

Decision and reasons of the Acting Senior Assistant Ombudsman

Application number: AFOI-RR/25/80061

Applicant: 'EC'

Respondent: Justice and Community Safety Directorate

Respondent reference: 2025/31787

Date: 18 September 2026

Decision reference: [2026] ACTOFOI 10

Catchwords: *Freedom of Information Act 2016* – deciding access – whether information is contrary to the public interest information – 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 – reveal the reason for a government decision and any background or contextual information that informed the decision – contribute to the administration of justice generally, including procedural fairness – the information is personal information of the person making the request – prejudice the protection of an individual’s right to privacy or any other right under the *Human Rights Act 2004* – prejudice an agency’s ability to obtain confidential information – prejudice the management function of an agency or the conduct of industrial relations by an agency.

Decision

1. For the purpose of s 82 of the *Freedom of Information Act 2016* (**FOI Act**), I am a delegate of the ACT Ombudsman.
2. The applicant applied for Ombudsman review of the decision made by the Justice and Community Safety Directorate (**JACS**) on 11 September 2025 refusing access to 2 documents containing information about a complaint made about the applicant.
3. My decision is to **confirm** the decision made by JACS.

Background to Ombudsman review

4. On 31 July 2025, the applicant applied to JACS for:
 1. *A copy of the complaint submitted against me, by [complainant] dated 26 May 2025, that was received by the Justice and Community Safety Directorate (JACS).*
 2. *All documents and correspondence relating to said complaint, including but not limited to correspondence between Territory staff.*
5. JACS conducted searches and located 2 documents within the scope of the request.
6. On 11 September 2025, JACS refused to give access to those 2 documents after considering the public interest test and determining the information was, on balance, contrary to the public interest to disclose.
7. On 19 September 2025, the applicant requested an Ombudsman review of the decision.
8. On 23 September 2025, the Office of the ACT Ombudsman (the **Office**) notified JACS of the review application under s 75 of the FOI Act and requested information for the purpose of the review.
9. On 30 September 2025, JACS provided our Office with a copy of the information at issue along with further submissions in support of their decision.

10. On 13 October 2025, our Office requested additional information to clarify the context and scope of the requested information because this matter is similar to a previous review matter before the Ombudsman involving the same applicant, being *'DP' and Justice and Community Safety Directorate [2025]* [ACTOFOI 13](#). Relevantly, this decision was sent to JACS on 11 September 2025 and subsequently published on the ACT Ombudsman website on 19 September 2025.
11. On 16 October 2025, JACS requested to meet with the Office to provide further information about the status of the complaint and contextual information. JACS also advised the complaint process is ongoing and has been transferred to another agency to conduct a preliminary assessment.
12. On 28 October 2025, our Office met with JACS to discuss the review and sought JACS' view on a potential informal resolution to give the applicant information about the complaint. JACS indicated it may be possible to provide information about the complaint if the applicant provided further information, namely medical clearance to receive information about the complaint, noting JACS' work health and safety obligations
13. On 7 November 2025, our Office contacted the applicant to convey JACS' position about potential informal resolution of this review matter.
14. On 14 November 2025, the applicant requested the Office to proceed with the review.
15. On 30 November 2025, the applicant submitted a copy of an email that appears to be internal correspondence between JACS officials (1 page) dated 16 May 2025, to support a disclosure of information about the complaint (**justification email**) which the applicant received in response to a different access application.

16. On 29 July 2026, the Senior Assistant Ombudsman provided her preliminary views to the parties in a draft consideration. On the same date, JACS accepted the draft consideration.
17. On 2 August 2026, the applicant provided submissions in response to the draft consideration that disclosure of the 2 documents would not be contrary to the public interest.

