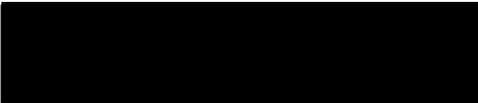




ACT
Government

Community Services



Freedom of Information access application: HACT 18/67

Dear [REDACTED]

I refer to your access application seeking information under the *Freedom of Information Act 2016* (the FOI Act) regarding the transfer of Block 17 Section 228, Conder ACT from Housing ACT to Argyle Community Housing Limited.

Your original application was submitted to the Chief Minister, Treasury and Economic Development Directorate (CMTEDD). I note that you were advised by CMTEDD to resubmit your request to the Environment, Planning and Sustainable Development Directorate (EPSDD). Your access application was received by EPSDD on 1 May 2018.

The Community Services Directorate (the directorate) received a request to transfer your application from EPSDD under section 57 of the FOI Act on 22 May 2018. In accordance with section 57 (3) of the FOI Act, your application is taken to be received on the date the application was transferred to the directorate, being 22 May 2018.

Your application states:

'I seek information related to Block 17 Section 228, Conder Land transfer.

I seek documents relating to the purchase/sale/transfer of the block known as: Block 17, Section 228 Conder Deposited Plan 11383, also known as 35 Sidney Nolan Street Conder ACT. I believe it was transferred from ACT Government to Argyle Community Housing Ltd on the 10th December 2017.

I seek documents and information relating to the decision of the transfer:

- * *why this transfer was done,*
- * *who authorised it,*
- * *what discussions or consultation took place,*
- * *where and when was the notification made*
- * *what conditions were applied to the purchase/granting/transfer, and*
- * *what consideration/compensation (financial or otherwise) was provided to the ACT Govt for this transfer.*

I do not require a copy of the title transfer, as I have that.'

I am an Information Officer appointed by the Director-General under section 18 of the FOI Act 2016 to deal with access applications made under Part 5 of the Act.

The Directorate was required to provide a decision on your access application by 21 June 2018. On 24 May 2018, Ms Lisa Guteridge, Senior Freedom of Information Officer emailed acknowledgement of your access application. Ms Guteridge sought your agreement to an additional 45 working days, to respond to your access application under section 41 (1) of the Act. This request was due to a large number of access applications being processed by the directorate, with over 30 access applications being received ahead of yours. You agreed to the revised date of 23 August 2018.

Ms Guteridge emailed you again on 17 August 2018. In her correspondence to you she informed you that additional material, approximately 500 emails, had been received that need to be assessed to identify if they were within scope of your request. This resulted in delaying the progression of your application, as such, Ms Guteridge sought your agreement to an additional extension of time. You agreed to extend the time to decide to 20 September 2018.

Consultation

On 17 September 2018, you were emailed a Notice of Third Party Consultation. The directorate was required to consult with a number of third parties under section 38 of the FOI Act. The consultation extended the statutory due date of your access application by an additional 15 working days to 12 October 2018.

Consultation is often complex and timely, this is exacerbated where there are multiple third parties involved. I note Ms Guteridge sought further extensions time on 26 September and 23 October 2018. You have agreed to the due date of 2 November 2018 to respond to this request.

I can advise that the consultation process is now complete. I have decided to uphold the views of the third parties. My rationale for this decision is detailed below in my statement of reasons.

Background information

In 2009, the Australian Capital Territory signed a National Partnership on the Nation Building and Jobs Plan.

A requirement of this agreement was that an agreed portion of properties were to be transferred to the community housing sector, to expand housing options to assist low income and vulnerable families, and housing affordability in the ACT.

