

***Peter Brewer and Justice and Community Safety Directorate [2022]***  
**ACTOFOI 8 (24 October 2022)**

**Decision and reasons for decision of ACT Ombudsman Iain Anderson**

<b>Application Number</b>	AFOI-RR/21/10035
<b>Decision Reference</b>	[2022] ACTOFOI 8
<b>Applicant</b>	Peter Brewer
<b>Respondent</b>	Justice and Community Safety Directorate
<b>Decision Date</b>	24 October 2022
<b>Catchwords</b>	<i>Freedom of Information Act 2016 (ACT)</i> – deciding access – whether disclosure of information is contrary to the public interest – information identifies corruption or the commission of an offence by a public official – inform the community of the government’s operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community – allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or public official – reveal or substantiate that an agency or public official has engaged in misconduct or negligent, improper or unlawful conduct or has acted maliciously or in bad faith – prejudice the protection of an individual’s right to privacy or any other right under the <i>Human Rights Act 2004</i> – 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. Under s 82(2)(c) of the *Freedom of Information Act 2016 (ACT) (FOI Act)*, I **set aside and substitute** the decision of the Justice and Community Safety Directorate (JACS), dated 21 December 2021.

## Background of Ombudsman review

2. On 23 November 2021, the applicant applied to JACS for access to the following information:
  - Any integrity reports filed between January 1 2020 and March 1 2020 in relation to the seizure of a mobile phone from a detainee and provided to the Commissioner for Corrective Services.
  - Any reports which disclose what was found on the phone.
  - Any photographic material which was downloaded from the seized mobile phone.
  - Any records of when that phone was seized, how it was secured, and what happened to the phone.
3. On 21 December 2021, JACS identified 9 documents totalling 59 pages as falling within the scope of the access application and decided to refuse access to all 9 documents.
4. On 22 December 2021, the applicant applied for Ombudsman review of JACS' decision to refuse access to the documents.
5. On 16 May 2022, then Acting ACT Ombudsman, Ms Penny McKay, provided preliminary views about the respondent's decision to the parties in a draft consideration.
6. The respondent accepted the draft consideration and did not provide any additional submissions.
7. On 24 May 2022, the applicant provided submissions in relation to the draft consideration. The submissions required careful consideration before making a final decision. The reasons set out in this final decision address the applicant's submissions in response to the draft consideration.

## Information at issue

8. The information at issue in this Ombudsman review is the information that JACS decided to refuse access to in its decision of 21 December 2021.
9. The issue to be decided in this Ombudsman review is whether the information at issue consists of "contrary to the public interest information" within the meaning of s 16 of the FOI Act.
10. In making my decision, I had regard to:
  - the FOI Act, in particular ss 6, 7, 9, 16, 17, 72, Schedule 1 and Schedule 2
  - the *Human Rights Act 2004* (**Human Rights Act**)
  - the *Integrity Commission Act 2018* (**Integrity Commission Act**)
  - the applicant's access application and review application
  - the respondent's decision

- the respondent's FOI processing file relating to the access application
- an unedited copy of the information at issue
- *ACT Ombudsman Guideline 4 – Considering the public interest*
- the Explanatory Statement to the Freedom of Information Bill 2016
- the applicant's submissions in response to my draft consideration, and
- relevant case law, including 'BM' and Justice and Community Safety Directorate,<sup>1</sup> 'BP' and Justice and Community Safety Directorate,<sup>2</sup> and Francis and Australian Sports Anti-Doping Authority (Freedom of Information).<sup>3</sup>

## Relevant law

11. 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.
12. 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.
13. Section 17 of the FOI Act sets out the test used to balance public interest factors favouring disclosure and non-disclosure respectively. This test requires me to:
  - identify any factor favouring disclosure that applies to the information (*a relevant factor favouring disclosure*), including any factor mentioned in Schedule 2, s 2.1,
  - identify any factor favouring non-disclosure that applies to the information at issue (*a relevant factor favouring non-disclosure*), including any factor mentioned in Schedule 2, s 2.2,
  - balance any relevant factor or factors favouring disclosure against any relevant factor or factors favouring non-disclosure,
  - 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.
14. Section 72 of the FOI Act provides that the person seeking to prevent disclosure of government information has the onus of establishing the information is contrary to the public interest information.

