

Decision and reasons of Senior Assistant Ombudsman

Application number:	AFOI-RR/25/80024
Applicant:	'EB'
Respondent:	Chief Minister, Treasury and Economic Development Directorate (CMTEDD)
Respondent reference:	CMTEDDFOI 2025-012
Participants:	CMTEDD Employee 1, CMTEDD Employee 2, CMTEDD Employee 3
Date:	7 May 2026
Decision reference:	[2026] ACTOFOI 8
Catchwords:	<i>Freedom of Information Act 2016</i> – deciding access – whether information is contrary to the public interest information – advance the fair treatment of individuals and other entities in accordance with the law in their dealings with the government – reveal the reason for a government decision and any background or contextual information that informed the decision – the information is personal information of the person making the request – prejudice the protection of an individual’s right to privacy or any other right under the <i>Human Rights Act 2004</i> – prejudice trade secrets, business affairs or research of an agency or person – prejudice an agency’s ability to obtain confidential information – prejudice the management function of an agency or the conduct of industrial relations by an agency.

Decision

1. For the purposes of s 82 of the *Freedom of Information Act 2016 (FOI Act)*, I am a delegate of the ACT Ombudsman.
2. The applicant applied for Ombudsman review of a decision made by the Chief Minister, Treasury and Economic Development Directorate (**CMTEDD**) on 19 March 2025 to refuse access to information about a complaint and the response to the complaint. The applicant requested release of all documents in full.
3. For the reasons set out below, I have decided to **confirm** CMTEDD's decision under s 82(2)(a) of the FOI Act to refuse access to contrary to the public interest information and provide access to information which is not contrary to the public interest information.

Background to Ombudsman review

4. On 13 January 2025, the applicant applied to CMTEDD under the FOI Act for access to the following information:

I request access to the following information related to the RED complaint submitted to CMTEDD People & Capability on 24 Sept 2024 by [person]

1. The preliminary assessment report prepared by Griffin Legal in their role conducting the complaint investigation as an independent party.
2. Documents and correspondence discussing the procedural response to this complaint by CMTEDD People & Capability, the delegate and other parties involved in the administration of the complaint, including the terms & conditions of the Preliminary Assessment provided to Griffin Legal.
3. Documents and correspondence discussing the evaluation of the preliminary assessment report by CMTEDD People & Capability, the delegate, and other parties involved in the administration of the complaint.
4. Documents and correspondence discussing the request for information on the relevant facts and reasons leading to the outcome of the preliminary

assessment, and the decision to withhold that information. This request was made via email on 19 Dec 2024 and again, during a meeting on 23rd Dec 2024. The denial of access to information was made on 10 Jan 2025 via an email from Cameron Dawson. Correspondence in this context includes but is not limited to any emails, letters, meeting notes, Microsoft Teams discussions, etc. The evaluation of the complaint, the preliminary assessment process and resulting discussions took place between 25 Sept 2024 and the present. The primary contacts for the complaint process are Cameron Dawson and Peita Francis, and the delegate is Leesa Croke. My full name is [applicant].

5. CMTEDD conducted searches and located 33 documents within the scope.
6. On 19 March 2025, CMTEDD decided to grant access to 16 documents in full, 11 documents in part and refuse access to 6 documents.
7. On 3 April 2025, the applicant applied for Ombudsman review of the primary decision.
8. On 16 April 2025, 3 CMTEDD employees applied to participate in this Ombudsman review.
9. On 24 April 2025, the delegate approved the requests to participate.
10. On 13 February 2026, I provided my preliminary views to the parties in a draft consideration.
11. On the same date, CMTEDD accepted the draft consideration.
12. On 26 February 2026, the applicant provided submissions in response to the draft consideration supporting disclosure of the complaint information as release would overcome significant procedural unfairness in the preliminary investigation and reduce harm to the applicant.