Cabinet agreed to transfer the official title of 35 Sidney Nolan to Argyle Community Limited as a not-for profit housing provider. This decision was published and is available on line at:

https://www.cmtedd.act.gov.au/open_government/inform/cabinet/summaries/2014/may2014/19may2015

I have also included a link to the National Partnership on the Nation Building and Jobs Plan below.

http://www.federalfinancialrelations.gov.au/content/npa/infrastructure/national-partnership/past/building_jobs_plan_NP.pdf

Public interest test

The FOi Act 2016 adopts a public interest test approach to determine whether government information should be made publicly available. Government information will not be released where a decision-maker in respect of an access application decides that giving access to information is contrary to the public interest.

When determining whether the release of information would be in the public interest, Information Officers consider Schedules 1 and 2 of the FOi Act 2016.

Information falling within one of the categories in Schedule 1 of the FOi Act 2016 is presumed to be contrary to the public interest to disclose, except in very narrow circumstances.

Where the information does not fall within one of the categories identified in Schedule 1, the public interest test in section 17 must be applied to determine whether the information is contrary to the public interest information. Schedule 2 sets out factors to be considered when applying the public interest test in section 17 to determine whether the release of the information would be contrary to the public interest. Information Officers must consider all relevant factors for and against disclosure and must determine, on balance, whether it is in the public interest to release the information.

Search for documents and material considered

Searches were completed for relevant documents and 76 documents were identified that fall within the scope of your request.

- Table of Contents 1 – Briefs and attachments (12 documents/127 pages);
- Table of Contents 2 – Emails and attachments (64 documents/284 pages)

Please note that the above figures do not include all material reviewed during the processing your access application, as all duplication of email correspondence and information not relevant to your request have not been included.

Located at **Attachment B** to this decision are the Table of Contents for the 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. Also attached are the documents released to you.

Considerations

In reaching my access decision, I have considered whether it is in the public interest to release the information falling within the scope of your application, having had regard to:

- *The Housing Assistance Act 2007;*

- The *Auditor-General Act 1996*;
- The *Taxation Administration Act 1999*;
- the FOI Act, Section 16;
- the FOi Act Schedule 1, Information disclosure of which is taken to be contrary to the public interest;
- The public interest test set out in section 17 of the FOi Act;
- The public interest factors set out in Schedule 2 of the FOI Act;
- Section 45 of the FOi Act;
- Section 50 of the FOI Act; and
- The content of the documents that fall within the scope of your request.

I have provided as **Attachment A** to this letter, excerpts of the relevant legislations referenced in the attached Table of Contents.

Decision on access

My decision is:

- To grant access to 14 documents with the status of “Access granted” in the Table of Contents under s 35(1)(a) of the FOi Act.
- To refuse to give access to 44 documents with the status of “Access refused” in the Table of Contents as the information is contrary to the public interest information under s 35(1)(c) of the FOi Act.
- To grant access, under section 50 of the Act, to copies of 26 documents with deletions applied to information that I consider would be contrary to the public interest to disclose.

My access decision is detailed further in the following statement of reasons.

Reasons for my decision

Some of the government information you have sought access to comprise of information that is considered to be contrary to the public interest under Schedule 1 of the Act. The relevant sections under Schedule 1 are:

Schedule 1, Section 1.2 – Information subject to legal professional privilege

Information that would be privileged from production or admission into evidence in a legal proceeding on the ground of legal professional privilege.

Legal professional privilege protects the confidentiality of certain communications made in connection with giving or obtaining legal advice or in the provision of legal services, such as representation in legal proceedings.

Advice privilege attaches to confidential communications between a legal adviser and client or third party for the dominant purpose of giving or receiving legal advice.

The information for which access is refused under this section are communications between officers of the directorate and their legal representatives at the ACT Government Solicitor (ACTGS) and relate to legal advice.

Schedule 1, Section 1.3 - Information disclosure of which is prohibited under law

- (5) *Information that is protected information under the Housing Assistance Act 2007, section 28 other than information disclosed to a person to whom the information relates.*

The *Housing Assistance Act 2007* section 28 (c) states that information is protected information if it identifies land that is a housing assistance property. This includes land used by an entity contracted by the commissioner to provide housing assistance.

