

Decision and reasons of Senior Assistant Ombudsman

Application number:	AFOI-RR/25/80009
Applicant:	'DP'
Respondent:	Justice and Community Safety Directorate
Respondent reference:	2024/117615
Date:	19 September 2025
Decision reference:	[2025] ACTOFOI 13
Catchwords:	Freedom of Information Act 2016 – deciding access – whether information is contrary to the public interest information – Information is the personal information of the person making the request – Contribute to the administration of justice generally, including procedural fairness – Prejudice the protection of an individual’s right to privacy or any other right under the Human Rights Act – Prejudice an agency’s ability to obtain confidential information – Prejudice the management function 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 the decision made by the Justice and Community Safety Directorate (JACS) on 2 December 2024, giving full access to 2 documents, partial access to 5 documents and refusing access to 7 documents.

3. JACS redacted a significant part of the material it decided was contrary to the public interest to release.
4. My decision is to **vary** JACS's decision under s 82(2)(b) of the FOI Act giving access to more information as it is not contrary to the public Interest information.

Background to Ombudsman review

5. On 22 October 2024, the applicant applied to JACS for access to the following:

All information regarding a provisional assessment that was conducted in relation to a complaint that was submitted against me, including but not limited to interviews from other employees and emails.

6. The respondent conducted searches and located 14 documents within the scope of the request.

7. On 2 December 2024, the respondent granted full access to 2 documents, partial access to 5 documents and refused access to 7 documents.

8. On 4 February 2025, the applicant requested an Ombudsman review of the decision on the ground that:

the majority of the information was redacted including interview with a selected few out of the many who were present. I wish to obtain the information to ascertain if I have any recourse available.

9. On 8 August 2025, I provided the parties with my draft consideration setting out my preliminary view.
10. On 13 August 2025, JACS responded and accepted my preliminary decision without providing any further submissions.
11. The applicant responded on 24 August 2025, and provided the following submissions:

I disagree with draft consideration AFOI-RR/25/80009, on the basis the decision denied disclosure of the preliminary assessment witness interview statements.

12. The applicant stated there is no evidence provided that the reports would be kept confidential, and they were denied procedural fairness.
13. The applicant also stated they had identified another factor favouring disclosure under the schedule 2, s2.1(a)(xiii).
14. However, I had discussed this factor as relevant in this review in paragraphs 44 – 49 below and I awarded a significant weight to it making a decision to release more documents than was released under the primary decision.
15. In relation to the confidentiality, JACS relied on 'complaints reporting process', adopted in the agency which is available for all employees, and it is a duty of the agency to comply with it. For that reason, I agreed with the primary decision not to release the witness statements.

Preliminary issue – scope

16. As a preliminary issue, I have considered whether all the information at issue is within the scope of this Ombudsman review.
17. I am satisfied that document 12 is out of scope of the request.
18. This document is an email chain dated 26 September 2024, and relates to legal advice regarding a Provisional Improvement Notice (PIN) issued as a result of the workplace incident that led to the complaint made against the applicant.
19. I am aware the applicant has sought access to the PIN and related information, which is subject to another Ombudsman review.

20. Although the legal advice was sought and provided regarding the workplace incident, it does not relate to the material within the scope, which is 'all information regarding a provisional assessment that was conducted in relation to a complaint that was submitted against [the FOI applicant]'.
21. In the course of this review the applicant confirmed their major concern is the information regarding the employees' interview material.
22. I note that part of document 12 has been released to the applicant by JACS following their primary decision and I do not intend to vary that decision.

Information at issue

23. The information at issue in this Ombudsman review is the material JACS refused to give access to, excluding document 12 as I consider it is not within the scope of this Ombudsman review.
24. The information at issue consists of 11 documents being emails relating to a workplace complaint and a preliminary assessment of the related workplace incident.
25. The key issue is whether the redacted information is contrary to the public interest information.
26. In making my decision, I have had regard to:
 - the applicant's access application and review application
 - the respondent's decision of 2 December 2024
 - the ACT FOI guidelines issued under s 66 of the FOI Act
 - the FOI Act, in particular Schedule 2
 - *Work Health and Safety Act 2011* (ACT) (WHS Act)
 - *Human Rights Act 2004* (ACT) (Human Rights Act)
 - *The Information Privacy Act 2014* (ACT) (IP Act)

- Relevant case law including *Francis and Australian Sports Anti-Doping Authority (Freedom of information)* [2019] AATA 12 (4 January 2019).

Relevant law

27. 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.¹
28. 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.
29. Schedule 1 of the FOI Act sets out categories of information taken to be contrary to the public interest to disclose.
30. 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.
31. 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.
32. 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.

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

33. 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

34. In applying the public interest test, JACS identified one factor favouring disclosure of the requested information, being that the information is the personal information of the applicant (schedule 2, s 2.1(b)(i)).

