



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 2022-086

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)	15
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

10 March 2022

The FOI Information Officer
Chief Minister, Treasury and Economic Development Directorate
Level 2 Canberra Nara Centre,
1 Constitution Avenue CANBERRA ACT

By Email: CMTEDDfoi@act.gov.au

Dear the FOI Information Officer,

Freedom of Information Request

I advise that the [REDACTED] seeks to make an application to access documents pursuant to the *Freedom of Information Act 2016 (FOI Act)*.

The request concerns the attendance by two [REDACTED] at the Founders Lane Project (**Project**), Block 5 Section 60 Braddon in the ACT on 17 March 2021. The principal contractor of this Project is JWLand Construction Pty Ltd (**JWLand**). Worksafe investigators attended the Project on 17 March 2022, including Matt Davies, Peter Moltmann and Adam Bounds.

Pursuant to the FOI Act, the [REDACTED] seeks copies of any information and/or documents in the possession of Worksafe in relation to [REDACTED] Worksafe's attendance at the Project on 17 March 2021 and/or Worksafe's consideration/investigation of matters that arose in relation to such attendances including (without limitation):

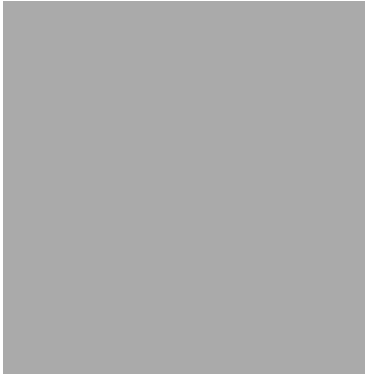
- copies of any statements taken;
- copies of any records of any interviews conducted;
- copies of any internal correspondence;
- copies of any file notes or other notes;
- copies of any photographs;
- copies of any videos;
- copies of any audio recordings;
- copies of any external correspondence, such as with JWLand and/or O'Neill & Brown Electrical Services;
- copies of reports;
- copies of notices;
- copies of any research undertaken; and
- copies of any inquiries made.

We kindly request copies of the documents to be provided in electronic form by email to [REDACTED]

We further request that we are notified of any cost involved in processing the above application prior to fulfilling the request.

Please note, this request has also been filed through the online form.

Should you require any further information please contact me via email or phone on [REDACTED]





ACT
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Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI2021-086



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 10 March 2022, in which you sought access under the *Freedom of Information Act 2016* (the Act) to:

Information and/or documents in the possession of WorkSafe in relation to [REDACTED] [REDACTED] WorkSafe's attendance at the Project on 17 March 2021 and/or WorkSafe's consideration/investigation of matters that arose in relation to such attendances including (without limitation):

- *copies of any statements taken.*
- *copies of any records of any interviews conducted.*
- *copies of any internal correspondence.*
- *copies of any file notes or other notes.*
- *copies of any photographs.*
- *copies of any videos.*
- *copies of any audio recordings.*
- *copies of any external correspondence, such as with JW Land and/or O'Neill Brown Electrical Services.*
- *copies of reports.*
- *copies of notices.*
- *copies of any research undertaken; and*
- *copies of any inquiries made.*

You confirmed on 24 March 2022 that you do not need copies of "Notice of Entry by WHS Entry Permit Holder" for any of the union officials.

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 8 April 2022.

Decision on access

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

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.

I have decided to grant partial access to one document and full access to two documents relevant to your request.

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 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 documents and/or components of these documents are as follows:

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 interest lies. As part of this process, I must consider factors favouring disclosure and nondisclosure.

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 2.2.1:

(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 information contained in these documents may contribute to the administration of justice generally by allowing you to have access to WorkSafe ACT investigation report and associated documents related to your access request.

Factors favouring nondisclosure in the public interest under Schedule 2.2.2:

(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.

Considering the factor in favour of disclosure against the factor favouring nondisclosure, I am satisfied that the protection of an individual's right to privacy, especially in the course of their dealings with ACT government, is a significant factor. Parties involved in this matter have provided their personal information for the purposes of complying with an WorkSafe inspection. Their right to privacy in my opinion, outweighs the benefit which may be derived from releasing their personal information. 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.

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 that the intent of the Act is met and will provide you with access to most 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 documents released to you in response to your access application will be published in the CMTEDD disclosure log between 3-10 days of the decision date. We will redact the names of union officials in publishing documents in order to protect their personal privacy. 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
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,



Katharine Stuart
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate
01 April 2022



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST

Reference NO.

CMTEDDFOI 2022-086

Pursuant to the FOI Act, the CEPU seeks copies of any information and/or documents in the possession of Worksafe in relation to [REDACTED] /or WorkSafe's attendance at the Project on 17 March 2021 and/or WorkSafe's consideration/investigation of matters that arose in relation to such attendances including (without limitation):

- copies of any statements taken.
- copies of any records of any interviews conducted.
- copies of any internal correspondence.
- copies of any file notes or other notes.
- copies of any photographs.
- copies of any videos.
- copies of any audio recordings.
- copies of any external correspondence, such as with JW Land and/or O'Neill Brown Electrical Services.
- copies of reports.
- copies of notices.
- copies of any research undertaken; and
- copies of any inquiries made.

