

Decision and reasons of Senior Assistant Ombudsman

Application number:	AFOI-RR/24/80004
Applicant:	Reform BCC – Community for Constitutional Reform at Brindabella Christian College
Respondent:	Transport Canberra and City Services
Respondent reference:	24-053
Date:	12 February 2025
Decision reference:	[2025] ACTOFOI 2
Catchwords:	<i>Freedom of Information Act 2016</i> – deciding access – whether disclosure of information is contrary to the public interest – contribute to positive and informed debate on important issues or matters of public interest – inform the community of the government’s operations – prejudice trade secrets, business affairs or research of an agency or person – prejudice an agency’s ability to obtain confidential information – prejudice the competitive commercial activities of an agency.

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. The applicant applied for Ombudsman review of a decision made by Transport Canberra and City Services (TCCS) on 12 June 2024, refusing access to information about gross revenue generated from advertising on public transport related to Brindabella Christian Education Limited (BCEL).

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3. My decision is to **confirm** the decision made by TCCS under s 82(2)(a) of the FOI Act because on balance the information sought is contrary to the public interest information.

Background to Ombudsman review

4. On 11 April 2024, the applicant applied to TCCS for:
 - ... information related to gross revenue generated by Go Transit and Ooh Media from advertising on ACT public transport related to Brindabella Christian College or its Early Learning Centres.
 - I seek to know annual revenue generated for the ACT Government from these advertisements and annual revenue generated for Go Transit and ooh Media since the 1 July 2019/2020 financial year...
5. On 31 May 2024, TCCS consulted GoTransit Media Group Pty Ltd (GoTransit) on the potential release of the information applied for under s 38 of the FOI Act.
6. On 12 June 2024, GoTransit objected to the release of the information applied for because disclosure would breach contractual confidentiality obligations and could negatively affect their contracts with other existing clients.
7. On the same day, TCCS decided to refuse access to the information because the information was determined to be, on balance, contrary to the public interest to disclose.
8. On 10 July 2024, the applicant applied for Ombudsman review of TCCS' decision under s 73 of the FOI Act.
9. On 23 August 2024, TCCS provided a copy of the information applied for and submissions in support of the original decision to the Ombudsman.
10. On 13 October 2024, the applicant provided additional submissions to the Ombudsman in support of the review application.
11. On 28 January 2025, my draft consideration was sent to the parties.

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12. On 7 February 2025, TCCS accepted my draft consideration.
13. On 10 February 2025, the applicant accepted my draft consideration.

Information at issue

14. The information at issue in this Ombudsman review is a spreadsheet with data on revenue derived from advertising campaigns purchased by BCEL from GoTransit (the 'advertising revenue spreadsheet').
15. TCCS contracted GoTransit to provide management services for the installation and display of advertisements on the exterior and interior of buses in the ACTION bus fleet from 1 January 2017.¹
16. The advertising revenue comprises the value of individual advertising items, total revenue for the financial year, and the proportion of revenue received by GoTransit and TCCS respectively between 1 July 2019 and 11 April 2024² for advertisements for BCEL.
17. In making my decision, I considered:
 - the applicant's review application dated 10 July 2024 and additional submissions received on 13 October 2024
 - the respondent's decision of 12 June 2024 and additional submissions received on 23 August 2024
 - the submissions of GoTransit provided to TCCS on 12 June 2024
 - an unredacted copy of the advertising revenue spreadsheet
 - the contract between TCCS and Go Transit ([Contract - 2016.27218.210](#)) (1 January 2017 – 30 June 2023) (the Contract)

¹ [ACT Tenders, Contract Details \(2016.27218.210\)](#).

² This date being the date the access application was made.

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- the FOI Act, particularly ss 16, 17, 35 and Schedule 2
- the Freedom of Information Guidelines made under s 66 of the FOI Act
- relevant legislation including:
 - the *Australian Education Act 2013* (Cth)
 - the *Australian Charities and Not-for-profits Commission Act 2012* (Cth)
 - [Australian Charities and Not-for-profits Commission Regulations 2022](#) (Cth)
 - the *Education Act 2004* (ACT)
 - the *Education Regulation 2005* (ACT)
 - the *Government Procurement Act 2001* (ACT)
- relevant case law including:
 - [‘DF’, Canberra Metro Pty Ltd and Transport Canberra and City Services \[2024\] ACTOFOI 16 \(23 September 2024\)](#) (‘DF’).

