



**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 2023-318

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:** [no-reply@act.gov.au](mailto:no-reply@act.gov.au)  
**To:** [CMTEDD FOI](#)  
**Subject:** Freedom of Information request  
**Date:** Monday, 4 September 2023 6:27:38 PM

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**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. [Learn why this is important](#)

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:

First Name:

Last Name:

Business/Organisation:

Address:

Suburb:

Postcode:

State/Territory:

Phone/mobile:

Email address:

### 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):

I request copies of correspondence sent by the Registrar General or their delegate to the Australian Carriage Driving Society Inc. between September 2021 and December 2021.

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: CMTEDD FOI 2023-318



### 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 4 September 2023, in which you sought access to correspondence to the *Australian Carriage Driving Society Inc.*

Specifically, you are seeking:

***"I request copies of correspondence sent by the Registrar General or their delegate to the Australian Carriage Driving Society Inc. between September 2021 and December 2021."***

On 11 September 2023 you contacted CMTEDD by phone in response to being advised of third party consultation. You provided some additional information on your requested scope of information when you were informed third party consultation was being undertaken on an email, and you informed CMTEDD you were seeking a letter. You provided further information on your scope of requested information by email to CMTEDD on 12 September 2023. On 12 September 2023 you consented to the following revised scope:

***"I am seeking copies of correspondence sent by the Registrar General or their delegate to the Australian Carriage Driving Society Inc. between 1 September 2021 and 30 December 2021. This includes, but is not limited to:***

- ***a copy of a letter from Access Canberra, signed by the delegate to the Registrar General, and sent to Australian Carriage Driving Society (ACDS) via the [redacted] in November 2021 (the November letter). The November letter supposedly contains information on what the process is for making decisions at General Meetings under the Associations Incorporations Act 1991.***



## **Authority**

I am an Information Officer appointed by the Director-General of CMTEDD 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 was required to provide a decision on your access application by 17 October 2023. Following third party consultation under section 38 of the Act, the due date was extended by 15 working days, with a due date of 7 November 2023.

## **Decision on access**

The search was conducted using the information you provided, including searching for records held by multiple business areas. Your requested scope was “between September 2021 and December 2021”. Accordingly, records were searched with a date range of 1 September 2021 to 31 December 2021.

Your requested scope sought correspondence “sent by the Registrar General or their delegate.” Accordingly, any correspondence not from the Registrar General or their delegate has been determined to be “outside scope” of your requested information.

Searches were completed for relevant documents and one (1) document was identified that falls within the scope of your request.

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

After the scope of your request was revised, additional searches were undertaken and no additional documents were located within the scope of your requested information.

I am satisfied that appropriate searches were completed and that no additional documents relevant to your request are held by CMTEDD.

I have decided to grant partial access to one (1) document relevant to your request. I have decided to refuse access to part of this document as I consider it to be:

- contrary to the public interest information under schedule 1; or
- information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

My access decisions are detailed further in the following statement of reasons and the documents released to you are 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 *Human Rights Act 2004*;
- *Registrar-General Act 1993*;
- *Hogan v Hinch* [2011] HCA 4; 243 CLR 506; and
- the content of the documents that fall within the scope of your request.

### **Additional Information on your requested scope**

Please note that the Registrar-General is *appointed* under notifiable instrument NI2022-397. Further, the *Registrar-General Act 1993* allows the Registrar-General to *appoint* Deputy Registrars- General at section 4A. According to schedule 2 item 2 of the *Deputy Registrars-General Appointment 2020 (No 3)*, positions classified from ASO3 through to SOGB in the Licensing and Registration business unit of Access Canberra, are *appointed* as Deputy Registrars-General. Therefore, the correspondence that was sent within the date range of your scope, was sent by a person *appointed* by the Registrar-General, not a delegate and *may* be considered outside of scope. However, in the interests of pro-disclosure under the Act, I have decided to include this document within the scope of requested information.

### **Exemption claimed**

My reasons for deciding not to grant access to the identified documents and components of these documents are as follows:

#### Contrary to the public interest information under schedule 1 of the Act

Folio 1 of the identified document contains no information that is considered to be contrary to the public interest under schedule 1 of the Act.

