



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 2018-0064

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: matrix@act.gov.au
To: [CMTEDD.FOI](#)
Subject: Freedom of Information request
Date: Tuesday, 20 March 2018 9:39:39 AM

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):

All documents as to why a bankrupt, [REDACTED] Director of The Schnitzel Haus Braddon Pty Ltd (ACN 31 603 059 490), and now in the same location Topsy Bull Pty Ltd (ACN 31 603 059 490), whose bankruptcy allowed him to avoid paying his vulnerable young employees their wages and superannuation entitlements, was subsequently declared a fit and proper person to hold an ACT liquor licence during his bankruptcy and currently.

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 2018-0064

[REDACTED]

via email: [REDACTED]

Dear [REDACTED]

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 March 2018, in which you sought access to all documents as to why a bankrupt, [REDACTED] Director of The Schnitzel Haus Braddon Pty Ltd (ACN 31 603 059 490), and now in the same location Topsy Bull Pty Ltd (ACN 31 603 059 490), whose bankruptcy allowed him to avoid paying his vulnerable young employees their wages and superannuation entitlements, was subsequently declared a fit and proper person to hold an ACT liquor licence during his bankruptcy and currently.

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 is required to provide a decision on your access application by 19 April 2018.

Decision on access

Searches were completed for relevant documents and 3 documents were identified that fall within the scope of your request.

I have decided to grant full access to 1 document and partial access to 2 documents. The information redacted in the documents I consider to be information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

I have included as [Attachment A](#) to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

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 decision is below.

Statement of Reasons

In reaching my access decision, I have taken the following into account:

- the Act, particularly Schedule 2 section 2(a)(ii);
- the content of the documents that fall within the scope of your request;
- the *Human Rights Act 2004*.

Exemption claimed

My reasons for deciding not to grant access to the identified documents and components of these 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 2.1)

- inform the community of the government’s operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community;
- reveal the reason for a government decision and any background or contextual information that informed the decision.

Factors favouring non-disclosure (Schedule 2.2)

- Prejudice the protection of an individual’s right to privacy or other right under the *Human Rights Act 2004*;

Having considered the factors identified as relevant in this matter, I consider that release of information contained in these documents may inform the community of the government’s operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community and reveal the reason for a government decision and any background or contextual information that informed

the decision by allowing you to have a complete record of the steps taken by the ACT Government to determine legislative compliance. The documents that were identified as being within the scope of your request show the processes undertaken by the ACT Government and decisions undertaken in relation to this matter.

However, when considering this finding against the factor favouring non-disclosure, I am satisfied that the protection of an individual's right to privacy, especially in the course of a line of enquiry into legislative compliance and diversionary education, is a significant factor as the parties involved have provided their personal information for the purposes of meeting obligations under relevant legislation which, in my opinion, outweighs the benefit which may be derived from releasing the personal information of the individual's involved in this matter. These 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 information of the individuals 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 (contacts names and personal information about the status of licence fees) 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 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 will ensure 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.

Folios 2 and 4 of the identified documents contain 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. Subsequently this information has been redacted from release.

Charges

Pursuant to *Freedom of Information (Fees) Determination 2017 (No 2)* 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. Your access request along with copies of the documents released to you will be published on the CMTEDD Disclosure Log after 24 April 2018. The disclosure log can be viewed online at <https://www.cmtedd.act.gov.au/functions/foi/disclosure-log>

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.

If you wish to request a review of my decision you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601
Via email: ombudsman@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
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 6207 7754 or email CMTEDDFOI@act.gov.au

Yours sincerely,



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

19 April 2018



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

NAME	WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.
[REDACTED]	All documents as to why a bankrupt [REDACTED], Director of The Schnitzel Haus Braddon Pty Ltd (ACN 31 603 059 490), and now in the same location Topsy Bull Pty Ltd (ACN 31 603 059 490), whose bankruptcy allowed him to avoid paying his vulnerable young employees their wages and superannuation entitlements, was subsequently declared a fit and proper person to hold an ACT liquor licence during his bankruptcy and currently.	2018-0064

