



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 2024-379
Date of Application	20 November 2024
Date of Decision	10 January 2025
Processing time (in working days)	17
Fees	N/A
Decision on Access	Full Release
Information Requested (summary)	The number of compliance investigation that have been commenced by the ACT Revenue Office in relation to eligibility claim of the First Home Buyer Concession Scheme.
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 type="checkbox"/> Published <input checked="" 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: CMTEDDFOI 2024-379 - FOI request - investigations undertaken by ACT Revenue
Date: Wednesday, 20 November 2024 1:24:32 PM

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Good afternoon

I seek access to the following information under the *Freedom of Information Act 2016 (ACT)*:

- the number of compliance investigations that have been commenced by the ACT Revenue Office in relation to eligibility to claim the First Home Buyer Concession Scheme, as established by Div 2.6A of the Duties Act 1999 and introduced in July 2019; and
- the number of adverse compliance decisions (that is, decisions that the claimant was not eligible) that have been made on the basis that the first home buyer that claimed the concession was not eligible to claim the concession since the concession scheme was introduced in July 2019; and
- the number of adverse compliance decisions that have been made on the basis that the exemption in relation to court orders was not available, specifically, that the first home buyer that claimed the concession was not eligible to claim the concession because:
 - they held a legal or equitable interest in another property (the **Earlier Property**) within the prescribed period before purchasing the property the subject of the claimed concession;
 - the person was required to relinquish the Earlier Property under an order of a court; and
 - although there were court orders requiring the person to relinquish the Earlier Property, the court orders were made prior to the date of settlement for the sale of the Earlier Property, and accordingly ACT Revenue consider that the Earlier Property was not relinquished under an order of a court; and
- confirmation as to whether any legal advice was sought in relation to the making of the adverse compliance decisions, including with respect to the proper statutory construction of the relevant legislation and legislative instruments.

In relation to the exemption in relation to court orders, I note that:

- the specific paragraph of the exemption has varied from time to time, and was originally set out in s 6(1)(b)(ii)(A) of the Determination (see for example, *Taxation Administration (Amounts Payable - Home Buyer Concession Scheme) Determination 2019 (No 2) (2019 Determination)*) and is now set out in the definition of an "allowed interest" in Schedule 1 of the *Taxation Administration (Amounts Payable - Home Buyer Concession Scheme) Determination 2024 (2024 Determination)*).
- the prescribed period has also varied from time to time, and was originally 2 years in the 2019 Determination, but has increased to five years in the 2024 Determination.

I confirm that I wish to include in the scope of my request all investigations and decisions arising out of claims for the HBCS since its introduction in 2019 (regardless of the specific paragraph where the exemption appears for both types of prescribed periods).

I confirm that I am seeking only to access information in relation to the number of investigations and adverse decisions that fall within the scope of my request as described above. I am **not** seeking to access any personal information in relation to those decisions and I am not seeking access to the decisions themselves. Similarly, I am only seeking that ACT Revenue confirm whether legal advice was sought, and am not seeking access to the legal advice itself.

Please contact me via email should you require any additional information in relation to this request.





ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2024-379



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 November 2024, in which you sought access to:

- the number of compliance investigations that have been commenced by the ACT Revenue Office in relation to eligibility to claim the First Home Buyer Concession Scheme, as established by Div 2.6A of the Duties Act 1999 and introduced in July 2019; and
- the number of adverse compliance decisions (that is, decisions that the claimant was not eligible) that have been made on the basis that the first home buyer that claimed the concession was not eligible to claim the concession since the concession scheme was introduced in July 2019; and
- the number of adverse compliance decisions that have been made on the basis that the exemption in relation to court orders was not available, specifically, that the first home buyer that claimed the concession was not eligible to claim the concession because:
 - they held a legal or equitable interest in another property (the **Earlier Property**) within the prescribed period before purchasing the property the subject of the claimed concession;
 - the person was required to relinquish the Earlier Property under an order of a court; and
 - although there were court orders requiring the person to relinquish the Earlier Property, the court orders were made prior to the date of settlement for the sale of the Earlier Property, and accordingly ACT Revenue consider that the Earlier Property was not relinquished under an order of a court; and
- confirmation as to whether any legal advice was sought in relation to the making of the adverse compliance decisions, including with respect to the proper statutory construction of the relevant legislation and legislative instruments.

In relation to the exemption in relation to court orders, I note that:

- the specific paragraph of the exemption has varied from time to time, and was originally set out in s 6(1)(b)(ii)(A) of the Determination (see for example, *Taxation Administration (Amounts Payable - Home Buyer Concession Scheme) Determination 2019 (No 2) (2019 Determination)*) and is now set out in the definition of an "allowed interest" in Schedule 1 of the *Taxation Administration (Amounts Payable - Home Buyer Concession Scheme) Determination 2024 (2024 Determination)*).
- the prescribed period has also varied from time to time, and was originally 2 years in the 2019 Determination, but has increased to five years in the 2024 Determination.

I confirm that I wish to include in the scope of my request all investigations and decisions arising out of claims for the HBCS since its introduction in 2019 (regardless of the specific paragraph where the exemption appears for both types of prescribed periods).

I confirm that I am seeking only to access information in relation to the number of investigations and adverse decisions that fall within the scope of my request as described above. I am **not** seeking to access any personal information in relation to those decisions and I am not seeking access to the decisions themselves. Similarly, I am only seeking that ACT Revenue confirm whether legal advice was sought, and am not seeking access to the legal advice itself.

