



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 2024-107
Date of Application	21 March 2024
Date of Decision	7 May 2024
Processing time (in working days)	30
Fees	N/A
Decision on Access	Partial Release
Information Requested (summary)	Documents for point 15 of policy number 12/2022 on negative balances not being permissible.
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: [REDACTED]
To: [CMTEDD FOI](#)
Subject: Re: CMTEDDFOI 2024-107 - FOI request
Date: Thursday, 4 April 2024 4:50:42 PM

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Good afternoon FOI,

Yes I am seeking information that 1. Explains why section 15 was created and 2. information as to the reasons why its not permissible for an employee to have negative balance.

Regards

[REDACTED]

On Thu, 4 Apr 2024, 13:18 CMTEDD FOI, <CMTEDDFOI@act.gov.au> wrote:

Good afternoon [REDACTED],

Thank you for your time on the phone this afternoon.

I note you provided information to help with interpreting the scope of your request, as per the below email.

In particular, you are seeking information that explains why point 15 of the policy was created (The policy can be accessed [here](#)).

In particular, information that explains why a zero long service balance and not a negative balance.

As advised, a formal acknowledgement email will issue soon.

If you disagree with any information in this email, please reply by 15 April 2024 or you will be taken to agree.

Kind regards

Information Access Team

Phone: 02 6207 7754 | CMTEDDFOI@act.gov.au

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

From: [REDACTED]
Sent: Thursday, March 21, 2024 2:04 PM
To: CMTEDD FOI <CMTEDDFOI@act.gov.au>
Subject: CMTEDDFOI 2024-107 - FOI request

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I wish to seek information under section 30 of the Freedom of Information Act 2016 for the following information.

In June 2022, Workforce Capability and Governance issued policy number 12/2022 in relation to prior service recognition.

Under the title “Calculating credits- long service leave”, point 15 relates to a negative balance outcome.

I am seeking all information that led to the creation of point 15, including all research material, memos, internal decisions, legal opinions, notes of meetings, reasons for the need to create of point 15 and correspondence with outside entities including Unions, as well as any correspondence that highlighted the need for the creation of this policy.

I am aware legal opinions are privileged, but I would hope in this case the ACT Govt would waive privilege as I believe releasing any legal opinion is in the public interest and doing so would not interrupt or impede the operations of government nor is the material commercially sensitive.

If Workforce Capability and Governance was not involved with the discussions/creation of the information I am seeking, can you please advise me which of your agencies/departments are responsible, or could you please forward this FOI request to them.

Should you require any clarification or further information on my request, please contact me on this email address or on mobile [REDACTED]

regards

[REDACTED]

This email, and any attachments, may be confidential and also privileged. If you are not the intended recipient, please notify the sender and delete all copies of this transmission along with any attachments immediately. You should not copy or use it for any purpose, nor disclose its contents to any other person.



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 21 March 2024, in which you sought access to the following information:

“In June 2022, Workforce Capability and Governance issued policy number 12/2022 in relation to prior service recognition.

Under the title “Calculating credits- long service leave”, point 15 relates to a negative balance outcome.

I am seeking all information that led to the creation of point 15, including all research material, memos, internal decisions, legal opinions, notes of meetings, reasons for the need to create of point 15 and correspondence with outside entities including Unions, as well as any correspondence that highlighted the need for the creation of this policy.

I am aware legal opinions are privileged, but I would hope in this case the ACT Govt would waive privilege as I believe releasing any legal opinion is in the public interest and doing so would not interrupt or impede the operations of government nor is the material commercially sensitive.

If Workforce Capability and Governance was not involved with the discussions/creation of the information I am seeking, can you please advise me which of your agencies/departments are responsible, or could you please forward this FOI request to them.”

On 4 April 2024 you confirmed that the interpretation of your scope included:

“I am seeking information that 1. Explains why section 15 [point 15 of the policy] was created and 2. information as to the reasons why its not permissible for an employee to have negative balance.”

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. Therefore, a decision is due by **7 May 2024**.

Decision on access

A search of CMTEDD records has failed to identify any documentation in scope of your request. I am satisfied that appropriate searches were completed and that no documents within scope of the requested information are held by CMTEDD.

Additional Information

I note a previous decision with similar scope was made on CMTEDD application CMTEDDFOI 2021-079. This can be accessed here:

https://www.cmtedd.act.gov.au/data/assets/pdf_file/0003/2426520/2024-079.pdf

I understand that you were contacted on 4 April 2024 to attempt to rescope your request, given the above decision, which failed to locate any records within your scope of requested information. Initial searches failed to locate any records for request CMTEDDFOI 2024-107.

Noting the objects of the Act, in particular section 6(f) of the Act, being to “facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of the maximum amount of government information,” one document was located which although outside the scope of your requested information, relates to the approval of the policy referred to in the scope of your request.

I have decided to grant **partial access** to this document.

The record identified as relevant to your application is listed in the schedule enclosed at **Attachment A**. This provides a description of the document and the access decision for that document.

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
- *Public Sector Management Act 2016*
- *Public Sector Management Standards 2016*
- *Human Rights Act 2004*
- your views on the release of information in the public interest

As a decision maker, I am required to determine whether the information 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

Schedule 1: Information taken to be contrary to the public interest.

There were no schedule 1 factors identified within the information being released.

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 this document is within the ‘public interest’.

Factors favouring disclosure (under Schedule 2, Section 2.1 of the Act)

- Section 2.1(a)(i) - *promote open discussion of public affairs and enhance the government’s accountability.*
- Section 2.1(a)(viii) - *reveal the reason for a government decision and any background or contextual information that informed the decision.*

I have given significant weight to the above factors favouring disclosure. I note the document being released provides contextual information on the approval process of the policy which informed the decision to approve the ACTPS Prior Service Recognition Policy as referred to in the scope of your request.

