



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 2022-279

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	N/A
4. Additional information identified	No
5. Fees	N/A
6. Processing time (in working days)	35
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: [REDACTED]
To: [CMTEDD FOI](#)
Subject: Re: CMTEDDFOI 2022-279 - Freedom of Information request
Date: Monday, 5 September 2022 5:01:20 PM

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[REDACTED]
I agree with the changes as you have set out below resetting from 10 years of reports to 5 years.

Regards,
[REDACTED]

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From: [REDACTED] on behalf of CMTEDD FOI
<CMTEDDFOI@act.gov.au>
Sent: Monday, September 5, 2022 4:54:38 PM
To: [REDACTED]
Subject: RE: CMTEDDFOI 2022-279 - Freedom of Information request

OFFICIAL

Good afternoon [REDACTED]

Thank you for speaking with me earlier.

This email is to confirm the rescope of your request to the following:

- ***Request the last 5 years of mandated “Authorised Insurer” statements to the Construction Occupations Registrar in relation to the Building Act Clause 95 (4) (or to whomever these reports are now sent to).***
- ***Request the last 5 years of mandated “Approved Fidelity Fund Trustees” statements to the Commissioner for Fair Trading in relation to the Building Act Clause 103 (2) (b) (iv) and Building Prudential Standards Clauses 57 and 58 (or to whomever these reports are now sent to).***

Please confirm by return email as soon as possible.

Thanks

Sue

Sue [REDACTED] | Freedom of Information Coordinator | Information Access Team
Phone: [REDACTED] | Email: CMTEDDFOI@act.gov.au
Corporate | Chief Minister, Treasury and Economic Development Directorate | ACT Government

From: no-reply@act.gov.au <no-reply@act.gov.au>
Sent: Monday, 5 September 2022 7:42 AM
To: CMTEDD FOI <CMTEDDFOI@act.gov.au>
Subject: CMTEDDFOI 2022-279 - Freedom of Information request

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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:

First Name:

Last Name:

Business/Organisation:

Address:

Suburb:

Postcode:

State/Territory:

Phone/mobile:

Email address:

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.)

FOI – Home Warranty Claims statements to the ACT Government This FOI Request relates to the lack of clarity surrounding Home Warranty Schemes (both HIA Insurer and Master Builder Fidelity Fund). The current legislation (Building Act Clause 95 – Duties of Insurers, sub clause 4) requires: (4) On or before 31 July in each year, an authorised insurer must give a written statement to the construction occupations registrar in relation to claims on residential building insurance policies dealt with by the insurer in the financial year ending on the previous 30 June, stating the following: (a) the number of claims; (b) the amount of

each claim; (c) the number of claims that were paid; (d) the amount paid on each claim; (e) if a claim was rejected—the reason for its rejection. The Building Act Clause 103 – Prudential Standards (for Approved Fidelity Funds) goes on to state: (2) The prudential standards may – (b) make provision in relation to – (iv) requiring the giving of information to the commissioner for fair trading, or any other entity prescribed under the prudential standards, about decisions by the trustees to pay or refuse to pay claims. The Building Prudential Standards Clauses 57 and 58 go on to state: Reporting to the commissioner for fair trading 57. The trustees must report to the commissioner for fair trading each decision by the trustees to pay or refuse a request under a fidelity certificate: (a) every three months, commencing from the date of approval of the approved scheme; and (b) if requested in a written direction from the Minister, within the period specified in the direction. A direction made under paragraph (b) is a disallowable instrument. Note A disallowable instrument must be

Under the Freedom of Information Act 2016 I want to access the following document/s (*required field):

notified, and presented to the Legislative Assembly, under the Legislation Act 2001. 58. The report for the purposes of clause 57 must include, in respect of a financial year: (a) the number of requests for payment received by the trustees pursuant to fidelity certificates; (b) the amount sought under each request for payment pursuant to a fidelity certificate; (c) the number of payments made in response to requests for payment pursuant to fidelity certificates; (d) for each request for payment pursuant to a fidelity certificate that was paid, the amount that was paid, and (e) where a request for payment pursuant to a fidelity certificate was rejected, the reason for its rejection. • The Minister’s Letter dated 30 Jun 22 (attached) identifies the Commissioner for Fair Trading receives these reports every 3 months (in accordance with Clause 103 (2) (iv) of the Building Act 2004 and Clauses 57 & 58 of the Prudential Standards) • The Commissioner for Fair Trading’s Letter to me dated 13 Apr 22 (attached), states that ‘the Commissioner does not have any jurisdiction over the approval or oversight functions of the fund’ The specific request is to: • Question: Does the term “Authorised Insurer” under the Building Act, Include both the HIA Insurer and the Master Builders Fidelity Fund? • Request the last 10 years of mandated “Authorised Insurer” statements to the Construction Occupations Registrar in relation to the Building Act Clause 95 (4) (or to whomever these reports are now sent to). • Request the last 10 years of mandated “Approved Fidelity Fund Trustees” statements to the Commissioner for Fair Trading in relation to the Building Act Clause 103 (2) (b) (iv) and Building Prudential Standards Clauses 57 and 58 (or to whomever these reports are now sent to). I am happy to email a copy of the Minister's Letter of 30 Jun 22 and Commissioner for Fair Trading's Letter of 13 Apr 22. Could I please be kept informed of the FOI request progress, noting the issues that we have had in our previous FOI requests.

I do not want to access the following

documents in relation
to my request::

Thank you.
Freedom of Information Coordinator

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

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 5 September 2022.

Specifically, you are seeking:

- *Request the last 5 years of mandated "Authorised Insurer" statements to the Construction Occupations Registrar in relation to the Building Act Clause 95 (4) (or to whomever these reports are now sent to).*
- *Request the last 5 years of mandated "Approved Fidelity Fund Trustees" statements to the Commissioner for Fair Trading in relation to the Building Act Clause 103 (2) (b) (iv) and Building Prudential Standards Clauses 57 and 58 (or to whomever these reports are now sent to).*

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 was required to provide a decision on your access application by 5 October 2022 however, following an extension the due date is now 26 October 2022.

Decision on access

A search of CMTEDD records has failed to identify any documentation in relation to your request. The search was conducted using the information you provided.

I am satisfied that appropriate searches were completed and that no documents relevant to your request are held by CMTEDD.

However, Access Canberra advised you would need to contact the MBA to obtain documents in relation to this request.

Charges

Pursuant to *Freedom of Information (Fees) Determination 2017 (No 2)* processing charges are not applicable for this request because no documents are being released to you.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. A description of the access application and my decision will be published in the CMTEDD disclosure log after 3 days after the date of my decision. 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 of my decision, 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



Emma Hotham
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate

26 October 2022