Background of complaints

18. This matter is complex. While this review is about documents relating to a complaint made about the applicant on 26 May 2025 (**the second complaint**), there was also an earlier complaint on 17 September 2024 (**the first complaint**), which is relevant to this review.
19. The first complaint against the applicant was finalised with formal counselling of the applicant, following a preliminary assessment conducted by JACS. That complaint did not proceed to an investigation of alleged misconduct.
20. Documents relating to that preliminary assessment were the subject of the Ombudsman review in *'DP' and Justice and Community Safety Directorate* [2025] [ACTOFOI 13](#).
21. Notably, details of the first complaint, including the identity of the complainant, were disclosed to the applicant, outside of the FOI Act, as part of JACS' preliminary assessment process for the first complaint.
22. As part of this Ombudsman review, the applicant has raised it would be appropriate to disclose information about the second complaint, as similar information was previously given to the applicant, and the complaints appear to be related.
23. The applicant has also provided the justification email. In that email, a Human Resources (HR) officer wrote to another senior officer within JACS conveying

their position about the applicable legislative frameworks, policies and reasons why the first complaint was provided to the applicant as part of the preliminary assessment process.

24. Since 28 July 2025, when the preliminary assessment notification for the second complaint was dispatched, the applicant has been on leave due to being unfit for work having claimed a workplace injury.
25. JACS has a primary duty of care to the applicant within the context of an employment relationship under the *Work and Safety Act 2011*.¹
26. JACS made submissions to this Office that disclosure of the complaint information may conflict with its duty of care having regard to the nature of the workplace injury.
27. When JACS receives a complaint about an employee, the preliminary assessment process is normally commenced by a manager within JACS.²
28. However, given the complexities and sensitive nature of the second complaint and potential conflicts of interest involving multiple individuals, JACS transferred the second complaint to the Professional Standards Unit (**PSU**) of the Chief Minister, Treasury and Economic Development Directorate (**CMTEDD**) to conduct the preliminary assessment process.
29. PSU undertook the preliminary assessment in accordance with the ACT Public Sector ACT Fire & Rescue Enterprise Agreement 2024-2026 (**ACT F&R EA**)³ and the Preliminary Assessment Guide.⁴

¹ [Work health and Safety Act 2011](#) (ACT), s 19.

² [Complaints Management Policy](#) – Justice and Community Safety Directorate (approved on 17 September 2024), p 9; [ACT Public Sector ACT Fire & Rescue Enterprise Agreement 2024-2026](#), L2.

³ [ACT Public Sector ACT Fire & Rescue Enterprise Agreement 2024-2026](#), L2.25.

⁴ [Preliminary Assessments](#) – Assessing allegations of inappropriate workplace behaviour or misconduct (2019).

30. Our Office is not aware if the applicant has engaged with the preliminary assessment process of the second complaint or received information about the second complaint as part of that process.

Information at issue

31. The information at issue in this Ombudsman review is 2 documents comprising 67 pages, including a copy of the original complaint against the applicant dated 26 May 2025 and email correspondence.

32. The key issue to be decided is whether this information is contrary to public interest information or not.

33. In making my decision, I have had regard to:

- JACS' decision notice of 11 September 2025, correspondence dated 30 September 2025 in response to the s 75 notice, and an additional email of 16 October 2025
- summary of a meeting of 28 October 2025
- the applicant's Ombudsman application dated 19 September 2025, correspondence of 14 November 2025 attaching the preliminary assessment notice, correspondence of 30 November 2025 attaching the justification email and submissions dated 2 August 2026 in response to this Office's draft consideration
- the [FOI Act](#), particularly ss 6, 16, 17 schedule 1 and schedule 2
- [Information Privacy Act 2014](#) (ACT) (**IP Act**)
- [Legislation Act 2001](#) (ACT) (**Legislation Act**)
- [Work health and Safety Act 2011](#) (ACT) (**WHS Act**)
- the Freedom of Information Guidelines made under section 66 of the FOI Act, particularly:
 - [Freedom of Information \(Volume 3 – Dealing with access applications\) Guideline 2020](#) (**Guidelines 3**)

