

## Decisions and reasons of Senior Assistant Ombudsman

Application number:	AFOI-RR/23/10051
Applicant:	'CX'
Respondent:	Transport Canberra and City Services
Respondent reference:	23-047
Date:	29 May 2024
Decision reference:	[2024] ACTOFOI 6
Catchwords:	<i>Freedom of Information Act 2016</i> – reasonable steps to identify all government information within scope – information not held by respondent

### Decision

1. For the purpose of s 82 of the *Freedom of Information Act 2016* (**FOI Act**), I am a delegate of the ACT Ombudsman.
2. For the reasons set out below, the decision of Transport Canberra and City Services (**TCCS**) dated 22 June 2023 is confirmed under s 82(2)(a) of the *Freedom of Information Act 2016* (**FOI Act**).
3. I have made this decision because I am satisfied that reasonable steps have been taken to identify government information held by the agency within the scope of the request.

## **Background of Ombudsman review**

4. On 9 May 2023, the applicant applied to TCCS for access to:
  - (1) Section 21 (3)(b) Litter Act 2004 Removal Direction Notice issued to Mastro 5 Design Group on 11 November 2020 (or proximate) directing the removal of litter from public land (the nature strip in front of my property) by 3 December 2020; and
  - (2) Section 98 of the Public Unleased Land Act 2013 Object Removal Notice on 11 November 2020 (approximate) directing the removal of the Bobcat from public land by 19 November 2020.
5. On 22 June 2023, TCCS advised the applicant the information requested was not held by TCCS and TCCS was satisfied all appropriate and reasonable searches were conducted pursuant to s 35(1)(b) of the FOI Act.
6. On 7 November 2023, the applicant applied for Ombudsman review under s 73 of the FOI Act.
7. On 25 March 2024, I provided my preliminary view to the parties in a draft consideration.
8. On 28 March 2024, TCCS indicated it accepted the draft consideration, making no further submissions.
9. On 4 April 2024, the applicant provided their response to the draft consideration, including additional submissions in support of their view the original decision is not correct.

## **Relevant law**

10. Section 7 of the FOI Act provides every person with 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.<sup>1</sup>

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<sup>1</sup> Section 35(1)(c) of the [FOI Act](#).

11. Section 34 of the FOI Act requires that an agency deciding an access application must take reasonable steps to identify all government information within the scope of the application.<sup>2</sup>
12. In making my decision, I have had regard to:
  - the applicant's review application
  - the respondent's decision
  - the ACT FOI guidelines, a notifiable instrument under s 66 of the FOI Act
  - the FOI Act, in particular s 34, and
  - the submissions of the applicant and respondent.

### **The contentions of the parties**

13. In its decision notice, TCCS said:

I have been advised that the information you are seeking is of a type that was migrated to a new case management system. It is possible that the information may have been held by TCCS, however some records were lost or corrupted following the record migration and are no longer held.

Further searches were conducted of requests for archiving and of secure file locations on site. These searches did not identify the relevant records.

I am satisfied that all appropriate and reasonable searches were completed. Pursuant to s.35(1)(b) of the Act, I have determined that the information you have requested is not held by TCCS.

14. In their application for Ombudsman review, the applicant said:

According to standard processes which should be followed prior to data migration, all data should be backed up, especially the files that [are] being migrated.

...a full audit [should have been] conducted of the system and data quality to ensure everything is correct once the data migration process [had] completed. If missing, incomplete or corrupt data are noticed, these files can be restored from the backup.

The two documents sought have been distributed to a range of individuals via e-mail, including the Senior City Ranger... the recipient of the direction notices; and staff within access Canberra responding to a complaint [made by the applicant] via the Human Rights Commission.

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<sup>2</sup> Section 34(1) of the [FOI Act](#).

15. In response to my draft consideration, the applicant submitted:

While there are listed a large number of steps that are indicated as having been taken, it is stretching credulity that none of the record keeping or back up arrangements have yielded the documents sought under FOI...

### **Scope of review**

16. This review is not about whether certain government information sought by the applicant should, or should not, be released under the FOI Act.

17. Rather, given TCCS's original decision identified no information within the scope of the applicant's access application, the primary issue in this review is whether reasonable steps were taken to identify such information.

### **Were reasonable steps taken to identify government information?**

18. Section 34 of the FOI Act required TCCS to 'take all reasonable steps to identify all government information within the scope of the [applicant's] application'.

