

## Decision and reasons of Senior Assistant Ombudsman

Application number:	AFOI-RR/25/80047
Applicant:	EA
Respondent:	Justice and Community Safety
Date:	1 April 2026
JACS reference:	2025/24168
Decision reference:	[2026] ACTOFOI 7
Catchwords:	<i>Freedom of Information Act 2016</i> – deciding access whether information is contrary to the public interest information – the information is personal information of the person making the request – reveal the reason for a government decision and any background or contextual information that informed the decision – prejudice the protection of an individual’s right to privacy or any other right under the Human Rights Act 2004 – prejudice trade secrets, business affairs or research of an agency or person – 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 requested documents held by the Justice and Community Safety Directorate (**JACS**) in relation to a flexible working arrangement.
3. JACS decided to give access to 6 documents in full and 19 documents in part.
4. The applicant sought review of the primary decision made by JACS to refuse access to part of the information identified.

5. For the reasons set out below, I **confirm** the decision made by JACS under s 82(2)(a) of the FOI Act because the information sought is not contrary to the public interest information.

### **Background to Ombudsman review**

6. On 22 April 2025, the applicant requested the following information:
  1. *"All documentation and correspondence relating to my application for flexible working arrangements - Regular Ptime Employment and its denial.*
  2. *All documentation and correspondence relating to the "status quo decision agreed between the ESA Commissioner and the UFU that prevents the use of 24-hour shifts as part of an FWA".*
  3. *All documentation and correspondence relating to my application for a variation and its denial. This request includes correspondence with other parties, including but not limited to UFU representatives or members.*
  4. *All documentation, details, and correspondence relating to the "ongoing dispute with the UFU" referred to in the attachment. This request includes correspondence with other parties, including but not limited to UFU representatives or members.*
  5. *All documentation and correspondence relating to the denial of my dispute against the refusal of my variation to a flexible work arrangement.*
  6. *All documentation and correspondence relating to my application to extend my flexible work arrangement, its denial, and the rejection of my dispute."*
7. JACS conducted searches and located 25 documents within the scope of the request.
8. On 17 July 2025, JACS decided to grant access to 6 documents in full and 19 documents in part.
9. On 22 July 2025, the applicant made a request for Ombudsman review.
10. On 4 February 2026, the parties were provided with my draft consideration.
11. On 6 February 2026, JACS accepted my proposed decision without providing further comments.

12. The applicant did not respond and did not provide any submission.

### **Information at issue**

13. The scope of this review does not include documents JACS decided to give access to in full.<sup>1</sup>

14. The key issue of this review is whether the information which was refused within the remaining 19 documents is contrary to the public interest information.

15. I have reviewed an unredacted copy of all 25 documents in the scope of the application, consisting of emails and attachments.

16. I found one attachment to document 25 is outside of the scope of the access application and as such it is not subject to the review.

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

- the applicant's review application and submissions
- JACS' primary decision
- the third parties' submissions
- the *Information Privacy Act 2014* (IP Act), and
- the FOI Act, particularly ss 6, 7, 16, 17, 35, 50, 72, Schedule 2.

### **Third party consultation**

18. JACS identified material within the scope of the access application which may be of concern to relevant third parties.

19. Prior to making its decision, JACS consulted the following third parties in relation to the research papers prepared for the purpose of dealing with the situation raised by the applicant (attachments to document 25):

- The University of Newcastle Australia, and

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<sup>1</sup> Documents 6, 7, 13, 15, 18, 21.

- United Firefighters Union ACT Branch (the Union).
20. The University of Newcastle did not object to the release of the report it prepared.
21. The Union objected to the release of the report it had prepared. The Union stated in its response:
- *We believe the information contained in the study is privileged and confidential information.*
  - *The information is the intellectual property of the United Firefighters Union.*
  - *We believe the study has no relevance to the information request for documentation, details, and correspondence relating to the decision agreed between the ESA Commissioner and the UFU that prevents the use of 24 hour shifts as part of an FWA.*
  - *The content does not deal with FWA's and 24 hours shifts.*
22. As a result, JACS refused to give access to the report prepared for the Union on the grounds of business affairs, trade secret and research, and it was withheld from the bundle of documents.
23. Neither of the third parties requested to participate in this review.

