

## Decision and reasons of Senior Assistant Ombudsman

Application number:	AFOI-RR/25/80042
Applicant:	'DN'
Respondent:	Chief Minister, Treasury and Economic Development Directorate
Respondent reference:	CMTEDDFOI 2025-166
Date:	29 August 2025
Decision reference:	[2025] ACTOFOI 11
Catchwords:	Freedom of Information Act 2016 – 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. My decision is to **confirm** the Chief Minister, Treasury and Economic Development Directorate's (**CMTEDD**) decision under s 82(2)(a) of the FOI Act that the requested information is not held.
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 application.

## Background to Ombudsman review

4. On 9 May 2025, the applicant applied to CMTEDD for:

Information held by CMTEDD from 1 January 2023 to 31 December 2024 regarding the 1,000+ luxury apartment development in Lyneham:

1. All records, including briefings, emails, and meeting minutes, mentioning or involving:
  - Chief Minister Andrew Barr or his office.
  - Minister Yvette Berry or her office.
2. Reports or assessments on the development's economic, traffic, or education impacts, including references to Brindabella Christian College, Lyneham High, or Lyneham Primary.
3. Correspondence with EPSDD, TCCS, or Education Directorate on the development's approval or impacts.
4. Records discussing a "Super-school" or school consolidation in Lyneham including redevelopment or restoration of Lyneham Oval.

**Format:** Electronic copies, searchable PDFs.

**Exclusions:** Exclude public economic reports.

5. On 19 June 2025, CMTEDD provided a decision to the applicant advising no documents within the scope of the request were held by CMTEDD.
6. On 28 June 2025, the applicant contacted CMTEDD and asked CMTEDD to confirm whether the searches for information included terms like 'Newlyne', 'Yowani', 'Block 7, Section 67 Lyneham' or 'TP Dynamics'; whether documents involving the Chief Minister's office or Minister Berry's office were searched and whether searches covered correspondence with other directorates.
7. On 30 June 2025, CMTEDD acknowledged the correspondence from the applicant and advised the applicant could seek Ombudsman review of their decision.
8. On 10 July 2025, the applicant applied for Ombudsman review under s 73 of the FOI Act.

9. On 21 July 2025, in response to the notice of Ombudsman review issued under s 75 of the FOI Act CMTEDD provided copies of search minutes to our Office.
10. On 23 July 2025, our Office sought further information from CMTEDD about the interpretation of the scope of the access application, specifically whether CMTEDD interpreted the scope of the request to include information about the Newlyne development.
11. On the same day, CMTEDD responded confirming that the scope was interpreted as a request for information about a 1,000-luxury apartment development.
12. On 11 August 2025, I provided my preliminary view to the parties in a draft consideration.
13. On the same day, CMTEDD indicated it accepted the draft consideration, making no further submissions.
14. On 13 August 2025, 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**

15. 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>1</sup>
16. Section 34 of the FOI Act requires that an agency or Minister deciding on an access application must take reasonable steps to identify all government information within the scope of the application.<sup>2</sup>

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

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

17. Respondents may, at any time, contact the applicant to clarify the scope of the application (a clarification request).<sup>3</sup>

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

- the applicant's review application of 10 July 2025, correspondence to CMTEDD dated 28 June 2025 and submissions of 30 July 2025 and 13 August 2025 made to our Office
- CMTEDD's decision of 19 June 2025
- the ACT FOI guidelines, made under s 66 of the FOI Act
- the FOI Act, in particular s 34, and
- submissions of CMTEDD dated 21 July 2025 and 23 July 2025.

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

19. In its decision notice, CMTEDD said:

A search of records has failed to identify any documentation in relation to [the applicant's] request. The searches were conducted using the information [the applicant] provided which specifically states documents held by CMTEDD. I am satisfied that appropriate searches were completed and that no documents within scope of [the applicant's] requested information are held.

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

CMTEDD's search failed to meet s 44(2) obligations for reasonable searches (ACT Ombudsman Guidelines, para 3.5), as it ignored standard terms like "Newlyne," "Yowani," "Block 7, Section 67, Lyneham," or "TP Dynamics." The development's scale (800–1,200 dwellings, potentially 5,000 residents) and Chief Minister Barr's ribbon-cutting (Canberra Times, 26 April 2025) suggest CMTEDD holds briefings or records.

21. In its response to the Ombudsman's s 75 notice, CMTEDD said:

It is possible that [the applicant] misunderstood my response in saying that CMTEDD holds no documents within scope. I was simply trying to explain that the decision only related to CMTEDD and that the other directorates he had approached may have information.

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<sup>3</sup> Section 34(2) of the FOI Act.

As you will see from the material we have provided for this review, we conducted information search requests quite broadly and no information within scope was found.

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

I urge a full review under s 73, as CMTEDD's narrow interpretation fails s 34 obligations, given significant public interest and my personal targeting.

CMTEDD's claim of no documents, based on a "1,000-luxury apartment development" interpretation, is inadequate (s 34; ACT Ombudsman Guidelines, para 3.5). The development's scale (800–1,200 dwellings, potentially 5,000 residents, Allhomes, 27 November 2024; Canberra Times, 22 June 2023: <https://www.canberratimes.com.au/story/8607500/massive-development-reshapes-canberranorthern-gateway/>

And Chief Minister Barr's ribbon-cutting (Canberra Times, 26 April 2025) suggest briefings or records exist. Over 120 local media stories in the past 12 months (e.g., Riotact, 6 November 2022; ABC News, 21 June 2023) and BCEL's impact (1,050 students, Region News, 8 July 2025: <https://region.com.au/application-to-wind-up-brindabella-college-on-grounds-of-insolvency-set-for-federal-court/668544/>

Demonstrate public interest under s 17 (Schedule 2.1(a)(i)–(iii)). My ATO targeting (17–18 February 2025: Kitto's refusal, Berry's announcement, ATO wind-up, Canberra Times, 19 February 2025 <https://www.canberratimes.com.au/story/8895636/brindabella-christian-college-faces-ato-windup-application/>

Further justifies disclosure, as documents may reveal coordination with EPSDD, TCCS, or Education Directorate.