- [Freedom of Information \(Volume 4 – Considering the public interest\) Guidelines 2023](#) (**Guidelines 4**)
- [Freedom of Information \(Volume 6 – Ombudsman review\) Guideline 2020](#) (**Guidelines 6**)
- relevant caselaw including:
 - *'BP' and Justice and Community Safety Directorate* [2021] [ACTFOI 19](#) (22 December 2021)
 - *Coutts v Close* [2014] [FCA 19](#)
 - *'DK' and Community Services Directorate* [2025] [ACTOFOI 7](#)
 - *'DP' and Justice and Community Safety Directorate* [2025] [ACTFOI 13](#)
 - *Hof and Rockhampton Regional Council* [2015] [QICmr 8](#)
 - *Re Minister for Immigration and Multicultural Affairs; Ex parte Lam* [2003] [HCA 6](#)
 - *Robert Kenneth Wilson and Australian Postal Corporation* [1994] [AATA 189](#) (11 July 1994)
- current enterprise agreement, relevant policies and guidelines of agencies as:
 - [ACT Public Sector ACT Fire & Rescue Enterprise Agreement 2024–2026](#) (**ACT F&R EA 2024–2026**)
 - [ACT Public Sector Code of Conduct 2022](#)
 - [Complaints Management Policy](#) – Justice and Community Safety Directorate (approved on 17 September 2024) (**Complaints Management Policy 2024**)
 - [Privacy Policy](#) – Justice and Community Safety Directorate (approved/effective on 13 April 2026)
 - [Preliminary Assessments](#) Guide – Assessing allegations of inappropriate workplace behaviour or misconduct (2019) (**Preliminary Assessment Guide**)

Relevant law

34. Section 7 of the FOI Act gives every person an enforceable right of access to government information. This right is subject to other provisions of the FOI Act, including grounds on which access may be refused.⁵

⁵ FOI Act, S 35(1)(c).

35. Contrary to the public interest information is defined in s 16 of the FOI Act as:
- 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.
36. The public interest test set out in s 17 of the FOI Act involves a process of balancing public interest factors favouring disclosure against public interest factors favouring nondisclosure to decide whether, on balance, disclosure would be contrary to the public interest.
37. Section 35(1)(c) of the FOI Act provides an access application may be decided by refusing to give access to the information sought because the information being sought is contrary to the public interest information.
38. Section 50 of the FOI Act applies if an access application is made seeking government information in a record containing contrary to the public interest information, and it is practicable to give access to a copy of the record, from which contrary to the public interest information has been deleted.
39. Schedule 1 of the FOI Act sets out categories of information taken to be 'contrary to the public interest information' for the purposes of the definition in s 16.
40. Schedule 2 of the FOI Act sets out the public interest factors which must be considered, where relevant, when determining the public interest.

The position of the parties

41. In refusing access to all documents, JACS balanced the competing factors and ultimately found that the information was 'contrary to the public interest information' as releasing it would be an unreasonable disclosure of personal information, may deter others from sharing information in confidence in

future (including union representatives), and could prejudice the management functions of the agency and compromise the integrity of the complaints handling process.

42. JACS later confirmed to our Office in response to the s 75 notice that the complainant had explicitly requested that the complaint be kept confidential and not be shared without their prior consent. Further, while some attachments in the complaint were previously available to the applicant, JACS was concerned that releasing attachments without the broader context could lead to incorrect assumptions.
43. JACS also expressed concerns for the applicant's well-being given they were currently unfit for work. JACS had sought information from the applicant to confirm they were medically fit to receive information on the matters contained in the FOI documents, but that this has not been forthcoming. JACS was concerned that the release of information regarding this matter may exacerbate the applicant's current condition. JACS was nonetheless willing to provide conditional access with medical clearance.
44. In response to our Office's attempts to informally resolve the review the applicant submitted JACS did not require medical clearance to provide a preliminary assessment notification for the first complaint and therefore believed JACS can provide associated details for the second complaint in the same way.

