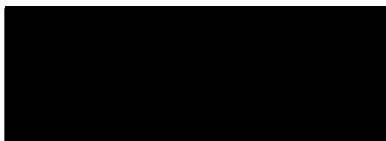


Our ref: 2018-510174

17 December 2018



Dear 

I acknowledge receipt of your email dated 20 November 2018 in which you made an access application for certain information under the *Freedom of Information Act 2016* (the FOI Act). You requested access to:

‘...final briefing notes and documents prepared for the 2017-18 Annual Reports hearings...’

This letter constitutes notice of my decision on your access application. The Ombudsman has appointed me as an information officer for the purposes of the FOI Act. This appointment authorises me to make this decision.

Decision

I have identified six documents falling within the scope of your access application. Under s 35(1)(c) of the FOI Act, I have decided to refuse access to three documents in full because the information is contrary to the public interest information. Under s 35(1)(a) of the FOI Act, I have disclosed two documents in full. Under s 35(1)(c) of the FOI Act, I have granted partial access to the remaining document because the relevant information is contrary to the public interest information. My reasons for this decision are set out at Attachment A to this letter.

Attachment B contains a schedule setting out the relevant documents.

Material not subject to the FOI Act

The FOI Act applies to agencies, as defined in s 15 of the FOI Act. Under s 15(2) of the FOI Act, the judicial council established under s 5A of the *Judicial Commissions Act 1994* falls outside the definition.

Review rights

Ombudsman review

Under s 73 of the FOI Act, you may apply in writing to this Office for a review of this decision. To do so, you should write to the Ombudsman requesting a review, to actfoi@ombudsman.gov.au or using the contact information set out at the foot of the first page of this letter.

The review application must be made within 20 working days after the day this decision is published in our disclosure log which is available at: <http://ombudsman.act.gov.au/contact-us/seeking-information/disclosure-log>. While no particular form is required to apply for review of this decision, we recommend that applicants use the form available at: <http://www.ombudsman.act.gov.au/Freedom-of-Information>.

ACAT review


Should you be dissatisfied with this Office's review decision, you would be able to apply to the ACT Civil and Administrative Tribunal (ACAT) for review. Further information, including contact information for the ACAT, and information about how to make an application to the ACAT is available at: <https://www.acat.act.gov.au/>.

Judicial review

A further option for review of this decision may be available under the *Administrative Decisions (Judicial Review) Act 1989*. Advice about pursuing this option may be obtained from a qualified legal practitioner.

If you require clarification of any of the matters discussed in this letter you may contact me using the contact information set out at the foot of the first page of this letter.

Yours sincerely



Gregory Parkhurst
Information Officer

ATTACHMENT A – Statement of reasons for decision

Material taken into account

In making my decision I had regard to the following:

- the terms of your access application,
- the information to which you sought access, and
- relevant provisions of the FOI Act.

Information taken to be contrary to the public interest

Schedule 1 to the FOI Act sets out information the disclosure of which is taken to be contrary to the public interest.

Information in possession of Ombudsman Schedule 1 section 1.12(a)

Under Schedule 1 s 1.12(a) I have redacted certain material from page 21 of document 6 in the schedule of documents.

Schedule 1 to the FOI Act sets out information the disclosure of which is taken to be contrary to the public interest. Under s 1.12(a) information in the possession of the Ombudsman that has been obtained or generated in relation to an Ombudsman review is information the disclosure of which is taken to be contrary to the public interest.

The relevant material consists of information concerning certain reviews by this Office under the FOI Act.

The relevant information does not identify 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.

In these circumstances, I have not allowed access to the relevant material contained in the requested document on the grounds that its disclosure is taken to be contrary to the public interest.

Information in possession of Ombudsman Schedule 1 section 1.12(b)

Under Schedule 1 s 1.12(b), I have redacted certain material from page 31 of document 6 in the schedule of documents.

Schedule 1 to the FOI Act sets out information the disclosure of which is taken to be contrary to the public interest. Under s 1.12(b) information in the possession of the Ombudsman that has been obtained or generated in relation to an investigation undertaken by the Ombudsman under s 9 of the *Ombudsman Act 1989* (the Ombudsman Act) is information the disclosure of which is taken to be contrary to the public interest.

The relevant material consists of information concerning decisions made by the Ombudsman in relation to action taken under s 9 of the Ombudsman Act. The redacted material concerns a matter that is still under investigation.

The relevant information does not identify 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.

For the reasons set out above, I have not allowed access to the relevant material, on the grounds that its disclosure is taken to be contrary to the public interest.

**A function exercised under the *Ombudsman Act 1989* division 2.2A (Reportable conduct)
Schedule 1 section 1.12(c)**

Under Schedule 1 s 1.12(c), I have refused access in full to three single page documents, each described in the document schedule as 'Reportable conduct case study'.

Schedule 1 to the FOI Act sets out information the disclosure of which is taken to be contrary to the public interest. Under s 1.12(c) information in the possession of the Ombudsman that has been obtained or generated in relation to a function exercised under division 2.2A of the Ombudsman Act is information the disclosure of which is taken to be contrary to the public interest.

The relevant material is three summaries of cases under the Reportable Conduct Scheme. The three cases are not hypothetical. While the names of the persons involved have been changed, these documents describe actual events. The summaries contain detailed descriptions of the relevant reportable conduct, and information about the outcomes in relation to each matter. Near the top of each summary there is a marking which states: 'Information in confidence – based on actual report – not to be disclosed.'

The relevant information does not identify 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.

For the reasons set out above, I have not allowed access to the three Reportable Conduct case studies on the grounds that its disclosure is taken to be contrary to the public interest.

ATTACHMENT B – Schedule of relevant documents

Schedule of documents for: Coe, Alistair			
Ombudsman's reference: 2018 - 510174			
Item no.	Description	Date	Decision
1	Reportable conduct case study		Schedule 1 section 1.12(c)
2	Reportable conduct case study		Schedule 1 section 1.12(c)
3	Reportable conduct case study		Schedule 1 section 1.12(c)
4	Ombudsman's background brief		Disclosed under FOI
5	Minute to Ombudsman		Disclosed under FOI
6	Annual report hearing brief		Redactions Schedule 1 section 1.12 (a), Schedule 1 section 1.12 (b)

ATTACHMENT C – Relevant FOI Act provisions

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.

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.

Schedule 1 Information disclosure of which is taken to be contrary to the public interest

1.12 Information in possession of ombudsman

Information in the possession of the ombudsman that has been obtained or generated in relation to—

- (a) an ombudsman review; or
- (b) an investigation undertaken by the ombudsman under the [Ombudsman Act 1989](#), section 9; or
- (c) a function exercised under the [Ombudsman Act 1989](#), division 2.2A (Reportable conduct).