

**Decision and reasons of Senior Assistant Ombudsman**

Application number: AFOI-RR/24/10007

Applicant: DK

Respondent: Community Services Directorate

Respondent reference: FOI-CSD-23/2

Date: 3 July 2025

Decision reference: [2025] ACTOFOI 7

Catchwords: Freedom of Information Act 2016 – deciding access – whether information is contrary to the public interest information – advance the fair treatment of individuals and other entities in accordance with the law in their dealings with government – contribute to the administration of justice generally, including procedural fairness – contribute to the administration of justice for a person – information is personal information of the person making the request – reveal the reason for a government decision and any background or contextual information – prejudice the protection of an individual’s right to privacy or any other right under the Human Rights Act 2004 – prejudice an agency’s ability to obtain confidential information – prejudice the management function of an agency or the conduct of industrial relations by 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. For the reasons set out below, the decision of the Community Services Directorate (**CSD**) dated 23 January 2024 should be **varied** under s 82(2)(b) of the FOI Act.

## Background of Ombudsman review

3. On 1 February 2023, the applicant applied to CSD for access to:

... all correspondence, email, letter, document, notes from or to [staff member] concerning [applicant]. The correspondence is likely addressed to or from Ms Jo Wood, Ms Anne-Maree Sabellico, Ms Christine Murray, Ms Cathy Chandler, Mr Andrew Trevaskis, Ms Maggie Drejer-White, Mr Phillip Rocks and the Public Sector Standards Commissioner.
4. Under s 41 of the FOI Act, CSD requested additional time from the applicant to decide the application, with an agreed due date of 30 June 2023.
5. CSD completed processing the application on 21 June 2023, but due to an administration error, the decision was not provided to the applicant. When reviewing the processing of the application, CSD identified that consultation required under s 38(2) of the FOI Act had not been carried out.
6. CSD informed the Ombudsman of a decision not made in time under s 39(1)(c) of the FOI Act, and continued to process the application, including conducting third party consultation, making a subsequent decision on 23 January 2024.
7. On 23 January 2024, CSD identified 29 documents totalling 90 pages within the scope of the request and refused access to all 29 documents.
8. On 16 February 2024, the applicant applied for Ombudsman review under s 73 of the FOI Act.

9. On 27 February 2024, the Office of the ACT Ombudsman (the Office) notified CSD of the review and requested the following:
  - A copy of the original access application and any correspondence clarifying or modifying the scope of the application
  - Information about the steps taken to identify the information in the scope of the application, and
  - An unredacted copy of any correspondence requested in the original access application.
10. On 12 March 2024, the Office received the requested information from CSD.
11. On 7 February 2025, the former Senior Assistant Ombudsman provided their preliminary view to the parties in a draft consideration.
12. On the same day the applicant accepted the draft consideration and did not provide any additional submissions.
13. On 24 February 2025, staff from the Office met with staff from CSD to discuss the draft consideration.
14. On 30 April 2025, CSD responded to the draft consideration and provided additional written submissions.

**Delay**

15. I acknowledge that this matter has been subject to delays both during the processing of the access application by CSD and during the Ombudsman review process.
16. I note the objects of the FOI Act include facilitating and promoting, prompt disclosure of government information, and I acknowledge that the delays are in contrast to the objects of the FOI Act.

### **General observation – employment matters**

17. As a general observation, I note s 10 of the FOI Act provides that the FOI Act is not intended to prevent or discourage the publishing or giving of access to government information otherwise than under the FOI Act. In that context, I encourage agencies to work with applicants to explore options to provide access to information informally or otherwise outside of the FOI process, where it is appropriate to do so. This includes in circumstances where the information relates to employment matters, for which the FOI Act may not be the most appropriate framework for release.

### **Preliminary issue – third party consultation**

18. In their initial response to the s 75 notice advising CSD of the Ombudsman review, CSD provided evidence they had consulted with a third party, who objected to the release of their personal information.

19. In their submission in response to the draft consideration, CSD advised:

On 23 April 2025, [the third party] was advised of the consideration being made by the Ombudsman to overturn the original decision and invited [the third party] to contact the Ombudsman's office to add further information or comments in relation to the release of [the third party's] personal information.