Consideration

Public interest test

45. To determine whether disclosure of the complaint information is contrary to the public interest, the FOI Act prescribes the following 5 steps:

- 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
- 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
- balance any relevant factor or factors favouring disclosure against any relevant factor or factors favouring nondisclosure
- decide whether, on balance, disclosure of the information would be contrary to the public interest, and
- unless, on balance, disclosure of the information would be contrary to the public interest, allow access to the information.

46. There are irrelevant factors which must not be taken into account when considering public interest test including the applicant's identity, circumstances, or reason for seeking access to the information. However, the FOI Act also provides that the applicant's identity, circumstances, and reason for seeking access to the information at issue may be considered if the information requested is personal information and the personal information is not about the applicant.⁶

47. The fact that an applicant is seeking information that is not their own personal information is not alone a sufficient reason to denying access to that information. It is still necessary to identify any relevant factors favouring disclosure and non-disclosure, on balance, to decide whether disclosure of the personal information is contrary to the public interest.⁷

⁶ FOI Act, 17(2)(f) & 17(3).

⁷ Guidelines 4, p 50.

Factors favouring disclosure

48. In its original decision, JACS identified 3 factors favouring disclosure. I have identified a further factor favouring disclosure.

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—Schedule 2, s 2.1 (a)(iii)

49. A factor favouring disclosure of information is where disclosure could reasonably be expected to inform the community of the government's operations, including the policies, guidelines and codes of conducts followed by the government in its dealing with member of the community.⁸

50. Disclosure of the information at issue relating to the current complaint in which the applicant is the subject of the complaint (**subject person**) could reasonably be expected to inform the community about how JACS handles allegations of inappropriate behaviour or misconduct.

51. In response to the draft consideration, the applicant submitted that given, in their view, the documents would show the complainant holds a position in a union, disclosing the information would inform the community about how JACS manages complaints raised by industrial officials against non-union employees.

52. I consider the information would only provide insight into a single complaint process. I therefore do not consider it would carry much weight in informing the broader community.

53. I attribute this factor minor weight.

⁸ Guidelines 4, p 53.

Reveal the reason for a government decision and any background or contextual information that informed the decision—Schedule 2, s 2.1 (a)(viii)

54. A factor favouring disclosure of information is where disclosure could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision, which can serve to provide transparency and accountability to the decision-making process.⁹

55. The complaint process for the second complaint was at the preliminary assessment stage, when JACS transferred the preliminary assessment process to the PSU. Following the preliminary assessment process, PSU will inform the applicant about the outcome.

56. The information held by JACS is limited to original copies of the complaint and all related documents already handed over to PSU.

57. Therefore, I am of the view that disclosure could provide contextual information about the complaint but would not reveal potential actions taken from the preliminary assessment process.

58. I attribute moderate weight to this factor.

Contribute to the administration of justice generally, including procedural fairness—Schedule 2, s 2.1 (a)(xiii)

59. A factor favouring disclosure of information is where disclosure could reasonably be expected to contribute to the administration of justice generally, including providing procedural fairness.

60. I accept disclosure of the complaint information in the context of handling the complaint could reasonably be expected to contribute to the administration

⁹ Guidelines 4, p 54.

of justice generally, by providing procedural fairness and allowing the subject of a complaint an opportunity to respond.¹⁰

61. I have considered whether a conditional requirement to provide a medical clearance prior to being given access to information about the complaint would align with principle of procedural fairness.
62. Gleeson CJ stated '*fairness is not an abstract concept. It is essentially practical. Whether one talks in terms of procedural fairness or natural justice, the concern of the law is to avoid practical injustice*'.¹¹
63. As set out in FOI Guidelines 4, disclosure would contribute to the administration of justice when it would ensure an applicant is given the opportunity to respond to allegations made against them;¹² specifically, the right to be heard merely depends on a person being given the opportunity to respond to relevant material relied upon to exercise a power or make an adverse decision against them.¹³
64. In *Coutts v Close*¹⁴ case (**Coutts**), Griffiths J states the rule of procedural fairness as:

Subject to any relevant statutory modification or variation, it is well-established that a person liable to be directly affected by an administrative decision to which the rules of procedural fairness apply must be given an opportunity of putting information or submissions to the decision-maker.