Relevant law

18. 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.³

19. 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.

³ FOI Act s 35(1)(c).

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20. 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.
21. Schedule 2 of the FOI Act sets out the public interest factors which must be considered, where relevant, when determining the public interest.
22. 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.
23. Section 72 of the FOI Act provides in an Ombudsman review, a person seeking to prevent disclosure of government information has the onus of establishing the information is contrary to the public interest information.

The submissions of the parties

24. In the decision notice, TCCS said:

...the advertisements for Brindabella Christian College or its Early Learning Centres has received attention broadly and could contribute to positive and informed debate on matters of public interest. I have also identified that the information partially relates to a commercial agreement between TCCS and its contractor Go Transit...

I find that the information is of concern to a relevant third party, and that factor 2.2(a)(xi) is applicable. In particular, I have considered that the disclosure of media rates and associated values is considered strictly commercial in confidence in the third-party contracts, and disclosure is likely to result in a breach of those contracts. I have also considered that the information relates to pricing methodology of the relevant third-party which is not otherwise publicly available. I acknowledge the third party's concerns that disclosure is likely to prejudice their business affairs as details would provide competitors with insights into pricing structures, and that such knowledge would enable competitors to undercut rates, impact customer relationships or retention, and undermine their competitive position in the market. I have placed significant weight on this factor, as the objections demonstrate the significant likelihood of harm to trade secrets or business affairs if the information was disclosed.

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I have also given consideration to the relationship between TCCS and Go Transit, in particular the expectation that TCCS acts within its contractual agreement and in good faith.

Actions contrary to these expectations are likely to prejudice the competitive commercial activities of TCCS and inhibit TCCS' ability to obtain confidential information. The risk of harm to commercial activities of TCCS are also likely to be broad reaching, as vendors considering entering into contract with TCCS require assurance that TCCS will act in good faith. I have placed significant weight on Schedule 2.2(a)(xii) and 2.2(a)(xiii) and find that the disclosure of the requested information is likely to cause significant harm to Go Transit's trade secrets and business affairs, and in turn prejudice the competitive commercial activities of TCCS.

25. In their Ombudsman review application, the applicant said:

The documents requested provide transparency and accountability around the use of taxpayer funds by the ACT Government and the schools use of Commonwealth recurrent funding provided for the education and care of children...

The release of these documents also provides accountability around whether or not rates and charges by the contractor are fair and reasonable or otherwise, and whether the ACT government is benefiting financially from potential above market rates being charged by a contractor...

Contrary to the claims of the decision maker, there are no competitors to Go Transit Media Group in the ACT as they hold the SOLE ACT Government contract in relation to the Management of Bus and Light Rail Advertising on ACT public transport. No competitors were identified by the third-party consultation or the decision maker...

the Federal education minister identified that BCEL/BCC was paying above market rates for bus advertising and this formed a consideration in the decision on 17 May 2021 that BCEL did not satisfy the fit and proper requirements to be the Approved Authority for public funding for BCC. Consequently, the Minister imposed conditions on their financial management and governance and required review of expenditure on advertising amongst other elements which were being paid at above market rates.

This decision by the Federal Education Minister was reviewed by the Administrative Appeals Tribunal during 2022 and 2023 which ultimately concluded in the school conceding it was unfit and agreeing to conditions imposed as set out in AAT consent orders signed on 12 April 2023 which included a requirement to conduct market testing of major cost items which had not been subject to a tender process including "advertising" (Clause 3.20)....

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Given both the Federal Education Minister and the Tribunal have indicated above market rates are being paid for advertising with Go Transit, we seek transparency around this issue by publication of relevant documents...

The school's current financial situation has attracted significant media interest and questions from Senator David Pocock in Senate Estimates to the Federal Education Schools Assurance Office who indicated the school is in breach of the AAT Conditions and ongoing funding is now at risk with the Ministers office considering pausing or ceasing funding. The ongoing and historical expenditure of advertising on a taxpayer funded public transport system is relevant and of significant public interest in this context.

26. In response to TCCS's consultation, GoTransit stated:

... details associated with GoTransit such as media charges and values in these records should be classified as commercial in confidence.

Our contracts with clients strictly prohibit the public release of such information. Disclosing these details would violate our contractual obligations, which explicitly require confidentiality regarding media rates and associated values.