Submission of the parties

13. In response to my draft consideration, the applicant mainly discussed a disability complaint to Human Rights Commission and the Administrative Review Tribunal. There are some references to this review which I will address below.
14. The applicant is dissatisfied with minor weight being awarded to a factor under Schedule 2, s 2.1(a)(vii) stating that it 'neglects that the facts of my disability discrimination complaint are still in contention'.
15. I awarded minor weight for that factor because I consider the applicant received some material prior to the request for access and release of the extra material would not 'advance the fair treatment' of the applicant generally.
16. The applicant also stated that the subject information within the scope of the review is their personal information and referred to a case BP and Justice and Community Safety Directorate. I am of the view that this decision makes clear that procedural fairness does not require that the person be given access to information.
17. The applicant referred to paragraphs 46 and 47 in the draft consideration which stated that the review decision-maker agreed that the release of the information may generally advance the fair treatment of the applicant. It is important to consider my views on this factor favouring disclosure in its totality. While I acknowledge that release of the information may generally advance the fair treatment of the applicant, my decision is made on balance, considering all factors in favour of release as well as those against release.
18. I accept that the documents contain personal information of the applicant. At the same time the documents contain information of third parties, and I

consider it is not always possible to release personal information of the applicant without releasing information of the third parties.

19. Release of the third parties' information may prejudice their right to privacy and also breach their confidence as the information they shared with CMTEDD was provided in confidence. These concerns were directly raised by the third parties (see paragraph [37]).

Information at issue

20. The information at issue in this Ombudsman review is 6 documents CMTEDD refused access to, and the 11 documents released in part (a total of 17 documents).¹

21. These documents comprise email correspondence and attachments related to a preliminary assessment of a workplace complaint.

22. The remaining 16 documents were released in full and are not subject to this Ombudsman review.

23. The key issue of the review is whether the information CMTEDD refused access to is contrary to the public interest information.

24. In making my decision, I have had regard to:

- the applicant's Ombudsman review application dated 3 April 2025 and submissions
- the FOI access application dated 13 January 2025
- CMTEDD's decision of 19 March 2025
- CMTEDD's FOI processing file and additional submissions
- an unredacted copy of the information at issue
- the submissions made by third parties
- the [FOI Act](#), particularly ss 7, 16, 17, 35, 38, 50, 72 and Schedule 2

¹ Documents 1-3, 5-7, 12, 14-21, 25, 32.

- the [Freedom of Information Guidelines](#) (FOI Guidelines) made under s 66 of the FOI Act
- the [Information Privacy Act 2014 \(ACT\)](#) (IP Act)
- the [Human Rights Act 2004 \(ACT\)](#) (Human Rights Act), and
- relevant case law including:
 - *Australian Broadcasting Corporation and Australian Fisheries Management Authority* [\[2016\] AICmr 43](#)
 - *Stewart and SunWater Limited* [\[2012\] QICmr 70](#) at [83] – cited in *Google Australia Pty Ltd and Wing Aviation Pty Ltd and Environment, Planning and Sustainable Development Directorate* [\[2019\] ACTOFOI 14](#)
 - *Searle Australia Pty Ltd v Public Interest Advocacy Centre and Department of Community Services and Health* [\[1992\] FCA 241](#), and
 - *DK and Community Services Directorate* [\[2025\] ACTOFOI 7](#).

Relevant law

25. Section 7 of the FOI Act gives every person an enforceable right of access to government information. This right is subject to other provisions of the FOI Act, including grounds on which access may be refused.²

26. Contrary to the public interest information is defined in s 16 of the FOI Act as: information—

- (a) that is taken to be contrary to the public interest to disclose under schedule 1; or
- (b) the disclosure of which would, on balance, be contrary to the public interest under the test set out in section 17.

² Section 35(1)(c) of the [Freedom of Information Act 2016 \(ACT\)](#).

