

01/12/2022

Our reference: OLA22-0213

Brenton Higgins

Via email only: Brenton.Higgins@cpsu.org.au

Dear Mr Higgins,

DECISION ON YOUR ACCESS APPLICATION

I refer to your access application made under the *Freedom of Information Act 2016 (FOI Act)*, dated the 9th of November 2022, and received by the Office of the Legislative Assembly on 09/11/2022.

This application requested access to:

‘Information pertaining to Worksafe ACT Prohibition Notice, including any correspondence between Mr Tom Duncan and Mr Peter Garrison AM SC.

This should include any emails, letters or other correspondence regarding the Worksafe ACT Prohibition notice issued on the Legislative Assembly and should be for the time period of 15 August to today’s date (09/11/2022).’

Authority

I am an information officer appointed by the Clerk of the Office of the Legislative Assembly to make decisions about access to government information, in accordance with section 18 of the FOI Act.

Decision

I have identified five documents containing information within the scope of your access application. These are outlined in the attached *Schedule of documents*.

I have decided to:

- grant full access to 4 documents
- grant part access to 1 document

Disclosure of information

The documents are attached.

Disclosure log

Please note that section 28 of the FOI Act requires publication of access applications and any information subsequently released on our [disclosure log](#).

This means that if access to the information is granted, it will also be made publicly available on our website, unless the access application is an application for your personal, business, commercial, financial or professional information.

Review rights

You may apply to the ACT Ombudsman to review my decision under section 73 of the FOI Act.

An application for review must be made within 20 days of receipt of this decision notice.

You may submit a request for review of my decision to the ACT Ombudsman by writing in one of the following ways:

Email (preferred): actfoi@ombudsman.gov.au

Post: The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

More information about ACT Ombudsman review is available on the ACT Ombudsman website at: <http://www.ombudsman.act.gov.au/improving-the-act/freedom-of-information>.

Yours sincerely

Stuart Row
Director Information and Digital Services
Office of the Legislative Assembly

Schedule of documents
Brenton Higgins – OLA22-0213

| Document reference number | Page number | Date | Description | Decision | Category or Factor |
|---------------------------|-------------|------------|--|-----------------|---------------------------------|
| 1. | Email | 15/08/2022 | Request for discussion on correspondence received from CPSU in relation to advice from the Clerk to the Speaker concerning Prohibition Notice 5068 | Release in full | |
| 2. | Email | 15/08/2022 | Response by Mr Garrison to request for discussion on correspondence received from CPSU in relation to advice from the Clerk to the Speaker concerning Prohibition Notice 5068. | Release in full | |
| 3. | Email | 15/08/2022 | Observations by Mr Garrison on correspondence from CPSU in relation to advice from the Clerk to the Speaker concerning Prohibition Notice 5068. | Release in part | Schedule 2, section 2.2 (b)(ii) |
| 4. | Email | 25/10/2022 | Provision of legal advice received by the Work Health Safety Commissioner in relation to Prohibition Notices. | Release in full | |

| | | | | | |
|----|-------|------------|---|-----------------|--|
| 5. | Email | 25/10/2022 | Response of receipt of legal advice received by the Work Health Safety Commissioner in relation to Prohibition Notices. | Release in full | |
|----|-------|------------|---|-----------------|--|

Reasons for decision

What you requested

'Information pertaining to Worksafe ACT Prohibition Notice, including any correspondence between Mr Tom Duncan and Mr Peter Garrison AM SC.

This should include any emails, letters or other correspondence regarding the Worksafe ACT Prohibition notice issued on the Legislative Assembly and should be for the time period of 15 August to today's date (09/11/2022).'

What I took into account

In reaching my decision, I took into account:

- your original access application dated 9th November 2022
- the documents containing the information that fall within the scope of your access application
- consultations with OLA officers about:
 - the nature of the documents
 - OLA's operating environment and functions
- the FOI Act
- the ACT Ombudsman FOI Guidelines

Reasons for my decision

I am authorised to make decisions under section 18 of the FOI Act.

I have decided that some parts of documents that contain the information you requested contain information would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the FOI Act. My findings of fact and reasons are discussed below.

Schedule 2, section 2.2 (b)(ii)

I have applied Schedule 2, section 2.2(b)(ii) to parts of document 3.

Schedule 2, section 2.2(b)(ii) is a factor favouring nondisclosure if:

The information would be privileged from production in a legal proceeding on the ground of legal professional privilege.

Would disclosure of the information breach legal professional privilege?

I am satisfied the disclosure of some information contained in document 3 could reasonably be expected to be privileged from production in a legal proceeding on the ground of legal professional privilege.

The information I have decided not to disclose includes correspondence between Mr Garrison and Mr Duncan. I consider the information is not well-known or publicly available and the information provided by the Mr Garrison is in the form of legal advice.

On this basis, I am satisfied disclosure of some information contained in document 3 could reasonably be expected to breach legal professional privilege.

Public interest considerations

The public interest test set out in section 17 of the FOI Act involves a process of balancing public interest factors favouring disclosure against public interest factors favouring nondisclosure to decide whether, on balance, disclosure would be contrary to the public interest.

When weighing up the public interest for and against disclosure under Schedule 2 of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would promote the objects of the FOI Act and promote open discussion of public affairs and enhance the government's accountability.

Based on the above, I have decided that in this instance, the public interest in disclosing the information in document 3 is outweighed by the public interest against disclosure because the disclosure of information of this nature would breach legal professional privilege.

I have not taken into account any of the irrelevant factors set out in section 17(2) of the FOI Act in making this decision.

Summary of my decision

In conclusion, I have decided to:

- grant you full access to 4 documents (document 1, 2, 4, 5)
- grant you part access to 1 document (document 3)