38
Fees	N/A
Decision on Access	Partial Release
Information Requested (summary)	A copy of complaints together with any warnings and inspection/improvement notices issued in response.
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: [TCCS_FreedomOfInformation](#)
To: [CMTEDD_FOI](#)
Cc: [REDACTED]
Subject: CMTEDDFOI 2024-215 - Transfer request - TCCS FOI 24-099 - Records relating to WorkSafe cases 00370410 and 00361838
Date: Wednesday, 3 July 2024 3:43:23 PM
Attachments: [Authority to TCCS.pdf](#)
[FOI 24-099 - Access application - \[REDACTED\].msg](#)

OFFICIAL

Hi team,

TCCS have received a FOI access application from [REDACTED] on behalf of [REDACTED]. The application scope is as follows:

“We act for [REDACTED] in a claim for personal injury damages that have arisen as a result of an accident that occurred on 1 November 2023 during the course of his employment with Outdoor Elegance.

We are instructed by our client that he has previously lodged safety complaints with Access Canberra with reference numbers 00370410 and 00361838.

We politely request a copy of those complaints together with any warnings and inspection/improvement notices issued in response.”

Our CIO team has advised that the records requested are WorkSafe cases. On this advice, can you please advise if CMTEDD accept transfer of this application?

For background, this FOI came through as a customer service request initially and was passed through records management teams (CSD> Access Canberra > TCCS, see attached). It was initially presumed the cases were with TCCS; however, our searches show this is because WorkSafe use the TCCS Salesforce environment.

Kind regards,

Sam

Samantha Irons | A/g Director

Phone: 02 6207 9242 | Email: TCCS.FOI@act.gov.au

Information Access | Procurement, Legal and Information Access | Transport Canberra and City Services Directorate | ACT Government

480 Northbourne Avenue, Dickson 2602 | GPO Box 158 Canberra ACT 2601 | www.act.gov.au



ACT
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Economic Development

Our ref: CMTEDDFOI 2024-215



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 24 July 2024.

Specifically, you have sought access to the following information:

- We act for [REDACTED] in a claim for personal injury damages that have arisen as a result of an accident that occurred on 1 November 2023 during the course of his employment with Outdoor Elegance.
 - We are instructed by our client that he has previously lodged safety complaints with Access Canberra with reference numbers 00370410 and 00361838.
 - We politely request a copy of those complaints together with any warnings and inspection/improvement notices issued in response.

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 **4 September 2024**.

Decision on access

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

I have decided to grant **full access** to one document and **partial access** to the second document.

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
- *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.

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 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)(xiii) - contribute to the administration of justice generally, including procedural fairness.*

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

Having reviewed the documents, I consider that the protection of an individual's right to privacy, especially in the course of dealings with the ACT Government is a significant factor as the parties involved have provided their personal information for the purposes of working with the ACT Government. This, in my opinion, outweighs the benefit which may be derived from releasing the personal information of the individual's involved in this matter.

Individuals are entitled to expect that the personal information they have supplied as part of this process will be dealt with in a manner that protects their privacy. Considering the type of information to be withheld from release, I am satisfied that the factors in favour of release can still be met while protecting the personal information of the individuals involved. I therefore weigh the factor for nondisclosure more highly than the factor in favour of release in this instance. As a result, I have decided that release of this information (phone numbers of individuals not employed by the ACT Public Service) could prejudice their right to privacy under the *Human Rights Act 2004*.

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 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.

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 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

26 August 2024



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST

Reference NO.

As a result of an accident that occurred on 1 November 2023 during the course of employment with Outdoor Elegance.

CMTEDDFOI 2024-215

- Our client has previously lodged safety complaints with Access Canberra with reference numbers 00370410 and 00361838.
- We request a copy of those complaints together with any warnings and inspection/improvement notices issued in response.

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-3	WorkSafe ACT Workplace Visit Report	28 Nov 2023	Partial release	Sch 2 s2.2 (a)(ii)	Yes
2	4-6	WorkSafe ACT Improvement Notice	30 Nov 2023	Full release	N/A	Yes
Total No of Docs						
2						

WORKPLACE VISIT REPORT

Initial Information

Inspection Number: 00183271
Lead Inspector: Brooke Schofield
Inspector ID: P01873
Lead inspector email address: brooke.schofield@worksafe.act.gov.au
Is there any accompanying inspectors? Yes

Melanie Forey

Date visit commenced: 28 November, 2023 12:49
Legislation visit conducted under: WHS

Entity Information

Type of entity: Trust
Name of individual or registered company: The Trustee for The Elegance Unit Trust
Trading as: OUTDOOR ELEGANCE CANBERRA
ACN: 131444730
ABN: 98008315665
Industry Group: Retail
Address: PO Box 708 Fyshwick ACT 2609

Contact Name: The Trustee for The Elegance Unit Trust
Contact Number: [Sch 2.2\(a\)\(ii\)](#)
Contact Email: office@outdoorelegance.com.au

Details of Visit:

Address: Shop 17 337 Canberra Ave Fyshwick ACT 2609
Notification of entry to (as required by s164): PCBU

Inspector Notes:

On 28 November 2023 at about 12:49, WorkSafe ACT Inspectors Brooke SCHOFIELD assisted by Melanie FOREY attended The Trustee for The Elegance Unit Trust Pty Ltd ABN: 98 008 315 665 trading as Outdoor Elegance Canberra at Canberra Outlet Centre Shop 17 337 Canberra Ave FYSHWICK ACT 2609.

