



STANDING COMMITTEE ON PUBLIC ACCOUNTS

ALISTAIR COE MLA (CHAIR), MICHAEL PETERSSON MLA (DEPUTY CHAIR), ANDREW BRADDOCK MLA

Inquiry into referred 2019–20 Annual and Financial Reports and Budget Estimates 2020-21
ANSWER TO QUESTION TAKEN ON NOTICE
Friday 5 March 2021

Asked by Mr Braddock on Friday 5 March 2021: Mr Manthorpe took on notice the following question:

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In relation to: FOI Decisions – reasons, priorities etc

1. Please provide a summary of the typical reason, from the published material as to which agency needed to do more around the decisions and why.

The ACT Ombudsman: The answer to the Member's question is as follows:–

When agencies are deciding if information is contrary to the public interest to disclose, they are required to conduct a public interest test, set out in s 17 of the *Freedom of Information Act 2016* (the FOI Act). This test requires the decision-maker to identify all factors favouring disclosure, and the factors favouring nondisclosure, and conduct a balancing test to determine if information is in the public interest to disclose.

Through our reviews, we have observed some agencies do not always identify all relevant factors favouring disclosure prescribed in Schedule 2, s 2.1 of the FOI Act. This means that some relevant factors are not considered in deciding whether material should be disclosed. Where all relevant factors have been weighed, agencies do not always give clear or sound reasons for the weight they have given to each factor.

There is no single agency responsible for this trend. We have observed there is room for improvement across ACT agencies generally.

I have set out specific examples where we have changed the agency's decision:

- In **Jon Stanhope and Chief Minister, Treasury and Economic Development Directorate [2020]**, we identified two additional factors favouring disclosure that CMTEDD had not identified - that disclosure would promote the open discussion of public affairs and enhance accountability, and reveal the reason for a government decision. After applying the public interest balancing test with these additional factors in mind, we found the applicant should be given access to some of the information initially refused.



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

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- In **AV and Environment, Planning and Sustainable Development Directorate [2020]**, we found EPSDD had correctly identified one factor favouring disclosure, but found that none of the three factors favouring non-disclosure applied to the information at issue and therefore, should be given no weight when conducting the public interest balancing test. For this reason, we found all the information at issue should be disclosed.
- In **BE and Justice and Community Safety Directorate [2021]**, JACS had refused to disclose information under Schedule 1 of the FOI Act on the basis it was law enforcement or public safety information. We found this factor was not applicable to the information at issue. A different factor under Schedule 1 of the Act applied - that the information disclosure was prohibited by law. While this did not change the outcome of the decision, the reason for the decision was different.
- In **Alistair Coe and Transport Canberra and City Services [2020]**, we identified three additional factors favouring disclosure that TCCS had failed to identify. We considered the information would contribute to positive and informed debate on important issues or matters of public interest, inform the community of the government's operations, and ensure effective oversight of expenditure of public funds. TCCS had identified three factors favouring non-disclosure, but we placed no weight on these factors. We varied the decision and found that further information should be disclosed to the applicant.

Approved for circulation to the Standing Committee on Public Accounts

Signature:

Date: 15.3.21

By the ACT Ombudsman, Mr Michael Manthorpe PSM