The deletions made to this information identify other housing assistance properties which is protected information and contrary to the public interest to disclose under this section of the FOi Act.

- (6) *Any other information the disclosure of which is prohibited by a secrecy provision of a law.*

One document is information disclosed under a tax law. This information may only be disclosed by a tax officer with consent of the person to whom the information relates and is prohibited from secondary disclosures. The document relates to Argyle Community Housing Limited, and is prohibited from release in accordance with section 98 of the *Taxation Administration Act 1999*.

Section 1.5 – Information in the possession of the Auditor-General

Information in the possession of the auditor-general that has been generated in relation to an audit under the *Auditor-General Act 1996*.

Information including all communications from the ACT Auditor-General's Office is protected information for the purposes of section 35 of the *ACT Auditor-General Act 1996*.

Access has been refused to two documents and deletions made to seven documents containing information that has been either generated in relation to an audit or is communication from the ACT Auditor-General and therefore contrary to the public interest to disclose under the FOI Act.

Section 1.6 - Cabinet information

A number of documents which have been refused access or released with deletions, made reference to cabinet information. As stated above in the background information, the decision to transfer 35 Sidney Nolan Street, Conder, was made by Cabinet, therefore a large amount of information relevant to your request can not be released to you.

Cabinet information is contrary to the public interest to disclose and includes information that has been submitted, or that a Minister proposed to submit to

cabinet for its consideration and that was bought into existence for that purpose, is a copy of, part of, or contains an extract from the aforementioned.

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

A number of documents contain information that I consider on balance to be contrary to the public interest to disclose under the test set out in section 17 of the FOI Act.

Factors that have been considered when deciding public interest

Personal information

Some of the documents contain personal information, including the names, contact details and opinions of third parties. The third parties identified in these documents hold the reasonable expectation that their personal information is held by the directorate on a strictly confidential basis.

There are no factors favouring the disclosure of personal third party information.

There is one factor favouring non-disclosure under **Schedule 2, section 2.2(a)(ii)** in that the names and contact details of these third parties could reasonably be expected to prejudice the protection of an individual's right to privacy under the *Human Rights Act 2004*.

In balancing these factors, I have taken into account that the purpose for which the information was disclosed to the directorate in addition to the fact that the contact details of these third parties are not publicly available. As your application seeks access to government information that is not 'personal', these documents will be published on the directorate's disclosure log, it is therefore my view that that these factors render the information highly personal and sensitive, and the public interest harm in disclosing the information would be significant.

Business affairs

A number of documents contain information relating to non-government organisations. This information includes sensitive pricing information, contractual agreements with the Commissioner for Social Housing and information received in confidence.

There are three factors favouring disclosure in the public interest. The release of this information could reasonably be expected to promote open discussion of public affairs enhance government accountability (**Schedule 2, section 2.1(a)(i)**); ensure effective oversight of expenditure of public funds (**Schedule 2, section 2.1(a)(iv)**) and reveal the reason for a government decision and any background or contextual information that informed the decision (**Schedule 2, section 2.1(a)(viii)**).

There are three factors favouring non-disclosure in the public interest. The disclosure of this information could reasonably be expected to prejudice trade secrets, business affairs or research of an agency or person (**Schedule 2, section 2.2(xi)**); prejudice an agency's ability to obtain confidential information (**Schedule 2, section 2.2(a)(xii)**); and prejudice the competitive commercial activities of an agency.

In balancing these factors I have taken into consideration the commercial value of the information, the current competitive commercial environment, the impact on the directorate's ability to obtain confidential information and the impact disclosure would have on non-government organisations future tender capabilities.