SCHOFIELD and FOREY entered the workplace under the Work Health and Safety Act 2011 (WHS Act). Upon entry, Inspectors identified themselves to persons who identified themselves as the Showroom Manager.

They confirmed that The Trustee for The Elegance Unit Trust Pty Ltd is the person conducting a business or undertaking (PCBU) and themselves as authorised representatives of the PCBU.

SCHOFIELD asked questions and made observations at the workplace, noting some observed contraventions in relation to:

- The workplace was generally neat and tidy.
- Most Fire response equipment is readily available, including Fire hose reel, Fire Hydrants and Fire Extinguishers A:B(E).
- Signage for the fire equipment located behind the gazebo structure was obstructed when panels were lowered. Signage needs to be adjusted to suite the tenancy arrangement.
- Routine testing of fire equipment within the retail section of the workplace is not occurring.
- Routine testing of fire equipment within the shared loading dock area is being conducted.
- There was Emergency Plan within the workplace.
- There was evidence of Worker training has occurred in fire response and emergency procedures.
- First aid equipment is stocked and adequately stocked to treat injuries that may occur within the workplace.
- First aid signage indicating the location and the first aid providers was visible with the office entry.
- The amenities were clean and appropriate for the number of workers.
- The loading dock door had smokers outside as the Centre Manager of the Canberra Outlet Centre had placed a ashtray adjacent to the No Smoking Sign.

WorkSafe ACT will make contact with Centre Management to discuss this issue as the passive smoke is entering the loading dock area.

Inspectors request the following to be provided by 5-12-2023.

- Current Workers Compensation certificate of currency

The following Notices are issued outstanding from the previous visit.

- Improvement Notice for WHS Reg 2011 s359. Fire protection and firefighting equipment

SCHOFIELD took photographs and recorded notes in contemporaneous notebook A10339 page 89.

At about 11:20h the same day, SCHOFIELD and FOREY departed the workplace.

Disclaimer: The issues identified during this inspection are only indicative of compliance with the Work Health and Safety Act 2011, the Work Health and Safety Regulations 2011, the Dangerous Substances Act 2004 and the Workers Compensation Act 1951 on the date of the inspection. If compliance is identified during this inspection, it does not remove the obligation of any person to comply with any further requirement of the above mentioned Acts and Regulations.

Previous Action

Previous notice/s issued (either written or verbal)?

Recipient/s of this form:

Email: office@outdoorelegance.com.au
Email 2: office@outdoorelegance.com.au
Email 3:

Privacy Notice: The information collected for the purpose of the Work Health and Safety Act 2011 and is in accordance with the Information Privacy Act 2014. WorkSafe ACT prevents any unreasonable intrusion into person's privacy in accordance with the Privacy Act 1988 (C'Wlth) and Information Privacy Act 2014.

WorkSafe ACT provides identifiable information which can be disclosed to other law enforcement agencies and authorised organisation that have legal authority to request information under prescribed circumstances.



IMPROVEMENT NOTICE

This notice is issued under section 191 of the *Work Health and Safety Act 2011*. Section 210 requires that the person to whom an improvement notice is issued must, as soon as possible, display a copy of the notice in a prominent place at or near the workplace, or part of the workplace at which work is being carried out that is affected by the notice.

You must comply with this notice within the period specified. Failure to comply may incur a maximum penalty of \$50,000 for an individual and \$250,000 for a body corporate.

Notice issued to:

Legal name of person/business or undertaking: The Trustee for The Elegance Unit Trust

Address: PO Box 708, Fyshwick, ACT, 2609

Due Date: 13 December, 2023

Details of contravention:

Site location: Shop 17 337 Canberra Ave, Fyshwick ACT 2609

I Brooke SCHOFIELD reasonably believe on 28/11/2023 1:00 PM that you contravened section 19 (3) (a) of the Work Health and Safety Act 2011 (ACT), section 359 of the Work Health and Safety Regulation 2011. Fire protection and firefighting equipment by failing to provide and maintain of a work environment without risks to health and safety. The firefighting equipment within the workplace was not inspected or tested, puts workers and others at risk of fire, burns and smoke inhalation as they may not be operational or accessible to ensure effective response in a fire or emergency.

Brief description of how the provision is being or has been contravened:

Persons are exposed to a risk of burns and smoke inhalation due to uncontrolled fires in the event of a fire emergency.

During the workplace inspection it was identified that Fire equipment observed during inspection was not inspected or tested meaning that it may not be operational in the event of an emergency.