20. Section 76 of the FOI Act requires the primary decision-maker, on receiving a notice under s 75 of an application for Ombudsman review, to tell each relevant third party consulted under s 38 of the application for Ombudsman review.

21. CSD had an obligation to inform the third party of the Ombudsman review upon receipt of the notice issued under s 75 of the FOI Act. CSD have confirmed only that the third party was informed of the Ombudsman review on 23 April 2025, over 13 months after CSD were notified of the Ombudsman review on 27 February 2024. I encourage primary decision-makers to be

conscious of their obligations under the FOI Act and to notify third parties of applications for Ombudsman review in a timely manner.

22. The Office now includes, in the notices issued under s 75 of the FOI Act, a reminder of the obligation under s 76.
23. The third party did not seek to participate in or provide submissions to this review.

**Preliminary issue – confidentiality obligations of government staff**

24. CSD, in its decision notice and in submissions in response to the draft consideration, noted the obligation of the applicant to keep confidential information that they were aware of whilst working at CSD. CSD provided a copy of a document titled 'Obligations of former staff – confidential information.'
25. Section 9 of the *Public Sector Management Act (1994)* (ACT) (Public Sector Management Act) provides:
  - (2) A public servant must not—
    - (b) take improper advantage of the public servant's job or information gained through the public servant's job; or
    - (d) without lawful authority—
      - (i) disclose confidential information gained through the public servant's job
26. Upon separation from CSD, staff are required to sign the document noting their understanding of their obligations to keep information gained through their employment confidential.
27. If an applicant has prior knowledge of or has had prior access to information requested under the FOI Act, this may be a consideration in deciding whether disclosure of information is in the public interest. However, having knowledge of or previous access to information through official means such as

employment does not mean an automatic right of access to the information under the FOI Act.

**Information at issue**

28. I have reviewed the 29 documents identified by CSD as falling within the scope of the request. I am satisfied that a portion of the information within these documents is duplicated and therefore does not need to be included within the scope of this review.<sup>1</sup>

29. I am also satisfied that part of document 13, being screenshots of text messages, does not relate to the applicant and is therefore out of the scope of this review.

30. In the course of this review, the applicant confirmed:

I am only concerned about correspondence that is in relation to me. I do not... request information about anyone else.

I would like copies of all correspondence to and from [staff member] that involves me and no one else.

31. The former Senior Assistant Ombudsman, in their draft consideration, considered a portion of the information within these documents was outside of the scope of this review. Particularly, the former Senior Assistant Ombudsman identified correspondence that, whilst relating to the workplace complaint, did not concern the applicant directly as the correspondence only referred to administrative matters such as arranging meetings.<sup>2</sup>

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<sup>1</sup> Information included within documents 4, 5, 9, 11 and 26 is duplicated.

<sup>2</sup> Information included in documents 6, 8, 9 and 11 is of this nature and therefore out of scope of this review.

32. In the draft consideration, the former Senior Assistant Ombudsman considered the remaining information at issue included within 27 documents could be separated into 2 categories:

- information which the applicant is already aware of because it is either correspondence that was directly sent or copied to the applicant, or the applicant was otherwise present whilst the information was verbally shared whilst employed by CSD ('category 1 information'),<sup>3</sup> and
- correspondence in relation to the applicant, which was not sent or copied to them ('category 2 information').<sup>4</sup>

33. In their submissions in response to the draft consideration, CSD disagreed that some of the information falling within category 1 was within the scope of the access application, being '...all correspondence... concerning [the applicant]...'. CSD submitted:

It should be noted that portions of pages 1, 3, 4, 5 and 6 were considered 'Outside Scope' as the information did not concern [the applicant] but rather was a discussion/information provided by a Safety and Wellbeing Advisor or Manager on matters relating to expectations, supports in place, return to work timetables and concerns for [staff member], therefore not meeting the scope of '*...concerning [the applicant]*'.

The Ombudsman has indicated within the Draft Considerations that because [the applicant] was present or has already received this information, that the information should be released to [the applicant] however the information within those sections does not concern [the applicant] and so was assessed as 'Outside Scope'.

34. On my review of the documents, I am satisfied that part of the category 1 information initially identified in the draft consideration as within scope is not within the scope of the application as it does not concern the applicant.