27. The public interest test set out in s 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.
28. Section 35(1)(c) of the FOI Act provides an access application may be decided by refusing to give access to the information sought because the information being sought is contrary to the public interest information.
29. Section 38 of the FOI Act provides that if disclosure of information may reasonably be expected to be of concern to a third party, the respondent must take reasonable steps to consult with the third party before deciding to give access to the information.
30. Section 50 of the FOI Act applies if an access application is made for government information in a record containing contrary to the public interest information and it is practicable to give access to a copy of the record from which contrary to the public interest information has been deleted.
31. Schedule 2 of the FOI Act sets out the public interest factors which must be considered, where relevant, when determining the public interest.

The submissions of the parties

32. In the primary decision, CMTEDD identified 3 factors favouring disclosure awarding them some weight and 4 factors favouring nondisclosure giving them significant weight when balancing the factors.
33. In relation to the factors favouring disclosure, CMTEDD said:

... I consider that release of the information contained in these documents may contribute to enhancing your understanding of the outcomes from a workplace complaints process where you were the complainant.

I am satisfied that these factors favouring disclosure carry some weight. However, these factors are to be balanced against the factors favouring nondisclosure.

... I consider that the protection of an individual's right to privacy under the *Human Rights Act 2004*, is a significant factor. Information within your requested scope includes personal information of several third parties, including sensitive information in relation to their employment... and this would be an unreasonable release of personal information in the context of the material.

I have decided to redact the staff names of the private business who undertook the review, as I consider the release of these names... could reasonably be expected to be an unreasonable limitation on a person's rights under the Act.

34. In relation to the 4 factors favouring nondisclosure, CMTEDD stated:

I have placed significant weight on Schedule 2.2(a)(xii) and Schedule 2.2(a)(xv), as processes such as this one heavily relies on participants and members of staff being able to trust that their information is managed appropriately and discreetly. I believe providing some of these documents would diminish the expectation of confidentiality around investigation of these processes. I have been particularly mindful that the process involves you and that whilst you know the identity of the other participants, this does not necessarily mean that it is in the public interest to release them.

35. The applicant in their review application stated:

No information was provided discussing the basis on which this decision was made. After further calls and meetings, access to any level of information on the basis of the decision was refused...

I submitted an FOI request in order to access information that should have been provided in the course of the [preliminary assessment] in the interest of procedural fairness - to provide evidence that decisions were made fairly and without bias, and to allow a reasonable opportunity to respond...

... I have grounds to believe that demonstrably false and deceptive statements were made by my employer as an input to this process...

The release of information prompted by my request contained very little relevant information other than what was submitted by me in the process or was already available to me. Any information discussing the evidential basis for a decision has

been redacted, including much of the report discussing my own input into the complaint.

36. In submissions to this Ombudsman review, CMTEDD said:

... I formed the view that the preliminary assessments of third parties to the applicant was not in the public interest to release... In forming this view, I considered a previous Ombudsman review, where the Ombudsman upheld the decision.

['BM' and Justice and Community Safety Directorate \[2021\] ACTOFOI 14 \(23 November 2021\)](#) Paragraph 29 of the Ombudsman decision on this stated:

The complainant may be a public official, but the disclosure of a complaint made by a public official about another which is dismissed and not acted upon, does not, in this case, seem to be to be likely to serve the public interest.

The decision taken was that information that was from the applicant or sent to [the applicant] directly - [the applicant] could have the details of what [the applicant] complained about; anything official from ACT Government regarding the investigation, I had the details of other staff redacted noting that the allegations were unsubstantiated.

37. In submissions to this Ombudsman review, the employees said:

We wish to reiterate the points previously submitted during the consultation process for this request. We believe that the identifying information in the requested material is sensitive information as outlined in Section 1.4 of Schedule 2 [sic] of the FOI Act and its disclosure should be taken to be contrary to the public interest. In addition, if a public interest test were applied, there are factors outlined in Schedule 2.2 favouring nondisclosure of this identifying information that should apply, particularly that:

- i. release of identifying information would prejudice the protection of our right to privacy (a)(ii) and
- ii. the information is about unsubstantiated allegations of misconduct and disclosure could prejudice our fair treatment (b)(v).