### **Scope of review**

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

24. Rather, given CMTEDD's 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?**

25. Section 34 of the FOI Act required CMTEDD to 'take all reasonable steps to identify all government information within the scope of the application'.

26. 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 the scope of what is required will depend on the nature and subject matter of the request and at a minimum would include a search of electronic records and physical records in cases where that is applicable.<sup>4</sup>
27. In this matter the applicant sought access to information within a particular timeframe (1 January 2023 to 31 December 2024) about a '1000+ luxury apartment development' in the suburb of Lyneham including records involving the Chief Minister and Minister Berry, reports or assessments relating to identified schools, inter-directorate correspondence and records about school consolidation including redevelopment of Lyneham oval.
28. The phrasing of the application was ambiguous, specifically in the description of the development project subject of the application which provides only a general location and reference to size/type of the development. Section 34(3) provides that a respondent may contact the applicant to clarify the scope of the application at any time.
29. CMTEDD could have asked the applicant to confirm whether their reference to a '1000+ luxury apartment development' was a request for information about the Newlyne development on Northbourne Avenue, Lyneham.<sup>5</sup>
30. It would have been appropriate for CMTEDD to clarify the scope of the application with the applicant especially when one of the consulted business areas suggested in response to the search request that a particular development project may have been relevant (Newlyne development).

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<sup>4</sup> [Explanatory Statement](#), Freedom of Information Bill 2016 (ACT).

<sup>5</sup> [Newlyne, 'Location' \(15 August 2025\)](#).

31. I consider CMTEDD had opportunities to clarify the scope of the request with the applicant early on but chose not to seek further information and instead took a narrow view of the scope of the application.
32. Importantly, respondents should contact applicants to clarify the scope of an applicant to achieve the objects of the FOI Act being to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of the maximum amount of government information.<sup>6</sup>
33. The Office has reviewed the internal search consultations provided by CMTEDD. In the evidence of searches provided by CMTEDD, a copy of the applicant's access application dated 9 May 2025 was included in the search minute requests sent to business units and officers.
34. The search minute directs officers to complete searches for records within the scope of the access application provided including a search of all electronic and non-electronic record keeping databases, systems, and files.
35. The search minute includes guidance for officers stating that information can include but is not limited to the following (in electronic / non-electronic forms; draft or final forms):  
  
Notes and correspondence; records of meetings and telephone conversations; files; emails; Cisco Jabber files; Teams Message logs; media releases; minutes; briefings; meeting minutes; submissions; invitations; tenders; external consultation documentation; contracts; notebooks; diaries; photos; sound and visual recordings; maps; diagrams; drawings; and plans.
36. These searches included providing a copy of the access application to the Office of the Chief Minister. The Office of the Chief Minister noted that the access application expressly stated it was a request for 'information held by CMTEDD' and no information in the scope of the application was identified.

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<sup>6</sup> FOI Act s 6(f).

37. In submissions provided to our Office, the applicant raised the Newlyne development's scale and the Chief Minister attendance at a ribbon cutting event for the Newlyne experience centre supported their position that information within the scope of their application must be held by CMTEDD.
38. I do not agree with the applicant that the scope of their application was expressed as a request for information about the Newlyne development. While the Newlyne development is reported to involve the proposed construction of 'up to 1000 homes' in 3 stages over the next 8-10 years, the first stage of the development is for approximately 160 residences including townhouses and apartments.<sup>7</sup>
39. I consider the searches for the requested information undertaken by CMTEDD to be reasonable. CMTEDD has undertaken searches of all expected locations where information about a 1000+ luxury apartment development in Lyneham may have been stored. This included six business areas conducting searches of their records to locate any documents that may be within scope of the application.<sup>8</sup> The business areas did not identify any documents within scope of the request.
40. I am of the view CMTEDD conducted searches for the information contained in the access application (being a 1000+ luxury apartment development in Lyneham). I do not agree reasonable searches would have included conducting key word searches for terms which were not in the scope of the access application as suggested by the applicant following the decision.

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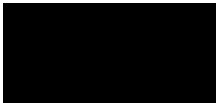
<sup>7</sup> The Canberra Times, ['Luxury north Canberra development to include hotel, restaurants and up to 1000 homes'](#) (24 April 2025).

<sup>8</sup> Including Access Canberra Business and Coordination, Economic Development, Treasury coordination, Suburban Land Agency, Policy and Cabinet coordination and Construction and Planning regulation.

41. I note the applicant did clarify scope and provide further information, but only after the decision had already been made by CMTEDD.
42. It is open to the applicant to make another access application that contains the additional information they provided in their review request and submission in response to the draft consideration.
43. For the purposes of this Ombudsman review, I am satisfied that all reasonable steps have been taken to identify government information held by CMTEDD within the scope of the request.

**Decision**

44. For the reasons set out above, my decision is to **confirm** CMTEDD's decision under s 82(2)(a) of the FOI Act that the information is not held.



**Katrina Dwyer**

**Senior Assistant Ombudsman**

**29 August 2025**