



## DECISION ON FREEDOM OF INFORMATION ACCESS APPLICATION

I refer to your application under the [Freedom of Information Act 2016](#) (the Act), received by the Justice and Community Safety (JACS) Directorate on 4 January 2021, in which you sought access to:

*'...for all documents in the possession of your office, the offices of previous Attornies-General, and each of the agencies subject to the request, since the request was lodged. I ask, in particular, that all documents passing between subject agencies and those "coordinating" a response, and documents from that "co-ordination" centre to the office of the Attorney-General.*

*I should also make it clear that this request embraces any description by any of the parties about the nature of the digitised "composite" document, and any assertions as to the location of the "master copy" and the processes by which it was created and controlled. At the end of the day I want its contents. But with or without that, I am entitled to a description of the thing itself.'*

### Authority

I am an Information Officer appointed by the Director-General under section 18 of the Act to deal with access applications made under Part 5 of the Act.

### Decision

I have identified 48 documents containing information within the scope of your access application. These are outlined in the *Schedule of documents*.

Searches were conducted for material held by the office of the former Attorney-General, using a variety of targeted and broad key words and criteria with the assistance of Shared Services ICT. These searches did not retrieve anything within scope.

I note that you were provided with advice regarding accessing court transcripts outside of the freedom of information (FOI) process as per the letter emailed to you on 15 January 2021.

I have decided to:

- grant full access to 16 documents
- grant part access to 18 documents
- refuse access to 14 documents

Please see the reasons outlined in the 'reasons for decision' at [Attachment A](#).

### **Online publishing – disclosure log**

Under section 28 of the Act, JACS maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the JACS disclosure log no later than 10 days after the decision. Your personal contact details will not be published.

You may view the JACS' disclosure log at:

<http://www.justice.act.gov.au/page/view/4049/title/disclosure-log>

### **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 in the JACS disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the Ombudsman at:

The ACT Ombudsman  
GPO Box 442  
CANBERRA ACT 2601

Via email: [actfoi@ombudsman.gov.au](mailto:actfoi@ombudsman.gov.au)

The review of decision application form is available at:

[https://www.ombudsman.act.gov.au/\\_data/assets/pdf\\_file/0026/79190/Apply-for-Ombudsman-review.pdf](https://www.ombudsman.act.gov.au/_data/assets/pdf_file/0026/79190/Apply-for-Ombudsman-review.pdf)

### **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  
Level 4, 1 Moore St  
GPO Box 370  
Canberra City ACT 2601

Ph: (02) 6207 1740

<http://www.acat.act.gov.au/>

If you have any queries concerning the Directorate's processing of your request, or would like further information, please contact email [jacsfoi@act.gov.au](mailto:jacsfoi@act.gov.au) or phone 6207 2167.

Yours sincerely



Danielle Krajina  
Executive Branch Manager,  
Governance and Business Improvement  
Information Officer

2 February 2021

## Attachment A – Reasons for decision

### 1. Material considered

In reaching my decision, I considered:

- your original access application
- the documents containing the information that fall within the scope of your access application
- consultations with JACS officers
- *Freedom of Information Act 2016*
- *Court Procedures Rules 2006*
- *Human Rights Act 2004*

### 2. Reasons for my decision

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
- 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 have included below the factors relevant to my decision on access.

#### 2.1. Information contrary to public interest to disclose

I have determined that some of the material within the scope of your request contains information that is taken to be contrary to the public interest to disclose under Schedule 1 of the Act.

*Schedule 1, 1.1A Information in possession of a court or tribunal*

*(1) Information in the possession of a court or tribunal unless the information is administrative in nature.*

*(2) In this section: court includes— (a) a registry or other office of a court or tribunal; and (b) the staff of the registry or office.*

*Schedule 1, 1.2 Information subject to legal professional privilege.*

*Schedule 1, 1.12 Information in the possession of the ombudsman that has been obtained or generated in relation to-*

*(a) an ombudsman review.*

*Court Transcripts*

Court transcripts relate to government information of a kind that is taken to be contrary to the public interest to disclose pursuant to section 1.1A of Schedule 1 of the Act. This information is not administrative in nature but rather relates to the conduct of particular proceedings before the Court.

However, you will note that I have been able to provide to you a copy of all content published on the decommissioned Eastman Website, which I expect will contain those transcripts you recall being on the public website. Access to this information was provided to you on 29 January 2021.

For any other Court documents you are able to request access through specific processes provided under the *Court Procedures Rules 2006*. Fees may be applicable to obtain copies of court transcripts and for the inspection of files and photocopying of material from court files.

#### *Coroners Court*

An inquiry to inspect a Coroners Court registry file can be made to the Chief Coroner via [coroners@courts.act.gov.au](mailto:coroners@courts.act.gov.au) under s 51 of the *Coroners Act 1997*.

#### *Legal Advice*

There are a number of documents that relate to the seeking or provision of legal advice. Documents of this type are taken to not to be in the public interest to release.

Document 31 on the schedule of documents contains references to an Ombudsman review in relation to a separate matter and this has been redacted under Schedule 1, 1.12. Reference to this review of decision application was provided as an example to give advice to the Information Officer who had responsibility for the FOI response at the time.

#### **Public interest test**

I have assessed the remaining information against the factors favouring disclosure and factors favouring non-disclosure in Schedule 2. On balance, I have decided that the information is in the public interest to disclose with some redactions. I have included below the relevant factors for your information.

#### *Factors favouring disclosure*

- (i) promote open discussion of public affairs and enhance the government's accountability;*
- (ii) contribute to positive and informed debate on important issues or matters of public interest;*
- (v) allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or public official.*

#### *Factors favouring non-disclosure*

##### *2.2 (a) Factors favouring nondisclosure in the public interest*

- (ii) prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004.*

An important consideration is the protection of personal privacy of individuals. I have redacted the private mobile numbers of government employees and the direct phone

numbers and contacts for personnel from statutory office holders whose details are not publicly listed. These redactions are minor in nature.

**Summary of my decision**

In conclusion, I have decided to:

- grant you full access to 16 documents
- grant you part access to 18 documents
- refuse access to 14 documents.