



ACT
Government

Justice and Community Safety

JACS2021/18

Via email: [REDACTED]

Dear [REDACTED]

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 5 January 2021, in which you sought access to:

- '1. Documents related to communication between ACT Child and Youth Protection Services/the ACT Government Solicitor and the ACT Courts registry in relation to the Coronial Inquest into the Death of Braydon Dillon.*
- 2. Documents related to media coverage of the Coronial Inquest into the Death of Braydon Dillon.'*

Thank you for agreeing to an extension of two weeks with a response due to you on 17 February 2021.

I understand that you have also submitted an FOI request to the Community Services Directorate (CSD).

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 decided to refuse access to a significant portion of the access application and partially release two documents containing information within the scope. The documents to be partially released are outlined in the *Schedule of documents* and the reasons for my decision in relation to the release of information contained in these documents is outlined at [Attachment A](#).

Intention to Refuse

In relation to my intention to refuse to deal with your application in part in its current form under section 43 of the Act, I note that a significant portion of your access application is subject to Schedule 1 of the Act. This material is taken to be contrary to the public interest to release.

Section 43 of the Act states that:

43 Refusing to deal with application—general

(1) A respondent may refuse to deal with an access application wholly or in part only if—

(e) the access application is expressed to relate to government information of a stated kind and government information of that kind is taken to be contrary to the public interest to disclose under schedule 1.

The material in relation to your request falls under the following Schedule 1 provision:

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.

The documents you have requested capture information in relation to the Dillon coronial and are not related to the management and administration of registry and office resources. The provision of information subject to a coronial inquiry is provided through the Coroner under section 51 of the *Coroners Act 1997* and cannot be processed under the FOI Act.

The *Coronial Practice Direction No. 2 of 2019* pursuant to section 51A(2)(a) of the *Coroners Act 1997* prescribes practices and procedures in relation to the release of coronial information and can be found here:

https://www.courts.act.gov.au/data/assets/pdf_file/0010/1379620/CPD-2-of-2019-Release-of-Information.pdf

An inquiry to inspect a Coroners Court registry file can be made to the Chief Coroner via coroners@courts.act.gov.au under section 51 of the *Coroners Act 1997*.

Further information regarding access to coronial information:

<https://www.courts.act.gov.au/magistrates/about-the-courts/coroners-court/access-to-coronial-information>

Consultation Period

Section 46(1)(b) states that before refusing to deal with an access application for the abovementioned ground for refusal, the applicant must be provided reasonable opportunity to consult with the respondent.

JACS recommends that you significantly refine the scope of your request. You are entitled to amend your application, and if you do the day the amended application is received becomes the commencement date of the decision process.

The consultation period required in accordance with section 46 (4) of the Act, is 10 working days from the receipt of this letter. A longer period can be agreed before or after the end of the 10 working days. This consultation period gives you an opportunity to consult with JACS.

If you decide not to provide any further information or submit a revised application by 17 May 2021, your access application for this portion of your request will be taken as withdrawn.

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 on 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

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

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/>

Freedom of Information Access Application - Decision Letter 2021/18

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 or phone 6207 2167.

Yours sincerely

A handwritten signature in black ink, appearing to be 'D. Krajina', with a long horizontal flourish extending to the right.

Danielle Krajina
Information Officer

17 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*
- *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 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.

3. 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.*

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, such as the personal mobile numbers of staff within government and the names of people who are not government employees. However, I note that these redactions are minor in nature and do not significantly alter the substance of the material to be released to you.

Summary of my decision

In conclusion, I have decided to grant you part access to two documents.