It is my decision that the factors favouring non-disclosure outweigh the factors favouring disclosure. The disclosure of this information is contrary to the public interest, it would adversely affect the operations and commercial competitiveness of the non-government organisation and impede the flow of confidential material to the Territory. The inability to obtain confidential information will significantly impact on the efficient and effective operations of the directorate. By contrast any gain to the community from the disclosure of this information would be minimal, noting that supplementary material released in your access application demonstrate transparency and accountability with regard to the transfer of title for 35 Sidney Nolan Street, Conder.

Charges

Processing charges are not applicable for this request in accordance with section 104 (4) of the FOi Act. The first 50 pages of information provided in response to an application must be provided free of charge, and the number of pages being provided to you is less than 50.

Online publishing – disclosure log

Under section 28 of the FOi Act, the Directorate 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 Directorate disclosure log no earlier than three days and no later than ten days after the date you receive this notice of decision. Your personal contact details will not be published.

You may view the Directorate's disclosure log at www.communityservices.com.au

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 the Ombudsman's review of this outcome under section 73 of the Act.

If you wish to request a review of my decision you can access the review of decision form on the Ombudsman's website (<http://www.ombudsman.act.gov.au/Freedom-of-Information>). Alternatively, you can 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

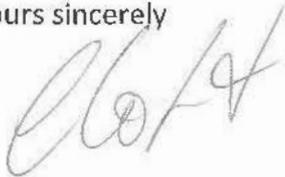
Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision.

Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
Level 4, 1 Moore Street
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

If you have any queries concerning the Directorate's processing of your request (ref: CYF 18/47), or would like further information, please contact the FOI processing officer via email at csd.foi@act.gov.au.

Yours sincerely



Catherine Loft
Information Officer

28 October 2018

*Freedom of Information Act 2016***16 What is *contrary to the public interest information*?**

In this Act:

contrary to the public interest information means information—

- (a) that is taken to be contrary to the public interest to disclose under schedule 1; or
- (b) the disclosure of which would, on balance, be contrary to the public interest under the test set out in section 17.

17 Public interest test

- (1) An agency or Minister, in deciding whether disclosure of information would, on balance, be contrary to the public interest, must take the following steps:
 - (a) identify any factor favouring disclosure that applies in relation to the information (a *relevant factor favouring disclosure*), including any factor mentioned in schedule 2, section 2.1;
 - (b) identify any factor favouring nondisclosure that applies in relation to the information (a *relevant factor favouring nondisclosure*), including any factor mentioned in schedule 2, section 2.2;
 - (c) balance any relevant factor or factors favouring disclosure against any relevant factor or factors favouring nondisclosure;
 - (d) decide whether, on balance, disclosure of the information would be contrary to the public interest;
 - (e) unless, on balance, disclosure would be contrary to the public interest, allow access to the information subject to this Act.
- (2) The following factors must not be taken into account when deciding whether disclosure of information would, on balance, be contrary to the public interest:
 - (a) access to the information could result in embarrassment to the government, or cause a loss of confidence in the government;
 - (b) access to the information could result in a person misinterpreting or misunderstanding the information;
 - (c) the author of the information was (or is) of high seniority in an agency;
 - (d) access to the information could result in confusion or unnecessary debate;
 - (e) access to the information could inhibit frankness in the provision of advice from the public service;
 - (f) the applicant's identity, circumstances, or reason for seeking access to the information.

38 Deciding access—relevant third parties

- (1) This section applies if the respondent to an access application considers that—
 - (a) some or all of the government information applied for is not contrary to the public interest information; but
 - (b) disclosure of the information may reasonably be expected to be of concern to a person or another entity other than the Territory (a *relevant third party*).
- (2) The respondent must take reasonable steps to consult with the relevant third party before deciding to give access to the information.