On 06 December 2024, you proposed that the scope would be revised to:

- *the number of adverse compliance decisions (that is, decisions that the claimant was not eligible) that have been made on the basis that the first home buyer that claimed the concession was not eligible to claim the concession since the concession scheme was introduced in July 2019; and*
- *the number of adverse compliance decisions that have been made on the basis that the exemption in relation to court orders was not available, specifically, that the first home buyer that claimed the concession was not eligible to claim the concession because:*
 - *they held a legal or equitable interest in another property (the **Earlier Property**) within the prescribed period before purchasing the property the subject of the claimed concession;*
 - *the person was required to relinquish the Earlier Property under an order of a court; and*
 - *although there were court orders requiring the person to relinquish the Earlier Property, the court orders were made prior to the date of settlement for the sale of the Earlier Property, and accordingly ACT Revenue consider that the Earlier Property was not relinquished under an order of a court; and*
- *confirmation as to whether any legal advice was sought in relation to the making of*

the adverse compliance decisions, including with respect to the proper statutory construction of the relevant legislation and legislative instruments.'

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.

I am a tax officer for the purposes of the *Taxation Administration Act 1999* (TAA), and a delegate of the Commissioner of ACT Revenue for the purpose of section 96 of the TAA.

Timeframes

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application by **12 January 2025**.

Consultation

Under section 46(1)(a) of the Act, before refusing to deal with your application, CMTEDD was required to provide you, in writing, the grounds for the refusal, and (b) provide you with a reasonable opportunity to consult with CMTEDD and provide any additional information that is relevant. CMTEDD was also required to provide any information that may assist you in making an application in a form that would remove the grounds for refusal.

In accordance with section 46(1)(b), the consultation period as outlined in the Act is 10 days from the day after the notice was provided to you, meaning the consultation period has now expired.

Our office received correspondence from you on 10 December 2024 where you requested an explanation in the final decision explaining why section 43(1)(a) *dealing with the application would require an unreasonable and substantial diversion of the respondent's resources* was relied upon in part of the access request and to include a reference to Revenue Management's current record keeping practices.

Decision on access

Searches were completed for relevant information and the ACT Revenue Office (ACTRO) has identified the following statistical data that falls within scope of your request.

I have decided to grant **Full access** to the statistical data, tabled as follows:

'the number of adverse compliance decisions (that is, decisions that the claimant was not eligible) that have been made on the basis that the first home buyer that claimed the

concession was not eligible to claim the concession since the concession scheme was introduced in July 2019'

Year	No of NoRs issued
2019-20	21
2020-21	7
2021-22	8
2022-23	81
2023-24	236
2024-25 (to YTD Sep)	46

'confirmation as to whether any legal advice was sought in relation to the making of the adverse compliance decisions, including with respect to the proper statutory construction of the relevant legislation and legislative instruments.'

The ACT Revenue Office sought legal advice in relation to compliance investigations and decisions when appropriate.

With regard to your request for a reference to the Revenue's current record keeping practices requested on 10 December 2024, in response, there is training provided to all CMTEDD employees, including ACT Revenue at induction and post-induction as required. There is also mandatory training for all staff on record keeping.

I have decided to in part refuse to deal with your application under *section 43(1)(a)* of the *Freedom of Information Act 2016*. The ground for refusal is that the information requested would require an unreasonable and substantial diversion of the respondent's resources.

The information we intending to refuse as per the request is set out below:

- the number of adverse compliance decisions that have been made on the basis that the exemption in relation to court orders was not available, specifically, that the first home buyer that claimed the concession was not eligible to claim the concession because:
 - they held a legal or equitable interest in another property (the **Earlier Property**) within the prescribed period before purchasing the property the subject of the claimed concession;
 - the person was required to relinquish the Earlier Property under an order of a court; and
 - although there were court orders requiring the person to relinquish the Earlier Property, the court orders were made prior to the date of settlement for the sale of the Earlier Property, and accordingly ACT Revenue consider that the Earlier Property was not relinquished under an order of a court; and

Pursuant to section 54(2) of the Act, a statement of reasons outlining my decision follows.

Statement of Reasons

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

- Section 43(1)(a) of the Act
- Section 44(1) of the Act
- the Taxation Administration Act 1999
- the information that falls within the scope of your request.

Section 44 (1) of the Freedom of Information Act 2016 states 'The resources required to identify, locate, collate and examine the information relating to your request would sustainably inhibit the ability of the respondent to exercise its functions and the extent to which the public interest would be advanced by giving access to the information does not justify the use of the required resources.'

The ACT Revenue Office conducts compliance investigations into a large number of HBC plus other revenue streams to ensure compliance and support the integrity of the tax laws. Our record systems do not retain information on the reasons for an assessment or reassessment. To identify why a particular HBC matter was reassessed each file would need to be identified amongst a large volume of work and then screened manually for associated reasoning. It may in fact be that a number of considerations which were taken into account, not just one. The time for review and cataloguing is not considered to be reasonable.

In light of the above, I have decided to release the statistical data to you in part of your access 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 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 and my decision will be published on the CMTEDD disclosure log. Your personal contact details will not be published. You may view CMTEDD disclosure log at <https://www.cmtedd.act.gov.au/functions/foi/disclosure-log-2023>.

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 the disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may use this form [Applying for an Ombudsman Review](#) to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman:

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 0293 or email ACTRO.FOI@act.gov.au.

Yours sincerely,

J Tonna

Joseph Tonna
Information Officer
ACT Revenue Office
Chief Minister, Treasury and Economic Development Directorate
10 January 2025