The documents proposed for review make clear that there was no finding of misconduct. However, we believe that public disclosure of the fact that such an

accusation has been made against each of us has the potential to damage our personal and professional reputations, and to prejudice our fair treatment in the workplace and elsewhere. We are each proud of our reputations as leaders, managers and information governance and cultural heritage professionals. Ours is a small profession, and the FOI process has already exposed this very personal information about our standing as managers to people who are our stakeholders and professional peers, with the potential to cast doubt on our integrity and competence. While the applicant is likely to know the identity of people referred to in the requested documents, this is a very different matter to the release of copies of documents which could then be disseminated more widely to the further detriment of those identified.

Third party consultation

38. During the primary decision-making CMTEDD consulted relevant third parties, namely Griffin Legal law firm (Griffin Legal) who conducted the preliminary assessment and 3 employees against whom the applicant lodged the complaints (CMTEDD employees).
39. During the consultation for the original access application the CMTEDD employees objected to release of the following:
 - release of identifying information would prejudice the protection of our right to privacy as provided in Schedule 2.2 (a)(ii) and
 - the information is about unsubstantiated allegations of misconduct and disclosure could prejudice our fair treatment in accordance with Schedule 2.2 (b)(v).
40. The CMTEDD employees objected to release of the information stating it 'has the potential to damage our personal and professional reputations, and to prejudice our fair treatment in the workplace and elsewhere.'
41. Griffin Legal objected to the release of 'personal information of Griffin Legal employees as it would prejudice the protection of an individual's right to

privacy under Schedule 2.2(a)(ii) of the Act and disclosure of the information would prejudice the business affairs of Griffin Legal and the employees under Schedule 2.2(a)(xi) of the Act.'

42. In relation to Griffin Legal, CMTEDD redacted various information including personal information under business affairs factor and personal privacy.
43. Griffin Legal did not participate in the review.
44. In submissions to this review, the CMTEDD employees also objected to release on the basis the information was contrary to the public interest information under Schedule 1, s 1.4 and following a public interest test. This is discussed below.

Consideration

Information taken to be contrary to the public interest to disclose

45. If disclosure would involve the unreasonable disclosure of sensitive information about any individual, that information is taken to be contrary to the public interest to disclose.³
46. For the reasons outlined below, I consider Schedule 1, s 1.4 is not relevant to the information at issue this review.
47. For the purpose of the FOI Act 'sensitive information' is defined under s 14 of the Information Privacy Act 2014 (IP Act).
48. Section 14 of the IP Act defines sensitive information as personal information that is:
 - (a) about the individual's –
 - (i) racial or ethnic origin; or
 - (ii) political opinions; or

³ Schedule 1, s 1.4 of the FOI Act.

- (iii) membership of a political association; or
- (iv) religious beliefs or affiliations; or
- (v) philosophical beliefs; or
- (vi) membership of a professional or trade association; or
- (vii) membership of a trade union; or
- (viii) sexual orientation or practices; or
- (ix) criminal record; or
- (b) genetic information about the individual; or
- (c) biometric information about the individual that is to be used for the purpose of automated biometric verification or biometric identification; or
- (d) a biometric template that relates to the individual.

49. I consider the information at issue does not contain such information.

Accordingly, Schedule 1 s 1.4 of the FOI Act is not relevant to this review.

50. However, the reference by the CMTEDD employees to 'sensitive information' in the context of this review is likely to be their personal information which is considered below in relation to the public interest factor favouring nondisclosure – prejudice the protection of an individual's right to privacy (and I understand was referred to during the s 38 consultations).