Moreover, the public release of this information would likely be detrimental to GoTransit & Transport Canberra. Our rates are established based on individual contract circumstances, with different discount levels applied to various clients. Publicly disclosing this sensitive information could lead to contractual repercussions with our existing clients, who may perceive the information as preferential treatment or unfair pricing practices.

Additionally, releasing these details would provide our competitors with valuable insights into our pricing structures. Such knowledge would enable them to undercut our rates, potentially poaching our clients and undermining our competitive position in the market.

27. These submissions are discussed in more detail below.

Consideration

28. The key issue to be decided in this Ombudsman review is whether the advertising revenue spreadsheet is, on balance, contrary to the public interest information.

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Public interest test

29. To determine whether disclosure 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
- unless, on balance, disclosure of the information would be contrary to the public interest, allow access to the information.

Factors favouring disclosure

30. TCCS identified 2 factors favouring disclosure of the advertising revenue spreadsheet. I do not consider any additional factors apply to the advertising revenue spreadsheet for the reasons set out below.

Contribute to positive and informed debate on important issues or matters of public interest (Schedule 2, s 2.1(a)(ii))

31. The existence of a reasonable expectation that disclosure could contribute to positive and informed debate on important issues or matters of public interest is a factor that favours disclosure under the FOI Act.

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32. In the decision notice, TCCS identified the advertisements for Brindabella Christian College (BCC) and its Early Learning Centres (ELC) (BCC and ELC) have received attention broadly and could contribute to positive and informed debate on matters of public interest.
33. The applicant submitted that the disclosure of information about costs for advertising on public transport by an education charity that is subject to certain approval conditions because of compliance action is of significant public interest.⁴
34. BCEL is a large, registered education charity and the approved authority under the *Australian Education Act 2013* (Cth) operating BCC.
35. BCEL has received media attention following regulatory action involving the school's governance and concerns about financial management.⁵ By their nature, advertisements for BCC were displayed on public buses and I note the advertisements themselves have received media attention.⁶
36. Medium and large entities registered under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (ACNC Act) must give the Commissioner a financial report for a financial year.⁷ The financial report must include financial statements prepared by the accounting standards.⁸

⁴ [Brindabella Christian Education Limited v Minister for Education \(No. 2021/3753\) Conditions on Approval – Brindabella Christian Education Limited \(12 April 2023\)](#).

⁵ [The Canberra Times, 'Ministers still mulling action against Brindabella Christian College' \(15 January 2025\)](#); [The Canberra Times, 'Education Minister takes action against Brindabella Christian College' \(16 September 2024\)](#); [The Canberra Times, 'Brindabella Christian College staff call for board to resign immediately' \(18 December 2024\)](#).

⁶ [The Canberra Times, 'Private school buys \\$100K robot dog while underpaying staff' \(13 June 2024\)](#).

⁷ [Australian Charities and Not-for-profits Commission Act 2012 \(Cth\)](#) (ACNC Act) s 60-10.

⁸ [Australian Charities and Not-for-profits Commission Regulations 2022 \(Cth\)](#) s 60.10(1).

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37. BCEL's financial report for the 2023–2024 financial year is currently not available and is listed as 'overdue' on the Charity Register.⁹ Previous financial reports of BCEL have included the total amount spent on 'advertising and marketing'.¹⁰
38. A non-government school's registration is subject to conditions including compliance with any registration standards.¹¹ One of the registration standards is that the proprietor of a registered school must ensure the school has access to adequate financial resources for its viable operation.¹²
39. I agree disclosure of the advertising revenue spreadsheet would reveal information about the amount spent on advertising by BCEL with GoTransit, which is not otherwise currently publicly available, and may contribute to positive and informed debate about the school's financial viability and capacity to comply with school registration standards.
40. However, disclosure of the advertising revenue spreadsheet alone would not provide sufficient information to contribute to positive and informed debate on the operation of education charities or the management of advertising contracts on public transport.
41. Release of the advertising revenue spreadsheet would reveal the amount spent by BCEL on advertising on buses and not the total amount spent on advertising and marketing. Further, release of part of the advertising revenue spreadsheet without the remainder of the financial report would only provide limited insight into the financial position of BCEL.

⁹ [Australian Charities and Not-for-profits Commission, Charity Register, Brindabella Christian Education Limited, Financials & Documents.](#)

¹⁰ [Brindabella Christian Education Limited, Financial Statements \(2021-2022 FY\)](#) page 7.