...The obligation extends to informing the affected person of the nature and content of adverse material that is credible, relevant and significant obtained from sources other than the affected person, as well as of any adverse conclusion reached by the decision-maker in respect of which the affected person had no notice. The affected person must be given an adequate opportunity to address such new

¹⁰ Guidelines 4, p 56.

¹¹ *Re Minister for Immigration and Multicultural Affairs; Ex parte Lam* [2003] [HCA 6](#) [37].

¹² Guidelines 4, p 56.

¹³ '*BP*' and Justice and Community Safety Directorate [2021] [ACTFOI19](#) (22 December 2021), [35].

¹⁴ [2014] [FCA 19](#).

material and/or any unexpected conclusions by further information and submission

...subject naturally to the particular statutory context, procedural fairness does not require that a decision maker adopt an “open file” policy which would have the effect of disclosing every submission or piece of evidence to an affected party

65. Coutts decision underpins the ‘right to be heard’ and ‘opportunity to respond’ of a subject person that has been elaborated and applied under the FOI Act.
66. A person must be informed of the nature and content of material relating to them that is credible, relevant and significant where that information will be used to make a decision adverse to them.
67. However, procedural fairness does not automatically require the employer to supply verbatim copies of adverse information to the person as an ‘open file’ policy.¹⁵
68. Importantly, procedural fairness requirements must be considered in their particular context, including any relevant statutory frameworks and applicable policies and procedures.
69. The ACTF&R enterprise agreement 2024–2026, the Preliminary Assessment Guide, ACT Public Sector Code of Conduct and complaints management policy consistently acknowledge, promote and establish a set of procedures and requirements in line with the principles of natural justice and procedural fairness.¹⁶
70. The preliminary assessment is typically the first step to assessing the allegations; subsequently, the manager/supervisor will communicate the outcomes of the preliminary assessment to relevant employees. There is a

¹⁵ ‘BP’ and Justice and Community Safety Directorate [2021] [ACTFOI 19](#) (22 December 2021), [34]; *Coutts v Close* [2014] [FCA 19](#), [90].

¹⁶ ACT F&R EA 2024–2026, L 1.4, L 2.7, L4.2, L4.5 & L 6.2; Preliminary Assessments 2019, pp 4, 6 & 7; Complaint Management Policy 2024, pp 4–5; [ACT Public Sector Code of Conduct 2022](#), p 10.

wide range of potential preliminary assessment outcomes, including findings of vexatious or frivolous complaints resulting in no further action required, suggestions for counselling, an underperformance process, or recommendation for a formal investigation.¹⁷

71. Accordingly, the preliminary assessment process might end with no further action being required, and no formal investigation. Nonetheless, the Preliminary Assessment Guide references the right of the subject of a complaint to be heard:

*It will usually also be appropriate to advise the employee subject to the allegations that a preliminary assessment is underway so that they can provide a response or comment on any proposed course of action before a decision is made.*¹⁸

72. The preliminary assessment notification provided to the applicant did inform him that a preliminary assessment was underway.
73. The applicant submitted that the preliminary assessment notification did not identify the allegations themselves, nor provide any evidence. As such, the applicant submits they have not been given the opportunity to comment envisaged by the Preliminary Assessment Guide.
74. The applicant also argues that given they had been given a copy of the first complaint unconditionally in 2024, this supported their right to access the second complaint.
75. I note there is a lack of clarity on how an agency is to manage a preliminary assessment process when the person subject of the complaint is on leave. I also note a lack of clarity and guidance on the intersection of WHS obligations, the FOI Act and procedural fairness requirements.