I note that your scope of requested information refers to you requesting information that explains the creation of the policy. The document I have decided to release refers to the contextual basis for the approval of policy, as well as providing context for implementing *the Public Sector Management Standards 2016*, which are implemented under the *Public Sector Management Act 2016*.

I am satisfied that these factors favouring disclosure carry some weight. However, these factors are to be balanced against the factors favouring non-disclosure.

Factors favouring non-disclosure (under Schedule 2, Section 2.2 of the Act)

- 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.*

Where public servants’ personal information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose unless special circumstances existed. This is because the information would reveal only that the public servant was performing their public duties. The document being released contains a mobile phone number of a staff member, which I have redacted.

Having reviewed the information, I consider that the protection of an individual’s right to privacy, is a significant factor. Release of information concerning individuals working within the ACT Public Service is generally not considered to prejudice the protection of an individual’s right to privacy. However, where mobile phone numbers may be used for home and work purposes, this information is redacted, as it could or would reasonably be

expected to prejudice an individual's 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, as well as releasing one document outside the scope of the request, 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.

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 published, 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

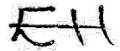
ACT Civil and Administrative Tribunal (ACAT) Review

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 CMTEDD FOI team by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely,

Handwritten signature of Emma Hotham, consisting of the letters 'EH' in a stylized, cursive font.

Emma Hotham

Information Officer

Chief Minister, Treasury and Economic Development Directorate

7 May 2024



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST

Reference No.

CMEDDFOI 2024-107

"In June 2022, Workforce Capability and Governance issued policy number 12/2022 in relation to prior service recognition. Under the title "Calculating credits- long service leave", point 15 relates to a negative balance outcome. I am seeking all information that led to the creation of point 15, including all research material, memos, internal decisions, legal opinions, notes of meetings, reasons for the need to create of point 15 and correspondence with outside entities including Unions, as well as any correspondence that highlighted the need for the creation of this policy. I am aware legal opinions are privileged, but I would hope in this case the ACT Govt would waive privilege as I believe releasing any legal opinion is in the public interest and doing so would not interrupt or impede the operations of government nor is the material commercially sensitive. If Workforce Capability and Governance was not involved with the discussions/creation of the information I am seeking, can you please advise me which of your agencies/departments are responsible, or could you please forward this FOI request to them."

"I am seeking information that 1. Explains why section 15 [point 15 of the policy] was created and 2. information as to the reasons why its not permissible for an employee to have negative balance."

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-2	Email - ACTPS Prior Service Recognition Policy	01/07/2022	Partial release	Sch 2 s 2.2 (a)(ii)	Yes
Total No of Docs						
1						

From: [Noud, Russell](#)
To: [#PeopleForum](#)
Cc: [Afaras, Sophie](#); [Allan, Sue](#); [Allars, Alex](#); [Burton, Amelia](#); [Amphlett, Kieron](#); [Bhalla, Teneisha](#); [Bouzas, Sophia](#); [Hughes, Fiona](#); [Girvan, Chelsea](#); [Groot, Sharna](#); [Matthews, EmmaC](#); [OConnor, Caitilin](#); [Ren, Ray](#); [Szandurski, Kim](#); [Taylor, Nina](#); [Connors, TeganM](#); [Trevillian, Lisa](#)
Subject: ACTPS Prior Service Recognition Policy
Date: Friday, 1 July 2022 9:14:17 AM

OFFICIAL

ACTPS Prior Service Recognition Policy

Good Afternoon

I am pleased to advise the ACTPS Prior Service Recognition Policy has been finalised and uploaded onto the Employment Portal [Policies and Guidance A-Z page](#) here:

https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0019/2022409/Prior-Service-Recognition-Policy.pdf (under the P section).

Thank you for all your feedback on this policy - it is very much appreciated.

Feedback

The updates made to the policy based on the feedback includes, but are not limited to:

- Additional clarification regarding ceasing employment with one employer and accepting employment with another, without a break (para 9)
- Additional clarification regarding personal leave accrual methods (para 13)
- Clarification on the treatment of negative balances when re-calculation of leave entitlements occur within the ACTPS (para 16)
- Additional clarification of the treatment of Legislative Assembly prior service
- Clarification of the treatment of Calvary prior service
- Clarification regarding the treatment of ADF prior service and personal leave balances (para 37)
- Additional clarification of the treatment of leave liability (para 45-46)
- Clarification of accepting prior service employment through the head of service/delegate discretion

Thank you to those directorates who provided feedback on the issues surrounding the prior service legislated provisions within the Public Sector Management Standards 2016. These will be scheduled for review in the near future and we will provide you with an opportunity to comment again at this time.

Next Steps

- All HR directorate areas are to ensure that all managers and staff are aware of the prior service policy and processes, in particular delegates involved in recruitment and selection processes.
- IRPSE will work with Shared Services Recruitment to ensure the policy is linked into the information that is provided to job applicants on the ACTPS Jobs website as soon as possible.
- IRPSE will work with Shared Services to update the recognition of prior service form where necessary.

Further Questions

If you have any further questions please don't hesitate to contact the IRPSE team at eba@act.gov.au.

Regards

Russell

Russell Noud

Executive Group Manager | Convenor of Appeals

Industrial Relations & Public Sector Employment

Workforce Capability and Governance

Chief Minister and Treasury Directorate | ACT Government

220 London Cct | GPO Box 158 Canberra City ACT 2601 | Web: www.act.gov.au

Phone: (02) 6207 6019 | Mobile: [Sch 2.2\(a\)\(ii\)](#) | Email: russell.noud@act.gov.au

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