



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2024-202

Miranda Townsend

via email: foi+request-11525-047e0e85@righttoknow.org.au

Dear Ms Townsend,

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 18 June 2024.

Specifically, you have sought access to the following information:

“- Detailed criteria and metrics used to evaluate and select occupations for the Critical Skills Shortage List for the past three years.

- Documents outlining the methodology and sources of data for assessing labor market needs, particularly for trades, construction, and medical occupations.

- Minutes, summaries, or reports from meetings where the Critical Skills Shortage List was discussed, highlighting input from stakeholders concerning these specific sectors.

- Documents justifying the quotas allocated for each occupation on the Critical Skills Shortage List for the past three years. I.e. Explanation and rationale behind the quota distribution, specifically why trades, construction, and medical occupations received their respective quotas.

- Internal communications, emails, and memos discussing the exclusion or limited inclusion of trades, construction, and medical occupations.

- Impact assessments or reports evaluating the effects of the current Critical Skills Shortage List on local labor markets, particularly for trades, construction, and medical sectors.

- Any reviews or evaluations of the Critical Skills Shortage pathway’s effectiveness in addressing labor shortages in the ACT.”

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.

As this matter required third party consultation, the decision due date was extended by 15 working days, in accordance with section 40(2) of the Act.

Therefore, a decision is due by **20 August 2024**.

Decision on access

Searches of CMTEDD records have identified 28 documents within the scope of your request.

I have decided to grant **full access** to five documents and **partial access** to 23 documents.

In addition to the 28 documents found, the business area has collated a response to the last four points of your request. This can be found at page 157 of **Attachment B**.

The records identified as relevant to your application are listed in the schedule 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.

Release of documents

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

Statement of 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
- third party views sought under section 38 of the Act
- *Human Rights Act 2004*.

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.

There are no Schedule 1 provisions applicable to the information within scope of this request.

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: 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 (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.*
- *Section 2.1(a)(viii) - reveal the reason for a government decision and any background or contextual information that informed the decision.*

The ACT Critical Skills List identifies occupations in demand for the territory and is an important tool for those that wish to apply for ACT nomination. I contend that it is reasonable to expect that information about this topic may be of interest to the community and contribute to informed debate about issues of interest. I also strongly believe that disclosure of this information could reveal the reasons that government made decisions regarding the list and provide transparency and accountability of the decision-making process.

I am satisfied that these factors favouring disclosure carry some weight. However, these factors are to be balanced against the factors favouring nondisclosure.

Factors favouring nondisclosure (Section 2.2)

- *Section 2.2(a)(ii) - prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004.*

Having reviewed the documents, release of information concerning individuals working within the ACT Public Service is generally not considered to prejudice the protection of an individual's right to privacy. However, where personal information may be used for home and work purposes, this information is redacted, as it is for other individuals, as it could or would reasonably be expected to prejudice an individual's right to privacy under the *Human Rights Act 2004*.

Having applied the test outlined in section 17 of the Act and deciding that release of personal information contained in the documents is not in the public interest to release, I have chosen to redact this specific information in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met and will provide you with access to the majority of the information held by CMTEDD within the scope of your request.

Charges

Processing charges are applicable for this request because the total number of pages to be released to you exceeds the charging threshold of 50 pages. However, the charges have been waived.

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 provided to you, 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 Information Access Team by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely



Katharine Stuart
Information Officer
Chief Minister, Treasury and Economic Development
Directorate

14 August 2024