¹¹ [Education Act 2004 \(ACT\)](#) s 93(a).

¹² [Education Regulation 2005 \(ACT\)](#) Schedule 2.4.

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42. I attribute minor weight to this factor.

Inform the community of the government's operations (Schedule 2, s 2.1(a)(iii))

43. A public interest factor favouring disclosure is where giving access to information could reasonably be expected to inform the community of the government's operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community.

44. In making the original decision, TCCS identified disclosure of the advertising revenue spreadsheet could reasonably be expected to inform the community of the government's operations as the information relates to a commercial agreement between TCCS and Go Transit.

45. The applicant submitted release of the advertising revenue spreadsheet would demonstrate whether the rates and charges imposed by the contractor are fair and reasonable, and if the ACT Government is financially benefiting from above market rates being charged.

46. I accept the advertising revenue spreadsheet relates to the commercial activities of GoTransit and TCCS, where disclosure would reveal the rates charged and the proportion of the fees received by GoTransit and TCCS, providing some insight into the government's operations.

47. However, I agree with GoTransit's submission that the amount charged for advertisements is a commercial decision of GoTransit and not TCCS, as BCEL has a separate agreement with GoTransit for the advertisements.

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48. Further, I am not satisfied release of the advertising revenue spreadsheet would allow a person to assess if above market rates were being charged. While the advertising revenue spreadsheet refers to certain campaigns and their cost, it is not clear for example the length of time each product was displayed, the number of vehicles or details of the product itself (e.g. full graphic wrap).
49. I note total revenue for advertisements displayed on buses and light rail vehicles received by the ACT Government is published in the TCCS Annual Report.¹³ Details of the Contract are also publicly available.¹⁴
50. I attribute minor weight to this factor.

Factors favouring nondisclosure

51. TCCS identified 3 factors favouring non-disclosure of the advertising revenue spreadsheet.

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

52. 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.
53. GoTransit offers clients advertising solutions on transit vehicles and was contracted by the ACT Government to display advertisements on the exterior and interior surfaces of Territory owned ACT Internal Omnibus Network (ACTION) buses, and responsible for the installation, repair and removal of all advertising campaigns managed by GoTransit.¹⁵

¹³ [Transport Canberra and City Services \(TCCS\) Annual Report 2023-2024](#), page 334.

¹⁴ [Contract - 2016.27218.210](#).

¹⁵ [Contract - 2016.27218.210](#).

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54. Both TCCS and GoTransit have submitted disclosure of the advertising revenue spreadsheet would prejudice the business affairs of GoTransit because release could result in negative repercussions with existing clients (noting rates are based on individual contract circumstances, discounts etc.) and give their competitors insight into pricing structures.
55. In their Ombudsman review application, the applicant submitted that release would not prejudice the business affairs of GoTransit because under the Contract for advertising management services they are the only supplier. The applicant also stated no competitors were identified by TCCS or GoTransit.
56. While I accept GoTransit is the only supplier under the Contract, I do not agree that GoTransit operates without any competitors in the advertising industry. While potential clients may only have one option for advertising on ACTION buses in the ACT, I consider there are other competitors operating in the ACT who provide out-of-home advertising services.¹⁶
57. Naturally, while the advertisements themselves are public, I do not consider advertising revenue spreadsheet of this kind is generally well-known or publicly available, particularly noting 'price components' was identified as confidential text under the Contract.¹⁷
58. As discussed above at [46], while the advertising revenue spreadsheet does not completely describe each advertising product, I consider release of this information would reveal detail about pricing structures noting the information covers products purchased by a single client during the last 4 financial years.

¹⁶ [The Mobile Billboard Company, Big impact outdoor media, Oms Media.](#)

¹⁷ [Contract - 2016.27218.210.](#)

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59. I consider release of the advertising revenue spreadsheet could prejudice the ability of GoTransit to operate competitively because release of detail about the prices set by GoTransit for advertisements on ACTION buses could be utilised by a competitor to approach potential clients with a more attractive offer.
60. However, I do not consider there is sufficient information in the advertising revenue spreadsheet for an existing client to perceive the rates they are paying are 'unfair' or that BCEL received 'preferential treatment'.
61. I am not satisfied that disclosure would impact contracts with existing clients noting GoTransit's own submission that price is dependant on the individual contract circumstances and those commercial arrangements have commenced.
62. I attribute minor weight to this factor.

