



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDD FOI 2023-422

Karen

via email: foi+request-10953-dd5b254d@righttoknow.org.au

Dear Karen,

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 **8 December 2023**. Specifically, you have sought access to the following information:

“The total number of instances a Notice to Show Cause Demerit Points was issued AFTER an issuance of a Notice of Ending of Rectification Order to the same Builder/Nominee/Building Company between 1 November 2021 to 1 December 2023.”

Authority

As an appointed Information Officer under section 18 of the Act by the Director-General of CMTEDD, I am authorised to make a decision on access or amendment to government information in the possession or control of CMTEDD.

Timeframes

In accordance with section 40 of the Act, CMTEDD was required to provide a decision within 30 working days. Therefore a decision is due on **30 January 2024**.

Decision on access

Searches were completed for relevant information and the business area has generated a written response. I have decided to grant full access to the information within scope. The following information was located in response to your request for information:

- A Notice to Show Cause Demerit Points was issued on three (3) instances after the end of the Rectification Order between 1 Nov 2021 and 1 Dec 2023.

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

Statement of Reasons

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

- assess whether the information would be contrary to public interest to disclose as per Schedule 1 of the Act, and
- 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 did not identify any Schedule 1 provisions as relevant to this request.

The public interest information under schedule 2 of the Act

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 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.

Factors favouring disclosure in the public interest:

(a) *disclosure of the information could reasonably be expected to do any of the following:*

(ii) *contribute to positive and informed debate on important issues or matters of public interest.*

I have placed substantial weight on the above factor favouring disclosure. It is reasonable to expect that information about this topic may be of interest to others within the community and contribute to informed debate about issues of interest.

I did not identify any factor favouring nondisclosure and have decided to release this information to you in full.

Charges

Processing charges are not applicable for this request because the number of pages released to you is below 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 and my decision will be published on 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/disclosure-log-2023>

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 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

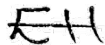
ACT Civil and Administrative Tribunal (ACAT) Review

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
Chief Minister, Treasury and Economic Development Directorate
25 January 2024