



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 2022-183

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	Waived
6. Processing time (in working days)	39
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](#)
Cc: [REDACTED]
Subject: FOI Request | Ministerial Briefs and Correspondence about Appointment of CIT CEO
Date: Friday, 10 June 2022 9:47:50 AM

Good morning,

**RE: FOI REQUEST – CIT CEO APPOINTMENT MINISTERIAL BRIEFS AND
CORRESPONDENCE**

I write to request under the *Freedom of Information Act 2016* a copy of any ministerial briefs, correspondence and accompanying papers, to do with the search, selection and appointment of current Chief Executive Officer of Canberra Institute of Technology - Leanne Cover.

Duplicate documents may be excluded.

Should you require any further information or clarification about my request, please contact my office on [REDACTED].

Best,





ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2022-183



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 10 June 2022 in which you sought access to:

- *Any ministerial briefs, correspondence and accompanying papers, to do with the search, selection and appointment of current Chief Executive Officer of Canberra Institute of Technology - Leanne Cover*

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 was required to provide a decision on your access application by 11 July 2022 however, following on third-party consultation and an extension of time the due date is now 5 August.

Third Party Consultation

In making this decision, I undertook consultation with relevant third parties in accordance with section 38 of the Act. The views of the third parties were considered in making this decision.

Decision on access

Searches were completed for relevant documents and five documents were identified that contain information that falls within the scope of your request.

I have decided to grant full access to three documents, partial access to one document and fully exempt one document from release as the release of it would, on balance, be contrary to the public interest in accordance with the test set out in section 17 of the Act.

My access decision is detailed further in the following statement of reasons, in accordance with section 54 of the Act.

Statement of Reasons

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

- the Act,
- the content of the documents that fall within the scope of your request,
- relevant case law precedents,
- the submissions made by the relevant third party, and
- the *Human Rights Act 2004*.

Exemption claimed

My reasons for deciding not to grant access to one document, and parts of another 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*¹ 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. Subsection 17(2) also lists a number of factors that must not be taken into account when determining public interest. I have noted the irrelevant factors listed in subsection 17(2) and I am satisfied that I have not considered any irrelevant factors in this case.

Taking into consideration the information contained in one document found to be within the scope of your request (refer document 5 in the schedule at Attachment A), I have identified that the following public interest factors are relevant to determine if release of the information contained within this document is within the ‘public interest’.

Factors favouring disclosure (Schedule 2.1)

To determine which factors in favour of disclosure apply to the document (refer document 5 in the schedule at Attachment A) identified within the scope of the access request, I am required to be satisfied that a factor or factors are ‘reasonably be expected to’ occur.

I have identified that the most relevant factor in favour of disclosure available under the Act, is schedule 2.1(a)(i) “*disclosure of the information could reasonably be expected to do any of the following (a) promote open discussion of public affairs and enhance the government’s accountability.*” I do not consider any other factors are relevant to this document.

¹ (2011) 243 CLR 506, [31]

In the case of *BA and Merit Protection Commissioner*² the Commonwealth Information Commissioner noted that “there is strong interest in fairness and integrity of public sector selection processes”. I agree with the Commissioner on this point. As outlined above, before I consider this factor as part of the section 17 public interest test, I must be satisfied that release of the information within the scope of your request ‘could reasonably be expected’ to promote open discussion of public affairs and enhance the government’s accountability.

The term “could reasonably be expected to” is not unique to the *Freedom of Information Act 2016*. In considering this term in other jurisdictions’ freedom of information legislation and case law precedent, the term “could reasonably be expected to” requires me to assess the likelihood of the predicted or forecast event. In this case, ‘promoting open discussion of public affairs or enhancing the government accountability’.

While I note the term “could” is less stringent than the word “would”, providing a lesser burden, there still needs to be a reasonable expectation that this would occur. In *Re News Corporation Limited v National Companies and Securities Commission*³ it was noted that the mere possibility or chance does not qualify as a reasonable expectation.

