

Decision and reasons of Acting Senior Assistant Ombudsman

Application number:	AFOI-RR/24/10010
Applicant:	'DF'
Respondent:	Transport Canberra and City Services
Participant:	Canberra Metro Pty Ltd
Respondent reference:	24-011
Date:	23 September 2024
Decision reference:	[2024] ACTOFOI 16
Catchwords:	<i>Freedom of Information Act 2016</i> – deciding access – whether information is contrary to the public interest information – contribute to positive and informed debate on important issues or matters of public interest – inform the community of the government's operation – prejudice trade secrets, business affairs or research of an agency or persons – prejudice an agency's ability to obtain confidential information – prejudice the competitive commercial activities of an agency

Decision

1. I am a delegate of the ACT Ombudsman for the purpose of section 82 of *Freedom of Information Act 2016* (FOI Act).
2. The applicant requested Ombudsman review of Transport Canberra and City Services (TCCS) decision to refuse access to information about the operating profit and loss of stage 1 of the Light Rail Project – City to Gungahlin.

'DF', Canberra Metro Pty Ltd and Transport Canberra and City Services [2024] ACTOFOI 16
(23 September 2024)

3. For the reasons set out below I **confirm** TCCS's decision of 8 March 2024 to refuse access under section 82(2)(a) of the FOI Act because, on balance, disclosure of this information would be contrary to the public interest.

Background to Ombudsman review

4. On 29 January 2024, the applicant applied to the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) for access to:

"...a copy of a document that shows the operating loss (or profit) of stage 1 of the Light Rail Project (City to Gungahlin) for the financial year 2020 to 2021..."
5. On the same day, TCCS accepted transfer of the application from CMTEDD.
6. On 8 March 2024, TCCS identified one document within the scope of the application and refused to give access to the document.
7. On 22 March 2024, the applicant applied for Ombudsman review under section 73 of the FOI Act.
8. On 10 July 2024, I provided my preliminary view to the parties in a draft consideration where the delegate intended to set aside the decision made by TCCS and to make a substitute decision to only give access to the headline profit/loss figure.
9. On 11 July 2024, the applicant accepted the draft consideration.
10. On 9 August 2024, TCCS responded to the draft consideration and provided additional submissions, including submissions from Canberra Metro Pty Ltd (Canberra Metro), objecting to the release of the information in scope.
11. On 30 August 2024, Canberra Metro applied to participate in this Ombudsman review under section 77(2) of the FOI Act.

'DF', Canberra Metro Pty Ltd and Transport Canberra and City Services [2024] ACTOFOI 16
(23 September 2024)

12. On 9 September 2024, TCCS provided information to the Ombudsman about the information at issue being commercially sensitive information in the contract between TCCS and Canberra Metro to design, construct, operate and maintain Stage 1 of the Light Rail Network (the Contract).¹

Information at issue

13. The information at issue is the statement of profit or loss and other comprehensive income for the financial year ended 30 June 2021 of Canberra Metro (profit and loss statement), which TCCS is entitled to access in accordance with the terms of the Project Agreement between the Territory and Canberra Metro (Project Agreement).²
14. The profit and loss statement contains financial information about Canberra Metro including revenue, other income and expenses during the first year of operation of Stage 1 of the Light Rail Project.³
15. In making my decision, I have had regard to:
 - the applicant's review application
 - the respondent's decision of 8 March 2024 and submissions of 9 August 2024 and 9 September 2024
 - submissions of Canberra Metro of 9 August 2024
 - the respondent's FOI processing file relating to the access application

¹ Tenders ACT, [Contract – CLR Stage 1 – 920/80154106](#).

² The Project Agreement is available within the Attachments section on the Tenders ACT webpage for the [Contract – CLR Stage 1 – 920/80154106](#). Clause 55.3(b) of the Project Agreement provides Canberra Metro (Project Co) must give the Territory certified copies of cashflow and profit and loss statements. See also *Freedom of Information Act 2016* (ACT) (**FOI Act**) s 14, meaning of 'held'.

³ Stage 1 of the Light Rail commenced operation 20 April 2019, see [Transport Canberra, Network Planning](#).

