



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 2022-197

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	
4. Additional information identified	No
5. Fees	Waived
6. Processing time (in working days)	35
7. Decision made by Ombudsman	Under review
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](#)
Cc: [REDACTED]
Subject: CMTEDDFOI 2022-197 FW: [REDACTED] Fair Trading - Misleading conduct - [REDACTED]
Date: Friday, 1 July 2022 10:34:47 AM

Caution: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe. [Learn why this is important](#)

To whom it may concern

I respectfully request the following information in relation to the following application “RE: [REDACTED] Fair Trading - Misleading conduct - [REDACTED]” made by Access Canberra | Chief Minister Treasury and Economic Development Directorate and henceforth called “Fair Trading” against the [REDACTED]

- All correspondence generated by Fair Trading and sent to the [REDACTED] in the course of its work in relation to the above application including the initial complaint and follow up correspondence relating amongst other things to its efforts to conciliate an outcome with the [REDACTED];
- All correspondence received by Fair Trading from the [REDACTED] in relation to the application including its formal response and any further communication;
- All Fair Trading file and case notes generated electronically and stored on electronic systems under the control of Fair Trading dealing with its management of the consumer complaint;
- All emails sent or received internally by Fair Trading relating to the management of the application;
- All correspondence relating to the delay on the part of Fair Trading including correspondence with the Minister and / or with [REDACTED]

To assist in responding to this FOI request, the email chain of our communication with Fair Trading is set out below.

Can you please give an indication of the likely time frame for a response?

If you need clarification or further information please let me know.

Thank you for your work.

Yours sincerely,

[REDACTED]

[REDACTED]

From: ACT Digital Feedback <digital.feedback@act.gov.au>
Sent: Monday, 27 June 2022 6:49 PM
To: [REDACTED]
Subject: [REDACTED] Fair Trading - Misleading conduct - [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 1 July 2022.

Specifically, you are seeking: *“Information in relation to the following application*

“RE: [redacted] Fair Trading - Misleading conduct - [redacted] made by Access Canberra | Chief Minister Treasury and Economic Development Directorate and henceforth called “Fair Trading” against the [redacted] [redacted]”

- All correspondence generated by Fair Trading and sent to the [redacted] [redacted] in the course of its work in relation to the above application including the initial complaint and follow up correspondence relating amongst other things to its efforts to conciliate an outcome with the [redacted] [redacted]*
- All correspondence received by Fair Trading from the [redacted] [redacted] in relation to the application including its formal response and any further communication;*
- All Fair Trading file and case notes generated electronically and stored on electronic systems under the control of Fair Trading dealing with its management of the consumer complaint;*
- All emails sent or received internally by Fair Trading relating to the management of the application;*
- All correspondence relating to the delay on the part of Fair Trading including correspondence with the Minister and / or with [redacted].”*

Authority

As an appointed Information Officer under section 18 of the Act, I am authorised to make a decision on access or amendment to government information in the possession or control of CMTEDD.

Timeframes

In accordance with section 40 of the Act, CMTEDD was required to provide a decision on your access application by 29 July 2022 however, following third party consultations, the due date is now 19 August 2022.

Decision on access

Searches were completed for relevant documents and 15 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 the documents that fall within the scope of your request and the access decision for each document.

I have decided to grant access in full to 14 documents and partial access to one document.

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 identified 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 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 [public interest] 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 the documents is within the 'public interest'.

Factors favouring disclosure in the public interest:

(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 the information contained in the document may contribute to procedural fairness by allowing you to have a copy of the documents that fall within the scope of your request.

Factors favouring nondisclosure in the public interest:

(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 other rights under the Human Rights Act 2004.

Having reviewed the documents, I consider that the protection of an individual's right to privacy, especially in the course of dealing with the ACT Government is a significant factor. Parties involved have provided their personal information for the purposes of working with the ACT Government and this, in my opinion, outweighs the benefit which may be derived from releasing the personal information of the individual's involved.

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 nondisclosure more highly than the factor in favour of release in this instance. As a result, I have decided that release of this information (signatures, mobile phone numbers, identifying details and names of individuals not employed by the ACT Public Service) 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 that 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.

Charges

Pursuant to *Freedom of Information (Fees) Determination 2017 (No 2)* processing charges are applicable for this request because the total number of pages to be released to you exceeds the charging threshold of 50 pages. However, the charges have been waived in accordance with section 107(2)(b) of the Act.

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 on 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 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
Chief Minister, Treasury and Economic Development Directorate

19 August 2022