

Decision and reasons of Senior Assistant Ombudsman

Application number:	AFOI-RR/23/10052
Applicant:	'CW'
Respondent:	Chief Minister, Treasury and Economic Development Directorate
Agency reference:	CMTEDD FOI 2023-386
Date:	5 April 2024
Decision reference:	[2024] ACTOFOI 4
Catchwords:	<i>Freedom of Information Act 2016</i> – deciding access – identifying government information – reasonable steps to identify government information within the scope of the application

Decision

1. For the purposes of s 82 of the *Freedom of Information Act 2016* (**FOI Act**), I am a delegate of the ACT Ombudsman.
2. For the reasons set out below the decision of the Chief Minister, Treasury and Economic Development Directorate (**CMTEDD**) dated 13 December 2023 is confirmed under s 82(2)(a) of the FOI Act.

Background to Ombudsman review

3. On 14 November 2023, the applicant applied for access to:
 1. The deputy work health and safety commissioner Amanda Grey sent an email to [FOI Applicant] proposing a meeting for mediation between the offender and [FOI Applicant] regarding the sexual harassment incident. I would like a copy of that email and any other documents relating to this incident including emails sent between managers or other staff within ACT Government and Worksafe ACT.

2. Following the incident a mediation date was agreed to and attended by Amanda Grey, [FOI Applicant] and [name redacted] in January 2021. I would like any meeting notes, emails or other documents relating to that meeting or outcomes held by Worksafe ACT.
3. Following the meeting in January 2021 an all staff email was sent to all staff within Worksafe ACT by either [name redacted] or [name redacted]. I would like a copy of that email sent sometime between December 2020-March 2021.
4. I would like a copy or any documents held by Worksafe ACT in relation to this incident overall including written notes, emails, statements, any internal records, any preliminary assessment records, any records at all that may refer to this incident from the time it was reported onwards.
4. On 13 December 2023, CMTEDD identified 4 documents within the scope of the application and provided access in full.
5. On 20 December 2023, the applicant applied for Ombudsman review under s 73 of the FOI Act.
6. On 1 March 2024, the Acting Senior Assistant Ombudsman provided her preliminary view to the parties in a draft consideration.
7. On 5 March 2024, the respondent accepted the draft consideration, making no further submissions.
8. The applicant did not provide a response to the draft consideration.

Relevant law

9. Section 7 of the FOI Act provides every person with an enforceable right of access to government information.¹ This right is subject to other provisions of the FOI Act, including grounds on which access may be refused.²

¹ Section 7 of the [FOI Act](#).

² Section 35(1)(c) of the [FOI Act](#).

10. Section 34 of the FOI Act requires that an agency deciding an access application must take reasonable steps to identify all government information within the scope of the application.³

Scope of review

11. This review concerns whether CMTEDD took reasonable steps to identify information within the scope of the original request.
12. In making my decision, I have had regard to:
- the applicant's review application and submissions
 - the respondent's decision
 - the submissions of the respondent
 - the FOI Act, in particular s 34, and
 - the Freedom of Information Guidelines (**FOI Guidelines**) made under s 66 of the FOI Act.

The contentions of the parties

13. In its decision notice, the respondent said:

I have placed substantial weight on the above factors favouring disclosure. The release of this information can reasonably be expected to provide some background and context into the administration and decision-making process relating a workplace matter concerning you as an ACT Government employee.

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

³ Section 34(1) of the [FOI Act](#).

14. In the application for Ombudsman review, the applicant stated their belief that additional information within the scope of the application should have been identified and provided as part of the original decision.

Consideration

15. The FOI Act does not expressly define what constitutes reasonable steps for the purpose of s 34.
16. The explanatory statement to the Freedom of Information Bill 2016 notes that at a minimum it would include a search of electronic records and physical records in cases where that is applicable.⁴
17. In handling the original request, CMTEDD completed searches and provided records of those searches, including the documents identified containing information within scope, to the CMTEDD information officer who made the original decision.
18. CMTEDD provided the ACT Ombudsman with information outlining how the searches were conducted, which included searches of records management systems, email inboxes, notepads, calendars and diaries, and directly speaking with relevant staff to ascertain if any records had been made which had not been captured outside of the other searches.
19. For the purpose of this review, ACT Ombudsman staff also met with CMTEDD staff from the relevant line area which conducted the searches, to discuss the searches and the process used to identify relevant information.
20. I have reviewed the records of the searches conducted by CMTEDD.

⁴ [Explanatory Statement](#), Freedom of Information Bill 2016.

21. Section 80 of the FOI Act provides that the Ombudsman may make a direction to conduct additional searches if the initial searches are considered insufficient.⁵
22. Having regard to the information provided by CMTEDD and the applicant, I am satisfied the searches conducted were reasonable and sufficient to satisfy the requirements of s 34 of the FOI Act.

Conclusion

23. For these reasons, my decision is to **confirm** CMTEDD's decision under s 82(2)(a) of the FOI Act.

David Fintan
Senior Assistant Ombudsman
5 April 2024

⁵ Section 80 of the [FOI Act](#).