



ACT
Government

Chief Minister, Treasury and
Economic Development

ref: CMTEDD FOI 2023-302

Ben Fairless

via email: foi+request-10606-6ab60f56@righttoknow.org.au

Dear Mr Fairless

FREEDOM OF INFORMATION REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on **23 August 2023**, in which you sought access to:

“Documents in the possession of CMTEDD that provide instructions on how to access, use, connect or interface with NEVDIS. This includes (but is not limited to) documents created by AustRoads that are in the possession of CMTEDD...”

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 **5 October 2023**.

Decision on access

Searches were completed for relevant information, and **ten** documents were identified within scope of your request. I have decided to refuse access to the information relevant to this request as I consider the disclosure of the relevant documents is contrary to public interest.

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided with this letter.

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

Material Considered

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 *Human Rights Act 2004*.

Exemptions Claimed

My reasons for deciding not to grant access to the identified 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 this document is within the 'public interest'.

Factors favouring disclosure in the public interest:

I note that the information you have sought access to relates to information that is held by Access Canberra for the purpose of regulatory activities undertaken by them, in cooperation with an external agency. The emphasis for reasons in favour of disclosure for this type of information could be to contribute to positive or informed debate on important matters of public interest. I note that this information could be of interest to others within the community, however, I could not reasonably identify any clear factor in favour of release for this information.

Factors favouring non-disclosure in the public interest:

- (a) *disclosure of the information could reasonably be expected to do any of the following:*
- (iii) *prejudice security, law enforcement or public safety;*
 - (x) *prejudice intergovernmental relations;*
 - (xii) *prejudice an agency's ability to obtain confidential information.*

When considering the information and factors in favour of nondisclosure, I have considered the safety implications of the materials within scope. Noting that the rego.act database is used and connected to other rego safety activities, I consider there to be a significant risk in prejudice towards the integrity of Access Canberra's internal IT system processes. Internal staff procedure documents are not intended to be viewed by the general public, but are created to assist ACT Government employees in performing their daily work duties. Therefore, this information has been excluded from the release in accordance with *Schedule 2.2(a)(iii)*.

I have also considered the impact on intergovernmental relations. The interactions between external government agencies and the ACT Government, rely on the ability to be able to advise and share information freely without potential threat towards data sharing agreements. Disclosure of this material could reasonably prejudice the flow of similar information between government agencies in the future, and potentially jeopardise professional working relationships between ACT Government and external agencies. I afford this factor significant weight.

Further, some of the materials shared between agencies are considered commercial in confidence, and as such, release of this information could prejudice intergovernmental relations and an agency's ability to obtain confidential information. All technical documents relating to the rego.act system and NEVDIS system, contain commercial-in-confidence information, sensitive copyright and intellectual property information. There are no clear reasons in favour of why this information should be shared in the public domain, and therefore it has been excluded from release under *Schedule 2.2 (a)(xii)*.

Having applied the test outlined in section 17 of the Act and deciding that release of information contained in the document is not in the public interest to release, I have decided to not release these documents.

Charges

Processing charges are not applicable for this request because no documents are being released to you.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your access application will be published in CMTEDD disclosure log.

Your original access application and my decision will be published on the CMTEDD disclosure log. Your personal contact details will not be published.

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 the decision is published on the 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
15 Constitution Avenue
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
5 October 2023