

Decision and reasons of Senior Assistant Ombudsman

Application number:	AFOI-RR/25/80079
Applicant:	'DZ'
Respondent:	Legal Aid ACT
Date:	31 March 2026
Decision reference:	[2026] ACTOFOI 6
Catchwords:	<i>Freedom of Information Act 2016</i> – enough detail to identify government information applied for – reasonable steps to identify all government information within scope – information not held by respondent.

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. For the reasons set out below, I have decided to **confirm** the decision of Legal Aid ACT dated 8 December 2025 under s 82(2)(a) of the FOI Act that the requested information is not held.

Background to Ombudsman review

3. On 4 December 2025, the applicant applied under s 30 of the FOI Act to Legal Aid ACT for access to the following information:
 - transcripts of all conversations between Legal Aid employees and all the representatives Legal Aid have appointed for [the applicant] in any matter.

- all transcripts of all inter departmental conversations, and all conversations between Legal Aid any third party where [the applicant's] name was mentioned since 2015.
 - transcripts of any conversations held by any member, employee, or any person appointed by the authority of the ACT Legislative Assembly since 2015 where [the applicant's] name was mentioned.
4. The applicant's access application included 2 forwarded emails dated 3 December 2025 and 11 September 2025 which discuss some legal matters in relation to the applicant.
 5. On 8 December 2025, Legal Aid ACT provided a decision to the applicant advising it had refused their application because no information within scope of the request is held by Legal Aid ACT.
 6. On 15 December 2025, the applicant applied to the ACT Ombudsman for a review of Legal Aid ACT's decision under s 73 of the FOI Act.
 7. The applicant's email of 15 December 2025 was also sent to Legal Aid ACT and contained a further access application clarifying the information sought.
 8. As part of this review, I am only considering the access application made on 4 December 2025 and determined on 8 December 2025. I understand that Legal Aid ACT is working with the applicant to process their further access application dated 15 December 2025, including taking steps to clarify and narrow the scope of the request.
 9. On 17 December 2025, the ACT Ombudsman issued a notice of review under s 75 of the FOI Act to Legal Aid ACT. Our Office's letter requested a copy of the access application and any correspondence clarifying scope, information about the steps taken by Legal Aid ACT to search for the information in scope, and any other relevant information such record-keeping policies.

10. Legal Aid ACT provided information in response to the s 75 notice on 18 December 2025 and 12 January 2026.
11. On 25 February 2026, I provided my preliminary views to the parties in a draft consideration.
12. On 2 March 2026, the applicant responded to the draft consideration and declined to agree or disagree with the proposed decision.
13. On 12 March 2026, Legal Aid ACT responded to the draft consideration and accepted the proposed decision.

Relevant law

14. 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.¹
15. Section 30 of the FOI Act sets out requirements for a valid access application, including that an applicant must provide enough detail to enable an agency or Minister to identify the government information applied for.² If an application does not comply with these requirements, the agency or Minister must take reasonable steps to provide the person an opportunity to make the application comply.³
16. Section 34 of the FOI Act requires that an agency or Minister deciding an access application must take reasonable steps to identify all government information within the scope of the application.⁴
17. Agencies may, at any time, contact the applicant to clarify the scope of the application (a clarification request).⁵

¹ Section 35(1)(c) of the FOI Act.

² Section 30(2)(a) of the FOI Act.

³ Section 31(2) of the FOI Act.

⁴ Section 34(1) of the FOI Act.

⁵ Section 34(3) of the FOI Act.

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

- the applicant's access application, review application and submission dated 2 March 2026,
- Legal Aid ACT's decision and submissions dated 18 December 2025, 12 January 2026 and 12 March 2026, and
- the FOI Act, in particular ss 30 and 34.

Information at issue

19. The information at issue in this Ombudsman review can be categorised as follows:

Conversations by Legal Aid ACT

- Transcripts of all conversations mentioning the applicant that occurred between Legal Aid ACT and legal representatives it has appointed for the applicant in any matter, and
- Transcripts of all conversations mentioning the applicant that occurred internally amongst Legal Aid ACT staff and with any third parties from 2015 onwards.

Conversations by anyone appointed by the ACT Legislative Assembly

- Transcripts of any conversations mentioning the applicant by any member, employee, or any person appointed by the authority of the ACT legislative Assembly from 2015 onwards.

20. I note the first 2 parts of this access application concern conversations by Legal Aid ACT internally or between Legal Aid ACT and various third parties, while the third part of this request concerns conversations by anyone appointed by the ACT Legislative Assembly. I consider these categories of information attract some differing considerations. Consequently, in deciding this Ombudsman review, I have dealt with the first 2 parts together and the third part separately.

