



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 2023-091

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)	20
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](#)
Cc: [redacted]
Subject: [redacted] - Request for information [redacted]
Date: Wednesday, 15 March 2023 12:43:43 PM
Attachments: [image001.png](#)
[redacted]

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Dear Proper Officer,

Please see **attached** request for information, which Worksafe ACT have advised I should direct to this address.

Please don't hesitate to contact us if you require anything further.

Kind regards,

To assist us during the Covid-19 pandemic, please send all correspondence and documents to us by email.



From: [redacted]
Sent: Wednesday, 15 March 2023 8:58 AM
To: worksafe@worksafe.act.gov.au
Cc: [redacted]
Subject: [redacted] Request for information [redacted]
[redacted]

Dear Commissioner,

Please find **attached** letter of today's date and enclosure.

We look forward to hearing from you.

Kind regards,

To assist us during the Covid-19 pandemic, please send all correspondence and documents to us by email.



Our Ref [REDACTED]



15 March 2023

Jacqueline Agius
Work Health and Safety Commissioner
Worksafe ACT

By email only: worksafe@worksafe.act.gov.au

This document, including any attachments, may contain privileged and confidential information intended only for the addressee named above. If you are not the intended recipient please notify us. Any unauthorised use, distribution or reproduction of the content of this document is expressly forbidden.

Dear Commissioner



We act on behalf [REDACTED], [REDACTED] [REDACTED], in relation to a claim for damages made by [REDACTED] in relation to an incident at work on 30 March 2021.

We understand that Worksafe ACT conducted enquiries and undertook an investigation into the circumstances of the incident, following which it referred the matter to the Director of Public Prosecutions. We also understand that the prosecution has now been finalised and the Magistrate Lawton of the ACT Magistrates Court handed down his decision on 16 February 2023.

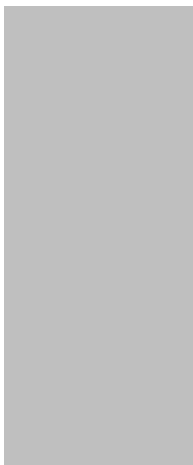
Please provide us with any and all information relating to the investigation and the prosecution, including, but not limited to: incident and investigation reports, statements made by witnesses, expert reports, documents provided by [REDACTED] the prosecution brief and any written judgment of Magistrate Lawton.

We **enclose** a copy of our client's authority for the release of that information.

Please send copies of the documents electronically to [REDACTED]

Please do not hesitate to contact us if you have any questions. Otherwise, we look forward to receiving your response and thank you for your assistance.

Yours faithfully





AUTHORITY TO OBTAIN INFORMATION AND DOCUMENTS

To: Worksafe ACT

Re: Investigation into the alleged incident on 30 March 2021 at [REDACTED]
[REDACTED]

I [REDACTED] in my capacity as [REDACTED]
[REDACTED] authorise Worksafe ACT to speak with and provide any and all
information and documents held by them in relation to the above named investigation to [REDACTED]
[REDACTED] including (but not limited to) all notifications, complaints, incident reports, proceedings,
determinations, statements, investigation reports, reports, correspondence and memoranda.

Dated: 9 March 2023





ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2023-091



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 5 May 2023.

Specifically, you are seeking: *“Document/s confirming the name of the company that employed the fork lift driver that was driving the fork lift that injured [REDACTED] on 30 March 2021.”*

Authority

As an appointed Information Officer under section 18 of the Act, I am authorised to make a decision on access or amendment to government information in the possession or control of CMTEDD.

Timeframes

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application by 5 June 2023, however, following on from an extension and third party consultations, the due date is now 27 June 2023.

Decision on access

Searches were completed for relevant documents and one document was identified that falls within the scope of your request.

I have included as **Attachment A** to this decision the schedule of relevant document. This provides a description of the document that falls within the scope of your request and the access decision for that document.

I have decided to partial access to one document.

My access decisions are detailed further in the following statement of reasons and the document released to you is provided as **Attachment B** to this letter.

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

Statement of Reasons

In reaching my access decisions, 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*.

Exemption claimed

Information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act

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 document 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 the document is within the ‘public interest’.

Factors favouring disclosure in the public interest under Schedule 2.1:

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

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

Having considered the factors identified as relevant in this matter, I consider that release of the information contained in the documents may contribute to procedural fairness by allowing you to have a copy of the documents that fall within the scope of your request.

Factors favouring nondisclosure in the public interest under Schedule 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.*

Having reviewed the documents, I consider that the protection of an individual’s right to privacy, is a significant factor as the party 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 identity of the individual 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 identity of the individual involved. I therefore weight the factor for non-disclosure more highly than the factor in favour of release in this instance. As a result, I have decided that release of this information (name, along with information that is out of scope) 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 document 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 to be 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, my decision and document released to you in response to your access application will be published on 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

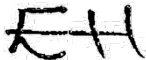
ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made 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 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely



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

5 June 2023



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST						Reference NO.
Document/s confirming the name of the company that employed the fork lift driver that was driving the fork lift that injured [REDACTED] on 30 March 2021.						CMTEDDFOI 2023-091
Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1, 6, 7	Transcript of Proceedings	30 Mar 2021	Partial Release	Sch 2 s2.2 (a)(ii) Out of Scope <i>(Fully redacted pages removed)</i>	Yes
Total No of Docs						
1						

Out of scope

TRANSCRIPT OF PROCEEDINGS

Out of scope

WORKSAFE ACT

INTERVIEWERS:

**INSPECTOR JEFFREY BEAVER
INSPECTOR JAMIE WILLIAMS**

INTERVIEWEE:

Sch 2.2(a)(ii)

12.25 PM, TUESDAY 30 MARCH 2021

Sch 2.2(a)(ii)

Out of scope

P-1

Out of scope, Sch 2.2(a)(ii)

35 INSPECTOR BEAVER: And what's your current occupation?

Sch 2.2(a)(ii): Forklift driver, or yeah just put forklift driver. I do all sorts from lunch breaks to working on machines to cleaning up, you know, the grounds and odd jobs like that.

40 INSPECTOR BEAVER: Okay.

Sch 2.2(a)(ii): Yeah, so forklifts are a small part of it, but it is part of it.

45 INSPECTOR BEAVER: And it's correct that you work for [REDACTED] [REDACTED] ?

Sch 2.2(a)(ii): Sorry?

INSPECTOR BEAVER: You work for [REDACTED] ?
5

Sch 2.2(a)(ii): Yes, I do.

INSPECTOR BEAVER: So not for ---

10 Sch 2.2(a)(ii): Sorry, that's incorrect. I worked for Programmed, that's a hire company and then they hire me out to [REDACTED].

Sch 2.2(a)(ii), Out of scope