---

<sup>1</sup> [2021] ACTOFOI 14 (23 November 2021).

<sup>2</sup> [2021] ACTOFOI 19 (22 December 2021).

<sup>3</sup> [2019] AATA 12.

15. Schedule 1 of the FOI Act sets out categories of information that are taken to be contrary to the public interest to disclose.
16. Schedule 2 of the FOI Act sets out the public interest factors that must be considered when determining the public interest.

## The contentions of the parties

17. The JACS decision relied on:
  - Schedule 1, ss 1.4 and 1.14(1)(a) - (d) and (f) of the FOI Act, and
  - Schedule 2, ss 2.2(a)(ii), (xii) and (xv) of the FOI Act to refuse access to the information at issue.
18. JACS listed Schedule 2, s 2.1(a)(iii) of the FOI Act as the single factor favouring disclosure of the information at issue.
19. Schedule 1, s 1.4 applies to information the disclosure of which would involve the unreasonable disclosure of sensitive information about any individual.
20. Schedule 1, ss 1.14(1)(a) - (d) and (f) apply to:

Information the disclosure of which would, or could reasonably be expected to—

  - (a) prejudice the investigation of a contravention or possible contravention of the law in a particular case; or
  - (b) identify the existence or identity of a confidential source of information in relation to the enforcement or administration of the law; or
  - (c) endanger a person's life or physical safety; or
  - (d) result in a person being subject to a serious act of harassment or intimidation; or
  - (f) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.
21. The JACS decision notice said:

There is a substantial amount of sensitive personal information contained within the documents that would be unreasonable to disclose. I also note that the release of this information could undermine the methods used for gathering this type of information and undermine their effectiveness in the future, and as such it is not reasonable or in the public interest to circumvent this or release any information that may undermine this work.
22. Schedule 2, s 2.1(a)(iii) provides a factor favouring disclosure is to inform the community of the government's operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community.

23. Schedule 2, s 2.2(a)(ii) protects an individual's right to privacy under the Human Rights Act against prejudice. Schedule 2, s 2.2(a)(xii) protects an agency's ability to obtain confidential information and Schedule 2, s 2.2(a)(xv) protects an agency's management function or conduct of industrial relations. These factors do not automatically mean that information is taken to be contrary to the public interest to disclose, but rather are Schedule 2 factors favouring non-disclosure which need to be considered according to the test set out in s 17 to determine whether, on balance, disclosure of the information is contrary to the public interest.

24. The JACS decision letter said:

Whilst I recognise the value in informing the public of the government's operations, in this instance this factor is significantly outweighed as the privacy of the individuals involved, and the ability of ACT Corrective Services to obtain confidential information from key sources in the future, could be badly compromised should this information be released.

25. In the application for Ombudsman review, the applicant submitted:

I believe this decision is incorrect and has been made to protect a senior executive within ACT Corrections who misappropriated seized material, broke the law by tampering with evidence, and has been involved in a cover-up.

... it is imperative and completely within the public interest to expose this senior executive's blatant manipulation and breaches of security. Should privacy be required to be protected, this person's name can be redacted.

... this FOI information is pertinent, relevant, in the public interest...

26. These submissions are discussed in more detail below.

## Considerations

27. I carefully considered an unedited copy of the information at issue together with the information provided by the applicant and respondent.

*Information that is taken to be contrary to the public interest to disclose under Schedule 1*

28. JACS decided the information at issue was taken to be contrary to the public interest to disclose under Schedule 1, ss 1.4 and 1.14(1)(a), (b), (c), (d) and (f).

29. Information mentioned in Schedule 1 is taken to be contrary to the public interest to disclose, unless the information identifies corruption or the commission of an offence by a public official, or that the scope of a law enforcement investigation has exceeded the limits imposed by law.