Prejudice an agency's ability to obtain confidential information (Schedule 2, s 2.2(a)(xii))

63. A factor favouring nondisclosure is where disclosure could reasonably be expected to prejudice an agency's ability to obtain confidential information.
64. In the decision notice, TCCS expressed release of the advertising revenue spreadsheet would likely result in a breach of contractual obligations. In the Ombudsman review application, the applicant said they are not advocating for any breach of contract, but release of the information would provide transparency.

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65. It appears TCCS holds the advertising revenue spreadsheet because this information was provided by GoTransit to TCCS as part of reporting requirements under the Contract.¹⁸
66. The Contract provides that confidential text is defined as any text of the Agreement that, for the purposes of the *Government Procurement Act 2001* (ACT) either party proposes should not be published and which is specified in item 7 schedule 1.¹⁹
67. The Contract provides individual pricing components are confidential text of which the Territory is satisfied disclosure would be an unreasonable disclosure of information about the business affairs of a person.²⁰ I note GoTransit does not consent to the release of the information.
68. I accept disclosure of information which TCCS has agreed not to disclose without the consent of GoTransit could reasonably be expected to affect the ability of TCCS to assure contractors that confidential information provided to TCCS will remain confidential in accordance with the terms of those commercial agreements.
69. As discussed in 'DF', I consider there is substantial public interest in ensuring agencies can obtain confidential information to engage and monitor contracted service providers.
70. I attribute significant weight to this factor, as it is reasonable to expect entities may either choose not to provide confidential information or require more

¹⁸ [Contract - 2016.27218.210](#) clause 1.14 page 30.

¹⁹ [Contract - 2016.27218.210](#) page 2. Definition of 'Confidential Text'.

²⁰ [Contract - 2016.27218.210](#) Schedule 1 Items 7 and 8; [Government Procurement Act 2001](#) s 18.

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significant restrictions on information sharing and disclosure in future procurement processes.²¹

Prejudice the competitive commercial activities of an agency (Schedule 2, s 2.2(a)(xiii))

71. A reasonable expectation disclosure could prejudice the competitive commercial activities of an agency favours against disclosure under the FOI Act.
72. In the decision notice, TCCS explained disclosure of the advertising revenue spreadsheet could harm the commercial activities of TCCS as vendors considering contracting with TCCS require assurance TCCS will act in good faith.
73. While I consider disclosure could impact the relationship between GoTransit and TCCS and potentially other contractors because of perceived non-compliance with the contract provisions regarding confidentiality, I am not persuaded this impact would prevent TCCS from generating revenue from the advertising space available on ACTION buses.
74. Release of this information would also not hinder TCCS's ability to procure advertising management services in the future.
75. Further, I do not consider TCCS competes for advertising space on ACTION vehicles as they are Territory owned and TCCS is therefore in a position to utilise advertising space as it wishes.
76. I attribute minor weight to this factor.

²¹ ['DF', Canberra Metro Pty Ltd and Transport Canberra and City Services \[2024\] ACTOFOI 16 \(23 September 2024\)](#) at [64].

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Balancing the factors

77. Having identified public interest factors favouring disclosure and factors favouring non-disclosure, I now must consider the public interest balancing test set out in s 17 of the FOI Act.
78. In this matter, I identified 2 public interest factors favouring disclosure and I attributed minor weight to these factors.
79. I considered 3 public interest factors favouring nondisclosure and attributed minor weight to 2 factors and significant weight to 1 factor.
80. Balancing public interest factors is not simply a case of quantifying the number of relevant factors for disclosure and non-disclosure, 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 disclosing the information has on the public interest.
81. The FOI Act has a pro-disclosure bias,²² 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'.²³
82. On balance, the factors favouring nondisclosure outweigh the public interest favouring disclosure of the advertising revenue spreadsheet.

²² [FOI Act s 17](#).

²³ [Explanatory Statement, Freedom of Information Bill 2016](#).

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Conclusion

83. For the reasons set out above, I confirm the decision made by TCCS under s 82(2)(a) the advertising revenue spreadsheet is, on balance, contrary to the public interest information.

David Fintan
Senior Assistant Ombudsman
Defence, Investigations, ACT & Legal