#### 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 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 in the public interest:

Under Schedule 2, section 2.1 of the Act:

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

*(i) promote open discussion of public affairs and enhance the government's accountability;*

*(iii) inform the community of the government's operation, including policies, guidelines and codes of conduct followed by the government in its dealings with members of the community.*

There are several factors favouring disclosure of the information requested. The disclosure of information concerning the conduct of investigations by regulatory bodies would reasonably be expected to promote open discussion and accountability and increase public knowledge and understanding of government processes. The release of information from public servants in exercising a statutory function in the areas of compliance and investigation could reasonably be expected to inform the community about how a regulatory agency undertakes its functions. I accord these factors moderate weight.

Factors favouring nondisclosure in the public interest:

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

Schedule 2, section 2.2(a) of the Act:

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

When considering the information and factors in favour of nondisclosure, I have considered the personal information, (that is not already in the public domain), and whether there is business information contained in the documents. I consider it unreasonable to release information that could identify the details of the person or persons that have been in contact with the ACT Government. I believe the release of this information may prejudice the protection of these individuals' right to privacy or any other right under the *Human Rights Act 2004*. There is no reason why there would be public interest in disclosing names of third parties who contacted the ACT government with a query. Disclosure could open these individuals to prejudice despite their involvement with the ACT Government being business related. I am satisfied that this factor favouring nondisclosure should be afforded significant weight as it relates to the individuals' privacy, and they have provided their personal information for the primary purpose of seeking information from the ACT government.

I note that this document contains some information that is within scope of your request. The remaining information is out of scope of your request and the portion that was prepared and submitted in response to a query has been partially released to you.

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) of the Act. 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.

Folio 1 of the identified document contains information that I consider, on balance, to be contrary to the public interest to disclose under the test set out in section 17 of the Act or they contain information which is out of scope.

### **Charges**

Pursuant to *Freedom of Information (Fees) Determination 2018* processing charges are not applicable for this request because the total number folio's 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. A description of the access application and my decision will be published in the CMTEDD disclosure log after 3 working days of the date of this decision and no later than 10 working days of the date of this 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 on 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](mailto:actfoi@ombudsman.gov.au)

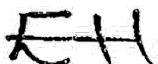
### **ACT Civil and Administrative Tribunal (ACAT) Review**

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 me by telephone on 02 62077754 or email [CMTEDDFOI@act.gov.au](mailto:CMTEDDFOI@act.gov.au).

Yours sincerely,

A handwritten signature in black ink, appearing to be the initials 'EH'.

Emma Hotham  
Information Officer  
Information Access Team  
Chief Minister, Treasury and Economic Development Directorate  
13 October 2023





**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

## FREEDOM OF INFORMATION REQUEST SCHEDULE

### WHAT ARE THE PARAMETERS OF THE REQUEST

Reference No.

**Revised Scope:**

*"I am seeking copies of correspondence sent by the Registrar General or their delegate to the Australian Carriage Driving Society Inc. between 1 September 2021 and 30 December 2021. This includes, but is not limited to:*

- a copy of a letter from Access Canberra, signed by the delegate to the Registrar General, and sent to Australian Carriage Driving Society (ACDS) via the [redacted] [redacted] November 2021 (the November letter) . The November letter supposedly contains information on what the process is for making decisions at General Meetings under the Associations Incorporations Act 1991.*

**CMTEDDFOI 2023-318**

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1	Email – Subject: "legal advice"	27/10/2023	Partial	Outside scope Sch 2 s2.2 (a)(ii)	Yes
<b>Total No of Docs</b>						
1						

**From:** [CITL](#)  
**To:** Sch 2.2(a)(ii)  
**Subject:** RE: legal advice  
**Date:** Wednesday, 27 October 2021 10:26:00 AM  
**Attachments:** [image001.png](#)

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OFFICIAL

Good Morning,

Unfortunately, Access Canberra cannot provide any legal advice.

Kind Regards,

Jessica Alves | Client Service Officer | Community, Industry & Trader Licensing

Phone: 13 22 81 | Email: [Jessica.Alves@act.gov.au](mailto:Jessica.Alves@act.gov.au)

**Access Canberra | ACT Government | Chief Minister, Treasury and Economic Development  
Directorate**

GPO Box 158, Canberra City ACT 2601 | [www.act.gov.au/accessCBR](http://www.act.gov.au/accessCBR)



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outside scope