



**ACT**  
Government

Chief Minister, Treasury and  
Economic Development

Our ref: CMTEDD FOI 2022-355

[REDACTED]

[REDACTED]

[REDACTED]

## FREEDOM OF INFORMATION REQUEST

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 [REDACTED] in which you sought access to high level data, relating to complaints and Controlled Activity Orders over the past 5 years. Specifically, you have requested the following information:

*Some high level data, over two broad areas: Complaints and Controlled Activity Orders.*

### Complaints submitted:

- *How many complaints were submitted to the authority concerning an illegal development or development behaviour over the past 5 years? Please provide the number of complaints per year (calendar or financial).*
  - *How many of these complaints were seeking a Controlled Activity Complaint (CAC) or seeking a Controlled Activity Order (CAO), or were about an activity within scope of a COA (see part 11.3 of the planning and development act).*
  - *How many of these complaints progressed to a controlled activity order, whether on the authority's own initiative or on application, (refer to s345(e) and s348 and part 11.3 of the act).*
- *How many times did the Government officially decide to take no action, and specifically not action a CAO for the reason that the complaints were deemed frivolous, vexatious or not made honestly (please see s346(b) of the act).*

### CAOs submitted:

- *How many applications were made to the authority for Controlled Activity Orders, under part 11.3 of the act, by a person in the past 5 years.*
- *Of these, how many times did the planning and land authority decide to (s351 of the act):*
  - *to make a controlled activity order of the kind sought; or*
  - *to make a controlled activity order (including a different kind of order) that is not more burdensome than the order*
  - *not to make a controlled activity order.*
- *What were the reasons for the Government deciding to 'not make a controlled Activity Order'?*
- *How many of the CAOs submitted by a member of the public would the Government have considered to be frivolous, vexatious or not made honestly.*

On [REDACTED], you agreed to refine the scope of the request, to the last 2 years.

### **Timeframes**

In accordance with section 40 of the Act, CMTEEDD was required to provide a decision on your access application by [REDACTED].

### **Decision on access**

Searches were completed for relevant information, and statistical data that fall within the scope of your request, has been identified for the past 2 years

The information being released to you, is provided as **Attachment A**.

Information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act

### Public Interest

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.

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 in the public interest:

- (a) *disclosure of the information could reasonably be expected to do any of the following:*
- (ii) *contribute to positive and informed debate on important issues or matters of public interest;*
  - (iii) *inform the community of the government’s operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community.*

I have placed substantial weight on the above factors favouring disclosure. I note that the above material relates to parking arrangements and shared public spaces which are issues that are of interest to the community. The release of this information can reasonably be expected to provide information that will inform the community and increase their understanding of government operations.

I did not identify any factor favouring non-release and have decided to release this information to you in full.

## **Charges**

Processing charges are not applicable for this request because the total number of pages to be released to you does not exceed the charging threshold of 50 pages.

## **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 in CMTEDD disclosure log, 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](mailto:actfoi@ombudsman.gov.au)

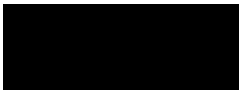
## **ACT Civil and Administrative Tribunal (ACAT) Review**

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  
Level 4, 1 Moore St  
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 Freedom of Information Coordinator on or email [CMTEDDFOI@act.gov.au](mailto:CMTEDDFOI@act.gov.au).

Yours sincerely,



Information Officer  
Information Access Team  
Chief Minister, Treasury and Economic Development Directorate

12 December 2022

Request	Response
<p><b>1. How many complaints were submitted to the authority concerning an illegal development or development behaviour over the past 5 years? Please provide the number of complaints per year (calendar or financial).</b></p>	<p>“Illegal development or development behaviour” is interpreted to mean complaints related to developments and development approvals or applications. This excludes some controlled activities under Schedule 2 of the Planning and Development Act 2007 (the Act), such as failing to keep a leasehold clean.</p> <p>Complaints received regarding “illegal development or development behaviour” were as follows:</p> <ul style="list-style-type: none"> <li>• 2020-2021 – <b>619</b></li> <li>• 2021-2022 – <b>714</b></li> <li>• 2022-2023 (to 20 November) - <b>316</b></li> </ul>
<p><b>2. How many of these complaints were seeking a Controlled Activity Complaint (CAC) or seeking a Controlled Activity Order (CAO), or were about an activity within scope of a COA (see part 11.3 of the planning and development act).</b></p>	<p>Controlled activities are defined under Schedule 2 of the Act. While a complainant may not explicitly make reference to a Controlled Activity Complaint, Access Canberra may consider the complaint in this context where appropriate.</p> <p><b>Complaints received regarding ‘planning matters’ were as follows:</b></p> <ul style="list-style-type: none"> <li>• 2020-2021 – <b>868</b></li> <li>• 2021-2022 – <b>844</b></li> <li>• 2022-2023 (to 20 November) - <b>407</b></li> </ul>
<p><b>3. How many of these complaints progressed to a controlled activity order, whether on the authority’s own initiative or on application, (refer to s345(e) and s348 and part 11.3 of the act).</b></p>	<p>Of the Controlled Activity Orders issued by the authority that related to development or development behaviour by a lessee:</p> <ul style="list-style-type: none"> <li>- 2020-2021 – <b>4</b></li> <li>- 2021-2022 – <b>3</b></li> <li>- 2022-2023 (to 20 November) – <b>1</b></li> </ul>
<p><b>4. How many times did the Government officially decide to take no action, and specifically not action a CAO for the reason that the complaints were deemed frivolous, vexatious or not made honestly (please see s346(b) of the act).</b></p>	<p>Determination of this number is not possible due to the constraints of Access Canberra’s reporting systems, and manually identifying the outcome of over 1700 complaints is an unreasonable diversion of resources.</p>

<p><b>5. How many applications were made to the authority for Controlled Activity Orders, under part 11.3 of the act, by a person in the past 5 years.</b></p>	<p>The authority received Applications for Controlled Activity Orders as follows:</p> <ul style="list-style-type: none"> <li>- 2020-2021 – <b>2</b></li> <li>- 2021-2022 - <b>1</b></li> <li>- 2022-2023 (to 20 November) – <b>3</b></li> </ul>
<p><b>6. Of these, how many times did the planning and land authority decide to (s351 of the act):</b></p> <ul style="list-style-type: none"> <li><b>a) to make a controlled activity order of the kind sought; or</b></li> <li><b>b) to make a controlled activity order (including a different kind of order) that is not more burdensome than the order</b></li> <li><b>c) not to make a controlled activity order.</b></li> <li><b>d) What were the reasons for the Government deciding to 'not make a controlled Activity Order'?</b></li> <li><b>e) How many of the CAOs submitted by a member of the public would the Government have considered to be frivolous, vexatious or not made honestly.</b></li> </ul>	<ul style="list-style-type: none"> <li><b>a)</b> The authority decided to make a Controlled Activity Order of the kind sought in one case.</li> <li><b>b)</b> The authority decided to make a Controlled Activity Order that is not more burdensome than the order sought in one case.</li> <li><b>c)</b> The authority decided not to make a Controlled Activity Order in four cases.</li> <li><b>d)</b> The authority decided not to make a Controlled Activity Order (CAO) in these cases as there was insufficient evidence to support taking regulatory action.</li> <li><b>e)</b> During the reporting period, the delegate of the planning and land authority considered none of the Controlled Activity Order Applications frivolous, vexatious or not made honestly.</li> </ul>