'DF', Canberra Metro Pty Ltd and Transport Canberra and City Services [2024] ACTOFOI 16
(23 September 2024)

- the FOI Act, particularly ss 16, 17, 35, and Schedule 2
- the Freedom of Information Guidelines made under s 66 of the FOI Act
- the Project Agreement and attachments
- relevant case law including:
 - ['BS' and Chief Minister, Treasury and Economic Development Directorate \[2022\] ACTOFOI 5 \(19 May 2022\)](#).
 - ['BV' and Environment, Planning and Sustainable Development Directorate \[2022\] ACTOFOI 10 \(17 November 2022\)](#)
 - [Greenpeace Australia Pacific and Queensland Treasury; Northern Australia Infrastructure Facility \(Third Party\) \[2018\] QICmr 9 \(1 March 2018\)](#)

Relevant law

16. 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.⁴
17. 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.
18. 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.

⁴ Section 35(1)(c) of the FOI Act.

'DF', Canberra Metro Pty Ltd and Transport Canberra and City Services [2024] ACTOFOI 16
(23 September 2024)

19. 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.
20. Section 50 of the FOI Act applies if an access application is made for 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.
21. Schedule 2 of the FOI Act sets out the public interest factors which must be considered, where relevant, when determining the public interest.
22. A person seeking to prevent disclosure of government information has the onus of establishing that the information is contrary to the public interest information.⁵

The submissions of the parties

23. In the decision notice TCCS said:

“...In making my decision, I have considered that financial expenditure or earnings contained in the [profit and loss statement] relate to third party finances and commercial in confidence information. I...find that disclosure may contribute to positive and informed debate and may further inform the public about relevant Government operations as Light Rail Stage 1 is a significant service provided by the ACT Government. However, the extent of this information contributing to debates or providing information on relevant government operations is minor, as the records contain third party financial information. Information relating to public expenditure for 2020–2021 is already available...

I have also considered the manner in which TCCS is entitled to access the relevant information, specified under contract 920/80154106. This agreement defines the information as commercially sensitive and required that it be handled as commercial in confidence.

The expectations for the non-disclosure of commercially sensitive information to third parties is explicitly stated within the agreement, and doing so would likely prejudice ongoing commercial activities of TCCS...

⁵ Section 72 of the FOI Act.

'DF', Canberra Metro Pty Ltd and Transport Canberra and City Services [2024] ACTOFOI 16
(23 September 2024)

disclosure of the requested information is likely to prejudice the ability of our agency to obtain further commercially sensitive information, which is crucial to meeting obligations under the contract...

The information within the records includes pricing, spending, income and other financial business information. I have considered that this information is commercially sensitive, and that the disclosure is likely to prejudice the business affairs of the third party as the detail and nature of the information is not merely historical..."

24. In their Ombudsman review application, the applicant said:

"...it is in the interests of all ratepayers and taxpayers to know whether the expenditure of their rates by the governments is justified and responsible. Access to the profit and loss account of the 12 kilometre light rail project stage 1 costing hundreds of millions of dollars of public money is an important part of this knowledge. This substantially outweighs the interests of third parties who benefited from the expenditure especially in view of the age of the document.

The Government has to be accountable for its decisions especially decisions of this magnitude. If the document cannot be made available in full that part of the document that shows the bottom line (the amount of the profit or loss) should be made available. The factors favouring nondisclosure do not apply to the bottom line..."

25. In response to the draft consideration, Canberra Metro said:

"...These paragraphs appear to proceed on an assumption that the headline profit or loss figure contained in the document is either directly reflective of income received from the ACT government by Canberra Metro or a reliable indication of the profitability, or "financials", of stage 1 of the Light Rail. Neither is correct.

The headline profit or loss figure...is a function of Canberra Metro's commercial advertising revenue, interest payments, distributions, heading and other matters as well as income received from government. Because it includes factors such as hedging, distributions, interest payments and commercial activities other than the operation of the Light Rail it is not reasonable to form the view that it would contribute to any informed debate about the operation of stage 1 of the Light Rail and government spending on the project, or about the construction of the remaining planned stages...

The significance of any disclosure of its headline profit or loss figure for 2020-21 is that such information, when combined with publicly known information about its debt and equity arrangements, would enable a person with reasonable skill in financial analysis to reverse engineer highly commercially sensitive information such as its debt to equity ratios, debt service coverage, earnings ratios, margin and other financial sensitivities...

