



ACT
Government

**Asbestos Response
Taskforce**

Dear

I refer to your request under the *Freedom of Information Act 1989* (FOI Act) received by the Chief Minister, Treasury and Economic Development Directorate on 14 November 2014 seeking access to the list of residential properties in the ACT that the government believes are contaminated with loose-fill asbestos.

I apologise for the delay in responding to your request.

Decision Maker

I am authorised under section 22 of the FOI Act to make decisions on access to documents held by CMTEDD and liability for charges.

Charges

Due to the time involved in processing the request, I have decided under section 29 of the FOI Act not to impose processing charges for this request.

Identification of Documents

The Asbestos Response Taskforce is custodian of a number of lists and documents identifying properties that were remediated under the loose fill asbestos insulation program. This includes the current working list identifying 1021 known current affected homes as at 28 October 2014. I have interpreted your request as seeking access to this list.

Decision on access

I maintain the position conveyed to you in relation to your previous request, and internal review request, seeking access to the list and reiterate the request from Mr Andrew Kefford, the Taskforce Head, not to publish the inaccurate list that you have in your possession.

As noted in your request the government has indicated that it will publish the list of affected houses in 2015. This is likely to require legislative amendment to ensure current laws around privacy are not breached. The Information Privacy Regulation 2014

is limited in its application and relates to former tenants and tradespeople with a demonstrated interest in an affected property.

In the meantime I continue to determine that the list is exempt from release under the FOI Act by operation of sections 34(1)(a) and section 41(1). These sections provide, relevantly, that:

34 Documents affecting relations with Commonwealth and States

(1) Subject to subsection (2), a document is an exempt document if disclosure of the document under this Act—

(a) would, or could reasonably be expected to, cause damage to relations between the Territory and the Commonwealth or the Territory and a State;

(2) This section does not apply to a document in respect of matter in a document the disclosure of which under this Act would, on balance, be in the public interest.

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).

Reasons

My reasons for reaching this decision are set out below.

Documents affecting relations with Commonwealth and States

You note in your request that negotiations with the Commonwealth and ACT have now concluded. This is incorrect as the loan agreement is yet to be signed and negotiations in that context continue.

As such I reiterate my reasons of 24 March 2014 in that I consider that disclosing many of the program files, including lists of houses could reasonably cause damage to relations between the Commonwealth and the ACT. I am concerned that releasing the lists publicly may generate unnecessary alarm (particularly among homeowners) which would affect the ACT's negotiating position with the Commonwealth. Heightened media interest and public angst could work against the ACT's negotiation position in this regard.

The impact of this could reasonably result in rendering the conduct of the negotiations in relation to the loan agreement more difficult, substantial impairment of good working relations and hindering of cooperation.

My view must be balanced against the public interest. I consider that non-disclosure of the list is counterbalanced by Government policy that ensures those persons with an interest in the house are already informed (i.e. need to know basis). For instance, the Government is in ongoing contact with affected home owners and occupiers, has recently improved asbestos management laws and practice, has improved disclosure of affected homes through clearer documentation on building files, public and industry education

and tagging of affected homes. Strategies continue to be developed and implemented in this regard.

Personal information

As advised previously, the FOI Act defines 'personal information' as 'information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion'.

I am satisfied that information that a person is the owner or occupant of a house contained loose-fill asbestos and was cleaned during the program is personal information of the homeowner. The identity of the homeowner is not ascertainable from the list itself. However, the identity of the owner of any house listed may be readily obtained from other sources, including general knowledge and observation. Consequently, I consider that the release of the list amounts to an unreasonable disclosure of personal information about the homeowner and potentially other persons living in the house.

Alternatively, if I was of the view that release of the list does not amount to an unreasonable disclosure of personal information, I consider that I would be required to consult every affected homeowner to seek and consider their individual views on release of this information. To do so in my view would be an unreasonable diversion of resources. While I acknowledge that some affected homeowners are in favour of publically disclosing the addresses of their and other homeowners, I am also aware of recent requests from other homeowners to refrain from publishing the list and continuing the 'need to know' policy position.

I am of the view that regulatory amendments are required in order to properly release the list of affected homeowners and releasing the list under the FOI Act is not the correct vehicle for doing so. The government has expressed an intention to take this course of action in 2015.

Internal Review

You are entitled, under section 59 (1) of the Act, to request a review of my decision. This right of review extends to a review of the adequacy of the search for documents undertaken by the Directorate.

You have 28 days after receiving notice of my decision to ask for a review, or a further period as allowed by the Director-General.

Your request should be addressed to:

Director-General
Chief Minister and Treasury Directorate
GPO Box 158
CANBERRA ACT 2601

Complaints to the Ombudsman

Under section 54 of the Act, you may complain to the Ombudsman about administrative matters relating to the processing of your FOI request. There is no fee for making a complaint. The Ombudsman may conduct an independent investigation into your complaint. You can contact the Ombudsman either by telephone on 1300 362 072 or by writing to:

The Ombudsman
GPO Box 442
CANBERRA ACT 2601

Should you wish to discuss this or have any queries regarding this matter please contact me on 620 54725, or Fiona.barbaro@act.gov.au.

Yours sincerely

Fiona Barbaro
Director, Technical and Regulation
23 December 2014