SCHOFIELD asked the PCBU if he was aware of this requirement for testing and inspection. PCBU informed SCHOFIELD that he wasn't and thought it was it was part of the tenancy arrangement.

Directions as to the measures to be taken to remedy or prevent the contravention or likely contravention: *(it is mandatory to comply with these directions)*

You must, so far as reasonably practicable, ensure the health and safety of workers by:

1. Ensuring the workplace is provided with firefighting equipment that is operational and that it is regularly inspected and tested by a competent person
2. Ensure firefighting equipment is kept clear and unobstructed which may be done by installing the extinguisher on the correct bracket.

A person to whom a notice is issued must, as soon as possible, display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being carried out that is affected by the notice.

Recommendations (if any): *(it is not an offence not to comply with these recommendations)*

Please contact the inspector who issued this notice to confirm compliance prior to the day by which the person is required to remedy the contravention or likely contravention.

Provide evidence of compliance with all directions via email to brooke.schofield@worksafe.act.gov.au.

In complying with the directions, refer to the following reference tools:

WHS Act 2011 Section 19 "Primary Duty of Care"

WHS Regulation 2011 Section 359 "Fire Protection and Firefighting Equipment"

WHS Code of Practice "Managing the work environment and facilities"

AS 1851-2012 "Routine Servicing of Fire Protection Systems and Equipment"

Issuing Details

Issued by: Brooke Schofield

ID number: P01873

Date issued: 30/11/2023

Service method: Email

Notice emailed to: office@outdoorelegance.com.au

Improvement Notice issued under section 191 of the Work Health and Safety Act 2011 - further information

If you have any questions you may contact the inspector who issued this notice.

Display of Notices

A person to whom a notice is issued must, as soon as possible, display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being carried out that is affected by the notice (s 210(1)). A person must not intentionally remove, destroy, damage or deface a notice displayed under s 210(1) while the notice is in force (s 210(2)). The maximum penalty for failing to comply with these provisions is \$5,000 for an individual or \$25,000 for a corporation.

Compliance with direction or notice

The person to whom an improvement notice is issued must comply with the notice within the period specified in the notice.

Maximum penalty:

- (a) in the case of an individual—\$50 000; or
- (b) in the case of a body corporate—\$250 000

Extension of time for compliance with improvement notices

If a person has been issued with an improvement notice, they may contact the inspector who issued this notice, or email worksafe@act.gov.au to apply for an extension of time to comply with that notice. This must be done within the compliance period which ends at midnight on the due date stated in the notice.

An inspector may, by written notice given to the person, extend the compliance period for the improvement notice. However, the inspector may extend the compliance period only if the period has not ended.

Directions and recommendations

A direction may refer to a code of practice and may offer the person a choice of ways in which to remedy the contravention (s 204). A Improvement notice may include recommendations. It is not an offence to fail to comply with recommendations in a notice (s205).

Changes to notice by inspector

An inspector may make minor changes to a notice for clarification, to correct errors or references, or to reflect changes of address or other circumstances (s206).

Privacy statement

WorkSafe ACT may obtain personal information about you in connection with this notice. The information may be collected and stored using the powers, and to carry out functions or activities, under the Work Health and Safety Act 2011 and related work safety laws. Under that Act, the information can be disclosed to other ACT Government agencies or non-government organisations, and other Australian work safety enforcement agencies. WorkSafe ACT is obliged to handle your information openly, transparently and in accordance with the Territory Privacy Principles set out in the Information Privacy Act 2014. For more information about how WorkSafe ACT will collect, use, share, and store your personal information and how you can access and correct the information, please see the Privacy Statement at www.act.gov.au/privacy.

Review of this *Work Health and Safety Act* notice

If you have any questions or need more information you may contact the inspector who issued this notice, or email worksafe@act.gov.au.

You, or another person whose interests are affected by the decision, may apply for an internal review of the decision to issue this notice.

A review may be sought within 14 days, or in the case of an improvement notice within the compliance date period specified in the notice, whichever is lesser. You may also make an application for the reviewer to stay the operation of the Improvement notice.

Please ensure you include the notice number in your application for a review, together with the applicant's name and address, and the reason you are seeking the review.

An application for a review can be made in writing to: The Work Health and Safety Commissioner WorkSafe ACT, GPO Box 158 Canberra City ACT 2601 or by email: worksafe@act.gov.au.

You may then seek a review of an internal reviewer's decision in the ACT Civil and Administrative Tribunal (ACAT). Information about that process can be found at www.acat.act.gov.au.

The decision to issue this notice is also reviewable under the *Administrative Decisions (Judicial Review) Act 1989* on application to the ACT Supreme Court.

Further, a person may make a complaint to the ACT Ombudsman about the issue of this notice.

WorkSafe ACT contact details

PO Box 158, Canberra ACT 2601

Email: worksafe@act.gov.au

Phone: (02) 6207 3000

Fax:(02) 6205 0336

Translating and Interpreting Service

Phone: 131 450