



Decision and reasons of Senior Assistant Ombudsman

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| Application number: | AFOI-RR/25/80050 |
| Applicant: | 'DX' |
| Respondent: | Justice and Community Safety Directorate |
| Respondent reference: | 2025/27776 |
| Date: | 17 March 2026 |
| Decision reference: | [2026] ACTOFOI 3 |
| Catchwords: | <i>Freedom of Information Act 2016</i> - 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 the management function of an agency - prejudice an agency's ability to obtain confidential information. |

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 requested an Ombudsman review of the decision made by the Justice and Community Safety Directorate (**JACS**) to provide partial access to information about a complaint made by the applicant.
3. For the reasons set out below, I **confirm** JACS' decision under s 82(2)(a) of the FOI Act.

Background to Ombudsman review

4. On 13 June 2025, the applicant made a request for access to the following Information:

Any and all documentation relating to a complaint I submitted through Superintendent Jim Walsh on 27 September 2024, including but not limited to any information relating to any assessment or investigation that took place.

5. JACS conducted searches and located 3 documents within the scope of the request being 3 email chains and attachments.
6. On 23 July 2025, JACS decided to grant access to 1 document in full, 1 document in part and refused access to 1 document.
7. On 24 July 2025, the applicant requested an Ombudsman review of JACS' decision to get access to all Information which was refused.
8. On 7 August 2025, the applicant provided information to our Office supporting their view that not all the information within the scope of their access application had been identified by JACS.
9. On 27 January 2026, the parties were provided with my draft consideration.
10. On 2 February 2026, JACS accepted my preliminary decision without providing further comments.
11. On 31 January 2026, the applicant responded to the draft consideration stating:

In relation to paragraph 21 in the draft consideration, this is not longer relevant as the PA process has been finalised.

21. In its decision, JACS stated:

Redactions have been applied to this information, noting that the release of this information prior to it being finalised will compromise the integrity of the PA process. I further note that, internal discussions and communications supplied to other parties regarding the assessment have also been redacted.
12. The above-mentioned statement that the preliminary assessment process was not yet finalised was correct at the time JACS decided the application. I have considered the passage of time and further information provided by the

applicant about the conclusion of the preliminary assessment in assessing the information at issue.

Information at issue

13. The information at issue consists of 2 documents being emails relating to a workplace complaint and its preliminary assessment.
14. The key issue to be decided in this Ombudsman review is whether the redacted information on documents 1 and 3 is contrary to public interest to disclose or not.
15. Document 2 is out of scope of the review as it was release in full.
16. In making my decision, I have had regard to:
 - the applicant’s review application and submissions
 - JACS’ primary decision
 - the FOI Act, particular ss 7, 16, 17, 35, 50, 72, Schedule 2
 - *Human Rights Act 2004* (ACT) (**Human Rights Act**), and
 - *the Information Privacy Act 2014* (ACT) (**IP Act**).

Relevant law

17. 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
18. 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.

¹ Section 35(1)(c) of the *Freedom of Information Act 2016* (ACT) (FOI Act).

19. 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.
20. 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.
21. 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.
22. 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

23. In the primary decision, 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)).
24. 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)) and prejudice the management function of an agency or the conduct of industrial relations by an agency (schedule 2, s 2.2(a)(xv)).
25. In its decision, JACS stated:

Redactions have been applied to this information, noting that the release of this information prior to it being finalised will compromise the integrity of the PA process. I further note that, internal discussions and communications supplied to other parties regarding the assessment have also been redacted.

26. In their application for Ombudsman review, the applicant stated:

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

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

Preliminary issue—identifying information within scope

27. A respondent deciding an access application must take reasonable steps to identify all government information within the scope of the application.²

28. JACS provided the evidence of the searches they conducted to locate all the information within the scope.

29. The applicant has raised concerns about the searches performed by JACS particularly:

It appears information has been withheld pertaining to my FOI request, relating to:

1. Information relating to the PA being paused, and the dates.
2. When the PA was completed.

30. The applicant referred to an email he received on 6 August 2025 which confirmed that it is a discretion of the person undertaking the preliminary assessment to conduct interview. Also, the email confirmed that parties could supply additional information. The applicant did not supply any additional information.

31. The applicant has provided our Office with a copy of correspondence between the applicant and JACS about the conclusion of the preliminary assessment of the applicant's complaint, and responses to enquiries from the applicant about this process.

² FOI Act s 34(1).

32. Based on this information, it appears the preliminary assessment was completed after the date the access application was made and for this reason, information about when the preliminary assessment was completed may not have been in existence at that time and therefore would fall outside of the scope of the access application.
33. In relation to the information about the preliminary assessment being paused I consider information of this kind, if held by JACS, would fall within the scope of the application.
34. JACS provided our Office with evidence of searches conducted to identify the information sought. Noting the sensitive nature of the material sought, the information access team consulted with the Chief Human Resources Officer and the Human Resources Director to obtain relevant documents.
35. As the information sought concerned an employment related complaint, I consider it was appropriate for staff with human resources functions to assist with identification of information in scope.
36. The applicant provided our Office with a copy of an internal email between JACS staff sent in March 2025 forwarding an enquiry from the applicant seeking an update on the preliminary assessment of their complaint.
37. JACS identified emails from March 2025 comprising correspondence between JACS and the applicant where the applicant said they intended to provide further evidence to support their complaint, but they were waiting until another process has progressed before doing so (receipt of submissions from a third party for a different process).
38. I note the applicant's position that this information about wanting to provide more evidence was forwarded to the officer with carriage of the preliminary assessment process, where the applicant would have expected the officer to respond to their colleague's enquiry (i.e. whether they agreed to wait for the additional information or would proceed with their assessment).