¹⁷ Preliminary Assessments 2019, pp 2-4.

¹⁸ Preliminary Assessments 2019, p 3.

76. JACS' disclosure of the first complaint was consistent with a general observation made in *'DK' and Community Services Directorate* when considering the release of employment matters under s 10 of the FOI Act:

As a general observation, I note s 10 of the FOI Act provides that the FOI Act is not intended to prevent or discourage the publishing or giving of access to government information otherwise than under the FOI Act. In that context, I encourage agencies to work with applicants to explore options to provide access to information informally or otherwise outside of the FOI process, where it is appropriate to do so. This includes in circumstances where the information relates to employment matters, for which the FOI Act may not be the most appropriate framework for release.¹⁹

77. Without purporting to form any view or make any finding about how JACS handles complaint processes, I note providing access to an original complaint, outside of the FOI process in relation to the first complaint, appears to be what JACS determined to be appropriate in the circumstances of that particular matter. I do not consider it establishes a precedent of an 'open file' practice for the agency.

78. For the second complaint, the applicant has a pre-existing pathway to conditionally access the adverse information outside of the FOI Act. The applicant submitted that that pathway has not, in practice, resulted in any disclosure over many months and should not be relied upon to reduce the weight given to this factor. If a summary version outlining the nature and content of the allegations was given to the applicant, I would afford no weight under this factor. However, this is not the situation.

79. The Ombudsman cannot compel an agency to comply with this practice, or to progress a complaint pathway within a particular period. In my view, that conduct would also prejudice the management function of an agency under the FOI Act.

¹⁹ *'DK' and Community Services Directorate* [2025] [ACTOFOI 7](#) [17].

80. As this ongoing complex complaint process acutely references employment law rather than FOI legislation, I refer to the above general observation of employment matters and encourage dissatisfied parties to determine conditional disclosure of the complaint through other available and appropriate channels as to the progress of the investigative process.

81. I therefore attribute minor weight to this factor.

***The information is personal information of the person making the request—
Schedule 2, s 2.1 (b)(i)***

82. A factor favouring disclosure of information is where the information is the personal information of the person making the request. I find this factor applies in this matter as the applicant sought allegations made about them.

83. The Ombudsman has provided guidance on this factor in scenarios where the application sought access to a complaint investigation preliminary assessment report.²⁰

84. Given the scope of requested information, I am satisfied that this factor applies to the matter and attribute significant weight to it.

Factors favouring nondisclosure

85. In its original decision, JACS identified 3 factors favouring nondisclosure of the information at issue. I find an additional factor is applicable in respect of the particular circumstances of this matter.

²⁰ Guidelines 4, p 58.

Prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004—Schedule 2, s 2.2(a)(ii)

86. A factor favouring nondisclosure of information is where disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy or any other right under the HR Act.
87. Information should normally be disclosed with respect to their routine day-to-day work activities; it nevertheless does not comprise information about workplace complaints/investigations such as documents, held by agencies, containing:
- the opinions, observations, experiences of the involved parties obtained in the context of an investigation in the allegations; and
 - recommendations about the action to be taken as a result of the complaint being substantiated against them.²¹
88. The IP Act sets out how personal information is handled by public sector agencies and how the privacy of individuals is protected. Collecting and handling personal information have been further specified in the Privacy Policy of JACS.²²
89. It is important to highlight that the complainant clearly requested, in writing, not to disclose their identity and original copy of the complaint. This reasonable request is consistent with the right to anonymity and confidentiality under JACS' Complaints Management Policy.²³
90. Notwithstanding this, I note that under the Complaints Management Policy 2024, the right to confidentiality is not absolute, as it might compromise the

²¹ Guidelines 4, p 65; *Hof and Rockhampton Regional Council* [2015] [QICmr 8](#), [49].

²² [Privacy Policy](#) – Justice and Community Safety Directorate (approved/effective on 13 April 2026), pp 6–13; Complaints Management Policy 2024, 11.2.