30. I carefully reviewed a copy of the information at issue. I consider the information potentially identifies corruption or the commission of an offence by a public official. It follows therefore that I disagree with the JACS decision that the information at issue is contrary to the public interest to disclose under Schedule 1.
31. A public official is any person who performs an official function or acts in an official capacity for the ACT.<sup>4</sup> Public officials include:
- Members of the Legislative Assembly (MLA)
  - members of staff of an MLA
  - judicial officers
  - members, assessors or registrars of the ACT Civil and Administrative Tribunal
  - officers of the Legislative Assembly
  - statutory office holders
  - public servants
  - employees of a public sector entity, and
  - contractors, employees of contractors or volunteers exercising a function of a public sector entity.
32. *ACT Ombudsman Guideline 4 – Considering the public interest* provides that if the information under consideration identifies corruption, the commission of an offence by a public official, or that the scope of a law enforcement investigation has exceeded the limits imposed by law, Schedule 1 does not apply and decision-makers must apply the public interest test in assessing whether or not to release the information.
33. The Explanatory Statement to the Freedom of Information Bill further states, in relation to Schedule 1 of the Bill:
- ... the scope of the schedule is limited so that it does not apply to information that identifies corruption or the commission of an offence by a public official or to information that would reveal the scope of a law enforcement investigation has exceeded the limits imposed by law. In these circumstances the public interest test will be required to be applied to the information (see clause 17).
34. Therefore, for the information sought to be contrary to the public interest information, disclosure of the information sought must, on balance, be contrary to the public interest under the test set out in s 17 of the FOI Act.

---

<sup>4</sup> Section 12(1) of the Integrity Commission Act.

*Irrelevant factors*

35. In making my decision, I have not had regard to any of the irrelevant factors which a decision-maker is prohibited from considering under s 17(2) of the FOI Act.

36. In response to the draft consideration, the applicant submitted, in relation to his reasons for seeking access to the information at issue:

My contention in pursuing this matter through a further appeal to your office and its draft consideration is that the source that has provided me with this information has no selfish aim nor motive other than to ensure that malpractice and/or corrupt behaviour by appointed public servants is revealed, and to uphold public confidence in the processes which are established to expose such malpractice and/or corrupt behaviour.

It is incumbent upon my role, as a journalist, to seek out information which would support/deny these allegations rather than publish them without any. Seeking to achieve this validity of information is the purpose of my efforts in pursuing this matter.

37. I am unable to have regard to these submissions because s 17(2)(f) of the FOI Act explicitly prohibits the applicant's identity, circumstances or reason for seeking access to the information at issue to be taken into account when deciding whether disclosure of information would be contrary to the public interest.

*Factors favouring disclosure*

38. Three factors favouring disclosure are relevant in this review.

Inform the community of the government's operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community

39. Of the factors favouring disclosure listed in Schedule 2, s 2.1(a) of the FOI Act, JACS considered that releasing the information at issue would inform the community of the government's operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community.<sup>5</sup> This is a reasonable expectation that could weigh in favour of disclosure under the FOI Act.

40. I consider that disclosure of the information at issue may inform the community of the policies, guidelines and codes of conduct followed by JACS in its dealings with members of the community, including those linked to ACT Corrective Services.

41. A careful review of the information at issue, however, indicates most of the information at issue relates to JACS' dealings with staff under the ACT Corrective Services Integrity Framework, as opposed to members of the community.

---

<sup>5</sup> Schedule 2, s 2.1(a)(iii) of the FOI Act.

42. In *BM and Justice and Community Safety Directorate*<sup>6</sup> the Acting Senior Assistant Ombudsman decided this factor was not applicable in that case, stating:

... the information is about internal human-resources related issues within the governmental workforce rather than 'dealings with members of the community'... in my view 'members of the community' should not be interpreted to mean government employees in their capacities as government employees.<sup>7</sup>

43. The draft consideration noted that because the information at issue only partly relates to dealings with members of the community, this factor was afforded minimal weight. In response, the applicant submitted:

... there appears to be no justification for "reading down" the reference to "members of the community" in Schedule 2, section 2.1(a) of the FOI Act, to exclude government employees in their capacity as government employees...