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1	Email	09-Jun-2017	Full release	N/A	Yes
2	2	Email	09-Jun-2017	Partial release	Schedule 2 section 2(a)(ii) Personal Information	Yes
3	3-5	Email chain	26-Jun-2017	Partial release	Schedule 2 section 2(a)(ii) Personal Information	Yes
Total No of Docs						
3						

From: Cubin, Derise
Sent: Friday, 9 June 2017 2:57 PM
To: Nowlan, Andrew; Nasca, Giancarlo; White, Robyn; Curtin, Daniel
Cc: Pitt, Leesha; Simmons, Craig; Snowden, David
Subject: Young Canberra hospitality worker chasing \$15,000 after Schnitzel Haus restaurant collapse

Hi

I think we need to look at section 69 and 73 (I think they are the right sections) of the liquor act re suitability ... esp if same directors

"The Schnitzel Haus Pty Ltd (the Schnitzel Haus Erindale - licence number 13008828) – Surrendered 9 February 2017

The Schnitzel Haus Braddon Pty Ltd (possibly also trading as Topsy Bull Pty Ltd - licence number 13008851) – Company changed it's name from The Schnitzel Haus Braddon Pty Ltd to Topsy Bull Pty Ltd as of [27 February](#) (just an amendment, not a transfer as it's the same ACN and company structure as before)."

<http://www.canberratimes.com.au/act-news/young-canberra-hospitality-worker-chasing-15000-after-schnitzel-haus-restaurant-collapse-20170601-gwi67v.html>

Can we please have a look into this ...
Thx Derise

Sent from my iPad

From: [Nowlan, Andrew](#)
To: [Cubin, Derise](#)
Cc: [Curtin, Daniel \(Health\)](#)
Subject: RE: Young Canberra hospitality worker chasing \$15,000 after Schnitzel Haus restaurant collapse [SEC=UNCLASSIFIED]
Date: Friday, 9 June 2017 6:10:19 PM
Attachments: [image001.png](#)

Hi Derise

IBS confirms that the same persons are involved with both entities – **Sch 2 s2(a)(ii)** and **Sch 2 s2(a)(ii)**.

Sch 2 s2(a)(ii)

In terms of suitability under the Liquor Act the relevant provisions are as indicated by you:

69(1)(e) if the person is an individual—whether the person is, or during the preceding 5 years was

—

(i) bankrupt or personally insolvent; or

(ii) involved in the management of a corporation when the corporation was insolvent;

69(1)(f) if the person is a corporation—

(i) whether the person is, or during the preceding 5 years was, insolvent; or

(ii) whether each influential person for the corporation is a suitable person to hold the licence or permit.

Section 73(2) then provides the offence provision for failing to keep the Commissioner advised of any changes to circumstances that would affect any ongoing suitability to hold a licence such as being insolvent or declared bankrupt.

Based on the **Sch 2 s2(a)(ii)** involvement with both businesses, and Erindale being placed into voluntary administration, it would be prudent to issue a Show Cause in relation to ongoing suitability to hold a liquor licence. I can work on this over the weekend.

Cheers,
Andrew.

Andrew Nowlan | Senior Inspector | Business Engagement, Education & Compliance
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Access Canberra | ACT Government | www.act.gov.au/accesscbr
GPO Box 158 Canberra ACT 2601



**Access
Canberra.**

From: [Curtin, Daniel \(Health\)](#)
To: [Cubin, Derise](#)
Subject: RE: The Schnitzel Haus P/L [SEC=UNCLASSIFIED]
Date: Monday, 26 June 2017 2:48:07 PM
Attachments: [image001.png](#)

Thanks – I have been verbally updated. I've just asked both for their opinion on timing for the response. Whether it should go out prior to this action being finalised?

From: Cubin, Derise
Sent: Monday, 26 June 2017 2:34 PM
To: Curtin, Daniel
Subject: FW: The Schnitzel Haus P/L [SEC=UNCLASSIFIED]

Hi

FYI – so you are in the loop

Cheers Derise

From: Cubin, Derise
Sent: Monday, 26 June 2017 2:34 PM
To: Nowlan, Andrew
Cc: Brennan, Krista
Subject: RE: The Schnitzel Haus P/L [SEC=UNCLASSIFIED]

Hi Andrew and Krista

Thank you very much for your advice on this matter & the research that you have undertaken.