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<sup>3</sup> Information included in documents 1-3, 5 and 27.

<sup>4</sup> Information included in documents 6, 7, 9-26 and 28-29.

35. There remains, however, a portion of category 1 information that is within the scope of this Ombudsman review.<sup>5</sup>
36. The information at issue subject to this review comprise of e-mails, e-mail attachments, a questionnaire, screenshots, a transcript of a conversation and correspondence related to a workplace complaint held by CSD. In making my decision, I have had regard to:
- the applicant's access application and review application
  - the respondent's decision of 23 January 2024
  - the ACT FOI guidelines, a notifiable instrument under s 66 of the FOI Act
  - the FOI Act, in particular Schedule 2
  - the [Human Rights Act 2004](#)
  - the [Information Privacy Act 2014](#)
  - the [Public Sector Management Act 1994](#)
  - the respondent's FOI processing file relating to the application
  - the submissions of the parties, and
  - relevant case law, including [BP and Justice and Community Safety Directorate \[2021\] ACTOFOI 19](#).

### **Relevant law**

37. 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.<sup>6</sup>

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<sup>5</sup> Information included on pages 5-7, 13-14, 80-87 is in scope of this review.

<sup>6</sup> Section 35(1)(c) of the [FOI Act](#).

38. 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.

39. The public interest test in s 17 sets out the process for balancing public interest factors favouring disclosure and nondisclosure respectively. This balancing test must be used to determine whether disclosure would be contrary to public interest.

40. The FOI Act permits refusal of access to information where the information sought is contrary to the public interest information.

41. Schedule 2 of the FOI Act sets out public interest to be balanced when conducting the s 17 test to determine the public interest.<sup>7</sup>

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

42. In its decision notice, CSD identified disclosure of the information at issue could reasonably be expected to advance the fair treatment of individuals and other entities in accordance with the law in their dealings with the government and reveal the reason for a government decision and any background or contextual information that informed the decision; and identified there was information that is the personal information of the person making the request.

43. CSD also identified disclosure 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 2004* (Human Rights Act); prejudice an agency's ability to obtain confidential information; and prejudice the

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<sup>7</sup> Section 35(1)(c) of the [FOI Act](#)

management function of an agency or the conduct of industrial relations by an agency.

44. Further, CSD decided a large part of the information was out of scope and was therefore not disclosed to the applicant.
45. In their application for review to the Ombudsman, the applicant said they did not take copies of complaints and subsequent replies by the CSD in their previous employment role as they believed it to be a breach of their obligations.
46. In their submission in response to the draft consideration, CSD disagreed to the approach proposed by the draft consideration, submitting that the capacity and circumstances in which the applicant initially received the information should be taken into consideration, and reiterating that disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy under the Human Rights Act.
47. CSD further submitted that a release of the information at issue to the applicant would be a release to the world at large, with no basis under the FOI Act to require the applicant not to disclose the information received to any other person.

## **Consideration**

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

48. To determine whether disclosure is contrary to the public interest, the FOI Act prescribes the following 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**

49. The original decision from CSD identified 3 factors favouring disclosure as relevant. I consider an additional 2 factors favouring disclosure are also relevant.

***Advance the fair treatment of individuals and other entities in accordance with the law in their dealings with government (schedule 2, s 2.1(a)(vii)), contribute to the administration of justice generally, including procedural fairness (schedule 2, s 2.1(a)(xiii)) and contribute to the administration of justice for a person (schedule 2, s 2.1(xiv))***

50. CSD identified that disclosure could reasonably be expected to advance the fair treatment of individuals and other entities in accordance with the law in their dealings with the government.

51. I consider that disclosure could also reasonably be expected to contribute to the administration of justice generally, including procedural fairness, and contribute to the administration of justice for a person.

52. Due to the similarity of these factors, I will discuss these 3 factors together.

53. I consider disclosure of both the category 1 and category 2 information promotes these factors. I note that the applicant has knowledge of or has previously had in their possession the category 1 information.

54. In *BP and Justice and Community Safety Directorate*, the Acting Senior Assistant Ombudsman observed:<sup>8</sup>

...procedural fairness does not generally require the disclosure of original copies of adverse information to be disclosed to a person.