- (3) Disclosure of government information may reasonably be expected to be of concern to a relevant third party if—
- (a) for a relevant third party that is an individual—
 - (i) the information is personal information about the individual; or
 - (ii) the disclosure of the information would, or could reasonably be expected to, affect the person's rights under the *Human Rights Act 2004*; or
 - (b) for a relevant third party that is a government or government agency—the information concerns the affairs of the government or agency; or
 - (c) the information concerns the trade secrets, business affairs, or research of the relevant third party.
- (4) If disclosure of government information may reasonably be expected to be of concern to a person because the information is personal information about the person but the person is deceased, subsection (2) applies as if an eligible family member of the person were a relevant third party.
- (5) The respondent, in consulting with a relevant third party, must—
- (a) ask the relevant third party whether it objects to the disclosure of the government information; and
 - (b) if the relevant third party objects to the disclosure—invite the relevant third party to provide its views, within 15 working days, on whether the information is contrary to the public interest information; and
 - (c) tell the relevant third party that if access is given to the information in response to the application, the information (other than personal information) will be made available to the public through the disclosure log of the respondent under section 28.
- (6) After obtaining the views of a relevant third party, the respondent must—
- (a) tell the relevant third party of the respondent's decision on the access application; and
 - (b) if the relevant third party has told the respondent that it objects to the disclosure of the government information—defer giving access to the information of concern to the relevant third party until after—
 - (i) the respondent is given written notice by the relevant third party that it does not intend to make an application for review of the decision; or
 - (ii) if notice is not given under subparagraph (i) and no application for review under part 8 is made by the end of the review period—the end of the review period; or
 - (iii) if an application for review under part 8 is made during the review period—the review has ended.
- (7) The respondent must give the applicant written notice when access is no longer deferred under subsection (6) (b).
- (8) In this section:
- eligible family member*, of a deceased person—see schedule 2 (Factors to be considered when deciding the public interest), section 2.3.
- review period* means the period within which an application for review under part 8 may be made.

40 Deciding access—time to decide

- (1) A respondent to an access application must decide the application not later than 20 working days after receiving it.
- (2) If the respondent consults with a relevant third party under section 38, the period under subsection (1) is extended by 15 working days.

41 Deciding access—respondent may ask for additional time to decide

- (1) At any time before the end of the period for deciding an access application under section 40, the respondent may ask the applicant for an additional stated amount of time to decide the application.
- (2) The respondent may ask the applicant for additional time under subsection (1) more than once.
- (3) If—
 - (a) the respondent has asked the applicant for an additional stated amount of time under subsection (1); and
 - (b) the applicant has not refused the request; and
 - (c) the respondent has not received notice that the applicant has applied for review under part 8;

the respondent may decide the application before the end of the additional time requested under subsection (1).

50 Giving access—deletion of contrary to the public interest information

- (1) This section applies if—
 - (a) an access application is made for government information in a record containing contrary to the public interest information; and
 - (b) it is practicable to give access to a copy of the record from which the contrary to the public interest information has been deleted.
- (2) Subject to section 35 (1) (e), the respondent must—
 - (a) give access to a copy of the record; and
 - (b) tell the applicant the original record contained contrary to the public interest information that has been deleted from the copy.

57 Transfer of access applications

- (1) This section applies if—
 - (a) an access application has been made to an agency or Minister; and
 - (b) the government information to which the application relates is not held by the agency or Minister but the agency or Minister believes it may be held by another agency or Minister (the *transferee*); and
 - (c) the transferee agrees it may hold the information.
- (2) The agency or Minister must transfer the application to the transferee.
- (3) An access application transferred under this section is taken to have been made to the transferee at the time it was transferred.
- (4) The transferee receiving an access application must give the applicant written notice of—
 - (a) the day on which the application was received; and
 - (b) the date by which a decision is to be made (unless additional time is given under section 40, section 41 or section 42).

- (5) The notice must be given to the applicant as soon as practicable but in any case not later than 10 working days after the day the application was received.

Schedule 1 Information disclosure of which is taken to be contrary to the public interest (see s 16)

Information mentioned in this schedule is taken to be contrary to the public interest to disclose unless the information identifies corruption or the commission of an offence by a public official or that the scope of a law enforcement investigation has exceeded the limits imposed by law.