35. JACS also identified release of the information at issue could reasonably be expected to prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act (schedule 2, s 2.2(a)(ii)); prejudice an agency's ability to obtain confidential information (schedule 2, s 2.2(a)(xii)); and prejudice the management function of an agency or the conduct of industrial relations by an agency (schedule 2, s 2.2(a)(xv)).

36. In the decision notice JACS said:

The complaints reporting process is available to all JACS staff and volunteers, however the information is obtained with the assurance that these reports will be kept confidential as much as possible. It can be expected that JACS staff and volunteers would be reluctant to report concerns of misconduct if they believed their complaints or witness statements were to be made available to the person at the centre of their complaint or individuals outside of the HR process. The release of this information would undermine the directorate's ability to obtain this information in future HR related matters.

The ACT Ombudsman FOI Guidelines outlines that the 'management function' of an agency may include activities such as performance reviews, counselling, discipline, and occupational health and safety. Redactions have been applied to information related to the management of staff related issues as its release is reasonably expected to prejudice the management function of JACS and undermine staff trust in the confidentiality of related processes.

I note that the original complaint was provided to you...outside of the FOI process and as such the above considerations do not apply to this document as it is already available to you.

Redactions have also been applied to personal information included in the conversation records to protect the individual's right to privacy under the Human Rights Act 2004.

I note that while mobile phone numbers of staff are available to you, the release of information under the Act is unconditional and their release under FOI would be unreasonable disclosure of personal information. As such, minor redactions have been applied to this personal information.

37. The applicant stated in their review application:

I am an affected employee but I feel the only way I can access the information is under the ACT FOI Act.

There was a preliminary assessment conducted regarding a spurious complaint against me from [...] I am not a union member, but the PA was conducted by a union member interviewing other union members. Out of the 20 people present only a few were interviewed.

I requested all information regarding a provisional assessment that was conducted in relation to a complaint that was submitted against me, including but not limited to interviews from other employees and emails.

The majority of the information was redacted including interview with a selected few out of the many who were present. I wish to obtain the information to ascertain if I have any recourse available.

Consideration

38. I have carefully considered an unredacted copy of the information at issue.

Public interest test

39. 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

40. JACS identified in its decision one factor favouring disclosure relevant to this matter. In reviewing the information at issue, I have identified an additional factor favouring disclosure.

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

41. In its original decision, JACS relied on one factor favouring disclosure for a part of the material as being personal information of the applicant as stated in Schedule 2, s 2.1(b)(i) of the FOI Act.

42. JACS did not identify any other factors favouring disclosure.

43. In the FOI Act, personal information:²

- (a) means information or an opinion (including information forming part of a database), whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion; but
- (b) for an individual who is or has been an officer of an agency or staff member of a Minister, does not include information about –
 - (i) the individual's position or functions as an officer or staff member; or
 - (ii) things done by the individual in exercising functions as an officer or staff member.

44. I consider this factor is relevant in this case. I intend to afford significant weight to this factor, as release would give the applicant access to their own

² FOI Act, Dictionary, meaning of 'personal information'.

personal information, particularly in relation to a complaint made about them in the context of their employment.

Contribute to the administration of justice generally, including procedural fairness—Schedule 2, s 2.1(a)(xiii)

45. I have identified an additional factor favouring disclosure of the information at issue.
46. I consider this factor is relevant because disclosure of the information about the preliminary assessment, including witness statements, could contribute to the administration of justice generally including procedural fairness because the applicant is seeking access to the material in relation to a preliminary assessment of their behaviour at the workplace.
47. Procedural fairness is an important part of managing complaints and people who are affected should be provided with as much relevant information as possible so they can respond to allegations and ensure the assessment was conducted in accordance with legislation, rules and procedures.
48. Release of the information may assist the affected person to consider if further steps in the process are necessary and to have a further opportunity to respond to the complaint.
49. Although the applicant received a copy of the complaint, additional information contained in witness statements may assist in responding to the complaint. Further, some of the information within the statements is the personal information of the applicant in a way of opinion about the applicant.
50. I intend to award significant weight to this factor.

Factors favouring nondisclosure

51. JACS identified 3 factors favouring nondisclosure which applied to the information at issue.

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

52. A factor favouring nondisclosure is 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.

53. In its decision, JACS redacted mobile phone numbers of staff members to protect their right to privacy, although JACS noted that those numbers are known by the applicant. JACS also refused access to information in conversation records.

54. 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.

55. The following can be considered in deciding whether disclosure of personal information would be 'unlawful' or 'arbitrary':

- 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.

56. 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.³
57. TPP 6 provides if an agency holds personal information about an individual that was collected 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.
58. An agency may use or disclose non-sensitive personal information for a secondary purpose if the use or disclose is related to the primary purpose; required or authorised by law; or a permitted general situation exists.
59. The phone number was collected for the purpose of communication with that employee for work related matters and for the primary purpose of management of its staff - in this instance, ensuring the safety of its staff and ability to communicate but not to make that information publicly available.
60. I agree a phone number issued to a particular person is personal information, and its disclosure could harm the individual's right to privacy as it may lead to unwanted and irrelevant disturbance and necessity to change the number to avoid those calls.