'DF', Canberra Metro Pty Ltd and Transport Canberra and City Services [2024] ACTOFOI 16
(23 September 2024)

in turn would be able to deploy that information to obtain a significant and unreciprocated commercial advantage in bidding against Canberra Metro..."

26. These submissions are discussed in more detail below.

Consideration

27. The key issue to be determined in this Ombudsman review is whether the profit and loss statement is contrary to the public interest information.

Public interest test

28. To determine whether disclosure is contrary to the public interest, the FOI Act prescribes the following five 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
- unless, on balance, disclosure of the information would be contrary to the public interest, allow access to the information.

Factors favouring disclosure

29. TCCS identified 2 factors favouring disclosure of the information. For the reasons set out below, I do not consider any other factors favouring disclosure apply.

'DF', Canberra Metro Pty Ltd and Transport Canberra and City Services [2024] ACTOFOI 16
(23 September 2024)

Contribute to positive and informed debate on important issues or matters of public interest (Schedule 2, s 2.1(a)(ii))

30. A reasonable expectation disclosure could contribute to positive and informed debate on important issues or matters of public interest favours disclosure under the FOI Act.
31. Public transport and government expenditure are matters of public interest. The Light Rail project is the largest public private partnership (PPP) being undertaken by the Territory,⁶ where the cost to the ACT Government over the term of the contract is estimated to be \$1, 311, 210, 201.⁷ I acknowledge the public interest in providing access to information that would contribute to positive and informed debate on whether the project reflects value for money spent.⁸
32. In submissions to the Ombudsman, TCCS said while the profit and loss statement fell within the scope of the application, no records of a similar description relating to government expenditure were identified in processing the application.
33. Information about government expenditure on the Light Rail project and operations is publicly available,⁹ including a benefits realisation report¹⁰ and a dataset about Light Rail patronage on the Open Data Portal.¹¹

⁶ [Capital Metro Agency, Contract Summary, June 2016](#), page 1.

⁷ Tenders ACT, Contract – [CLR Stage 1 – 920/80154106, Contract details](#). Note, subject to change.

⁸ [Government Procurement Act 2001 \(ACT\)](#) s 8.

⁹ Transport Canberra, [City to Gungahlin Light Rail Project Delivery Report \(June 2019\) Net Present Cost, page 33](#). See also ACT Treasury, Previous ACT budgets, Budget papers 2020–2021, [Budget Statements H](#), (Light Rail Stage 1 PPP Service Payments, pages 29, 31, 39), (PPP Territory Retained Risk, pages 30, 33), (Procurement and delivery 2, page 33).

¹⁰ [Transport Canberra, Benefits Realisation Report 2024, 1 May 2024](#).

¹¹ [dataACT, Open Data Portal, Light Rail Patronage](#).

34. In my draft consideration, I considered disclosure of information about the profitability of the Light Rail project would contribute to debate about the remaining proposed stages. In response, Canberra Metro submitted the profit and loss statement does not accurately represent whether the Light Rail project is profitable.
35. The profit and loss statement does not separately list revenue received from the ACT government. The revenue figures in the profit and loss statement reflect both ACT government funding and other sources in accordance with the PPP arrangement and Canberra Metro's commercial activities.¹² Disclosure of the profit and loss statement would not necessarily reveal the profitability of Light Rail Stage 1 project but the income, expenses and net profit or loss of Canberra Metro during the 2020–2021 financial year.
36. I accept disclosure of the profit and loss statement would reveal information about the financial performance of Canberra Metro being the main contracted service provider following the completion of stage 1 of the Light Rail project. However, I do not consider disclosure would give access to information that would meaningfully contribute to positive and informed debate about government expenditure or the Light Rail project.
37. I attribute minor weight to this factor.

¹² See [Capital Metro Agency, Contract Summary, June 2016](#), page 12.

Inform the community of the government's operations (Schedule 2, s 2.1(a)(iii))

38. A public interest factor favouring disclosure is where giving access to information which could reasonably be expected to 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.¹³

39. I acknowledge the profit and loss statement contains information about the revenue, income and expenditure of the contracted service provider responsible for project delivery and overarching management for the duration of the Light Rail project.

40. A copy of the profit and loss statement is held by TCCS because of a contractual obligation for Canberra Metro to provide certain information to the Territory.¹⁴ As discussed above at [35], I do not consider disclosure of the profit and loss statement would reveal the value of payments made to Canberra Metro by the ACT Government, because this detail is not included. Further, disclosure would not reveal information about the PPP arrangements, or the transport services provided by Canberra Metro to the public.