1.2 Information subject to legal professional privilege

Information that would be privileged from production or admission into evidence in a legal proceeding on the ground of legal professional privilege.

1.3 Information disclosure of which is prohibited under law

- (1) Information that is confidential under the *Adoption Act 1993*, section 60.
- (2) Information that is protected information under the *Children and Young People Act 2008*, section 844, other than information disclosed to a person to whom it relates.
- (3) Information that is protected information under the *Crimes (Child Sex Offenders) Act 2005*, section 133A.
- (4) Information that is protected information under the *Crimes (Restorative Justice) Act 2004*, section 64.
- (5) **Information that is protected information under the *Housing Assistance Act 2007*, section 28 other than information disclosed to a person to whom the information relates.**
- (6) **Any other information the disclosure of which is prohibited by a secrecy provision of a law.**
- (7) In this section:
secrecy provision—a provision of a law is a *secrecy provision* if it—
 - (a) applies to information obtained in the exercise of a function under the law; and
 - (b) prohibits people mentioned in the provision from disclosing the information, whether the prohibition is absolute or subject to stated exceptions or qualifications.

1.5 Information in possession of auditor-general

Information in the possession of the auditor-general that has been obtained or generated in relation to an audit under the *Auditor-General Act 1996*.

1.6 Cabinet information

- (1) Information—
 - (a) that has been submitted, or that a Minister proposes to submit, to Cabinet for its consideration and that was brought into existence for that purpose; or
 - (b) that is an official record of Cabinet; or
 - (c) that is a copy of, or part of, or contains an extract from, information mentioned in paragraph (a) or (b); or
 - (d) the disclosure of which would reveal any deliberation of Cabinet (other than through the official publication of a Cabinet decision).

- (2) Subsection (1) does not apply to purely factual information that—
- (a) is mentioned in subsection (1) (a); or
 - (b) is mentioned in subsection (1) (b) or (c) and is a copy of, or part of, or contains an extract from, a document mentioned in subsection (1) (a);
- unless the disclosure of the information would involve the disclosure of a deliberation or decision of Cabinet and the fact of the deliberation or decision has not been officially published.
- (3) In this section:
- Cabinet* includes a Cabinet committee or subcommittee.

Schedule 2 Factors to be considered when deciding the public interest

(see s 17 (1))

2.1 Factors favouring disclosure in the public interest

The following are 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;
 - (iii) inform the community of the government's operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community;
 - (iv) ensure effective oversight of expenditure of public funds;
 - (v) allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or public official;
 - (vi) reveal or substantiate that an agency or public official has engaged in misconduct or negligent, improper or unlawful conduct or has acted maliciously or in bad faith;
 - (vii) advance the fair treatment of individuals and other entities in accordance with the law in their dealings with the government;
 - (viii) reveal the reason for a government decision and any background or contextual information that informed the decision;
 - (ix) reveal that the information was—
 - (A) incorrect; or
 - (B) out-of-date; or
 - (C) misleading; or
 - (D) gratuitous; or
 - (E) unfairly subjective; or
 - (F) irrelevant;
 - (x) contribute to the protection of the environment;

- (xi) reveal environmental or health risks or measures relating to public health and safety;
 - (xii) contribute to the maintenance of peace and order;
 - (xiii) contribute to the administration of justice generally, including procedural fairness;
 - (xiv) contribute to the administration of justice for a person;
 - (xv) contribute to the enforcement of criminal law;
 - (xvi) contribute to innovation and the facilitation of research;
- (b) the information is personal information of—
- (i) the person making the request; or
 - (ii) a child and the information is to be given to the child's parent or guardian and the disclosure of the information to the child's parent or guardian is reasonably considered to be in the best interests of the child; or
 - (iii) a deceased person and the person making the request for the information is an eligible family member of the deceased person.

