



ACT
Government

Territory and Municipal Services

Freedom of information request

I refer to your application made under the *Freedom of Information Act 1989* (the FOI Act) received on 17 November 2011, in which you sought access to all documentation relating to surveys undertaken by the Territory and Municipal Services Directorate to ascertain the level of customer satisfaction with café services in Macarthur House.

Decision

I am an officer authorised under section 22 of the FOI Act to make a decision in relation to your request.

Five documents have been located within the scope of your request. I have decided to:

- partially release documents 1 and 2; and
- exempt from release documents 3 to 5.

I have decided to exempt some material from documents 1 and 2 pursuant to section 41(1) of the FOI Act, which provides:

41 Documents affecting personal privacy

- (1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

The material that I have exempted from documents 1 and 2 are the names of directorate staff who participated in feedback on the questions to be included in the café survey. While I would not normally remove the names of government officers from documents released pursuant to the FOI Act, in this instance I have decided that the officers concerned were not acting in their official capacities, but rather were acting as private consumers of café services in Macarthur House, and thus to release their names in this context would be unreasonable.

I have decided to exempt from release documents 3 to 5 pursuant to sections 39(1) and 40(1)(d) of the FOI Act, which provide:

39 Documents affecting financial or property interests of the Territory

- (1) Subject to subsection (2), a document is an exempt document if its disclosure under this Act would have a substantial adverse effect on the financial or property interests of the Territory or of an agency.

40 Documents concerning certain operations of agencies

- (1) Subject to subsection (2), a document is an exempt document if its disclosure under this Act would, or could reasonably be expected to—
[...]
(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Documents 3 to 5 are the responses of directorate staff to the questions asked in the café survey. The purpose of the survey was to identify what staff in Macarthur House would like in terms of café services. The responses to the survey questions will form the basis of a public tender for the provision of café services. I have decided that releasing the responses under the FOI Act would undermine the proper effectiveness of the tender process, and would provide an unfair advantage to any competitor should the information be used by potential tenderers.

Sections 39(2) and 40(2) of the FOI Act require me to consider the public interest before exempting from release documents under sections 39(1) and 40(1).

In applying this public interest test, I have taken the following factors into account:

- the general public interest in government-held information being accessible to the community, as expressed in the FOI Act's object of extending as far as possible the right of the Australian community and, in particular, the citizens of the Territory, to access to information in the possession of the Territory;
- the ACT Government's commitment to conducting an open government;
- release of the documents would prejudice the proper conduct of the proposed public tender process for café services in Macarthur House; and
- the public interest in ensuring that tender processes are conducting fairly and in not providing an advantage to one competitor over other potential tenderers.

I have decided that, on balance, the public's interest in ensuring that public tenders are conducted fairly, properly and effectively outweighs the public interest in obtaining the responses to the survey.

Notwithstanding my decision not to release documents 3 to 5, containing the responses to the questions asked in the café survey, for your information I have included at Attachment C the questions that were asked in the survey.

While I am not prepared to defer access to the survey results under section 20(1)(c) of the FOI Act, it may be that the information would be released should it be requested after the conclusion of tendering.

Fees and charges

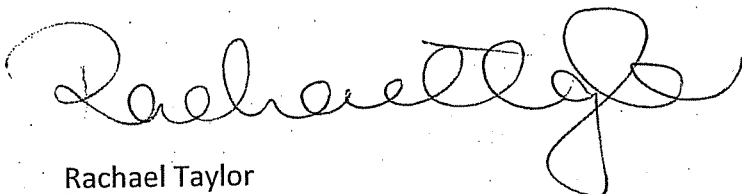
Freedom of information requests attract fees and charges for time spent searching and retrieving documents, decision-making time and photocopying. In relation to your request, no fee is payable as the time spent on processing your request, and the number of documents released were within the fee-free threshold.

Right of review

My decision is reviewable. This means that if you are dissatisfied with my decision, you have a right to seek a review under section 59 of the FOI Act. The review process is explained for your information at Attachment A.

You have 28 days from the date of this letter to seek a review of my decision, or such other period as the Director-General permits.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rachael Taylor', with a large, stylized loop at the end.

Rachael Taylor
Senior Manager
Government Business

21 December 2011



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Attachment A

FREEDOM OF INFORMATION SCHEDULE

Document number	Description	Status (full release, partial release, exempt)	Reason for exemption (where applicable)
1	Response to email from Director Asset Information, 8 April 2011	Partial release	Section 41 – Documents affecting personal privacy
2	Response to email from Director Asset Information, 8 April 2011	Partial release	Section 41 – Documents affecting personal privacy
3	Café Customer Survey responses	Exempt	Section 39 – Documents affecting financial or property interests of the Territory Section 40 – Documents concerning certain operations of agencies
4	Café Customer Survey responses – Survey Monkey	Exempt	Section 39 – Documents affecting financial or property interests of the Territory Section 40 – Documents concerning certain operations of agencies
5	Café Customer Survey response text and date	Exempt	Section 39 – Documents affecting financial or property interests of the Territory Section 40 – Documents concerning certain operations of agencies

Freedom of Information Act 1989 – Review Processes

Internal Review

If you are dissatisfied with a decision made under the Freedom of Information Act 1989, you have a right to seek an internal review of the decision. If you wish to seek an internal review you should write to:

The Director-General
Territory and Municipal Services Directorate
C/- Freedom of Information Officer
GPO Box 158
CANBERRA ACT 2601

You have 28 days from the date of the decision letter to seek a review of the outcome or such other period as the Director-General permits.

ACT Civil and Administrative Tribunal

If you are still dissatisfied after the agency has conducted an internal review, you can seek an independent review of the decision by the ACT Civil and Administrative Tribunal. You have 28 days from the date of the internal review decision to seek a review from the Tribunal.

The Tribunal is an independent body. It can agree with, change or reject the original decision, substitute its own decision or send the matter back to the decision maker for reconsideration in accordance with Tribunal recommendations.

To apply to the Tribunal for a review you can obtain an application form from the Tribunal (www.acat.act.gov.au). The form outlines all the information needed by the Tribunal to process a review promptly. There is a fee for lodgment of an appeal with the Tribunal. This fee may be remitted under certain circumstances.

The postal address of the Tribunal is:

ACT Civil and Administrative Tribunal
GPO Box 370
CANBERRA ACT 2601

Ombudsman

You also have the right to complain to the Ombudsman about the processing of your request. If you wish to lodge a complaint you should write to:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Further information

For further information on your right to review of an FOI decision, please contact the directorate's FOI officer on 6205 5408 or tamsfoi@act.gov.au.

Café Customer Survey

Q1. Please rank the importance of the following

Answer Options	Not important	A little important	Important	Very Important
Quality coffee				
Fresh Sandwich bar				
Hot food				
Health food				
Cold drinks				
Snacks				
Variety of food				
Competitive prices				
Efficient service				
Friendly service				
Cleanliness				
Catering				

Q2. How often do you use the café?

Answer Options
Every day
Many times a day
Most days
Some days (less than once a week)
Rarely (no more than once week)
Never

Q3. If you do not currently use the café, please say why not?

Q4. What items do you currently buy from the café?

Answer Options
Coffee
Cold drinks
Breakfast
Lunch
Snacks
N/A

Q5. What other items or services would you like to see provided?

Q6. What sort of recreational facilities would you like in the café?

Answer Options
Indoor seating
Outdoor seating
Lounges
Television

Q7. Are you happy with the current opening hours (7 am – 4.30 pm)?

Answer Options
Yes
No

Q8. Do you have any other comments or suggestions to improve the café?