In helping to determine if the release of the documents within the scope of the request could be reasonably expected contribute to the ‘promoting open discussion of public affairs or enhancing the government accountability’, I have referred previous matters where documents containing similar information has been discussed. Namely, I have considered the judgements in *Re Dyki and Federal Commissioner of Taxation*⁴, *Department of Social Security v Dyrenfurth*⁵, and *Colakovski v Australian Telecommunications Corporation*⁶. In reviewing these cases, I note that while they were decided in relation to Commonwealth Freedom of Information legislation which has now been superseded or amended, many of the principles and judgement discussions remain relevant.

I have also noted the case of *BA and Merit Protection Commissioner*⁷. In this case the applicant sought copies of documents generated during a recruitment process, these included but were not limited to copies of selection reports, comparative assessments and referee reports. These documents were considered by the Information Commissioner to be in the public interest, as their release (with the exclusion of personal information) could allow for accountability and ensure integrity in recruitment of public sector officials. The Information Commissioner saw a public interest in the release of these types of documents as they could be reasonably expected to promote discussion of the

² [2014] AICmr 9 (30 January 2014).

³ (1984) 5 FCR 88.

⁴ (1990) 22 ALD 124

⁵ (1988) 15 ALD 232

⁶ (1991) 29 FCR 429

⁷ [2014] AICmr 9 (30 January 2014).

recruitment process and that therefore is in the public interest. I note however in this decision, that a significant amount of personal information was redacted leaving only factual information.

I note that Ms Cover's executive contract is included in the scope of your request. I am not satisfied that the same argument in relation to public interest can be said for this single document that contains information about this individual's salary and employment conditions, bearing in mind that appointment, classification and whether a salary above classification has been awarded is already publicly available. The release of this information in my opinion does not provide enough detail to allow for a discussion about transparent recruitment or could reasonably be expected to promote open discussion of public affairs and enhance the government's accountability.

Heerey J in *Colakovski v Australian Telecommunications Corporation*⁸ stated in regard to a request for documents that contained personal information of an individual that [the information requested is] 'of no demonstrable relevance to the affairs of government and [is] likely to do no more than excite or satisfy the curiosity of people about the personal affairs of the individual'. I believe that this statement is true in relation to this access request. Taking these issues into account I am not satisfied that there are any factors under schedule 2.1 of the Act that favour disclosure of this document.

Factors favouring non-disclosure (Schedule 2.2)

- *Prejudice the protection of an individual's right to privacy or other right under the Human Rights Act 2004.*

As with the factors in favour of disclosure, for me to be satisfied that a factor(s) in favour of nondisclosure applies to the document identified to be within the scope of your request, I am firstly required to be satisfied that release of the document could 'reasonably be expected to' result in a prescribed outcome.

In considering the factors in favour of non-disclosure as found in Schedule 2.2, I consider that the only relevant factor in this matter is schedule 2.2(a)(ii) – *Prejudice the protection of an individual's right to privacy or other right under the Human Rights Act 2004.*

In considering the application of this factor, I contend that release of the documents within the scope of the request would be an unreasonable release of Ms Cover's personal information as the documents identified contain personal information about her personal affairs.

I have noted that some information including the names of executives, classification and whether they are engaged at a higher salary is tabled in the Legislative Assembly. However, I consider that this document may contain additional personal information which goes beyond what is tabled. These details I consider are personal to Ms Cover and

⁸ (1991) 29 FCR 429.

is not information that would normally be disclosed during the execution of Ms Cover's duties.

In making this decision, I note that while salary information is tabled in the ACT Legislative Assembly, it is possible that the salary or conditions of Ms Cover's contract are different to that of a standard ACT Government Executive. It is possible for staff at the same level to be paid different amounts or have different employment conditions that have been negotiated with the agency and that are confidential and not known to other staff. I consider that release of the information within the scope of this request would either confirm or deny Ms Cover's salary and employment conditions. The release of this information would cause a significant intrusion into the privacy of Ms Cover which would impact her rights under the *Human Rights Act 2004*. Given the nature of the information, I have given significant weight to this factor.

Having applied the test outlined in section 17 of the Act and noting that there are no strong factors in favour of disclosure, I have decided that the releasing the personal information of Ms Cover as contained in the documents found to be within the scope of your request is contrary to the public interest to release. Therefore, I have chosen to withhold this document from release in its entirety.