Public interest test

51. To determine whether disclosure of information is contrary to the public interest, the FOI Act prescribes the following five steps:

- identify any factor favouring disclosure that applies in relation to the information (a relevant factor favouring disclosure), including any factor mentioned in schedule 2, section 2.1

- identify any factor favouring nondisclosure that applies in relation to the information (a relevant factor favouring nondisclosure), including any factor mentioned in schedule 2, section 2.2
- balance any relevant factor or factors favouring disclosure against any relevant factor or factors favouring nondisclosure
- decide whether, on balance, disclosure of the information would be contrary to the public interest, and
- unless, on balance, disclosure of the information would be contrary to the public interest, allow access to the information.

Factors favouring disclosure

52. In the primary decision, CMTEDD identified 3 factors favouring disclosure.

Advance the fair treatment of individuals and other entities in accordance with the law in their dealings with the government—Schedule 2, s 2.1(a)(vii)

53. A factor favouring disclosure is where release could reasonably be expected to advance the fair treatment of individuals and other entities in accordance with the law in their dealings with the government.

54. In the primary decision CMTEDD stated ‘release of information contained in these documents may contribute to enhancing your understanding of the outcomes from a workplace complaints process where you were the complainant’ and awarded some weight to the factor.

55. In their application for Ombudsman review the applicant stated:

The purpose of my FOI request was to consult with legal representation at a workers compensation tribunal, and to escalate the matter of the discrimination complaint to the Human Rights Commission.’

56. By the time of the FOI request, the applicant had already received the result of the assessment. As such, release of the information under review may not advance the fair treatment of the applicant in this context of the specific

assessment. However, I agree release could be seen to advance the fair treatment of the applicant generally, in contributing to their understanding of the outcomes from a workplace complaints process.

57. I attribute minor weight to this factor.

Reveal the reason for a government decision and any background or contextual information that informed the decision—Schedule 2, s 2.1(a)(viii)

58. A factor favouring disclosure is where the information could reasonably be expected to reveal the reasons for a government decision and any background or contextual information.

59. I consider this factor relevant here as the information at issue consists of material regarding the preliminary assessment of the complaint and explaining the decision to dismiss the complaint.

60. The applicant submitted a ground for the review was the refusal to release the information explaining the basis for the decision to dismiss the complaint.

61. In the primary decision CMTEDD said:

Having considered the factors identified as relevant in this matter, I consider that release of information contained in these documents may contribute to enhancing your understanding of the outcomes from a workplace complaints process where you were the complainant.

62. CMTEDD stated that they were satisfied that 'redacting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met and will provide you with as much access to information held by CMTEDD within the scope of your request as possible.'

63. I attribute minor weight to this factor, as I consider disclosure would only reveal the reasons for a decision in relation to this particular complaint. I note that release of the information would not provide general information about the complaint handling processes.

***The information is personal information of the person making the request—
Schedule 2, s 2.1(b)(i)***

64. A factor favouring disclosure is where the information is the personal information of the person making the request. This factor is relevant here as the key information is about the complaint the applicant made against 3 employees.

65. The key information refers to the applicant by name, opinions about the applicant, and events that occurred at the workplace concerning the applicant. I consider it is personal information of the applicant.

66. I award this factor significant weight in the review, in relation to the personal information of the applicant contained within the information at issue.

67. I do not consider this factor applies to the part of the information at issue which is not the personal information of the applicant.

68. However, the report also contains the personal information of others, including that of the individuals.

Factors favouring nondisclosure

69. CMTEDD in the decision referred to 4 factors favouring nondisclosure and stated that the relevant information was redacted as release would not be in the public interest.

70. CMTEDD stated in the decision:

I have decided to redact the staff names of the private business who undertook the review, as I consider the release of these names would be contrary to the public interest as release could reasonably be expected to be an unreasonable limitation on a person's rights under the Act.