44. I am not persuaded by the applicant's submission on this point. There is a distinction, as outlined in *BM and Justice and Community Safety Directorate*,<sup>8</sup> between policies, guidelines and codes of conduct followed by government employees in their dealings with members of the community, and those followed internally within government agencies.

45. I afford this factor minimal weight.

46. In addition, I consider the following factors listed in Schedule 2, s 2.1(a) of the FOI Act apply to the information at issue:

- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or public official,<sup>9</sup> and
- reveal or substantiate that an agency or public official has engaged in misconduct or negligent, improper or unlawful conduct or has acted maliciously or in bad faith.<sup>10</sup>

Allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or public official

47. In the application for Ombudsman review, the applicant alleged corruption within ACT Corrections by way of misappropriated seized material, evidence tampering and a cover-up.

48. In its submissions to me regarding this review, JACS stated:

... I note that Mr Brewer has made some serious allegations in his submission to the Ombudsman and that the release of these documents may go some way to addressing Mr Brewer's concerns, however, I cannot in all reasonable conscience release this information for the reasons I have listed above. I would

---

<sup>6</sup> [2021] ACTOFOI 14 (23 November 2021) at 25.

<sup>7</sup> ACTOFOI 14 (23 November 2021) at 25.

<sup>8</sup> [2021] ACTOFOI 14 (23 November 2021) at 25.

<sup>9</sup> Schedule 2, s 2.1(a)(v) of the FOI Act.

<sup>10</sup> Schedule 2, s 2.1(a)(vi) of the FOI Act.



encourage Mr Brewer to contact ACT Policing should he remain concerned about the way this matter has been handled.

49. In response to the draft consideration, the applicant submitted:

The Canberra Times has sought a response from the Minister's office and the directorate on these allegations and told nothing of this nature occurred. And yet your office identifies that such potential breaches occurred.

How is the community to have any confidence at all in the processes which are aimed at exposing corruption and malpractice when the directorate first denies such breaches occurred, then refuses under FOI to release the nine documents that would potentially identify the breaches, the ACT Ombudsman acknowledges that potential malpractice occurred, and yet there is no exposure of these practices in any form?

50. The applicant's submissions appear to me to imply the specific allegations he has raised have been confirmed. This is not the case. At paragraph 30 of this decision, I have stated that I consider the information at issue *potentially* identifies corruption or the commission of an offence by a public official.

51. Having confirmed that the information at issue potentially identifies corruption or the commission of an offence by a public official, I consider the release of the information at issue can reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or public official. I attribute significant weight to this factor.

Reveal or substantiate that an agency or public official has engaged in misconduct or negligent, improper or unlawful conduct or has acted maliciously or in bad faith

52. Having confirmed that the information at issue potentially identifies corruption or the commission of an offence by a public official, I consider the release of the information at issue could reasonably be expected to reveal that an agency or public official has engaged in misconduct or negligent, improper or unlawful conduct or has acted maliciously or in bad faith. I attribute significant weight to this factor. Disclosing this information at this time may impact any potential investigations.

Pro-disclosure bias

53. Additionally, the FOI Act has an express pro-disclosure bias which reflects the importance of public access to government information for the proper working of representative democracy.<sup>11</sup>

This concept is promoted through the objects of the FOI Act.<sup>12</sup>

---

<sup>11</sup> Section 17 of the FOI Act.

<sup>12</sup> Section 6(b) of the FOI Act.

54. In response to the draft consideration, the applicant submitted:

Clearly it is established by your office, and by JACS (through its strenuous efforts not to disclose), that this potential misconduct has occurred and you state quite clearly that a pro-disclosure bias is inherent in the FOI Act.

55. As I observed above at paragraph 50, I have not confirmed that misconduct has occurred. I have stated that the information at issue potentially identifies corruption.

56. Whilst the FOI Act is intended to be administered with a pro-disclosure bias, that bias does not automatically lead to unlimited access, particularly where it is not in the public interest. A balance is required to be struck between competing interests for and against disclosure, and between furthering democratic objectives and protecting individual rights.