With regard to 'document 2' in the Schedule (refer Attachment A), I have removed some personal information, as I consider this information to not be relevant to this request, and to protect the rights of the individual identified.

Charges

Processing charges are not applicable for this request because the number of pages being released to you is less than the charging threshold of 50.

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. 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.

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

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
05 August 2022



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST

Reference NO.

Any ministerial briefs, correspondence and accompanying papers, to do with the search, selection and appointment of current Chief Executive Officer of Canberra Institute of Technology - Leanne Cover.

CMTEDDFOI 2022-183

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1	Notifiable Instrument	5 Feb 2021	Full release	N/A	Yes
2	2-4	Executive Action request	Undated	Partial release	Sch 2 s2.2 (a)(ii)	Yes
3	5	Email	29 Jan 2016	Full release	N/A	Yes
4	6	Email chain	19 Feb 2018	Full release	N/A	Yes
5		CEO CIT contract		Exempt	Sch 2 s2.2 (a)(ii)	No
Total No of Docs						
5						

Australian Capital Territory

Financial Management (Canberra Institute of Technology Board Chief Executive Officer) Appointment 2021

Notifiable instrument NI2021–347

made under the

Canberra Institute of Technology Act 1987, sections 9 (Establishment of CIT Board) and 10 (CIT board members)

Financial Management Act 1996, section 80 (2) (Appointment of CEO of authority with governing board)

1 Name of instrument

This instrument is the *Financial Management (Canberra Institute of Technology Board Chief Executive Officer) Appointment 2021*.

2 Commencement

This instrument commences on 27 June 2021.

3 Appointment

The Canberra Institute of Technology Board appoints Ms Leanne Cover as the Chief Executive Officer of the Canberra Institute of Technology until 26 June 2026.

Craig Sloan
Chair
Canberra Institute of Technology Board

Kate Lundy
Deputy Chair
Canberra Institute of Technology Board

Date: 5 February 2021

Date: 5 February 2021

Executive Action Request

Instructions:

1. This form is completed by Directors-General to request Head of Service approval to complete Contract Executive actions.
2. The form should be completed electronically in MS Word and emailed to [Shared Services HR, Executive Contracts](#) for processing via the Director-General's office.
3. Guidance - Refer to [fact sheet](#) on the Customer Service Portal.

Note:

- Requests must be provided to Head of Service for consideration at least three weeks' prior to the proposed commencement date unless there are compelling reasons for the matter to be urgently considered.
- Requests to engage for periods of four weeks or less will not be approved without justification.

Request Details	
Directorate/Agency	Education Directorate
Position Title	Chief Executive Officer
Position Number	E51001
Classification	Executive Level 3.9
Establishment Action (if applicable) <i>Complete Establishment Variation Authority form also</i>	Select Establishment Action
Multiple Actions?	No
Action 1	Long Term Contract
Action 2 (if applicable)	Select Reason for Request
Action 3 (if applicable)	Select Reason for Request
Business Reason <i>Provide supporting information to assist the Head of Service</i>	Hi Nici and Jenna Are you able to update the executive contract database to indicate that the CEO CIT position (Leanne Cover) is a statutory office holder with the relevant dates of the contract? Thanks Andrew Hogan
Compliance Check for Short Term Contract Requests (if applicable)	<input type="checkbox"/> Merit selection process completed (mandatory for engagements exceeding nine months). If so, specify date: Enter Date <input type="checkbox"/> Total engagement does not exceed two years
Ministerial Appointment?	Yes/No
Directorate Contact	Enter Name Enter Phone No
Contract Executive Details	
Term of Contract	From: 27/06/2016 To: 26/06/2021
Title	Select Title