21. Given Legal Aid ACT's decision identified no information within scope of the applicant's access application, this Ombudsman review is not about whether certain government information sought by the applicant should, or should not be, released under the FOI Act.
22. The key issue to be decided in this Ombudsman review is whether Legal Aid ACT has taken reasonable steps to identify all government information it holds within the scope of the access application, as it is required to do so under s 34 of the FOI Act.

The submissions of the parties

23. In its decision notice, Legal Aid ACT said it had decided that the information sought is not held by Legal Aid ACT. The decision notice does not provide any information about the searches conducted or provide an explanation for why the requested information is not held by Legal Aid ACT.
24. In the application for Ombudsman review, which was also a further access application, the applicant clarified the records they are seeking, explained why they believed Legal Aid ACT held the information, and proposed an alternative option for providing the information in the event Legal Aid ACT did not possess the information in the form requested by the applicant:

... I am seeking a copy of my file as well as access to transcripts and documentation that should be available in relation to correspondence and communications involving Legal Aid ACT...

... Your contention that Legal Aid ACT holds no records at all is, in my view, demonstrably false. There has been significant communication between Legal Aid ACT and the lawyers appointed to represent me, including telephone calls and other correspondence. As such, I am entitled to access the transcripts or records of these interactions...

... If Legal Aid ACT contends that no telephone calls were recorded and/or that transcripts are not obtainable, I request the following additional records in place of any such transcripts:

* The dates and times of calls made by Legal Aid ACT that referenced me, and

* Statutory declarations from the relevant delegates, outlining the content of these calls.

25. The applicant's correspondence goes on to detail the specifics of their further access application, and phrased this subsequent request as 'transcripts of all correspondence between Legal Aid ACT' and various third parties.

26. In its responses dated 18 December 2025 and 12 January 2026 to the s 75 notice, Legal Aid ACT advised our Office that:

- phone calls in and out of Legal Aid ACT are not recorded or transcribed,
- it has a voicemail facility and if a person has called without connecting to a staff member, it is possible to leave a recorded voice mail message,
- it does not maintain a log of the dates and times of phone calls which relate to particular clients or matters,
- file notes might be made in some circumstances. From the last 6 months, there are only file notes of calls from the applicant and not with any of the applicant's legal representatives.

27. The applicant's response to the draft consideration:

- raised concerns that if no records were found, how could the Ombudsman be satisfied that reasonable steps were taken to identify the relevant information,
- addressed other matters that are not relevant to issues being considered by this review.

28. Legal Aid ACT's response to the draft consideration provided further information about its approach to this access application, including additional details about the steps taken to confirm if any transcripts existed, its record-keeping practices and why, based on its interpretation of the request, all reasonable steps had been taken to identify relevant government information. It also provided additional

information about its efforts to clarify the scope of the applicant's further access application.

29. These submissions are discussed in more detail below.

Were reasonable steps taken to identify government information?

30. Section 34 of the FOI Act required Legal Aid ACT to 'take reasonable steps to identify all government information within scope of the application'.

31. 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.⁶

Conversations by Legal Aid ACT

32. The first 2 parts of the access application sought transcripts of conversations mentioning the applicant that occurred internally amongst Legal Aid ACT staff or between Legal Aid ACT and various third parties, including the applicant's legal representatives.

33. Legal Aid ACT did not provide our Office with evidence of any searches conducted to identify the requested information.

34. In its response to our Office's s 75 notice, Legal Aid ACT informed our Office that it does not record or transcribe its incoming or outgoing phone calls and nor does it maintain a log of dates and times of phone calls in relation to particular clients or matters. Legal Aid ACT said, as a result, it cannot identify dates of phone conversations relating to the applicant's matters.

⁶ Explanatory Statement, Freedom of Information Bill 2016 (ACT).

35. In response to the draft consideration, Legal Aid ACT added that it had made verbal enquiries with its Chief Executive Officer, IT provider, client services staff and long-term Legal Aid ACT staff regarding the holding of any 'transcripts'. It said these enquiries confirmed that Legal Aid ACT does not make video or audio recordings of telephone calls or in-person conversations or meetings, so no written records transcribing such conversations are held.
36. I accept Legal Aid ACT's evidence that producing transcripts of its conversations is not part of its record-keeping practices, and as far as this request relates to such transcripts, my view is that Legal Aid ACT's decision not to look further for this information was reasonable in these circumstances.
37. Importantly, agencies should contact applicants to clarify the scope of an access application to achieve the objects of the FOI Act being to facilitate and promote, promptly and at the lowest cost, the disclosure of the maximum amount of government information.⁷ Legal Aid ACT has not provided our Office with evidence that it took this step in relation to the application made on 4 December 2025.
38. As set out above, the applicant responded to the decision on their access application by clarifying that they had intended to seek records of Legal Aid ACT's communications about the applicant and that they are open to receiving this information in a different form if no transcript existed.
39. In response to our Office's s 75 notice, Legal Aid ACT informed us that its practices include making file notes of calls in some circumstances. It did not provide information on its practices to record conversations at in-person meetings, which, noting that the request refers to 'conversations' rather than 'telephone conversations', it may also have been open to consider information of this kind within scope of this access application.