### **Relevant law**

24. 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.<sup>2</sup>
25. 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;

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<sup>2</sup> Section 35(1)(c) of the [Freedom of Information Act 2016 \(ACT\)](#) (FOI Act).

or

(b) the disclosure of which would, on balance, be contrary to the public interest under the test set out in section 17.

26. 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.
27. 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.
28. 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.
29. Section 72 of the FOI Act provides that a person seeking to prevent disclosure of government information has the onus of establishing that the information is contrary to the public interest information.
30. 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**

31. In the primary decision, JACS redacted the mobile phone numbers of the staff members on the basis of protecting personal privacy, acknowledging that the applicant may have known of this information. JACS also redacted some material relevant to the management functions on the ground disclosure could result in 'undermining the current processes in place for handling disputes and damage the working relationship between ACTF&R and the

UFU'. JACS also refused access to one report in full because of confidentiality.

32. The applicant in the review application requested access to all documents within the scope. The primary decision granted access to 6 documents in full and 19 documents in part.

33. These 19 documents are subject of the review.

34. In the application for review the applicant stated:

I wish to seek a review of the attached decision on the ground that I believe the decision-maker has refused access to information or parts of information that were requested. The documents provided are heavily redacted.

I request that all the requested information be provided, including but not limited to the redacted information.

## **Consideration**

### ***Public interest test***

35. 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**

36. JACS relied on one factor favouring disclosure.
37. As the applicant requested all 'documentation and correspondence relating to the denial of my dispute against the refusal of my variation to a flexible work arrangement', I consider there is a further relevant factor favouring disclosure.

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

38. In its decision, JACS relied on one factor favouring disclosure, being that the information is personal information of the applicant as stated in Schedule 2, s 2.1(b)(i) of the FOI Act.
39. I agree that this factor is relevant to the request as the applicant sought information regarding their application for flexible working arrangements.
40. I consider the personal information about the applicant in the key information is either known to the applicant or was previously provided to the applicant as part of the process.
41. I attribute moderate 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)**

42. An additional factor favouring disclosure is where disclosure could reasonably be expected to reveal the reason for a government decision and background or contextual information that informed the decision.
43. I consider that this factor is relevant because the information at issue concerns a workplace dispute about the applicant's requested work arrangements.
44. The key information is the personal information of the applicant as it

discussed the applicant's working arrangements and opinion of the employer regarding it.

45. However, I consider the material explaining this particular decision to deny a flexible working arrangement contains broader contextual information that informs the decision to deny flexible working arrangement. This may provide insight into the decisions made by government to approve or deny flexible working agreements, which is a matter of public interest.

46. I attribute minor weight to this factor as the information at issue, particularly the information about the reasons to deny the applicant's request for 'variation to a flexible work arrangement', is a matter of interest for the public.

47. However, I note that a majority of the information is related to one individual decision for flexible working agreement. As a result, would only demonstrate limited information about the government's consideration of flexible working agreements.

***Factors favouring nondisclosure***

48. JACS relied on the following 3 factors favouring nondisclosure.

***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)***

49. A factor favouring nondisclosure is where 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 2004* (**Human Rights Act**).

50. 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.

51. The following elements can be considered in deciding whether disclosure of personal information would be an unlawful or arbitrary interference with an individual's privacy. They include:

- 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, and
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act.

52. The IP Act sets out how personal information is 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<sup>3</sup>.

53. TPP 6 provides 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.

54. An agency may use or disclose non-sensitive personal information for a

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<sup>3</sup> Section 11 of the [Information Privacy Act 2014](#) (ACT) (IP Act).

secondary purpose if the use or disclosure is related to the primary purpose; required or authorised by law; or a permitted general situation exists.

55. JACS decided to redact the mobile phone number of a staff member from the information at issue.
56. The personal information in the information at issue was obtained by ACT Fire & Rescue (ACTF&R) for the primary purpose of management of its staff—in this instance, ensuring the safety of its staff.
57. I consider the disclosure of the information at issue for a secondary purpose would not be reasonably expected by the individuals who provided their personal information.
58. I afford significant weight to this factor.