Family Name	Cover
Given Name(s)	Leanne
Date of Birth	
AGS Number (if known)	
Phone	Enter Phone No
Email	Enter Email Address
Superannuation Scheme	
Special Conditions (inc. additional payments, etc.)	Enter any special conditions that form part of this contract
Advertising Details (if applicable)	
Vacancy period if known	Select placement period or type your own option.
How will the vacancy be advertised	Select Advertising
Press Required	Enter Press Requirements if Applicable
Special Instructions	Enter Special Instructions if Applicable
Closing Date	Select Closing Date
Hours Per Week	Enter Hours Per Week
Contact Officer	Enter Name
Contact Officer Phone	Enter Phone No
Contact Officer Email	Enter Email Address
Wording for Advertisement:	Type or paste advertising wording here
Director-General Details	
Name	Enter Name
Date	Select Date
<p>Email the completed form to Shared Services HR, Executive Contracts for processing.</p> <p>Shared Services is responsible for ensuring the request meets with compliance and ACTPS legislative requirements and preparation and disbursement of documentation.</p>	
Shared Services Use Only	
Original Contract Start Date (for extensions only)	Select Start Date
Compliance check: <ul style="list-style-type: none"> Complies with Head of Service directions Merit selection process completed (if greater than 9 months) Total engagement does not exceed two years (short term) or five years (long term) All relevant details have been provided 	Please Select
Comments	Enter Comments

Head of Service Decision

This request is

- approved
- modified and approved
- not approved

Reason if modified/not approved:

Name:

Date:

From: "Head Of Service" <HeadOfService@act.gov.au>
Sent: 29/01/2016 2:46 PM
Subject: Head of Service Message - Leanne Cover appointed CEO of CIT



29 January 2016

A MESSAGE FROM THE HEAD OF SERVICE 2016



Colleagues

I am pleased to congratulate Ms Leanne Cover on her appointment to the role of CEO of the Canberra Institute of Technology (CIT).

The recent appointment of a Minister for Higher Education, Training and Research in the new Administrative Arrangements demonstrates the importance the Government places on this sector of our economy.

Ms Cover is taking on this important role at a time of change and opportunity for the sector and brings a wealth of knowledge and experience to CIT from her extensive background in education and training. She has had key executive leadership roles in the ACT Government school and vocational education and training sector, and prior to acting as CIT CEO in 2015 was a Deputy Director-General in the then Education and Training Directorate.

Kathy Leigh
Head of Service

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RESPECT INTEGRITY
COLLABORATION
INNOVATION

From: "Shared Services, Exec Payroll" <ExecPayroll.SharedServices@act.gov.au>
Sent: 19/02/2018 11:02 AM
To: "Hogan, Andrew" <Andrew.Hogan@act.gov.au>; "Shared Services HR, Executive Contracts" <SSHRExecutiveContracts@act.gov.au>
Subject: RE: Leanne Cover, CEO, CIT [DLM=Sensitive: Personal] - NICI ADD LINE IN ECMS
Attachments: CEO CIT Contract.pdf

Hi Andrew

The attached documentation is what I could find in our electronic records.

Regards
Dee

Deepika Khemchandani | Team Supervisor

Phone 02 6205 5294 | Email: deepika.khem@act.gov.au

Executive Pay Team | Payroll Services

Shared Services | Chief Minister, Treasury and Economic Development Directorate | ACT Government

125 Gungahlin Place, Gungahlin | GPO Box 158 Canberra ACT 2601 | act.gov.au

From: Hogan, Andrew
Sent: Monday, 19 February 2018 10:47 AM
To: Shared Services HR, Executive Contracts <SSHRExecutiveContracts@act.gov.au>; Shared Services, Exec Payroll <ExecPayroll.SharedServices@act.gov.au>
Subject: Leanne Cover, CEO, CIT [DLM=Sensitive: Personal]

Hi Shared Services

I understand that Leanne Cover is appointed as the CEO of CIT (statutory office holder) until 26 June 2021. Could you please check your files and see whether there is an appointment instrument or executive contract with this date? If so, can you please email it through?

Thanks

Andrew Hogan | Senior Manager, Workforce Governance | Secretary, ACT Remuneration Tribunal

T: (02) 6205 4714 | F: (02) 6207 6775 | E: andrew.hogan@act.gov.au | W:

<https://www.cmtedd.act.gov.au/governance>

Public Sector Management | Workforce Capability and Governance | **Chief Minister, Treasury & Economic Development Directorate** | **ACT Government**

address: Level 5, Canberra Nara Centre, 1 Constitution Avenue, Canberra City ACT 2601 | mail: GPO Box 158, Canberra ACT 2601