39. I have formed the view that while JACS did not locate a response to this enquiry (which could have been done verbally), I am satisfied the steps taken to locate relevant information were sufficient.

Consideration

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

Public interest test

41. 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, and
- unless, on balance, disclosure of the information would be contrary to the public interest, allow access to the information.

Factors favouring disclosure

42. In its original decision, JACS relied on one factor favouring disclosure for part of the material being personal information of the applicant. JACS did not identify any other factors favouring disclosure.

43. In reviewing an unredacted copy of 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)

44. A factor favouring disclosure is the information is the personal information of the person making the request.

45. In the FOI Act, personal information³:

(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.

46. I consider this factor is relevant in this case and I afford significant weight to this factor, as release would give the applicant access to their own personal information, particularly in relation to a complaint they made in the context of their employment.

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

47. A factor favouring disclosure is the information could reasonably be expected to contribute to the administration of justice generally, including procedural fairness.

48. I consider this factor is relevant because the applicant is seeking access to the material in relation to a preliminary assessment of their complaint regarding behaviour of third parties at their workplace.

³ FOI Act, Dictionary, meaning of 'personal information'.

49. Procedural fairness is an important part of managing complaints and people who are affected should be provided with sufficient information to enable them to adequately respond to the issues, provide their views and ensure the assessment was conducted in accordance with legislation, rules and procedures.
50. 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 issues raised.
51. However, this needs to be balanced against the other factors favouring non-disclosure and does not necessarily relate to providing the affected parties (including the complainant) with all the information relating to the complaint or complaint process. In reviewing the information at issue, there does not appear to be any meaningful information that would assist with procedural fairness for the applicant.
52. Based on my review of the information at issue in this review, I award minor weight to this factor.

Factors favouring nondisclosure

53. In its original decision, JACS identified 2 factors favouring nondisclosure.

54. In reviewing the information at issue, I have identified a further factor favouring nondisclosure.

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)

55. A factor favouring nondisclosure is where disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act.

56. In its decision, JACS applied this factor to redact mobile phone numbers of staff members and other information identified in the decision to protect their right to privacy, although JACS noted that those numbers are known by the applicant.

57. 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.

58. The following may be relevant to determine 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.

59. 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.⁴

60. 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.

⁴ Section 11 of the *Information Privacy Act 2014* (ACT).

61. 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.
62. 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 staff—in this instance, ensuring the safety of staff and the ability to communicate but not to make that information publicly available.
63. 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.
64. I also agree that release of contact details of other employees may lead to prejudice the protection of an individual's right to privacy and there is no evidence in front of me those employees consented to release this information in response to a FOI request.
65. I award significant weight to this factor in relation to the personal information of the staff noted above.

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

66. A factor favouring nondisclosure is when disclosure could reasonably be expected to prejudice the management function of an agency or the conduct of industrial relations by an agency.
67. The management function of an agency includes activities such as recruitment, training, performance reviews, promotion, counselling, discipline, compensation and occupational health and safety.
68. In this case the management function of agency relates to the preliminary assessment of a workplace complaint initiated by the applicant.

69. 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. These management actions fall within the definition of the management functions of the agency.
70. Disclosure of the information may lead to a situation where people may not feel confident participating in the assessment or investigation of employment incidents. This may undermine workplace processes and subsequent outcomes.
71. Given the FOI Act places the onus on the respondent to justify how disclosure would prejudice the management function of an agency, I consider JACS could have more clearly outlined its reasoning in relation to this factor in the primary decision.⁵
72. While I recognise the preliminary assessment is concluded, I consider disclosure could still reasonably be expected to prejudice the management function as it may damage the trust relationship between management and employees wishing to provide necessary information for the assessment of a complaint, or future complaints (e.g. involving similar conduct or reprisal).
73. I agree with the decision not to release this material as people would expect disclosure of information concerning a complaint to be handled appropriately, consistent with the preliminary assessment process, including that certain information remain confidential even when the process or investigation has finished.
74. I 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.

⁵ A person seeking to prevent disclosure of government information has the onus of establishing that the information is contrary to the public interest information (s 72 of the FOI Act).

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

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

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

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

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

78. In this case, the information at issue is the material obtained for the preliminary assessment conducted in relation to the workplace incident. It includes response to the allegations of inappropriate behaviour, which was provided in confidence to an officer conducting the assessment and for that exclusive purpose.

79. As discussed above, disclosure of the information may lead to a situation where people may not feel confident participating in the assessment or investigation of employment incidents. This may undermine workplace processes and subsequent outcomes.

80. The information provided in relation to a PA process is expected to be kept confidential, unless disclosed within the PA process, and not for purposes outside of that process.

81. I award significant weight to this factor.

Balancing the factors

82. 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.

83. In this matter, I identified 2 factors favouring disclosure and awarded significant weight to one and minor weight to the other.

84. I identified 3 factors favouring nondisclosure and awarded significant weight to all of them.

85. 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.

86. The FOI Act has a pro-disclosure bias,⁶ 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'.⁷

87. 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. While it may not always be possible, I still 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.

Conclusion

88. I acknowledge the pro-disclosure bias of the FOI Act and the factors favouring disclosure, particularly with respect to the applicant.

⁶ Section 17 of the [FOI Act](#).

⁷ [Explanatory Statement, Freedom of Information Bill 2016](#).

89. However, for the reasons set out above (particularly the potential impact of disclosure in prejudicing the management function of an agency and the ability of an agency to obtain confidential information), I have decided, on balance, the factors favouring nondisclosure outweigh the factors favouring disclosure.

Decision

90. I **confirm** JACS's decision under s 82(2)(a) of the FOI Act.

Katrina Dwyer

Senior Assistant Ombudsman

17 March 2026