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

59. A factor favouring nondisclosure is where disclosure of information could reasonably be expected to prejudice trade secrets, business affairs or research of an agency or person.
60. In its decision, JACS considered this a relevant factor and applied it to the attachment to the document 25 on the ground that the research paper was prepared for the Union.
61. In third party consultation, the Union claimed the document was confidential, is the intellectual property of the Union and is not relevant to the information request. Further, the Union highlighted the research paper does not deal with flexible working arrangements or 24-hour shifts.
62. I agree that the research paper is not within the scope of the request and as a result, I do not consider this a relevant factor.

***Prejudice the management function of an agency or the conduct of industrial relations by an agency—Schedule 2, s 2.2(a)(xv)***

63. A factor favouring nondisclosure is where disclosure could reasonably be expected to prejudice the management function of an agency or the conduct of industrial relations by an agency.
64. The management function of an agency includes activities such as recruitment, training, performance reviews, promotion, counselling, discipline, compensation and occupational health and safety.
65. I agree that the key information redacted under this factor is within the management function of the agency because it relates to a workplace dispute and a flexible working arrangement decision.
66. I also accept that there is a public interest in ensuring accountability for government decisions in managing its employees.
67. The key information relevant to this factor discussed the *Fair Work Act 2009*, the ACT Fire and Rescue Enterprise Agreement 2020–2024 and other publicly available materials. It also contained the application in the dispute, as well as an explanation to the applicant about why the request for the flexible working arrangement was not supported and denied.
68. JACS considers releasing the internal communications drafting and developing a response to the applicant would prejudice its management function.
69. In explaining the reasons for the redactions, JACS stated:
- Releasing the drafts can reasonably be expected to hinder the management function of JACS by undermining the confidentiality of internal deliberations that support the development of an appropriate response to workplace matters.*
70. I consider that disclosure of such information could reasonably be expected to prejudice JACS's management function though inhibiting internal

deliberations. Release of this information might lead to concerns by supervisors and managers that discussions and support about how to proceed with workplace matters would be released. This could inhibit necessary engagement about central workplace matters.

71. As I have raised in other FOI decisions<sup>4</sup> related to the management function of an agency or the conduct of industrial relations by an agency, where information relates to employment matters, the FOI Act may not be the most appropriate framework for release of information, and I encourage directorates to look at alternative mechanisms for release.
72. In these circumstances, I consider that the applicant was provided with the reasoning why the flexible working arrangement was not supported.
73. I attribute significant weight to this factor.

### ***Balancing the factors***

74. 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.
75. In this matter, I identified 2 factors favouring disclosure and awarded moderate weight to one factor and minor weight to the other.
76. I also identified 2 factors favouring nondisclosure and awarded significant weight to both. I determined that one factor favouring nondisclosure was not relevant because the information contained within the Union report does not appear to be in scope of the access application request.
77. Balancing public interest factors is not simply a case of quantifying the

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<sup>4</sup> [DP and Justice and Community Safety Directorate \[2025\] ACTOFOI 13 \(19 September 2025\)](#)

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.

78. The FOI Act has a pro-disclosure bias,<sup>5</sup> 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'.<sup>6</sup>
79. JACS acknowledged that the applicant may have the mobile phone numbers of the people working in the same place however, in my view, release of the mobile phone numbers would not promote the object of the FOI Act as their disclosure would not reveal information about the government's operation or enhance scrutiny of the decision-making.
80. Additionally, the release of that information could cause harm to the privacy of individuals, and, on balance the factor favouring nondisclosure in protecting personal privacy outweigh factor favouring disclosure, and I agree to redacting the mobile phone numbers.
81. As outlined above, in relation to the prejudicing the management function, JACS stated the '*confidentiality of internal deliberations that support the development of an appropriate response to workplace matters because the drafts can reasonably be expected to hinder the management function of JACS*'.

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<sup>5</sup> Section 17 of the [FOI Act](#).

<sup>6</sup> [Explanatory Statement, Freedom of Information Bill 2016](#).

82. I have determined release of drafts may hinder management functions by creating a chilling effect on open engagement and discussions between supervisors and management on important workplace matters. Further, I consider the applicant was provided with the reasons the flexible working arrangement was not supported.
83. On balance, the factors favouring nondisclosure outweigh the factors favouring disclosure.

### **Decision**

84. For the reasons set out above in this decision, I confirm JACS decision to give partial access under s 82(2)(a) of the FOI Act.

**Katrina Dwyer**

**Senior Assistant Ombudsman**

**1 April 2026**