



ACT

Government

Community Services

Freedom of Information Access Application - Decision Notice

[REDACTED]

Freedom of information request: CSD 18/15 – Seniors matters

Dear [REDACTED]

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the FOI Act), received by the Community Services Directorate (CSD) on 23 July 2018, in which you sought access to government information relating to seniors matters heard by the Estimates Committee 2018-19 on 27 June 2018.

On 30 July 2018, the Freedom of Information Officer clarified the scope with your office and a revised scope was provided breaking the initial FOI Application into four separate applications. These applications are taken to be received on 30 July 2018.

Your applications sought access to the following government information:

Application no. 1: CSD 18/14 – Completed 27 August 2018

(1) *“All documents and briefing notes prepared for the Estimates Committee 2018-19 hearings on 27 June 2018 in relation to all seniors matters.”*

Application no. 2: CSD 18/15 - Attached

(2) *“All records of correspondence, meetings, telephone conversations, letters, file notes, emails, minutes, briefings etc. created in the process of creating briefing notes and documents the Estimates Committee 2018-19 hearings into seniors on 27 June 2018.”*

Application no. 3: CSD 18/16 – Completed 27 August 2018

(3) *“All documents and briefing notes prepared for the Estimates Committee 2018-19 hearings on 27 June 2018 in relation to all women’s matters.”*

Application no. 4: CSD 18/17- Completed 13 November 2018

(4) *“All records of correspondence, meetings, telephone conversations, letters, file notes, emails, minutes, briefings etc. created in the process of creating briefing notes and documents the Estimates Committee 2018-19 hearings into women on 27 June 2018.”*

This is the decision relating to your access application no. 2 regarding Seniors Matters.

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.

The statutory time to decide an access application is 20 working days, unless the timeframe is extended pursuant to certain provisions under the FOI Act. On 30 July 2018, you agreed to extend the time to decide this application (no.2) by 45 working days to **30 October 2018**.

I note that you were incorrectly advised on 20 November 2018, that the due date to respond to your request had been extended by 15 working days as the result of consultation. Unfortunately, at the time this error was identified the correct due date of 30 October 2018 had expired. Processing of your application was temporarily ceased whilst the Directorate moved to meet the statutory requirements of the FOI Act regarding a decision on your application not being made in time. I wish to apologise for the delay in providing a response to you and any inconvenience this may have caused.

Search for documents and material considered

To ensure the capture of all records meeting the scope of your request, an extensive search was undertaken by several branches within the Directorate. These searches included interrogation of electronic files including shared folders and outlook email correspondence. The searches returned over 100 separate emails with attachments and or links to documents held in shared folders and exceeded 1100 pages of information. Each document was reviewed to determine if it met the requirement of your request.

Access to 47 documents totalling 373 pages meet the scope of your request. Please note duplicate email correspondence has not been included. I have provided at **Attachment A** to this decision, a Table of Contents which provides the description of each document and the access decision for each of those documents.

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 an Information Officer 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.

Information falling within one of the categories in Schedule 1 of the Act 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.

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

- 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 43 (1)(d) of the FOI Act;

- Information released to you in request no.1 ref: CSD 18/14;
- Information that is publicly available.
- The content of the documents that fall within the scope of your request; and
- Section 50 of the FOI Act.

Decision on access

My decision is:

- To grant access to twenty-seven (27) documents with the status “Access granted” in the Table of Contents under s 35(1)(a) of the FOI Act;
- To refuse to deal with some information contained in four (4) documents with the status “Partial access” in the Table of Contents. These documents contain information that is already available to you;
- To grant access, under section 50 of the FOI Act to five (5) documents to copies of documents with deletions applied to the information that I consider would be contrary to the public interest to disclose; and
- To grant partial access to 11 documents with deletions made to copies and or information that is outside the scope of your request.

My access decisions are detailed further in the following statement of reasons.

Statement of reasons

Section 43(1)(d)

As stated above, it is my decision to refuse to deal with information contained in four (4) documents, identified in the Table of Contents in column one numbers 8, 21,33 and 38. The information deleted from these documents is information publicly available.

Section 43(1)(d) of the FOI Act states that a respondent may refuse to deal with an application wholly or in part if the government information which is already available to the applicant.

Section 45 specifies that for section 43(1)(d), government information is already available to the application only if the information-

- a) “is made publicly available by the respondent or by another agency of Minister; ...or
- e) has previously been given to the applicant under this Act of the *Freedom of Information Act 1989 (repealed)*”

These documents contain information that has been previously released to you in application no.1 CSD 18/14 and or contains information about the 2018-19 Budget which is publicly available at <https://apps.treasury.act.gov.au>.

