



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 2021-217

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	No
4. Additional information identified	No
5. Fees	N/A
6. Processing time (in working days)	9
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
Date: Friday, 20 August 2021 2:22:09 PM

CAUTION: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

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: [REDACTED]
First Name: [REDACTED]
Last Name: [REDACTED]
Business/Organisation: [REDACTED]
Address: [REDACTED]
Suburb: [REDACTED]
Postcode: [REDACTED]
State/Territory: [REDACTED]
Phone/mobile: [REDACTED]
Email address: [REDACTED]

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 the 7th of June [REDACTED] was placed under investigation by JACS. On the 19/08/2021 I was informed after all preliminary enquiries this investigation was ceased and that I was no longer under investigation. I'm requesting all email communication between Deb Clayton Baker and Phil Haarburger referencing myself or the investigation. I am requesting the names of all parties interviewed within the preliminary enquiries and the names of support persons in attendance. I am requesting all transcripts of recording/interviews from the preliminary enquiries.

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

Thank you.
Freedom of Information Coordinator



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2021-217



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 20 August 2021.

Specifically, your request stated: *"On the 7th of June [REDACTED] was placed under investigation by JACS. On the 19/08/2021 I was informed after all preliminary enquiries this investigation was ceased and that I was no longer under investigation. I'm requesting all email communication between Deb Clayton Baker and Phil Haarburger referencing myself or the investigation. I am requesting the names of all parties interviewed within the preliminary enquiries and the names of support persons in attendance. I am requesting all transcripts of recording/interviews from the preliminary enquiries."*

Authority

I am an Information Officer appointed by the 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 by 17 September 2021.

Decision on access

Searches were completed for relevant documents and 6 documents were identified that fall within the scope of your request. I have decided to refuse access to all 6 documents.

In accordance with section 54(2) of the Act a statement of reasons outlining my decision is below.

Statement of Reasons

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 *Human Rights Act 2004*; and
- the *Information Privacy Act 2014*.

Exemption claimed

My reasons for deciding not to grant access to the identified 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 section 2.1)

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

- (vi) *reveal or substantiate that an agency or public official has engaged in misconduct or negligent, improper or unlawful conduct or has acted maliciously or in bad faith.*

Having considered the factors identified as relevant in this matter, I consider that release of information contained in the document may reveal or substantiate that an agency or public official has engaged in misconduct or negligent, improper or unlawful conduct or has acted maliciously or in bad faith. The release of the information would allow the public to have access to the types of misconduct that have occurred and the outcomes of each allegation. The release of this information would demonstrate the work that is undertaken to ensure that members of the ACT Public Service uphold the requirements of the *Public Sector Management Act 1994* during their employment.

Factors favouring non-disclosure (Schedule 2 section 2.2)

(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 any other right under the Human Rights Act 2004;
- (ix) prejudice the flow of information to the police or another law enforcement or regulatory agency;

However, from my examination of the documents, the information contains the personal information of individuals that were assisting with an investigation conducted by the Professional Standards Unit (PSU) of which you were also a party. The information sought contains highly sensitive, personal witness statements and I consider that the disclosure of personal information of this kind would be a significant intrusion into the privacy of the parties involved, particularly as the information was provided in confidence. In my view, the information is so intertwined with the personal information of the people interviewed that the documents would lose their meaning and context if the personal information was removed.

Further, I am satisfied that at the time the witness statements from the staff were provided, it was on an understanding that the communications were being made and received in confidence. Breaking this confidence may impact the ability of the agency to receive similar information in the future. The protection of an individual's right to privacy, especially while assisting in a line of enquiry with a government agency, is a significant factor as the parties involved provided their personal information for the purposes of assisting with an investigation. I therefore consider that the parties interviewed supplied the information on the express understanding (or at the very least, under the reasonable expectation) that their identity and the statements provided would remain confidential.

Finally, failing to protect the identity of members of the ACT Government when providing information as part of an investigation could prejudice the future flow of information to a regulatory agency under the Act. ACT Government employees in future investigation matters could reasonably become reluctant to cooperate with the investigation if they believe that the information, they provide could be disclosed in response to an access application under the FOI Act.

Accordingly, I am satisfied that there is a substantial public interest in protecting the personal privacy of the parties involved in the investigation process including the witness statements.

I therefore weight the factors for non-disclosure more highly than the factor in favour of release in this instance. As a result, I have decided that release of the information requested could prejudice the complainant's right to privacy under the *Human Rights Act 2004* and it could also inhibit the future flow of information to the ACT Government.

Charges

Processing charges are not applicable for this request because no information is being released to you.

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 in response to your access application will be published in the CMTEDD disclosure log 3 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>.

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.

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 by the Ombudsman under section 82(1), you may apply to the ACAT for a 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 by email at CMTEDDFOI@act.gov.au.

Yours sincerely,



Daniel Riley
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate
2 September 2021