*Factors favouring nondisclosure*

57. Three factors favouring non-disclosure are relevant in this review.

An individual's right to privacy

58. A reasonable expectation that disclosure could prejudice an individual's right to privacy under the Human Rights Act weighs against disclosure under the FOI Act.<sup>13</sup>

59. Section 12 of the Human Rights Act provides that:

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.

60. JACS decided this factor was relevant in its decision. The applicant, in their application for Ombudsman review, submitted:

Should privacy be required to be protected, this person's name can be redacted.

61. In its submissions to this review, JACS stated:

It is worth noting that the redaction of the names and contact details of the individuals involved is not sufficient to protect the identity of persons referenced in the material, as they may easily be recognised through the content of reports and by piecing together information, otherwise known as the 'mosaic effect.' This is especially pertinent in the context of the size of the ACT population and the relatively small pool of staff and detainees at the AMC, where individuals are more easily identifiable.

62. In addition, JACS submitted that one of the persons referenced in the material repeatedly expressed concerns for their safety when disclosing information subsequently captured in an integrity report.

---

<sup>13</sup> Schedule 2, s 2.2(a)(ii) of the FOI Act.

63. Having regard to submissions from JACS, and cognisant of the particular circumstances of the officers and detainees at the AMC, the draft consideration took the view that releasing the information at issue would prejudice an individual's right to privacy under the Human Rights Act and negatively impact the individuals involved.

64. In response, the applicant submitted that because most of the information at issue relates to the guidelines and codes of conduct followed by JACS in its dealings with staff under the ACT Corrective Services Integrity Framework:

... it is not apparent how any interference with the privacy of individuals in this context could be either unlawful or arbitrary (as would be required for the Human Rights Act provisions to be relevant), given the nature of the information in question as described... Consequently, this factor would appear to be irrelevant to the weighing exercise and the Ombudsman's determination.

65. I have carefully reviewed the information at issue. The information at issue does not include guidelines and codes of conduct. The access application included a request for access to reports and records. Whilst a report may be based on a template, a completed report comprising sensitive personal information is distinguishable from an incomplete template.

66. For these reasons I afford this factor significant weight.

#### Prejudice an agency's ability to obtain confidential information

67. A reasonable expectation that disclosure of information could prejudice an agency's ability to obtain confidential information weighs against disclosure under the FOI Act.<sup>14</sup>

68. JACS decided this factor was applicable, stating in its decision notice:

... the ability of ACT Corrective Services to obtain confidential information from key sources in the future, could be badly compromised should this information be released.

69. JACS expanded on this factor further in its submissions to this review, stating:

The information within scope of this FOI request involves extensive intelligence holdings and the release of this information is likely to significantly impact on the future provision of such information...

The ACTCS Intelligence and Integrity Unit (IIU) investigates the validity of claims and makes recommendations to the relevant manager or the ACTCS Commissioner for action. The appropriate officer has the authority to investigate the claim further and undertake the appropriate course of action with the concerned parties. The effectiveness of these processes relies on people having trust in the IIU to manage this information in an appropriate way and to only disclose information where it is strictly necessary.

70. I agree with the submissions from JACS. The preliminary view expressed in the draft consideration was that it would be reasonable to expect that disclosing the information at issue

---

<sup>14</sup> Schedule 2, s 2.2(a)(xii) of the FOI Act.

would risk prejudice to the ability of JACS to obtain confidential information from staff or detainees of the AMC. In my draft consideration I afforded this factor significant weight.

71. In response, the applicant submitted:

... it appears no consideration has been given to redacting some information beyond the names and contact details of the individuals, in order to ensure that no identification can be made through the alleged "mosaic effect".

It appears completely arbitrary that the suggestion of such a risk to refuse access to the information in its entirety, without considering the possibility of disclosing the material to the extent it does not have the claimed effect.

72. I am not persuaded by this argument. The mosaic effect is well established in administrative law. In *Francis and Australian Sports Anti-Doping Authority (Freedom of Information)*,<sup>15</sup> the Administrative Appeals tribunal found, in relation to the mosaic effect:

In matters such as these, where issues of security, criminality and integrity are involved, a precautionary approach is preferable.<sup>16</sup>

73. For these reasons I afford this factor significant weight.

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

74. A reasonable expectation that disclosure of information could prejudice the management function of an agency weighs against disclosure under the FOI Act.<sup>17</sup>

75. JACS identified this as a factor in its decision, relevantly submitting that the effectiveness of its internal integrity investigation processes relied on people trusting that information would be managed appropriately and disclosed only when absolutely necessary.