41. I consider release of the profit and loss statement would only inform the community that the ACT government had received the information from Canberra Metro and would not inform the community about the oversight of the Light Rail project or other government operations.

42. I attribute minor weight to this factor.

Factors favouring nondisclosure

¹³ FOI Act Sch 2 s 2.1(a)(iii).

¹⁴ [Contract - CLR-Stage 1 - 920/80154106, Attachments - Project Agreement](#) clause 55.3(b).

'DF', Canberra Metro Pty Ltd and Transport Canberra and City Services [2024] ACTOFOI 16
(23 September 2024)

43. In the original decision, TCCS identified 3 factors favouring nondisclosure. I have not identified any additional factors.

***Prejudice trade secrets, business affairs or research of an agency or person
(Schedule 2, s 2.2(xi))***

44. A factor favouring nondisclosure of information is where release could reasonably be expected to prejudice trade secrets, business affairs or research of an agency or person.¹⁵ TCCS and Canberra Metro have submitted disclosure of the profit and loss statements, including the headline figure, would prejudice the business affairs of Canberra Metro.

45. Identifying the potential harm disclosure of information could have to the business affairs of a person generally involves the assessment of:¹⁶

- the extent to which the information is well-known or publicly available
- what negative implications might there be for the third party if the information were disclosed
- the nature and detail of the information
- whether it is current or merely historical
- the nature and custom of the market, and
- the extent of measures taken to guard the sensitivity of the information
any other circumstances which may affect its sensitivity.

46. Canberra Metro is a consortium consisting of Pacific Partnerships, CPB Contractors, John Holland Group, UGL, abrdn & CAF contracted by the ACT Government for the design, construction, operations, maintenance and financing of Stage 1 of the Light Rail.¹⁷

¹⁵ FOI Act Sch 2 s 2.2(a)(xi).

¹⁶ [Freedom of Information \(Volume 4 - Considering the Public Interest\) Guidelines 2023](#) at [8.11].

¹⁷ [Canberra Metro, About.](#)

'DF', Canberra Metro Pty Ltd and Transport Canberra and City Services [2024] ACTOFOI 16
(23 September 2024)

47. In the original decision, TCCS said the profit and loss statement solely relates to third party financial transactions. I agree disclosure of the profit and loss statement would reveal the revenue, income and other expenses of Canberra Metro during the 2020-2021 financial year, which is not otherwise publicly available, or generally published in notifiable contracts.¹⁸
48. In submissions to the Ombudsman, Canberra Metro explained in combination with publicly available information about debt and equity arrangements (e.g. refinancing¹⁹) disclosure of the profit and loss statement or headline figure would enable a person to calculate debt to equity ratios, debt service coverage, earnings ratios, margin and other financial sensitivities.
49. Canberra Metro has submitted competitors would gain an understanding of likely pricing for future projects subject to competitive procurement tenders and inform competitors about a tenderer's financing terms and arrangements. I note the profit and loss statement is identified as commercially sensitive information in the Project Agreement, where this information cannot be disclosed by the Territory without the consent of Canberra Metro.²⁰
50. In my draft consideration, I agreed disclosure of the revenue, other income and expenditure figures could prejudice the business affairs of Canberra Metro, but disclosure of only the headline total figure (i.e. net profit or loss) would lessen the potential prejudicial effect.

¹⁸ See also [Government Procurement Act 2001 \(ACT\)](#) s 12 and s 18(2)(b)(iv).

¹⁹ [Commonwealth Bank, Newsroom, CBA supports Australian-first PPP Green Loan \(16 December 2020\)](#).

²⁰ [Contract - CLR-Stage 1 - 920/80154106, Attachments - Project Agreement](#) clause 57.1(b).