19. This review is therefore solely confined to the question of whether TCCS took reasonable steps to identify relevant government information within the scope of the application.

20. The FOI Act itself is silent on what constitutes reasonable steps. Guidance provided in the explanatory statement to the Freedom of Information Bill 2016 notes that at a minimum it would include a search of electronic records and physical records in cases where that is applicable.<sup>3</sup>

21. In handling the initial request, the line area had completed its searches and provided records of searches, noting these searches yielded no results.

22. TCCS detailed how the searches conducted included searches of records management systems, email inboxes, hardcopy file locations, archiving, computer drives, backup data from the previous customer relationship

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<sup>3</sup> [Explanatory Statement](#), Freedom of Information Bill 2016 (ACT).

system; as well as directly speaking to all relevant staff members to determine if there were any copies of the records that were in possession of other teams, namely the systems and information team.<sup>4</sup> TCCS advised that directions and notices under the *Litter Act 2004* were typically issued by post, and the likelihood of this type of information being held in e-mail format was low.

23. In the applicant's further submissions of 14 February 2024, the applicant advised of several possible locations where the records may be stored, including an employee who had responded to the applicant's complaint via the Australian Capital Territory Human Rights Commission. TCCS advised that during searches, information relating to a complaint was identified within their backup records. However, the correspondence found only mention of a direction notice and no copy of the relevant record was identified.
24. For the purpose of this review, the Ombudsman's Office (the Office) sought additional information from TCCS regarding a search of records held by its legal team, which may have been in possession of the requested information, for example, if legal advice was sought. This search yielded no results.
25. In response to the issues raised in the applicant's further submissions, the Office sought additional information from TCCS about searching the inbox of the individual City Ranger who had issued the notice. TCCS confirmed a search of the City Ranger's inbox was completed as a standard approach. This search did not yield any results. The City Rangers had also conducted a further search of notice books held in the office and home offices. This search did not identify relevant records.
26. The Chief Information Officer of TCCS indicated the relevant information, if held, was likely to have been migrated from the now decommissioned

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<sup>4</sup> [ACT Ombudsman FOI Guideline 3 'Dealing with access applications'](#)

customer relationship system. While the data and attachments were exported from the system, a number of attachments subsequently became detached from the cases, corrupt or lost.

27. TCCS submits that although the FOI Act does not require backup systems to be checked in as an exhaustive obligation to take reasonable steps, a search of available backup systems for the requested records was undertaken.<sup>5</sup>
28. On 4 April 2024, the applicant provided submissions to the Ombudsman in response to the draft consideration. These submissions addressed the steps taken by TCCS to conduct searches.
29. The Office has reviewed the search minutes provided by TCCS. These minutes reflect a summary of the complaint, rather than the notice itself. The only data available from the searches is the complaint data. Had a complete backup of the case management system existed, the steps taken by TCCS to search for information would have likely located the notices sought. However, because of the data migration issues, I do not consider there are further steps TCCS could reasonably be expected to take to find the requested information.
30. I have reviewed the records of the searches conducted and ACT Ombudsman staff have liaised with staff from the TCCS line area to discuss further searches and the process of identifying information undertaken in handling the original application.
31. I consider the searches for the requested information undertaken by TCCS to be reasonable. TCCS has undertaken searches of all known and expected locations where the information may have been stored. This included searches of TCCS's own e-mail inbox, computer drives, physical files and archives for hardcopies. TCCS also sent an all-staff e-mail requesting staff to

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<sup>5</sup> [FOI Act](#) s 34(2).

check their bags, lockers and homes in case a hardcopy of the information existed. TCCS requested its legal team to conduct a search for the information, in the event that records were stored on a different case management system. TCCS requested for the City Ranger to conduct searches of their e-mail inbox. TCCS also sought advice from the Chief Information Officer of their information and systems team to ascertain whether the documents could be retrieved. I consider these attempts to search for the information to constitute a reasonable search.

32. I am therefore satisfied that reasonable steps have been taken to identify government information held by the agency within the scope of the request.

### **Conclusion**

33. For these reasons, my decision is to **confirm** TCCS's decision under s 82(2)(a) of the FOI Act that the information is not held.

**David Fintan**  
**Senior Assistant Ombudsman**  
**28 May 2024**