



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2024-179

'The FOI People'

via email: foi+request-11441-51952e07@righttoknow.org.au

Dear Applicant

FREEDOM OF INFORMATION REQUEST – NOTICE OF DECISION

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 22 May 2024.

Specifically, you have sought access to the following information:

“All public speeches made by the ACT Chief Minister that contain a condemnation about the killing of children in the occupied Palestinian Territories, specifically in East Jerusalem, the West Bank and the Gaza Strip since the 7th October 2023. I require all draft and final versions of these speeches.”

Authority

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

Timeframes

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application within 30 days. Therefore, a decision is due by **8 July 2024**.

Decision on access

Searches of records have identified five documents within the scope of your request, which includes records held by the Chief Minister's office.

I have decided to grant **full access** to five documents.

The records identified as relevant to your application are listed in the schedule enclosed at **Attachment A**. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

The date range for the scope of your requested information is for records held between 7 October 2023 until 22 May 2024, (the date that you submitted your access application).

Release of documents

The information being released to you is provided at **Attachment B**.

Reasons

In accordance with section 54(2) of the Act a statement of reasons outlining my decisions is below. In reaching my access decisions, I have taken the following into account:

- the Act
- the information that falls within the scope of your request

Scope of your request

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** of the Act.

One document, folio 5, contains information published on the website of the Legislative Assembly of the Australian Capital Territory (ACT Legislative Assembly), which contains part of a Hansard transcript of 7 February 2024.

Information is published on Hansard here:

<https://www.hansard.act.gov.au/hansard/10th-assembly/2024/PDF/20240207.pdf>

Hansard records and publishes the debates of the Legislative Assembly and the evidence taken during hearings of the Assembly committees. Please refer to pages 168-171 of Hansard. The above link is for the full publication of folio 5, noting that Folio 5 contains a partial extract from Hansard, as referenced in **Attachment A**.

The ACT Legislative Assembly publishes recordings on its website. They can be located here:

<https://broadcast.parliament.act.gov.au/vod/player/cecbeeba9dc567c45d20608bbb90ce9e?i=63e31e7cf8684e79b7e79f3b26925967-98>

Exemptions claimed

Schedule 1 of the Act: Information taken to be contrary to the public interest.

No Schedule 1 factors were identified. Therefore, this has not been a relevant factor.

Public Interest Test

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interests lies. As part of this process, I must consider factors favouring disclosure and non-disclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when ‘used in a statute, the term [public interest] derives its content from “the subject matter and the scope and purpose” of the enactment in which it appears’. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Schedule 2 of the Act: Factors to be considered when deciding the public interest.

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the ‘public interest’.

Factors favouring disclosure (under Sch 2, Section 2.1)

- Section 2.1(a)(i) - *promote open discussion of public affairs and enhance the government’s accountability.*

- Section 2.1(a)(ii) - *contribute to positive and informed debate on important issues or matters of public interest.*

Under section 14 of the Act, the meaning of **government information**:

(a) means information held by an agency or Minister; but

(b) does not include information—

(i) relating to a Minister's personal or political activities; or

(ii) created or received by a Minister in the Minister's capacity as a member of the Legislative Assembly.

held—*information is held by an agency or Minister if it is—*

(a) contained in a record held by the agency or Minister; or

(b) contained in a record that the agency or Minister is entitled to access.

Documents within your requested scope relate to public speeches given in the Legislative Assembly of the ACT during parliamentary debates. Noting that there may be public interest in the subject matter discussed, I have decided to release information insofar as records held include government information, and the definition does not include documents made in a personal capacity or during political activities.

I am satisfied that these factors favouring disclosure carry significant weight. However, these factors are to be balanced against the factors favouring nondisclosure. I did not identify any factors favouring non-disclosure within scope of this request.

Having applied the test outlined in section 17 of the Act, I am satisfied that the pro-disclosure intent of the Act is met and will provide you with access to all information held by CMTEDD within the scope of your request.

Charges

Processing charges are not applicable for this request because the number of pages released to you is below the charging threshold of 50.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a [disclosure log](#).

Your original access application and my decision will be published on the CMTEDD disclosure log. Your personal contact details will not be published.

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, or a longer period allowed by the Ombudsman.

We recommend using this form [Applying for an Ombudsman Review](#) to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

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
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740

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

Should you have any queries in relation to your request please contact the FOI Team by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely,



Emma Hotham
Information Officer
Chief Minister, Treasury and Economic Development Directorate

2 July 2024