



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 2023-066

Information to be published	Status
1. Access application	Published
2. Decision notice	Published
3. Documents and schedule	Published
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: no-reply@act.gov.au
To: [CMTEDD FOI](#)
Subject: Freedom of Information request-CMTEDDFOI 2023-066
Date: Wednesday, 1 March 2023 10:25:30 AM

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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):

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

All correspondence between Minister Berry and Geocon regarding the Phillip Pool site in Woden since November 2022. Minister Berry mentioned the string of letters during question time in the Legislative Assembly on Wednesday the 8th of February.

Thank you.
Freedom of Information Coordinator



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDD 2023-066



FREEDOM OF INFORMATION REQUEST

I refer to your request submitted 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 March 2023, in which you sought access to the following: Correspondence between Minister Berry and Geocon regarding the Phillip Pool.

Specifically you sought:

All correspondence between Minister Berry and Geocon regarding the Phillip Pool site in Woden since November 2022. Minister Berry mentioned the string of letters during question time in the Legislative Assembly on Wednesday the 8th of February.

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 is required to provide a decision on your access application by 30 March 2023. However, under section 38 of the Act, I am obliged to seek third party views on the release of the information concerning them and, under section 40 of the Act, provide a period of 15 working days for them to submit reasons favouring non-disclosure if they wish to do so. The revised deadline for a response to your request is 24 April 2023.

Decision on access

Searches were completed for relevant documents and four 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 grant access in partial to four documents relevant to your request as I consider them to be:

- contrary to the public interest information under schedule 1; or
- information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

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 views of third parties
- the *Information Privacy Act 2014*

Exemption claimed

My reasons for deciding not to grant access to the components of these documents are as follows:

Information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act

Public Interest

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interests lies. As part of this process I must consider factors favouring disclosure and 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 in the public interest:

(a) *disclosure of the information could reasonably be expected to do any of the following:*

- (i) *promote open discussion of public affairs and enhance the government’s accountability.*

- (ii) *contribute to positive and informed debate on important issues or matters of public interest.*

Information concerning this facility is reasonably expected to be in the public interest and disclosure would or could promote discussion and contribute to positive and informed debate. Release of this information could reasonably be expected to reveal the reason for a government decision, and I weigh this and the other factors for disclosure substantially.

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 any other right under the Human Rights Act 2004.*

Having reviewed the information, I consider that the protection of an individual's right to privacy, is a significant factor.

Having applied the test outlined in section 17 of the Act and deciding that release of some 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). This relates to the direct contact details of people contained within the information, and the identity of people referenced who are no longer involved in this matter.

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

Processing charges are not applicable for this request because there are less than 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, my decision and documents released to you in response to your access application will be published in the CMTEDD disclosure log after 28 April 2023. 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

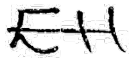
ACT Civil and Administrative Tribunal (ACAT) Review

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,



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

24 April 2023



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST	Reference NO.
All correspondence between Minister Berry and Geocon regarding the Phillip Pool site in Woden since November 2022. Minister Berry mentioned the string of letters during question time in the Legislative Assembly on Wednesday the 8th of February.	2023-066

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1	Letter – To Berry MLA from NG Landholdings - 1-5 Irving St	12/1/2023	Partial	Sch 2 s2.2 (a)(ii)	Yes
2	2	Email - RE Correspondence from Minister Berry	12/1/2023	Partial	Sch 2 s2.2 (a)(ii)	Yes
3	4	Letter - Berry to [REDACTED] Phillip Swimming Pool 22-23 Opening	19/12/2022	Partial	Sch 2 s2.2 (a)(ii)	Yes
4	5	Email Correspondence from Minister Berry	19/12/2022	Partial	Sch 2 s2.2 (a)(ii)	Yes
Total No of Docs						
4						

12/01/2023

Dear Minister Berry,

We refer you correspondence ref: CMTEDD2022/5786 dated 19/12/22 to Sch 2.2(a)(ii)
Sch 2.2(a)(ii)

We wish to advise that 1-5 Irving St Phillip ACT, known as the Phillip Swimming & Ice Skating Centre was acquired by

intends on continuing to operate the swimming and ice-skating centre and are currently working through the rectification works required for the pool to be operational.