Rather, the right to be heard merely depends on a person being given the opportunity to respond to relevant material relied upon to exercise a power or make an adverse decision against them. Upon receiving information, the recipient may in fact decide that no action is warranted in relation to it. The person to whom the information relates may not, in such circumstances, need to be given an opportunity to respond because there is no procedure being applied which needs to be rendered fair.

Similarly, an opportunity to respond to information does not automatically mean that a person has a right to see the information in its original form. The relevant question for the purposes of ensuring a person is given an opportunity to be heard is whether the substance of the information has been put to them in a manner that is fair and comprehensive.

55. I note that information was provided to the applicant for the purpose of assessing the complaint. I note also that information was provided to the applicant directly by the complainant as was expected due to the nature of the formal working relationship of the applicant and complainant.

56. I have considered information provided by CSD that there is currently no formal investigation or similar process occurring that would now create an expectation of procedural fairness, or otherwise require the applicant to be afforded procedural fairness, in connection with the information at issue.

57. I afford these 3 factors minor weight.

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<sup>8</sup> [2021] ACTFOI 19 (22 December 2021) [34]-[35].

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

58. I agree this factor is relevant to both the category 1 and category 2 information as the emails contain the personal information of the person making the request.
59. Given the information at issue refers to the applicant by name throughout, I consider it is personal information for the purposes of the FOI Act.
60. I also consider this information is the joint personal information of the applicant and the complainant. In my view, in some instances the applicant's personal information is so intertwined with the personal information of other individuals that release of that particular information would lose its meaning and context if the personal information of the other individuals was removed.
61. I afford this factor significant weight in this review, at least in relation to the sections of the information at issue which includes only the personal information of the applicant.

***Reveal the reason for a government decision and any background or contextual information (schedule 2.1(a)(viii))***

62. CSD identified that release of the information at issue would reveal background and contextual information about the administration and decision-making process about how the workplace complaint was handled.
63. I agree this factor is relevant to both the category 1 and category 2 information, particularly the emails noting employee concerns and the steps taken to hear and address those concerns, the transcript of a recording, correspondence between the complainant and employment relations advisors and correspondence between the complainant and another

Directorate. This information concerns the complaint made and actions taken in response to it.

64. It is in the public interest for members of the public to know that complaints and concerns are heard and addressed by government directorates.

65. The material concerns the processes followed in handling these specific complaints. I find the factor applies to this information and I afford moderate weight to this factor, as I consider disclosure would reveal the reasons for a decision in relation to this particular complaint only and not general information about CSD's complaint handling processes.

### **Factors favouring nondisclosure**

66. The original decision from CSD identified 3 factors favouring nondisclosure as relevant.

### ***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))***

67. A reasonable expectation disclosure could prejudice an individual's right to privacy under the Human Rights Act is a factor favouring nondisclosure under the FOI Act.

68. Section 12 of the Human Rights Act provides:

Everyone has the right –

- (a) Not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
- (b) Not to have his or her reputation unlawfully attacked

69. Having reviewed the information within both category 1 and category 2, I consider the information at issue contains personal information of individuals who are not the applicant.

70. In addition, there is information contained within the information at issue about the circumstances leading to the complaint that provides sufficient

context to identify specific individuals.

71. In considering whether the disclosure of this 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, relevant matters include any detriment disclosure may cause, the nature of the information, and the circumstances in which the information was collected.<sup>9</sup>
72. I consider disclosure of both the category 1 and category 2 information could present an arbitrary interference with a person's privacy under s 12 of the Human Rights Act, specifically those individuals who are not the applicant.

#### *Category 1 information*

73. In the draft consideration, the former Senior Assistant Ombudsman considered that the applicant was already aware of the category 1 information in full, having either been sent or copied into correspondence by the complainant directly, or been present, with the complainant, where the information has been verbally shared. For these reasons, the draft consideration indicated this factor would be afforded minor weight in relation to the category 1 information.
74. In its decision notice, CSD addressed the applicant's knowledge of the category 1 information:

It is noted that in your position at that time, interactions via meetings, phone calls and emails were made with a number of third-party persons including other Directorate staff. Your position within the Directorate required you to be a party to these conversations and if not for that official function you would not have been privy to this information. Noting that confidentiality of information gained in a position within the Directorate and the '*Obligations of former staff - confidential information*', details restrictions from making use or disclosing information other than in respect of your functions as an employee of the Directorate.