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1	File Notes	17 March 2021	Partial	Sch 2 s2.2 (a)(ii)	Yes
2	2-3	Workplace Visit Report	17 March 2021	Partial	Sch 2 s2.2 (a)(ii)	Yes
3	4	Image	N/A	Full	N/A	Yes
Total No of Docs						
3						

St Patrick's Day

PETER / Sch 2.2(a)(ii)



MARCH 2021

8:00 am

Wednesday
076/289 Week 12

17

8:30

9:00

0900 CALL FROM () EIU RE EMERGENCY
PREPAREDNESS @ JMWLAND SITE.

9:30

- ADVISED PCBU TO ADDRESS IMMEDIATELY.
- NO IMMEDIATE RISK

10:00

- ALL STAFF 2B RE INDOCTION.
- THIS WOULD BE MY ADVICE IF

10:30

WORKERS, WHEN ASKED WERE
UNSURE SO RE INDOCTION IS
APPROPRIATE.

1:00

- CALL BACK TO CONFIRM IMPLEMENTATION

:30

- NO ANSWER LEFT MESSAGE
- INSP TO ATTEND SITE.

00

Initial Information

Inspection Number: 00057212

Lead inspector: Peter MOLTMANN Inspector ID: P39354

Is there any accompanying inspectors: Yes

Adam BOWNDS

P39353

Type of visit: Reactive

Date of visit: 17/03/2021

Legislation visit conducted under: WHS

Purpose of visit: Commercial construction

Entity information

Type of entity: Business Entity

Name of individual or registered company: JWland Construction Pty Ltd

Trading as:

ACN:

ABN: 86616339309

Industry Group:

Address: Braddon ACT 2612

Contact Name: Sch 2.2(a)(ii)

Contact Number: Sch 2.2(a)(ii)

Contact Email: Sch 2.2(a)(ii) @jwland.com.au

Details of visit

Address: Braddon ACT 2612

Notification of entry to (as required by s164): Manager

Were any potential breaches of the legislation identified? Yes

163 Duty of person conducting business or undertaking

(1) A person conducting a business or undertaking that includes the carrying out of construction work must comply with AS/NZS 3012:2010 (Electrical installations—Construction and demolition sites).

ETU organiser claimed that the electrical socket connecting the cables and emergency lighting luminaries did not provide adequate anti tampering against disconnection and therefore did not comply with AS/NZS 3012:2010.

Inspector notes:

I attended site at 13:15 with Inspector Bownds following a request from the WHS manager on site to mediate with a union dispute.

The following part of the Work Health and Safety Regulation 2011 was in dispute:

163 Duty of person conducting business or undertaking

(1) A person conducting a business or undertaking that includes the carrying out of construction work must comply with AS/NZS 3012:2010 (Electrical installations—Construction and demolition sites).

It was noted that 2.7.3 Emergency Lighting of AS/NZS 3012:2010 references:

- AS/NZS 2291.1 Part 1: System design, installation and operation
- AS/NZS 2293.3 Part 2: Emergency escape luminaries and exit signs

It was also noted that an emergency escape luminary had both standards listed on the side indicating that it complied with these standards.

The ETU organiser did not accept that this was sufficient and rang [redacted] – Electrical Inspector for additional clarification. The phone was handed to me and we discussed the issue. [redacted] indicated on the phone call to me that he considered the connections to be acceptable.

The CEPU organiser asked whether WorkSafe ACT had any jurisdiction over a T/A working with a sprinkler fitter in regard to trade licenses. I explained that those licences were not issued by WorkSafe ACT and we had no authority over their compliance.

We left site at approximately 14:30.

Disclaimer: The issues identified during this inspection are only indicative of compliance with the Work Health and Safety Act 2011, the Work Health and Safety Regulations 2011, the Dangerous Substances Act 2004 and the Workers Compensation Act 1951 on the date of the inspection. If compliance is identified during this inspection, it does not remove the obligation of any person to comply with any further requirement of the above mentioned Acts and Regulations.

Further action

Further action required: No

Previous notice/s issued (either written or verbal)?

Contacts

Lead inspector email address: peter.moltmann@act.gov.au

Recipient/s of this form

Email: [redacted]@jwland.com.au

Email 2: adam.bownds@act.gov.au

Privacy Notice: The information collected for the purpose of the Work Health and Safety Act 2011 and is in accordance with the Information Privacy Act 2014. WorkSafe ACT prevents any unreasonable intrusion into person's privacy in accordance with the Privacy Act 1988 (C'With) and Information Privacy Act 2014. WorkSafe ACT provides identifiable information which can be disclosed to other law enforcement agencies and authorised organisation that have legal authority to request information under prescribed circumstances.

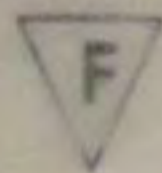
Powercraft

**MAINTAINED
EMERGENCY LUMINAIRE**

SWEX4

LAMP: WHITE LED

C0/D8, C180/D5, C90, C270/C8



$U_N = 48 \text{ VDC}$

Battery: NiCd 3.6V/1.6AH

AS 2293.1 - 2005

AS 2293.3 - 2005

Made in Singapore