I have also considered the impact of disclosing information which relates to business affairs. In the case of *Re Mangan and The Treasury* [2005] AATA 898 the term 'business affairs' was interpreted as meaning 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or

internal affairs'. Schedule 2 section 2.2(a)(xi) allows for government information to be withheld from release if disclosure of the information could reasonably be expected to prejudice the trade secrets, business affairs or research of an agency or person. I have placed significant weight on Schedule 2.2(a)(xii) and Schedule 2.2(a)(xv), as processes such as this one heavily relies on participants and members of staff being able to trust that their information is managed appropriately and discreetly. I believe providing some of these documents would diminish the expectation of confidentiality around investigation of these processes. I have been particularly mindful that the process involves you and that whilst you know the identity of the other participants, this does not necessarily mean that it is in the public interest to release them.

71. The primary decision maker analysed factors under Schedule 2, s 2.2(a)(xii) and (xv). However, they did not explain the relevance of the factor regarding business affairs. It appears CMTEDD considered information about Griffin Legal, such as their contact details and names of lawyers as 'business information'.
72. I have considered these factors separately for the purpose of the review.

Prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004—Schedule 2, s 2.2(a)(ii)

73. A factor favouring nondisclosure is that disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act.
74. The following elements can be considered in deciding whether disclosure of personal information would prejudice the protection of an individual's right to privacy:
- the nature, age and current relevance of the information
 - whether the information is well known or available from other public sources
 - any detriment that disclosure may cause to the person to whom the information relates

- any opposition to disclosure expressed or likely to be held by that person
- the circumstances of an agency's collection and use of the information
- whether disclosure of the information might advance the public interest in government transparency and integrity
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

75. Section 12(a) of the Human Rights Act provides that everyone has the right 'not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily'. It does not provide a general right to privacy but can essentially be viewed as the right of an individual to preserve their personal sphere from interference from others.⁴

76. The IP Act outlines how personal information is to be handled by public sector agencies and how the privacy of individuals is protected. An individual's privacy is 'interfered with' if an act or practice breaches a Territory Privacy Principle (TPP) in relation to personal information about the individual.⁵

77. TPP 6 provides that if an agency holds personal information about an individual that was collated for a particular purpose (primary purpose), the agency must not use or disclose the information for another purpose (secondary purpose) unless the individual consents or an exception in TPP 6.2 or 6.3 applies.

78. I consider key information includes the personal information of individuals other than the applicant, including names, position titles and information

⁴ [Freedom of Information \(Volume 4 – Considering the public interest\) Guidelines 2023](#) at [8.2].

⁵ Section 11 of the [Information Privacy Act 2014 \(ACT\)](#) (IP Act).

about the circumstances leading to the preliminary assessment that provides sufficient context to identify specific individuals.

79. This information also includes statements made by people in relation to the complaints and their assessment, names and contact details.

80. I consider that the information was collected for the primary purpose of the preliminary assessment. I consider that the disclosure of the information for a secondary purpose would not be reasonably expected by the third parties.

81. Further, in considering whether the disclosure of the information could reasonably be expected to prejudice the protections of an individual's right to privacy or any other right under the Human Rights Act, relevant matters include any detriment disclosure may cause, the nature of the information, and the circumstances in which the information was collected.

82. During the third-party consultation for the initial access application and the subsequent Ombudsman review, the third parties have objected to the release of their information.

83. CMTEDD's decision was to redact a large amount of information related to various parties to protect their privacy.

84. Names and contact details of other CMTEDD employees are well-known to the applicant who lodged a formal complaint against them using their names and positions.

85. I can see references within the key information to the email addresses of these parties and numerous emails they sent to the applicant and the applicant sent to them.

86. The employees subject to the workplace complaints raised the following concerns relevant to consideration about whether the release of information would present an arbitrary interference with a person's privacy:

The documents proposed for review make clear that there was no finding of misconduct. However, we believe that public disclosure of the fact that such

an accusation has been made against each of us has the potential to damage our personal and professional reputations, and to prejudice our fair treatment in the workplace and elsewhere. We are each proud of our reputations as leaders, managers and information governance and cultural heritage professionals. Ours is a small profession, and the FOI process has already exposed this very personal information about our standing as managers to people who are our stakeholders and professional peers, with the potential to cast doubt on our integrity and competence. While the applicant is likely to know the identity of people referred to in the requested documents, this is a very different matter to the release of copies of documents which could then be disseminated more widely to the further detriment of those identified.