⁷ Sections 6(f) and 34(3) of the FOI Act.

40. As mentioned above, Legal Aid ACT have since clarified in response to the draft consideration that its practices do not include making video or audio recordings of in-person conversations or meetings, so it determined that written records transcribing those conversations are not held.
41. My view is it would have been appropriate for Legal Aid ACT to contact the applicant to clarify the scope of the access application. Instead, it chose not to seek further information, and it took a narrow view of the scope of the application.
42. I consider that Legal Aid ACT should have contacted the applicant to clarify its understanding of the conversations referred to within scope of the access application. I also consider Legal Aid ACT should have explained their record-keeping practices to the applicant and asked the applicant if they wanted to access any records that aligned with those practices, such as file notes.
43. Notwithstanding this, regarding the first 2 parts of this access application, my view is that reasonable steps have been taken to identify government information held by Legal Aid ACT within the scope of the application.

Conversations by anyone appointed by the ACT Legislative Assembly

44. The third part of the access application sought transcripts of any conversations mentioning the applicant by any member, employee, or any person appointed by the authority of the ACT Legislative Assembly from 2015 onwards.
45. My view is that this part of the access application is not necessarily seeking records of conversations in which Legal Aid ACT was a participant or that occurred in the context of a phone call. As such, I do not consider that Legal Aid ACT's practice of not recording or transcribing its conversations alone provides a sufficient basis to conclude that this information is not held.
46. I observe that this part of the access application appears very broad and lacks clarity or specificity, both in terms of the roles and records intended to be captured by this request and the more than 10-year timeframe that the request covers.

47. For example, a transcript of a conversation involving someone meeting the description in the access application could be created in a number of different contexts and then included in a legal file because it formed part of the evidence in that legal matter. Such information could be on a legal file belonging to the applicant or even form part of another person's records.
48. In the draft consideration, I observed that Legal Aid ACT accepted this part of the access application met the requirements for a valid application in s 30 of the FOI Act, but it was not clear from Legal Aid ACT's s 75 responses or any other documents received by our Office what information it considered within scope of this request or what searches, if any, were conducted for this information. I consider that Legal Aid ACT's approach to this part of the information request could have been more clearly documented (e.g. by completing a search minute).
49. In response to the draft consideration, Legal Aid ACT confirmed that it considered that the access application contained sufficient detail. It confirmed its findings that it does not hold any 'transcripts' applied to all parts of this access application and that transcripts of conversations where Legal Aid ACT was not a party are not held by Legal Aid ACT. It did not provide any evidence to support that its record-keeping practices mean that it would not in any circumstances possess a copy of a transcript of a conversation referencing a client.
50. The applicant's response to the draft consideration, while repeating clarifications about their access application, did not point to any additional information, for example something evident from the applicant's client profile with Legal Aid ACT, that provided clarity of this part of the access application.
51. I consider it may have been open to Legal Aid ACT to find that the third part of this access application does not comply with s 30(2)(a) of the FOI Act because the context and the identities of the participants to the conversations sought is not

clear. Consequently, the applicant has not included enough detail to enable Legal Aid ACT to identify all of the government information being sought.

52. The responses of the parties to the draft consideration confirmed that each had a different understanding of the information being requested.

53. As discussed earlier, I consider that it would have been prudent for Legal Aid ACT to contact the applicant and discuss this part of their access application, either to assist the applicant to bring their request into accordance with the requirements⁸ or to clarify the scope of their request,⁹ as the case may be.

54. While I consider Legal Aid ACT's efforts to contact the applicant about their request fell short of expectations, I accept that not being able to identify the information sought, as a consequence of the lack of detail set out in the application, would have significantly limited Legal Aid ACT's ability to search for the information. In these circumstances, my view is that reasonable steps were taken to taken identify all government information held by Legal Aid ACT within scope of the application.

Conclusion

55. For the reasons set out above, I confirm the decision of Legal Aid ACT on 8 December 2025 that the information is not held by the agency under s 82(2)(a) of the FOI Act.

Katrina Dwyer

Senior Assistant Ombudsman

31 March 2026

⁸ Section 31(2) of the FOI Act.

⁹ Sections 6(f) and 34(3) of the FOI Act.