76. In response to the draft consideration, the applicant submitted that this factor was in essence a repeat of the consideration that disclosing information could prejudice an agency's ability to obtain confidential information.

77. The ability for an agency to obtain confidential information may be related to the management function or the conduct of industrial relations by an agency. However, in considering this factor, I must also consider the broad meaning of these terms.

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

---

<sup>15</sup> [2019] AATA 12.

<sup>16</sup> [2019] AATA 12 [178].

<sup>17</sup> Schedule 2, s 2.2(a)(xv) of the FOI Act.

and safety. 'Conduct of industrial relations' includes an agency's management of employment-related obligations and any potential investigation and sanctions for allegations of corruption.

79. I am not persuaded by the applicant's submission.

80. In *BP and Justice and Community Safety Directorate*<sup>18</sup> the Acting Senior Assistant Ombudsman found:

... maintaining a system for reporting integrity matters in a corrections context is inextricably linked to the management function of an agency. Indeed, a corrections agency without an integrity reporting process or one in which the mechanism is dysfunctional would be compromised in its management function.<sup>19</sup>

81. I agree with the Acting Senior Assistant Ombudsman's view and consider it is relevant to this review. I consider disclosure of the information at issue could reasonably be expected to prejudice both the JACS management function and conduct of industrial relations, through inhibiting the receipt of and monitoring of integrity-related information, and thereby also prejudicing the ability to act upon matters of internal integrity I afford this factor significant weight.

#### *Balancing the factors*

82. Having identified public interest factors favouring disclosure and factors favouring non-disclosure, I now must consider the public interest balancing test set out in s 17 of the FOI Act.

83. In this matter, I identified 3 public interest factors apply which favour disclosure of the information at issue, being Schedule 2, ss 2.1(a)(iii), (v), and (viii), and I attribute considerable weight to these factors.

84. On the other hand, I identified 3 public interest factors apply which favour nondisclosure of the information at issue, being Schedule 2, s 2.2(a)(ii), (xii) and (xv), and I attribute significant weight to these factors.

85. Balancing public interest factors is not simply a case of quantifying the number of relevant factors for disclosure and non-disclosure, 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.

---

<sup>18</sup> [2021] ACTOFOI 18 (22 December 2021).

<sup>19</sup> *BP and Justice and Community Safety Directorate* [2021] ACTOFOI 18 (22 December 2021) at [53].

86. 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 be put on each side, rather the scales are ‘laden in favour of disclosure’.<sup>20</sup>
87. I am satisfied that in relation to the information at issue, on balance, the public interest factors favouring non-disclosure outweigh the public interest factor favouring disclosure of the information at issue. This is because I attribute overall significant weight to the three factors favouring non-disclosure, whereas I have attributed considerable, but less, weight to the three factors favouring disclosure and factored in the pro-disclosure bias in the FOI Act.

## Conclusion

88. For the reasons set out above, the decision of JACS dated 21 December 2021 to refuse access to the information at issue under s 35(1)(c) of the FOI Act, should be set aside and substituted with a new decision under s 82(2)(c) of the FOI Act, with respect to the information at issue in this review.
89. Whilst I agree with JACS that the information at issue should not be disclosed because it is “contrary to the public interest information” within the meaning of s 16 of the FOI Act, I disagree with JACS’ reliance on Schedule 1 of the FOI Act to make that decision. Given the information at issue potentially identifies corruption or the commission of an offence by a public official, Schedule 1 cannot apply.
90. Taking into account all the relevant factors listed in Schedule 2, the information at issue is contrary to the public interest to disclose under the public interest test set out in s 17 of the FOI Act.

**Iain Anderson**  
**ACT Ombudsman**

**24 October 2022**

---

<sup>20</sup> [Explanatory Statement, Freedom of Information Bill 2016.](#)