



ACT

Government

Justice and Community Safety

2023/23608

“Karen”

Via email: foi+request-10876-fb2cf168@righttoknow.org.au

Dear “Karen”

DECISION ON FREEDOM OF INFORMATION ACCESS APPLICATION

I refer to your application under the [Freedom of Information Act 2016](#) (the Act), received by the Justice and Community Safety (JACS) Directorate on 18 November 2023, in which you sought access to:

“all documents pertaining to the appointment of the following Members, including but not limited to resumes, references, and recommendations:

- *Mary-Therese Daniel*
- *Geoffrey McCarthy*
- *Robert Orr*
- *Peta Spender*
- *Heidi Robinson*
- *George Tomlins”*

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.

Decision

I have identified three documents containing information within the scope of your access application. These are outlined in the *Schedule of documents*.

I have decided to refuse access to the three documents. Please see the reasons outlined in the ‘reasons for decision’ at [Attachment A](#).

ACT Civil and Administrative Tribunal appointments

The appointment of ACAT non-presidential and presidential members are notifiable instruments under section 94(6) and 95(5) of the *ACT Civil and Administrative Tribunal Act 2008*. For ease of reference, please see below links to the relevant notifiable instruments.

[Notifiable instrument NI2023–296 – Geoffrey McCarthy](#)

[Notifiable instrument NI2023-576 – Mary-Therese Daniel](#)

[Notifiable instrument NI2022–693 - Non-Presidential Members \(George Tomlins\)](#)

[Notifiable instrument NI2022-614 – Robert Orr](#)

[Notifiable instrument NI2022-615 – Peta Spender](#)

[Notifiable instrument NI2021-269 – Heidi Robinson](#)

Online publishing – disclosure log

Under section 28 of the Act, JACS maintains an online record of access applications called a disclosure log. My response to your access application will be published on the JACS disclosure log no later than 10 days after the decision. Your personal contact details will not be published.

You may view the JACS' disclosure log at: <https://www.justice.act.gov.au/disclosure-log>

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 on the JACS 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

The review of decision application form is available at:

<https://www.ombudsman.act.gov.au/complaints/how-to-make-a-complaint>

If you have any queries concerning the directorate's processing of your request, or would like further information, please contact JACSFOI@act.gov.au or phone (02) 6207 2167.

Yours sincerely



Naveen Wijemanne
Information Officer
29 January 2024

Attachment A – Reasons for decision

A. Material considered

In reaching my decision, I considered:

- your original access application
- the documents containing the information that fall within the scope of your access application
- consultations with JACS officers
- consultation with third parties
- *Freedom of Information Act 2016*
- *Human Rights Act 2004*

B. Reasons for my decision

As a decision maker, I am required to determine whether the information is in the public interest to release. To make this decision, I am required to:

- assess whether the information would be contrary to the public interest to disclose as per Schedule 1 of the Act
- perform the public interest test as set out in section 17 of the Act by balancing the factors favouring disclosure and factors favouring non-disclosure in Schedule 2

I have included below the factors relevant to my decision on access.

B.1 Information contrary to public interest to disclose

I have determined that the documents within the scope of your request contain information that is taken to be contrary to the public interest to disclose under Schedule 1 of the Act.

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
- (d) the disclosure of which would reveal any deliberation of Cabinet (other than through the official publication of a Cabinet decision).

The documents within scope of your request are Cabinet papers submitted to the Attorney-General for consideration. The release of these documents would reveal information that has been submitted to Cabinet for consideration that is not publicly known and reveal the confidential deliberations of Cabinet.

B.2 Public interest test

I have assessed the information against the factors favouring disclosure and factors favouring non-disclosure in Schedule 2. On balance, I have decided that the information is not in the public interest to disclose. I have included below the relevant factors for your information.

2.2 Factors favouring nondisclosure in the public interest

- (a) disclosure of the information could reasonably be expected to do any of the following:
 - (ii) prejudice the protection of an individual's right to privacy or any other right under the *Human Rights Act 2004*;
 - (xii) prejudice an agency's ability to obtain confidential information;
 - (xv) prejudice the management function of an agency or the conduct of industrial relations by an agency.

I have decided to refuse access to three documents under section 54(1) of the Act as this information is contrary to the public interest to release.

The documents contain personal information of applicants, the release of which would prejudice their right to privacy under the *Human Rights Act 2004*.

The ACT Ombudsman FOI Guidelines outlines that the management function of an agency may include activities such as recruitment, training, performance reviews, promotion, counselling, discipline, compensation and occupational health and safety.

The release of information related to the management of the recruitment process is deemed contrary to the public interest to release as it can reasonably be expected to prejudice the management function of JACS and the Attorney-General's Office (AGO) and undermine trust in the confidentiality of the recruitment process. I note that disclosure of this information would inhibit JACS and the AGO's ability to effectively complete such a process in the future and potentially serve to discourage suitable candidates from applying for roles.

C. Summary of my decision

In conclusion, I have decided to refuse access to three documents.