I agree with the suggestion you have made in relation to an educative approach – rather than an enforcement response at this time. I think that progressing with the letter as suggested is a good idea.

Thanks

Cheers Derise

From: Nowlan, Andrew
Sent: Monday, 26 June 2017 1:07 PM
To: Cubin, Derise
Cc: Brennan, Krista
Subject: FW: The Schnitzel Haus P/L [SEC=UNCLASSIFIED]

Hi Derise

Krista has made enquiries with RSM in relation to the Schnitzel Haus Erindale. Her comments are below:

- The Schnitzel Haus P/L that went into voluntary administration only related to Erindale premise

- The Schnitzel Haus P/L Braddon (now Topsy Bull Pty Ltd) is a related entity, however separate and not involved in the Erindale premise. RSM have no details on this company
- Trish stated that The Schnitzel Haus P/L incurred trade losses and the business was under capitalising from the beginning, therefore went into voluntary administration
- Trish further stated that Access Canberra (AC) was not listed as a creditor
- Not able to sell the business, nor viable to transfer the liquor licence, therefore may have been the reasoning behind surrender, however was not aware of the liquor licence or surrender to AC
- Advised new entity had made application for a new liquor licence at Erindale premise, Trish advised that RSM had disclaimed the lease and therefore did not object to a new business starting

It seems that RSM have treated the Braddon premises (now Topsy Bull) as being completely separate from the Erindale Schnitzel Haus, I think we need to be cognisant of that and proceed accordingly. I am therefore suggesting that we do not proceed down the line of considering any action to be taken against **Sch 2 s2(a)(ii)**, but rather that we note the issues currently being dealt with by RSM and remind him of his obligations under the Act to advise the Commissioner of any changes to his suitability, essentially a strongly worded educational letter.

Although we may well have grounds to pursue this further under section 69(e) of the Act, we need to be mindful of the detriment we could potentially have on current employees of **Sch 2 s2(a)(ii)** operation in Braddon – we do not want to be the public face of numerous persons finding themselves unemployed as a result of action we take - particularly as there is no mention or indication of Topsy Bull being in financial difficulty.

I definitely think education is the way to proceed with this, strongly reinforce the need to keep the Commissioner informed of changes that may affect suitability, particularly involvement with entities that are insolvent or otherwise under external administration. Enforcement is our last resort and I don't believe we have used our other options yet.

What are your thoughts?

Cheers,
Andrew.

Andrew Nowlan | Senior Inspector
Business Engagement, Education & Compliance
T: 02 6205 2534 M: 0433 400 472 (B/H) E: andrew.nowlan@act.gov.au
Access Canberra | ACT Government | www.act.gov.au/accesscbr
GPO Box 158 Canberra ACT 2601

ACT Government Access Canberra logo



From: Brennan, Krista
Sent: Monday, 26 June 2017 11:35 AM
To: Nowlan, Andrew
Subject: The Schnitzel Haus P/L

Hi Andrew,

Just spoke with [REDACTED] re The Schnitzel Haus P/L.

- The Schnitzel Haus P/L that went into voluntary administration only related to Erindale premise
- The Schnitzel Haus P/L Braddon (now Topsy Bull Pty Ltd) is a related entity, however separate and not involved in the Erindale premise. [REDACTED] have no details on this company
- Trish stated that The Schnitzel Haus P/L incurred trade losses and the business was under capitalising from the beginning, therefore went into voluntary administration
- Trish further stated that Access Canberra (AC) was not listed as a creditor
- Not able to sell the business, nor viable to transfer the liquor licence, therefore may have been the reasoning behind surrender, however was not aware of the liquor licence or surrender to AC
- Advised new entity had made application for a new liquor licence at Erindale premise, [REDACTED] advised that [REDACTED] had disclaimed the lease and therefore did not object to a new business starting

If you require anything further, she said you are welcome to contact her directly to discuss.

Kind Regards

Krista Brennan | Inspector

Business Engagement, Education & Compliance Section

Access Canberra | **ACT Government**

02 6205 5267 | krista.brennan@act.gov.au

GPO Box 158 Canberra ACT 2601 | www.act.gov.au/accesscbr

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