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<sup>9</sup> [\*Freedom of Information \(Volume 4 – Considering the public interest\) Guidelines 2023\*](#)

75. The former Senior Assistant Ombudsman invited CSD to make additional submissions on this point. In response, CSD stated:

The series of emails to and from... a current employee of CSD, relates to [their] employment concerns. [The applicant] is either the recipient or cc'd into emails in [their] capacity as [position].

[The applicant's] involvement in the meeting mentioned on pages 1-2 and subsequent emails relate entirely to [their] position at that time and contains confidential and personal information in relation to [staff member's] work conditions, concerns, application for a second job and return to work information...

... [The applicant] received the information in the emails in [their] role as a CSD employee with particular responsibilities in respect of people management issues... In respect of the information, [they were] under an obligation to keep it confidential and not disclose it to anyone who is not lawfully required to receive it - see in particular section 9(2)(a)(i), (b), (c), and (d) of the *Public Sector Management Act 1994*.

Despite leaving CSD, [the applicant] continues to have a legal obligation to keep confidential information (including the information in the emails) that [they were] aware of while working at CSD...

76. CSD also addressed document 27, which is a transcript of a recording of a conversation between the applicant and several other staff:

... (the participants)... were all CSD employees at the time that the conversation was recorded. The conversation... is a conversation relating to matters arising from the three participants official roles within CSD...

The transcript contains personal information of [staff member] who has since resigned from [their] position within CSD therefore making contact challenging... CSD submits that disclosure of the transcript would prejudice the protection of the right to privacy that [staff members] have.

77. I have carefully considered CSD's additional submissions addressing the personal information of both the applicant and other parties contained within the documents. Noting the circumstances in which the applicant initially obtained the category 1 information, the objection by a third party to the release of their information when consulted by CSD during the processing of the access application, and the difficulty in consulting with a second third party to whom the personal information relates, I afford significant weight to this factor in relation to the category 1 information.

*Category 2 information*

78. The *Information Privacy Act 2014* (ACT) (Information Privacy 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>10</sup>
79. 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.
80. 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.
81. The personal information in the category 2 information was obtained by CSD for the primary purpose of management of its staff – in this instance, receiving a complaint about an employee.
82. I consider that the disclosure of the category 2 information for a secondary purpose unrelated to the complaint or transition would not be reasonably expected by an individual who made a complaint to CSD at the time they were employed by CSD. Disclosure of the information is not related to the primary purpose of the collection. I place emphasis on the complaint assessment process being finalised and no new complaint being currently assessed.

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<sup>10</sup> Section 11 of the [Information Privacy Act 2014 \(ACT\)](#).

83. Having reviewed the category 2 information, I do not consider those individuals would expect CSD to disclose their personal information to the applicant for a purpose unrelated to the applicant's employment (e.g. internal complaint handling).
84. I have considered that the individuals to whom the personal information relates have not provided consent to the disclosure of this information to the applicant.
85. I consider disclosure of this personal information for a secondary purpose that is not related to the primary purpose of collection could amount to a breach of the TPPs and interfere with the protection of their right to privacy.
86. I afford significant weight to this factor.

***Prejudice an agency's ability to obtain confidential Information (schedule 2, s 2.2(a)(xii))***

87. A reasonable expectation that disclosure could prejudice an agency's ability to obtain confidential information favours nondisclosure under the FOI Act.
88. I agree this factor is relevant for this matter. As I have detailed above, the workplace complaint process is designed to be confidential, and this is expressed to staff members when they come forward to report issues.
89. The cohort of staff in the relevant area of CSD is a small pool of employees who work in an environment where cohesion and trust among colleagues is essential to a functioning workplace. I consider the closeness of this environment means that disclosure of the information at issue with identities removed would still represent information where identities could be either totally deduced or inferred to a sufficient degree that redaction would be ineffective in preserving privacy.