³ [Section 11](#) of the *Information Privacy Act 2014* (IP Act).

61. The information at issue also consists of documents related to other employees who were involved in the incident. Those employees provided their statements explaining the situation and provided their opinion, evidence. I consider this factor applies to this information as those individuals are identified and would not expect their personal information to be released for a purpose unrelated to the preliminary assessment.

62. I intend to award significant weight to this factor in relation to the personal information of the staff noted above.

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

63. A factor favouring nondisclosure is disclosure of the information could reasonably be expected to prejudice an agency's ability to obtain confidential information.

64. This factor is likely to be particularly relevant where:

- the information that is sought is of a confidential nature, and
- it was obtained in confidence.

65. The information must be secret or known to a limited group to be considered as confidential in nature.⁴

66. In this case the information at issue is the material obtained for the preliminary assessment conducted in relation to the workplace incident. It includes records of conversation from numerous interviews with employees.

67. In its decision, JACS explained that 'Information is obtained with assurances of confidentiality, and if information gathered as part of this process is released, staff would be reluctant to report their concerns' and referred to the

⁴ *Francis and Australian Sports Anti-Doping Authority (Freedom of information)* [2019] [AATA 12](#) (4 January 2019) at [109].

'complaints reporting process' which is available to all JACS staff and volunteers.

68. The Fire and Rescue Enterprise Agreement⁵ outlines the process for undertaking preliminary assessments and provides that the principles of procedural fairness apply.

69. The agreement provides disclosure is strictly limited to the parties involved and decision-makers only:⁶

The assessment must be done in an expeditious manner and generally be limited to having communication (either oral or written) about the issue, with relevant employees, and, if requested, their representatives.

70. Having considered the complaints process and the assurances given to participants, I accept release of part of the information at issue (information provided by witnesses) could prejudice the ability of JACS to obtain confidential information.

71. I intend to award significant weight to this factor.

Prejudice the management function of an agency—Schedule 2, s 2.2(a)(xv)

72. A factor favouring non-disclosure is when disclosure could reasonably be expected to prejudice the management function of an agency or the conduct of industrial relations by an agency.

73. I agree this factor is relevant to part of the information at issue.⁷

74. The management function of an agency includes activities such as recruitment, training, performance reviews, promotion, counselling, discipline, compensation and occupational health and safety.

⁵ [ACT Public Sector ACT Fire and Rescue Enterprise Agreement 2024-2026](#).

⁶ [ACT Public Sector ACT Fire and Rescue Enterprise Agreement 2024-2026](#) at [L2.6].

⁷ Documents 2-4, 6-8 and 10

75. In this case the management function of agency relates to the preliminary assessment of a workplace incident. There is no evidence the matter was referred for an investigation however the decision was made to arrange counselling for the applicant. It is important not to release this preliminary assessment information, including records of conversation and other material, apart from the purely factual information of the incident and personal information of the applicant as far as it can be separated.
76. Those materials are the records of interviews and emails related to the preliminary assessment.
77. In considering the weight to afford to this factor, I must consider the nature of the incident.
78. It was a workplace incident involving several employees, regarding attendance at a meeting.
79. In response to allegations of inappropriate behaviour, management conducted a preliminary assessment to decide how to manage this situation and if there was a need for further action. This management actions falls within the definition of the management functions of the agency.
80. Although there were a significant number of people involved in the incident, there is some material that cannot be released because it may prejudice the ability of ACTF&R to address workplace conduct issues as disclosure could inhibit staff from engaging in complaint processes and managers from taking appropriate action.
81. This material includes record of interviews, preliminary assessment document and communications between employees and management.

82. I intend to attribute significant weight to this factor, having regard to the public interest in maintaining the integrity of management activities, including the effective handling of workplace conduct issues.

Balancing the factors

83. 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.

84. In this matter, I identified 2 factors favouring disclosure and I identified 3 factors favouring nondisclosure.

85. I attributed significant weight 2 factors favouring disclosure and significant weight to 3 factors favouring nondisclosure.

86. 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 would have on the public interest.

87. The FOI Act has a pro-disclosure bias,⁸ 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'.⁹

88. My view is, on balance, that factors favouring nondisclosure outweigh the factors favouring disclosure to majority of the redactions with the exception of

⁸ Section 17 of the [FOI Act](#).

⁹ [Explanatory Statement, Freedom of Information Bill 2016](#).

personal information of the applicant, as far as it can be separated from the rest of the material.

Conclusion

89. For the reasons set out above, I have decided to vary the decision under s 82(2)(b) of the FOI Act

Decision

90. The effect of my decision will be to grant partial access to the information at issue, releasing more information than was released in the primary decision.

Katrina Dwyer

Senior Assistant Ombudsman

19 September 2025