I am happy to meet with you in person to run through in more detail should you require.

Yours Sincerely,

Sch 2.2(a)(ii)

From: Damon Smith Sch 2.2(a)(ii)
Sent: Thursday, 12 January 2023 11:46 AM
To: BERRY
Subject: RE: Correspondence from Minister Berry
Attachments: Letter - Berry MLA - 1-5 Irving St.pdf

You don't often get email from damon.smith@geocon.com.au. [Learn why this is important](#)

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Good Morning Amber,

Please find attached letter from [redacted] re recent acquisition of the Phillip Swimming and Ice Skating Centre and in response to your correspondence ref: CMTEDD2022/5786 dated 19/12/22 to [redacted]

Regards,

Damon Smith | General Manager

Sch 2.2(a)(ii)

GEOCON.COM.AU      



From: Sch 2.2(a)(ii)
Sent: Tuesday, 20 December 2022 9:30 AM
To: Damon Smith Sch 2.2(a)(ii)
Subject: FW: Correspondence from Minister Berry

FYI

From: BERRY <BERRY@act.gov.au>
Sent: Monday, 19 December 2022 10:32 AM
To: [redacted]
Subject: Correspondence from Minister Berry

Dear Sch 2.2(a)(ii)

Please see attached letter from Minister Berry.

Kind regards,
Amber

Office Manager
Phone: +61 2 6205 0233

Office of Yvette Berry MLA | Member for Ginninderra

Deputy Chief Minister
Minister for Education and Early Childhood Development
Minister for Housing and Suburban Development
Minister for the Prevention of Domestic and Family Violence
Minister for Women
Minister for Sport and Recreation
Phone: +61 2 6205 0233 | Email: berry@act.gov.au
[Facebook](#) | [Twitter](#) | www.yvetteberry.com.au



I acknowledge the traditional custodians of the ACT the Ngunnawal people, and their continuing connection to land and community. I pay my respect to Elders both past, present and emerging.

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Please note that from 1 January 2018 ACT Government ministerial diaries are subject to publication on the ACT Government's open access website under section 23 of the *Freedom of Information Act 2016*

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Yvette Berry MLA
Deputy Chief Minister
Minister for Early Childhood Development
Minister for Education and Youth Affairs
Minister for Housing and Suburban Development
Minister for Women
Minister for the Prevention of Domestic and Family Violence
Minister for Sport and Recreation

Member for Ginninderra

Sch 2.2(a)(ii)

Our ref: CMTEDD2022/5786

I write to you, in your role as the owner and operator of the Phillip Swimming & Ice Skating Centre (PSISC), seeking clarification on when the swimming pool will open to the community for the 2022-23 season.

I am advised the swimming pool requires some repairs before it is safe for use, with this work currently being undertaken. Given the impact the pool's closure is having on patrons and your obligations to ensure the pool is operational, could you please advise when the necessary repairs will be completed and when the pool will be ready for public use.

I look forward to your response so that we can inform the Canberra community about access to the pool over summer.

Yours sincerely

Yvette Berry MLA
19 December 2022

ACT Legislative Assembly London Circuit, GPO Box 1020, Canberra ACT 2601



+61 2 6205 0233



berry@act.gov.au



[@YvetteSBerry](https://twitter.com/YvetteSBerry)



[YvetteSBerry](https://www.facebook.com/YvetteSBerry)



[Yvette_berry_mla](https://www.instagram.com/Yvette_berry_mla)

From: BERRY
Sent: Monday, 19 December 2022 10:32 AM
To: Sch 2.2(a)(ii)
Subject: Correspondence from Minister Berry
Attachments: Berry to Sch 2.2(a)(ii) - Phillip Swimming Pool 22-23 Opening.pdf

Dear Sch 2.2(a)(ii)

Please see attached letter from Minister Berry.

Kind regards,
Amber

Office Manager
Phone: +61 2 6205 0233

Office of Yvette Berry MLA | Member for Ginninderra
Deputy Chief Minister
Minister for Education and Early Childhood Development
Minister for Housing and Suburban Development
Minister for the Prevention of Domestic and Family Violence
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