87. I consider release of the names and statements of people involved in a workplace code of conduct complaint investigation would present an arbitrary interference with the people's right to privacy under s 12 of the Human Rights Act.

88. Further, the information includes names, contact details of the staff of Griffin Legal which was engaged to conduct the preliminary assessment of the applicant's complaint and was collected for this primary purpose.

89. Griffin Legal was engaged by the government to undertake assessment of a work-related complaint, and transparency can be achieved through public reporting, oversighting, and performance indicators.

90. However, balanced against the concerns raised by the third parties, I do not consider the public interest would be served by release of the names and contact details of Griffith Legal.

91. While I note the applicant is already aware of the names and contact details of the participants, I consider the potential detriment that disclosure may cause the mentioned individuals.

92. I attribute significant weight to this factor.

***Prejudice trade secrets, business affairs or research of an agency or person—
Schedule 2, s 2.2(a)(xi)***

93. A factor favouring nondisclosure of information is where release could reasonably be expected to prejudice trade secrets, business affairs or research of an agency or person.

94. In considering whether the information constitutes 'trade secrets', it must, in my view, contain information which gives an agency or person an advantage over their competitors while the information remains generally unknown.⁶ A trade secret may be prejudiced where the disclosure of the information in question will destroy or diminish the commercial value of the information.

95. To apply this factor a decision-maker needs to establish relevant sensitive information which contains economic value not known by others and existence of a reasonable effort taken by the holder of the information to protect it.

96. In a practical sense, in determining whether, on balance, disclosure of information could reasonably be expected to prejudice the trade secrets or research, there is a requirement:

...that the particular prejudice or adverse effect... could reasonably be expected to flow from disclosure. This phrase requires an expectation that is reasonably based... it is not enough to simply assert that disclosure will result in some kind of adverse consequence⁷.

⁶ *Australian Broadcasting Corporation and Australian Fisheries Management Authority* [2016] AICmr 43 at [19].

⁷ *Stewart and SunWater Limited* [2012] QICmr 70 at [83] – cited in *Google Australia Pty Ltd and Wing Aviation Pty Ltd and Environment, Planning and Sustainable Development Directorate* [2019] ACTOFOI 14.

97. In other words, 'the test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect.'⁸

98. CMTEDD redacted part of on the key information on that ground but did not specify which adverse effect may occur (i.e. prejudice to trade secrets, business affairs or research). CMTEDD referred to the case of *Re Mangan and The Treasury* [2005] AATA 898 and stated: 'the term 'business affairs' was interpreted as meaning 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'. This did not provide any clarification on what adverse effect may occur.

99. I understand that a law firm is a business, providing legal services.

100. CMTEDD engaged their services to conduct a preliminary assessment for a fee.

101. However, the assessment had to be undertaken in accordance with CMTEDD's rules and guidelines, which is publicly available.

102. Griffin Legal as a service provider engaged by the government, must follow the rules and procedures adopted in the agency.

103. The preliminary assessment report is the product of the work done by the law firm. Its release would only reveal how they reached their conclusions. I do not see any potential risk to their usual business affairs in providing legal services should the key information be released to the applicant.

104. I consider this factor is not relevant here and I do not attribute any weight to it.

Prejudice an agency's ability to obtain confidential information—

Schedule s2.2(a)(xii)

105. A factor favouring nondisclosure of information is where release could reasonably be expected to prejudice an agency's ability to obtain confidential information.

⁸ *Searle Australia Pty Ltd v Public Interest Advocacy Centre and Department of Community Services and Health* [1992] FCA 241; (1992) at [46].

106. I consider there is a substantial public interest in ensuring agencies can obtain confidential information for the performance of their functions, including management of personnel and complaint handling.

107. In the context of an employment complaint, it is important that all people participating in the process have an opportunity to provide information confidentially without concern about the information being disclosed without their consent.