2.2

Factors favouring nondisclosure in the public interest

The following are factors favouring nondisclosure in the public interest:

- (a) disclosure of the information could reasonably be expected to do any of the following:
 - (i) prejudice the collective responsibility of Cabinet or the individual responsibility of members to the Assembly;
 - (ii) prejudice the protection of an individual's right to privacy or any other right under the *Human Rights Act 2004*;
 - (iii) prejudice security, law enforcement or public safety;
 - (iv) impede the administration of justice generally, including procedural fairness;
 - (v) impede the administration of justice for a person;
 - (vi) prejudice the security or good order of a correctional centre;
 - (vii) impede the protection of the environment;
 - (viii) prejudice the economy of the Territory;
 - (ix) prejudice the flow of information to the police or another law enforcement or regulatory agency;
 - (x) prejudice intergovernmental relations;
 - (xi) prejudice trade secrets, business affairs or research of an agency or person;
 - (xii) prejudice an agency's ability to obtain confidential information;
 - (xiii) prejudice the competitive commercial activities of an agency;

- (xiv) prejudice the conduct of considerations, investigations, audits or reviews by the ombudsman, auditor-general or human rights commission;
 - (xv) prejudice the management function of an agency or the conduct of industrial relations by an agency;
 - (xvi) prejudice a deliberative process of government;
 - (xvii) prejudice the effectiveness of testing or auditing procedures;
 - (xviii) prejudice the conservation of any place or object of natural, cultural or heritage value, or reveal any information relating to Aboriginal or Torres Strait Islander traditional knowledge;
- (b) the information—
- (i) is personal information of a child and the disclosure of the information is reasonably considered not to be in the best interests of the child; or
 - (ii) would be privileged from production in a legal proceeding on the ground of legal professional privilege; or
 - (iii) is personal information of a deceased person and the person making the request is an eligible family member of the deceased person and the disclosure of the information could reasonably be expected to impact on the deceased person's privacy if the deceased person were alive; or
 - (iv) is information disclosure of which is prohibited by an Act of the Territory, a State or the Commonwealth; or
 - (v) is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct and disclosure of the information could prejudice the fair treatment of an individual.

Housing Assistance Act 2007

Part 5

Protection of information

28 Meaning of *protected information*—pt 5

- (1) For this part, information is *protected information* if it—
- (a) identifies an entity that has applied for housing assistance as having applied for housing assistance; or
 - (b) identifies an entity that is or has been a housing assistance recipient as a housing assistance recipient or former housing assistance recipient; or
 - (c) identifies land that is a housing assistance property as a housing assistance property; or
 - (d) is protected personal information about an entity that—
 - (i) has applied for housing assistance; or
 - (ii) is or has been a housing assistance recipient; or
 - (e) is information prescribed by regulation for this definition; or
 - (f) would allow something to which paragraph (a), (b), (c), (d) or (e) applies to be worked out.

Note **Entity** includes a person—see the , dict, pt 1.

(2) In this section:

housing assistance property means—

- (a) land owned, controlled or held by the housing commissioner; or
- (b) land used by an entity contracted by the commissioner to provide housing assistance.

Example of land controlled or held by the housing commissioner—par (a)

land leased by the commissioner from a private landlord to provide public rental housing

Example of entity contracted by the housing commissioner—par (b)

a community organisation that is contracted by the commissioner to operate a refuge

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see , s 126 and s 132).

housing assistance recipient means an entity receiving housing assistance.

Examples of housing assistance recipients

- 1 a tenant of a housing assistance property
- 2 a person accommodated at a refuge or other residential facility that is operated by a community organisation receiving housing assistance to provide the accommodation

protected personal information, about an entity that is or has been a housing assistance recipient, means—

- (a) the entity's name, telephone number or address; or
- (b) any other information prescribed by regulation for this definition.