'DF', Canberra Metro Pty Ltd and Transport Canberra and City Services [2024] ACTOFOI 16
(23 September 2024)

51. Canberra Metro submitted disclosure of the headline figure would still have a prejudicial effect because, in combination with publicly available information, a person with reasonable skill in financial analysis could determine other highly sensitive financial information.
52. I am not satisfied disclosure of the profit and loss statement would reveal details about financing terms and arrangements, or information about the procurement process for Light Rail stage 1, which could be utilised by a competitor seeking finance or entering negotiations.
53. I do accept that the profit and loss statement contains financial information of Canberra Metro which could be used to calculate profitability for the 2020–2021 financial year. Disclosure of the profit and loss statement, including the headline figure could give competitors insight into the business operations and financial position of Canberra Metro at a particular time.²¹ However, the information is over 3 years old and may not reflect the current financial position of Canberra Metro.
54. While the information in the profit and loss statement could be used to calculate other financial information, I do not consider the information is sufficiently detailed to allow a person to reverse engineer pricing structures for future stages of the Light Rail or other public infrastructure projects (i.e. no information about fees, charges or scope of work).

²¹ See ['BS' and Chief Minister, Treasury and Economic Development Directorate \[2022\] ACTOFOI 5 \(19 May 2022\)](#) at [44]–[45].

'DF', Canberra Metro Pty Ltd and Transport Canberra and City Services [2024] ACTOFOI 16
(23 September 2024)

55. I do not agree release of total figures relating to revenue, other income and expenses for a financial year would provide sufficient information to a competitor to cause substantial harm to the competitive position of Canberra Metro in future tenders.²²

56. I attribute minor weight to this factor.

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

57. A factor favouring nondisclosure is where disclosure could reasonably be expected to prejudice an agency's ability to obtain confidential information.²³

58. TCCS received the profit and loss statement from Canberra Metro in accordance with the Project Agreement which compels Canberra Metro to give the information to the Territory.²⁴ I note TCCS may not otherwise be able to compel Canberra Metro to provide the profit and loss statement to TCCS.

59. Both TCCS and Canberra Metro have submitted the profit and loss statement is commercially sensitive information that the Territory is contractually obligated not to disclose without prior written consent of Canberra Metro (subject to exceptions).

60. TCCS referred to the Project Agreement which provides:²⁵

57. Confidential Information and disclosure

57.1 Confidential Information and disclosure by the Territory

...

(b) (Commercially sensitive information): Except as provided in this Agreement, the Territory must not publish or disclose any Excluded Finance Document or the information which is specified in the Commercially Sensitive Information Schedule

²² ['BV' and Environment, Planning and Sustainable Development Directorate \[2022\] ACTOFOI 10 \(17 November 2022\)](#) at [107]–109].

²³ FOI Act Schedule 2, s 2.2(xii).

²⁴ [Contract - CLR-Stage 1 - 920/80154106, Attachments - Project Agreement](#) 55.3(b).

²⁵ [Contract - CLR-Stage 1 - 920/80154106, Attachments - Project Agreement](#).

'DF', Canberra Metro Pty Ltd and Transport Canberra and City Services [2024] ACTOFOI 16
(23 September 2024)

(including the Financial Model) without the prior written consent of Project Co (which consent will not be unreasonably withheld or delayed), except if information which is specified in the Commercially Sensitive Information Schedule:

- (i) is required or authorised to be disclosed under Law;
- (ii) is reasonably necessary for the enforcement of the criminal law;
- (iii) is disclosed to the Territory's solicitors, auditors, insurers or advisers;
- (iv) is generally available to the public;
- (v) is in the possession of the Territory without restriction in relation to disclosure before the date of receipt from Project Co;
- (vi) is disclosed by the responsible Minister in reporting to the Legislative Assembly or its committees;
- (vii) is disclosed to the ombudsman or for a purpose in relation to the protection of the public revenue; or
- (viii) is required to be published or disclosed to enable the Territory to comply with the Public Disclosure Obligations under clauses 57.1(a)(i), 57.1(a)(ii), 57.1(a)(iii), 57.1(a)(iv) or 57.1(a)(vii).

...

Definitions

In this Agreement, unless the context otherwise requires:

Commercially Sensitive Information Schedule means Schedule 13.

...

Excluded Finance Document means each Finance Document, other than the Finance Direct Deed.

...

Finance Documents means:

- (a) each of the documents listed in the Finance Documents Schedule;²⁶
- (b) any document entered into in relation to a Refinancing of the Actual Debt approved by the Territory under clause 35; and
- (c) any other document which the parties agree is a Finance Document for the purposes of this Agreement.