90. Employees using the workplace complaint process are provided with assurances the information provided will be kept confidential. While this does not represent a blanket protection against disclosure under the FOI Act, it does raise consideration of the potential for disclosure to have a chilling effect on employee engagement with this process in the future.
91. I note in this matter, however, that the complainant either directly provided category 1 information to the applicant or was present when category 1 information was shared verbally with the applicant. In such circumstances the former Senior Assistant Ombudsman in their draft consideration noted it may be difficult to be satisfied that disclosure of the information at issue may prejudice CSD's ability to obtain confidential information and welcomed additional submissions on this point.
92. CSD's additional submissions did not address this point directly. However, I consider their submissions addressing the applicant's initial access to the category 1 information at issue as part of their employment have persuaded me that the release of this information might lead to concern by government employees that confidential information shared with their colleagues and managers through the course of their work may be subject to release and therefore disclosure of the information could reasonably be expected to prejudice an agency's ability to obtain confidential information. I give this factor moderate weight in relation to both category 1 and category 2 information.

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

93. A reasonable expectation that disclosure could prejudice the management function of an agency or the conduct of industrial relations by an agency favours nondisclosure under the FOI Act.

94. In *'BP' and Justice and Community Safety Directorate*,<sup>11</sup> the Acting Senior Assistant Ombudsman observed:
- ... maintaining a system for reporting integrity matters... is inextricably linked to the management function of an agency.
95. I consider disclosure of the information at issue could reasonably be expected to prejudice both the CSD's management function and conduct of industrial relations, through inhibiting the receipt of and monitoring of allegations of misconduct, and thereby also prejudicing the ability to act upon matters of internal integrity. Disclosure of the information at issue may make complainants or witnesses reluctant to fully participate in future investigations.
96. I consider the reasons outlined at paragraphs [87]-[92] are relevant to this factor favouring nondisclosure. In my view, the ability to obtain confidential information from employees is a central element of the management function or the conduct of industrial relations by an agency.
97. CSD, in its decision notice and in submissions in response to the draft consideration, noted the obligation of the applicant to keep confidential information that they were aware of whilst working at CSD. CSD provided a copy of a document titled 'Obligations of former staff - confidential information.' This document includes references to s 10 of the *Crimes (Offences against the Government) Act 1989* (ACT) and s 9 of the Public Sector Management Act, which both place obligations on former government staff to not disclose, without lawful authority, documents or information obtained through their employment.
98. CSD's additional submissions referenced at paragraphs [75] and [76] are relevant to this factor. I acknowledge CSD's submission that the applicant

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<sup>11</sup> [\[2021\] ACTOFOI 19.](#)

initially obtained the category 1 information in relation to the management function or the conduct of industrial relations by CSD. I afford this factor moderate weight in relation to the category 1 information and significant weight in relation to the category 2 information.

### **Balancing the factors**

99. 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.

100. I have identified 5 public interest factors favouring disclosure. I attribute significant weight to 1 public interest factor favouring disclosure, moderate weight to 1 public interest factor favouring disclosure, and minor weight to the remaining 3 factors favouring disclosure.

101. I identified 3 public interest factors favouring nondisclosure of the information at issue. In relation to the category 1 information, I attribute moderate weight to 2 public interest factors favouring nondisclosure and significant weight to 1 public interest factor favouring nondisclosure. In relation to the category 2 information, I attribute moderate weight to 1 public interest factor favouring nondisclosure and significant weight to 2 public interest factors favouring nondisclosure.

102. 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 has on the public interest.

103. The FOI Act has a pro-disclosure bias, 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 put on each side. Rather, the scales are 'laden in favour of disclosure'.

### **Conclusion**

104. On balance, in relation to the personal information of the applicant contained within the category 1 documents, the public interest factors favouring disclosure outweigh the public interest factors favouring nondisclosure.

105. I consider that in relation to the remaining category 1 information, including the personal information of other parties, information provided in confidence to CSD and information relevant to the management function of CSD, the public interest factors favouring nondisclosure outweighs the public interest factors favouring disclosure.

106. In relation to the category 2 documents, the public interest factors favouring nondisclosure outweigh the public interest factors favouring disclosure.

### **Decision**

107. For these reasons, my decision is to **vary** the decision under s 82(2)(b) of the FOI Act.

108. Additional information is to be released to the applicant as set out in the marked-up copy of the information at issue provided to CSD.

**Katrina Dwyer**  
**Senior Assistant Ombudsman**  
**3 July 2025**