²³ Complaints Management Policy 2024, p 9.

effectiveness of the investigation into the complaint and requirements of procedural fairness to the subject person.²⁴

91. The Preliminary Assessment Guide expresses similar considerations about revealing a complainant's identity,²⁵ some of which the applicant pointed to in their response to the draft consideration, including an excerpt that noted complainants should be advised that their identity may be revealed during the complaint process.
92. The applicant has also submitted that the identity of the complainant is not confidential to the applicant, because JACS disclosed the complainant's identity in the preliminary assessment notification. For this reason, the applicant submitted that significant weight should not be given to protecting the complainant's identity.
93. Even though the complainant's identity has been revealed to the applicant, that disclosure was restricted to the applicant as the person subject to allegations and has not been released to the general public.
94. While balancing privacy considerations and the pro-disclosure bias, I must consider, among other criteria:²⁶
 - whether the information was provided on a confidential basis
 - any opposition to disclosure of the information expressed or likely to be held by that person
 - the fact that restrictions cannot be placed on the use or dissemination of information released under the FOI Act.

²⁴ Complaints Management Policy 2024, 11.1.

²⁵ Preliminary Assessments 2019, p 6.

²⁶ Guidelines 4, p 62.

95. The preliminary assessment notification stated:

[the applicant is] directed to not discuss the allegations or [their] involvement with anyone other than your support person and/or industrial representative, unless given permission to do so by [notice issuer]. A breach of this direction may constitute misconduct and result in disciplinary action.

96. Therefore, in my view, the disclosure of the complainant's identity to the applicant with restricted disseminations was made within the context of an ongoing preliminary assessment of a complaint.

97. It is a well-established practice that disclosure of information under the FOI Act is in fact 'disclosure to the whole world',²⁷ and potential consequences of the disclosure must be considered, even where the same material had already been disclosed under another regime. Information disclosed under the FOI Act will be instantly publicly available. Thus, the purpose of disclosing the complainant's identity in course of the preliminary assessment must be differentiated with disclosure under the FOI Act.

98. I therefore attribute significant weight to this factor.

Prejudice an agency's ability to obtain confidential information—Schedule 2, s 2.2(a)(xii)

99. A factor favouring nondisclosure of information is where disclosure could reasonably be expected to prejudice an agency's ability to obtain confidential information. This factor is likely to be applicable where:

- the information sought is of a confidential nature; and
- it was obtained in confidence.²⁸

100. The information at issue is entirely related to the complaint about the applicant that is being currently progressed through a preliminary

²⁷ *Robert Kenneth Wilson and Australian Postal Corporation* [1994] [AATA 189](#) (11 July 1994) at [17].

²⁸ Guidelines 4, p 76.

assessment phase. The preliminary assessment process is being conducted by PSU, so the information that JACS holds about the complaint is limited.

101. The Preliminary Assessment Guide states (our emphasis):

All information about an allegation of inappropriate workplace behaviour must be kept confidential before, during and after the preliminary process to help ensure fair treatment and process, minimise the risk of victimisation, help avoid defamation proceedings and to respect people's privacy. It also helps to develop and maintain employee confidence in the process.²⁹

102. While information during a preliminary assessment process must remain confidential, confidentiality is to be balanced against the requirements of procedural fairness. As mentioned above, the complainant specifically requested JACS not disclose their original complaint without consent.

103. The applicant submitted that JACS' willingness to release the complaint information directly to the applicant, conditional only on the applicant providing medical clearance, is not consistent with the proposition that the complainant expects, and is entitled to, confidentiality, and that disclosure would compromise the integrity of the complaints process and defer future complainants.

104. While JACS offered to provide complaint information to the applicant as part of its complaint handling process, such disclosure would remain governed by JACS' complaint policy and Preliminary Assessment Guide, including confidentiality requirements and dissemination restrictions. Whereas as discussed above, disclosure to the applicant under the FOI Act would not have restrictions for further dissemination.

