



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 30 March 2022 in which you sought access to:

...any final briefs prepared for any ACT Minister(s) in relation to Law Courts PPP Project from 2012 until present.

Thank you for agreeing to extend the due date for the response to this access application.

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 32 documents containing information within the scope of your access application. These are outlined in the *Schedule of documents*.

I have decided to:

- grant full access to 25 documents
- grant part access to 7 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 access application, my decision and documents released to you in response to your access application will be published on 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 Your personal contact details will not be published.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: <https://www.justice.act.gov.au/disclosure-log>

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Freedom of Information Access Application - Decision Letter 2022/3694

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/>

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



Danielle Krajina
Information Officer

1 July 2022

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:

- 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.A Information contrary to public interest to disclose

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

1.2 Information subject to legal professional privilege

Information that would be privileged from production or admission into evidence in a legal proceeding on the ground of legal professional privilege.

Minor redactions have been applied to information that is contrary to the public interest to release as it is subject to legal professional privilege.

2.B Public interest test

I have assessed the 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

2.1 (a) *disclosure of the information could reasonably be expected to do any of the following:*

- (i) *promote open discussion of public affairs and enhance the government's accountability;*

- (iv) *ensure effective oversight of expenditure of public funds;*
- (viii) *reveal the reason for a government decision and any background or contextual information that informed the decision.*

It is reasonable to expect that there is public interest in the expenditure, planning and project management of the PPP ACT Court Facilities project. I have placed significant weight on the above factors and note that a considerable amount of the information within scope of this request is already publicly available.

Factors favouring non-disclosure

2.2 (a) *disclosure of the information could reasonably be expected to do any of the following:*

- (ii) *prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004;*
- (xi) *prejudice trade secrets, business affairs or research of an agency or a person;*
- (xiii) *prejudice the competitive commercial activities of an agency.*

I have assessed the names and contact details of non-government employees are not within the public interest to release, nor are the direct phone numbers of ACT Courts and Tribunal staff. However, I note that these redactions are minor in nature and do not significantly alter the substance of the material to be released.

Some of the documents refer to procurements that are still active and publishing certain information in relation to these matters could affect the Government's ability to obtain 'Value for Money' outcomes. Some of the budgeted amounts have been redacted on the basis it would make it easy to extrapolate how much funding is available towards ongoing procurements, reducing the Government's ability to procure a competitive commercial outcome.'

The individual tender amounts for artworks listed in document 11 have also been removed as the release of this information could undermine that business' competitive advantage when tendering for other projects.

Documents that contain information that is not within scope of the request have been redacted, noting that many of the financial briefs cover various different funding activities within the directorate. If these are the only redactions in a document, they are considered a full release of that document as per the *Ombudsman FOI Guidelines – Dealing with Access Applications*.

3. Summary of my decision

In conclusion, I have decided to:

- grant you full access to 25 documents
- grant you part access to 7 documents