



# Inquiry into Annual and Financial Reports 2023–24

## Answer to question taken on notice

---

Asked by: Mr Andrew Braddock MLA

Addressed to: Ms Erin O'Connell, Director of the ACT Reportable Conduct and FOI team, ACT  
Ombudsman's Office

In relation to: Review of FOI refusals

Hearing: 20 February 2025

Uncorrected Proof Transcript p 9

Transcript provided: 24 February 2025

Answer Due: 3 March 2025

Ms Erin O'Connell took on notice the following question(s):

**MR BRADDOCK:** Yes, just a question about where the ACT government has refused a FOI request on the basis of Cabinet information. I understand there were 50 instances in the past year. I want to understand, how many of those have been brought to your attention where you are of the view that the information was necessarily Cabinet information and hence the decision needed to be varied, set aside? And are you having any concerns about the application of this particular piece of the legislation?

**Mr Anderson:** So we have certainly had matters that have come to us on review where we have formed a different view to the relevant directorate and we have said, for example, a document that might have gone to Cabinet, nonetheless had purely factual information in it, and that purely factual information can be disclosed. I do not know if we can necessarily say how many matters involved that. We would have to take that on notice—

**Ms O'Connell:** We can take that on notice.

**MR BRADDOCK:** Thank you.

**Mr Anderson:** —to get that specific answer. But where we have seen it, we have raised it with the particular directorate. And we have put our views, clearly and simply, that the way in which the OIA Act applies to Cabinet material is that it does not exempt it if it is purely factual. And so it comes up now and again. But I have not been concerned in terms of seeing a particular pattern of behaviour of agencies not having regard at all to that.

I do think though that it is not the first thing that necessarily occurs to an agency when they have Cabinet material.

## OFFICIAL

Mr Iain Anderson: The answer to the Member's question is as follows:

In 2024, the ACT Ombudsman received 2 Freedom of Information (FOI) Ombudsman Review requests for Cabinet information refused under Schedule 1, s 1.6(1)(d) of the *Freedom of Information Act 2016* (FOI Act). Of these, the ACT Ombudsman:

- confirmed one decision ([‘DI’ and Chief Minister, Treasury and Economic Development Directorate \[2024\] ACTOFOI 19 \(27 November 2024\)](#))
- set aside and substituted one decision ( [Jo Clay MLA and Major Projects Canberra \[2024\] ACTOFOI 20 \(2 December 2024\)](#))

Since the beginning of the FOI scheme in 2018, the ACT Ombudsman has finalised 17 FOI Ombudsman Review requests for Cabinet information refused under Schedule 1, s 1.6(1)(d) of the FOI Act. Of these, the ACT Ombudsman:

- confirmed 3 decisions
- varied 9 decisions, and
- set aside and substituted 5 decisions.

The decisions to vary or set aside and substitute were based on either the release of purely factual information or the documents were not considered Cabinet information.

Approved for circulation to the Standing Committee on the Integrity Commission and Statutory Office Holders

Signature:



By the ACT Ombudsman, Mr Iain Anderson

Date:

28/2/25