105. The applicant also submitted that the fact the complainant is not a JACS or ACT Fire & Rescue employee should be relevant when considering the deterrent effect disclosure would have on future complainants coming

²⁹ Preliminary Assessments 2019, p 6.

forward. The applicant submitted that this deterrent effect is premised on the vulnerability of an employee-complainant with an ongoing employment relationship with the agency, which ought not transfer to a person not subject to the same institutional vulnerability.

106. I agree that different confidentiality considerations would be involved in managing a complaint from an employee versus other individuals. However, the effectiveness of JACS' ability to obtain confidential information is not limited to its ability to manage employee-complainants but extends to its complaint process more broadly.

107. The Complaints Management Policy states it is a commitment to providing an accessible, fair and transparent complaint process for all of JACS' clients and stakeholders, and covers complaints from members of the public.³⁰ For JACS' complaint handling to be effective, all complainants, employee or otherwise, need to have confidence that their information will be handled in accordance with those policies. On this point, I agree with JACS' submission that the release of a confidential complaint under FOI could be expected to cause distrust and may deter others from sharing any concerns they have if they know that the subject of their complaint would be privy to it in full.

108. Given the above, I hold the view that disclosure of confidential information could, and would, reasonably be expected to harm the future supply of confidential information from other sources being available to the agency.

109. Accordingly, I attribute significant weight on this factor.

³⁰ Complaints Management Policy 2024, p 7.

Prejudice the management function of an agency or the conduct of industrial relations by an agency—Schedule 2, s 2.2(a)(xv)

110. A factor favouring nondisclosure of information is where disclosure could reasonably be expected to prejudice the management function of an agency or the conduct of industrial relations by an agency.
111. I accept the second complaint had references to union activities, however it is unclear to the Office whether the complaint was made on behalf of the union or in an individual capacity.
112. The applicant asserted that the documents before the Office demonstrate that the complainant is identified in every relevant document solely by their union office.
113. The Preliminary Assessment Guide and complaints management policy do not set out differences in processing complaints made by union members versus other individuals.
114. All individuals are entitled to make a complaint to JACS. Hence, I do not agree that the disclosure could reasonably be expected to prejudice the conduct of industrial relations by an agency. Notwithstanding this, complaint handling is clearly defined as a management function of the agency including management of performance review, counselling, discipline.³¹
115. Thus, I am satisfied that disclosure of the information at issue could reasonably be expected to prejudice the management function of the agency.
116. I attribute significant weight to this factor.

³¹ Guidelines 4, p 79.

Balancing the factors

117. Having identified public interest factors favouring disclosure and factors favouring nondisclosure, I now must consider the public interest balancing test set out in s 17 of the FOI Act.
118. In this matter, I identified 4 factors favouring disclosure. I attribute minor weight to 2 factors, moderate weight to 1 factor and significant weight to 1 factor.
119. I identified 3 factors favouring nondisclosure, to which I attribute significant weight.
120. Balancing public interest factors is not simply a case of quantifying the number of relevant factors for disclosure and nondisclosure, with the higher quantity being considered in the public interest. The decision-maker's task is to consider the relative importance and weight of each factor identified. The weight given to a factor will depend on the effect that disclosing the information has on the public interest.
121. The FOI Act has a pro-disclosure bias,³² and as a result, the public interest test should not be approached on the basis that there are empty scales in equilibrium, waiting for arguments to be put on each side. Rather, the scales are 'laden in favour of disclosure'.³³

Conclusion

122. My conclusion is that the public interest factors favouring nondisclosure outweigh the public interest factors favouring disclosure.

³² FOI Act, s 17.

³³ [Explanatory Statement](#), Freedom of Information Bill 2016.

Decision

123. For the reasons set out above, I confirm JACS decision under s 82(2)(a) of the FOI Act.

Georgia Ramsay

Acting Senior Assistant Ombudsman

18 September 2026