Taxation Administration Act 1999

97 Other permitted disclosures

A tax officer may disclose information obtained under or in relation to the administration of a tax law—

- (a) with the consent of the person to whom the information relates or of a person acting on behalf of the person to whom the information relates;

98 Prohibition on secondary disclosures of information

A person must not disclose any information provided to the person by a tax officer in accordance with this Act unless the disclosure is made with the consent of the commissioner or so as to enable the person to exercise a function given to the person by law for the purpose of the enforcement of a law or protecting the public revenue.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Auditor-General Act 1996

35 Directions about protected information

- (1) The auditor-general, or a person authorised by the auditor-general (an *authorised person*), may give a direction to a person prohibiting or restricting the disclosure of protected information.
- (2) In deciding whether to give a direction under subsection (1), the auditor-general or authorised person must have regard to whether the direction—
 - (a) would promote the purposes of this Act; or
 - (b) is necessary or desirable to protect the integrity of an audit or investigation (however described) by the auditor-general.
- (3) The auditor-general or authorised person may also have regard to any other relevant matter in deciding whether to give a direction under subsection (1).
- (4) A person commits an offence if—
 - (a) the auditor-general or an authorised person has given to the person or someone else a direction under subsection (1) prohibiting or restricting the disclosure of protected information; and
 - (b) the person knows that the direction has been given; and
 - (c) the person discloses the information to someone else.Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (5) Subsection (4) does not apply if the information is disclosed—
 - (a) under this Act or another territory law; or
 - (b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law; or
 - (c) in a court proceeding.
- (6) Subsection (4) does not apply to the disclosure of protected information—
 - (a) if the protected information is about a person—with the person's consent; or
 - (b) in accordance with a disclosure direction; or

Note Disclosure direction—see s 36A.

 - (c) to an entity prescribed by regulation.

Note 1 The defendant has an evidential burden in relation to the matters mentioned in s (5) and s (6) (see *Criminal Cases*, s 58).

Note 2 If the protected information disclosed under s (5) or s (6) is provided by a person under s 14, the information and any information directly or indirectly derived from it may not be admissible in evidence against the person in another criminal proceeding (see s 14D).

36 Offences—use or divulge protected information

- (1) A person to whom this section applies commits an offence if—
 - (a) the person uses information; and
 - (b) the information is protected information; and
 - (c) the person is reckless about whether the information is protected information.Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (2) A person to whom this section applies commits an offence if—
 - (a) the person does something that divulges information; and

- (b) the information is protected information; and
- (c) the person is reckless about whether—
 - (i) the information is protected information; and
 - (ii) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) This section does not apply if the information is used or divulged—
 - (a) under this Act or another territory law; or
 - (b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law; or
 - (c) in a court proceeding.
- (4) This section does not apply to the using or divulging of protected information—
 - (a) if the protected information is about a person—with the person's consent; or
 - (b) in accordance with a disclosure direction; or
 - (c) to an entity prescribed by regulation.

Note **Disclosure direction**—see s 36A.

Note 1 The defendant has an evidential burden in relation to the matters mentioned in s (3) and s (4) (see *Criminal Cases*, s 58).

Note 2 If the protected information used or divulged under s (3) or s (4) is provided by a person under s 14, the information and any information directly or indirectly derived from it may not be admissible in evidence against the person in another criminal proceeding (sec s 14D).

- (5) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another law applying in the territory.

- (6) In this section:

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

divulge includes—

- (a) communicate; or
- (b) publish.

person to whom this section applies means—

- (a) a person who is or has been—
 - (i) the auditor-general; or
 - (ii) anyone acting under the direction or authority of the auditor-general; or

- (b) anyone else who has exercised a function under this Act.

produce includes allow access to.

use information includes make a record of the information.

Note The *Crimes Act 1900*, s 153 also deals with disclosure of information by public employees or people performing services for the Territory or a territory authority. Section 36 applies to the auditor-general and anyone else who has exercised a function under the Act.