

2018

**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

Community Services Directorate

**Notice to the Ombudsman – FOI not completed on time taken to be refusal
to give access under the FOI Act 2016 – August 2018**

**Presented by
Yvette Berry MLA
Minister for Housing and Suburban Development**



Mr Ken Richards
Acting Director
ACT Ombudsman
Email: actfoi@ombudsman.gov.au

Dear Mr Richards

FREEDOM OF INFORMATION REQUEST HACT 18/58 - DECISION NOT MADE IN TIME

I refer to an access application received by the Community Services Directorate (CSD) on 28 March 2018 made under the *Freedom of Information Act 2016* (the Act).

The scope of the access application was:

“All documents of my file in the Housing ACT for 2017 and 2018.”

I am writing to inform you that a decision in regards to release of the requested information was not made in the time allowed under section 40 or extended under section 41 of the Act.

Due to the volume, size and complexity of FOI access applications received by CSD, a 45 working day extension is routinely negotiated with each applicant on receipt of their application (including media and MLAs). The majority of CSD applicants agree to extensions of time or a staged release of information, and appreciate that CSD treats all applicants equally in order of receipt of submission, ensuring a fair process.

On 28 March 2018, the Directorate received an access application from a Housing ACT tenant and sought an extension under section 41(1) of the Act. At that time, the Directorate had in excess of 30 FOI access applications in the system, which were received prior to the Housing tenant’s application.

Email exchanges between the Directorate and the applicant resulted in a misinterpretation of the extension, with the Directorate having interpreted agreement for the 45 working day extension.

Based on the perceived extension, the Directorate worked to the due date of 3 July 2018. The Directorate continued to work on the access application and was able to finalise the application and provide a response on 15 June 2018.

On 4 July 2018, the Directorate received a notification under section 9 of the *Ombudsman Act 1989* of the FOI Act in relation to a complaint from the applicant. The Directorate provided a response and chronology to the Ombudsman on 10 July 2018.

The Directorate did not apply to the Ombudsman for an extension of time pursuant to section 42 (1) of the FOI Act, as the access application did not meet the requirements under section 42 (2) of the FOI Act.

The Directorate did not apply to the Ombudsman for an extension of time pursuant to section 78, as the Directorate had already provided a response to the applicant prior to the applicant seeking a review.

The Directorate worked with the Ombudsman to complete the review and on 15 August 2018, the Ombudsman advised the Directorate that *“while CSD initially considered ...the applicant’s... response to the s41 request as an agreement for future time, it had been communicated to CSD that...the applicant... had not accepted the extension request. Therefore the decision on access was made outside of the timeframe”*. Technically, this has placed CSD in a deemed refusal retrospectively for this application.

Yours sincerely

Bernadette Mitcherson
Director-General
August 2018