²⁶ [Contract - CLR-Stage 1 - 920/80154106, Attachments - Schedule 14 - Finance Documents Schedule.](#)

'DF', Canberra Metro Pty Ltd and Transport Canberra and City Services [2024] ACTOFOI 16
(23 September 2024)

61. In submissions to the Ombudsman, TCCS said it is reasonable to assume disclosure of a contracted party's profit and loss statement would discourage competitive private industry engagement in future procurement.
62. Canberra Metro submitted if information subject to clear contractual terms intended to protect information of that kind was disclosed, entities would be reluctant to comply with requests to provide confidential information on a voluntary basis and are likely to insist on more onerous terms to protect information in the future.
63. I accept the parties have agreed the profit and loss statement is a finance document for the purpose of the Project Agreement and falls within the categories of information the Territory must not disclose under the confidentiality clauses of the Project Agreement.²⁷
64. I consider disclosure of the profit and loss statement could affect the ability of TCCS to receive confidential information because entities expect information provided on an agreed confidential basis would remain protected. If such protections were not maintained by agencies, disclosure would undermine the confidence those entities have in TCCS to observe agreements requiring confidentiality.²⁸

²⁷ [Contract - CLR-Stage 1 - 920/80154106, Attachments - Project Agreement](#) clause 57.1(b).

²⁸ [Greenpeace Australia Pacific and Queensland Treasury; Northern Australia Infrastructure Facility \(Third Party\) \[2018\] QICmr 9 \(1 March 2018\)](#) at [49]-[51].

'DF', Canberra Metro Pty Ltd and Transport Canberra and City Services [2024] ACTOFOI 16
(23 September 2024)

65. I consider there is substantial public interest in ensuring agencies can obtain confidential information to engage and monitor contracted service providers who deliver services to the public. I attribute significant weight to this factor, as it is reasonable to expect entities may either choose not to provide confidential information or require more significant restrictions on information sharing and disclosure in future procurement processes.

Prejudice the competitive commercial activities of an agency (Schedule 2, s 2.2(xiii))

66. A reasonable expectation disclosure could prejudice the competitive commercial activities of an agency favours against disclosure under the FOI Act.²⁹

67. In the decision notice, TCCS said disclosure of the profit and loss statement, where there is an expectation commercially sensitive information will not be provided to third parties, would likely prejudice ongoing commercial activities of TCCS with Canberra Metro in the operation of the Contract.

68. As noted in TCCS' decision notice above at [47], the profit and loss statement contains information relating to the competitive commercial activities of Canberra Metro.

69. I am not satisfied TCCS' procurement of a contracted service provider to delivery public transport services is an activity carried out by TCCS in a competitive commercial environment. I do not consider TCCS competes with other providers to operate public transport for profit. I do not agree disclosure of the profit and loss statement would affect the competitive commercial activities of TCCS or another agency.

²⁹ FOI Act Sch 2, s 2.2(xiii).

'DF', Canberra Metro Pty Ltd and Transport Canberra and City Services [2024] ACTOFOI 16
(23 September 2024)

70. I do not consider this factor applies to the profit and loss statement.

Balancing the factors

71. Having identified public interest factors favouring disclosure and factors favouring non-disclosure, I now must consider the public interest balancing test set out in s 17 of the FOI Act.

72. In this matter, I identified 2 public interest factors favouring disclosure and I attributed minor weight to these factors.

73. I considered 3 public interest factors favouring nondisclosure and attributed minor weight to one factor, significant weight to one factor and determined one factor did not apply to the profit and loss statement.

74. Balancing public interest factors is not simply a case of quantifying the number of relevant factors for disclosure and non-disclosure, 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 disclosing the information has on the public interest.

75. The FOI Act has a pro-disclosure bias,³⁰ 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'.³¹

76. On balance, the public interest favouring nondisclosure outweighs the public interest in disclosing the profit and loss statement.

³⁰ Section 17, [FOI Act](#).

³¹ [Explanatory Statement, Freedom of Information Bill 2016](#).

'DF', Canberra Metro Pty Ltd and Transport Canberra and City Services [2024] ACTOFOI 16
(23 September 2024)

Conclusion

77. For the reasons set out above, my decision is to confirm TCCS' decision under s 82(2)(a) of the FOI Act to refuse to give access to the profit and loss statement because, on balance, disclosure of this information would be contrary to the public interest.

Georgia Ramsay

Acting Senior Assistant Ombudsman

23 September 2024