



**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 2019-238

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Schedule only
4. Additional information identified	No
5. Fees	N/A
6. Processing time (in working days)	6
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:** Freedom of Information request  
**Date:** Saturday, 19 October 2019 10:46:35 PM

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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.)**

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

Marked construction industry C class builders license examinations as undertaken by me on 12th June 2019 and 9th October 2019.

I do not want to access the following documents in relation to my request::

Thank you.

Freedom of Information Coordinator



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDDFOI 2019-238

[REDACTED]

via email: [REDACTED]

Dear [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 21 October 2019.

Specifically, you are seeking: *“Marked construction industry C class builders license examinations as undertaken by me on 12th June 2019 and 9th October 2019.”*

#### **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.

#### **Timeframes**

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application by 18 November 2019.

#### **Decision on access**

Searches were completed for relevant documents and two 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 refuse access to all identified documents as I consider them to be entirely composed of information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

In accordance with section 54(2) of the Act a statement of reasons outlining my decision is below.

#### **Material considered**

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

- the Act; and
- the content of the documents that fall within the scope of your request.

## **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 factors favouring non-disclosure.

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 (Schedule 2.1)

(viii) *reveal the reason for a government decision and any background or contextual information that informed the decision.*

#### Factors favouring non-disclosure (Schedule 2.2)

(xvii) *prejudice the effectiveness of testing or auditing procedures.*

Having considered the factors identified as relevant in this matter, I consider that the release of the information contained in the documents could reveal the reason for a government decision by showing the marking for the exams, including the questions incorrectly answered and the correct answer for those questions.

I have also considered the impact that releasing this information would have on the testing of builders in the ACT. The examination papers requested show in their marking the incorrect answers (and by default the correct answers) for a standard examination given to builders who are trying to become Class C Builders. The purpose of the examination is to determine whether builders have the expected knowledge required of a Class C Builder. Critically, these papers form part of a set of papers which are used regularly to test those wanting to become Class C Builders. Of further note is the front page of the test which informs those undertaking the exam that the contents of the examination paper are confidential, and by undertaking the exam they agree not to copy or discuss any part of the exam. For these reasons I consider that the release of this information would prejudice the testing procedure by providing the correct answers to this exam.

I have balanced the competing factors and find that for the reasons set out above, the factor which favours non-disclosure outweighs the factor favouring disclosure.

## **Charges**

Pursuant to *Freedom of Information (Fees) Determination 2017 (No 2)* processing charges are not applicable for this request because no information is 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. Your original access application and my decision on your access application will be published in the CMTEDD disclosure log three to ten working days after the date of my decision. Your personal contact details will not be published.

You may view the CMTEDD disclosure log at  
<https://www.cmtedd.act.gov.au/functions/foi/disclosure-log>.

### **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 a review by the Ombudsman of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in the CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the Ombudsman at:  
The ACT Ombudsman  
GPO Box 442  
CANBERRA ACT 2601  
via email: [actfoi@ombudsman.gov.au](mailto:actfoi@ombudsman.gov.au)

### **ACT Civil and Administrative Tribunal (ACAT) Review**

Under section 84 of the Act, if a decision is made by the Ombudsman under section 82(1), you may apply to the ACAT for a 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 (02) 6207 7754 or by email at [CMTEDDFOI@act.gov.au](mailto:CMTEDDFOI@act.gov.au).

Yours sincerely,



Sarah McBurney  
Information Officer  
Information Access Team  
Chief Minister, Treasury and Economic Development Directorate

29 October 2019



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

## FREEDOM OF INFORMATION REQUEST SCHEDULE

NAME		WHAT ARE THE PARAMETERS OF THE REQUEST				Reference NO.
[REDACTED]		Marked construction industry C class builders license examinations as undertaken by me on 12th June 2019 and 9th October 2019.				CMTEDDFOI 2019-238
Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-9	Examination paper	12-Jun-2019	Exempt	Schedule 2 2.2(a)(xvii)	No
2	10-17	Examination paper	9-Oct-2019	Exempt	Schedule 2 2.2(a)(xvii)	No
Total No of Docs						
2						