108. If an agency cannot obtain information confidentially, I consider this would undermine workplace processes and outcomes.

109. The key information to a certain extent consists of confidential information such as information provided by other participants.

110. CMTEDD applied this factor to a large amount of material within the key information and placed significant weight on it.

111. CMTEDD explained that employment processes such as the one the information at issue concerns 'heavily relies on participants and members of staff being able to trust that their information is managed appropriately and discreetly.'

112. It appears this factor was applied to the information provided by the people against whom the applicant lodged the complaint.

113. While some of the information was well-known by the applicant at the time of the request, I consider that release of such information may have a chilling effect on employees providing information as part of future processes.

114. I attribute significant weight to this factor.

Prejudice the management function of an agency or the conduct of industrial relations by an agency—Schedule s 2.2(a)(xv)

115. A reasonable expectation that disclosure could prejudice the management function of an agency or the conduct of industrial relations by an agency favours nondisclosure under the FOI Act.

116. I agree this factor is relevant here.

117. In DK and Community Services Directorate⁹, the Senior Assistant Ombudsman stated 'the workplace complaint process is designed to be confidential'.

118. I agree all the information regarding the assessment of the workplace complaint falls under that category.

119. CMTEDD considered the key information is information contrary to the public interest and cannot be released and placed significant weight on it stating that 'providing some of these documents would diminish the expectation of confidentiality around investigation of these processes.'

120. I agree that release of information, such as statements of other parties involved in the dispute and opinions expressed in the handling of the matter, may prejudice the management functions of CMTEDD.

121. This material was obtained in confidence and the individuals who provided their evidence did it for the purpose of the assessment and they had a legitimate expectation that this information would not be publicly disclosed.

122. If this material is released it may affect the management functions in a way that people would not feel confident to provide necessary information in the future and it would impact the ability of CMTEDD to make appropriate decisions.

123. I attribute significant weight to this factor.

Balancing the factors

124. Having identified public interest factors favouring disclosure and factors favouring nondisclosure, I now must consider the public interest balancing test set out in s 17 of the FOI Act.

⁹ DK and Community Services Directorate [\[2025\] ACTOFOI 7](#) at [88].

125. In this matter, I have identified 3 factors favouring disclosure. I attributed minor weight to two factors. In relation to the remaining factor, I consider that the disclosure of the personal information of the applicant should be given significant weight. I do not consider this factor applied to the remainder of the information (non-personal information of the applicant).

126. I identified 3 relevant factors favouring nondisclosure and attributed significant weight to them all. I do not consider the remaining factor of business affairs relevant in this matter.

127. Balancing public interest factors is not simply a case of quantifying the number of relevant factors for disclosure and nondisclosure, with the higher quantity being considered in the public interest. The decision-maker's task is to consider the relative importance and weight of each factor identified; the weight given to a factor will depend on the effect that disclosing the information has on the public interest.

128. The FOI Act has a pro-disclosure bias,¹⁰ and as a result, the public interest test should not be approached on the basis that there are empty scales in equilibrium, waiting for arguments to be put on each side. Rather, the scales are 'laden in favour of disclosure'.¹¹ My view is, on balance, the factors favouring nondisclosure outweigh the factors favouring disclosure.

Conclusion

129. In the circumstances of this review, I consider the arbitrary interference with the third parties right to privacy and human rights, along with the impact on the ability of agencies to obtain confidential information and prejudice the management functions outweighs any benefit from transparency of government decision-making.

¹⁰ Section 17 of the [FOI Act](#).

¹¹ [Freedom of Information Bill 2016, Explanatory statement](#).

130. I consider that the information at issue only provides contextual material explaining how one decision affecting the applicant was made.

Decision

131. For the reasons set out above in this decision, I confirm CMTEDD's decision under s 82(2)(a) of the FOI Act.

Katrina Dwyer

Senior Assistant Ombudsman

7 May 2026