It is therefore my decision not to deal with information that has previously been released to you in your access application no.1 reference number CSD 18/14 and not to deal with information that is publicly available via the Treasury website.

Schedule 2, 2.2(a)(ii)

It is my decision to refuse access to information contained five (5) documents identified in the Table of Contents in column 1, numbers 1,4,5,6 and 17. It is my decision to provide access under section 50 of the FOI Act to copies of these documents with deletions made to information that I consider to be contrary to the public interest to disclose. In making my decision to refuse access to this information, I have applied the cascading public interest test in accordance with section 17 of the FOI Act.

The information I refer to is the personal mobile phone number for a member of staff. This information has been provided on a small number of emails as a contact point in the event of an urgent matter.

I did not identify any factors favouring the disclosure of this information.

One factor favouring non-disclosure was identified namely that the disclosure of this information could reasonably be expected to prejudice the individuals right to privacy under the *Human Rights Act 2004* (Schedule 2, 2.2(a)(ii)). It is my view that it would be a significant intrusion into the privacy of the staff member concerned to disclose this information taking into consideration that it is a requirement under section 28 of the FOI Act that each access application (excluding requests for personal information) must be made publicly available on the Directorates disclosure log and would therefore be published to the world at large.

On balance, as there are not factors to favour the disclosure of this information and one factor favouring non-disclosure it is my decision that the personal mobile phone is deleted from these documents.

Documents outside of scope and or copies of documents

The remaining documents have either been granted access with deletions or not released. These documents contain information that does not meet the scope of your request, for example may concern Budget and or Estimates information relating to other Ministerial portfolios as this information has not been requested it has not been provided to you.

Additionally, where information is said to be a copy it has been withheld to reduce duplication and minimise the release of repetitious information. This information is identified in the Table of Contents in the "Reason for non-release or deferral" column by the term "Copy" or "Copies". The entries for copies in the Table of Contents refer you the folio number of the previously considered version. For example, document no. 10, folio 109 is an exact copy of the document released to you at folio 16 (document number 4).

Charges

[REDACTED] processing charges are not applicable for this request.

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 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 on this notice of decision.

You may view the Directorate's disclosure log at

<http://.....commun...services.act.gov.au>

How to request a decision review

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 within 20 working days from the day that my decision is published in Directorate's disclosure log, or a longer period allowed by the Ombudsman.

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

Via email: <http://www.acat.act.gov.au/>

If you have any queries concerning the Directorate's processing of your request CSD-18/17, or would like further information, please contact the FOI processing officer Lisa Guteridge on 6205 3296.

Yours sincerely

Mark Collis
Information Officer
February 2019

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.

43 Refusing to deal with application—general

- (1) A respondent may refuse to deal with an access application wholly or in part only if—
 - (a) dealing with the application would require an unreasonable and substantial diversion of the respondent's resources (see section 44); or
 - (b) the application is frivolous or vexatious; or
 - (c) the application involves an abuse of process; or
 - (d) the government information is already available to the applicant (see section 45); or
 - (e) the access application is expressed to relate to government information of a stated kind and government information of that kind is taken to be contrary to the public interest to disclose under schedule 1; or
 - (f) an earlier access application for the same government information—
 - (i) was made in the 12 months before the application was made; and

- (ii) access to the information was refused; and
 - (iii) the relevant public interest factors are materially the same as those considered in deciding the earlier application.
- (2) A respondent is entitled to consider 2 or more applications as 1 application if the applications are related and are made by the same applicant or by people acting together in relation to the applications.
- (3) An applicant is not entitled to a refund of any application fee paid if the respondent refuses to deal with the application.
- (4) In this section:
- abuse of process** includes—
- (a) harassment or intimidation of a person; and
 - (b) an unreasonable request for personal information about a person.

45 Refusing to deal with application—information already available to applicant

For section 43 (1) (d), government information is already available to the applicant only if the information—

- (a) is made publicly available by the respondent or by another agency or Minister; or
- (b) is available to the applicant from, or for inspection at, a place the respondent, another agency or Minister operates, free of charge; or
- (c) is available as part of a public register established under a territory law; or
- (d) is available to the applicant because it has been produced in accordance with a subpoena or court order; or
- (e) has previously been given to the applicant under this Act or the *Freedom of Information Act 1989 (repealed)*; or
- (f) is usually available for purchase.

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.

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.