

## Decision and reasons of Senior Assistant Ombudsman

Application number:	AFOI-RR/24/80015
Applicant:	Marist College Canberra
Respondent:	Chief Minister, Treasury and Economic Development Directorate
Participants:	<ol style="list-style-type: none"><li>1. Covenant Christian School</li><li>2. The FOI applicant</li></ol>
Respondent reference:	CMTEDDFOI 2024-270
Date:	22 September 2025
Decision reference:	[2025] ACTOFOI 15
Catchwords:	Freedom of Information Act 2016 - deciding access - whether information is contrary to the public interest information - 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 - Reveal the reason for a government decision and any background or contextual information that informed the decision - Prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004 - Prejudice security, law enforcement or public safety— Prejudice an agency's ability to obtain confidential information - Prejudice trade secrets, business affairs or research of an agency or person

## 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. My decision is to vary the Chief Minister, Treasury and Economic Development Directorate (**CMTEDD**) decision dated 20 November 2024 under s 82(2)(b) of the FOI Act.

## Background to Ombudsman review

3. On 27 August 2024, the FOI applicant requested access to the following information from CMTEDD:

ACT WorkSafe documents from 1 January 2023 to 27 August 2024 for all schools where an investigation was conducted I am seeking:

- Notices
- Reports &
- Directives

4. On 6 September 2024, the FOI applicant agreed to amend the scope of their application to:

ACT WorkSafe documents from 1 January 2023 to 27 August 2024 for all schools where a workplace visit was conducted I am seeking:

- Notices
- Reports &
- Directives

5. CMTEDD conducted searches and located 78 documents within the scope of the application.
6. On 11 October 2024, CMTEDD consulted Covenant Christian School ("Covenant") as a relevant third party on 5 documents of concern to them being 2 improvement notices, an improvement notice extension, a workplace visit report and an email from WorkSafe ACT to Covenant.

7. Covenant provided submissions to CMTEDD objecting to the release of some information they were consulted on, including the names of individuals and the name of the school.
8. On 16 October 2024, CMTEDD consulted the review applicant, Marist College Canberra (“Marist College”), as a relevant third party on 2 documents related to the applicant, being an improvement notice, and a workplace visit report.
9. On 24 October 2024, Marist College provided submissions to CMTEDD objecting to the release of the improvement notice.
10. On 6 November 2024, Marist College contacted WorkSafe ACT to advise they did not receive a copy of the improvement notice as the email address contained in the notice was incorrect and Marist College only became aware of the notice as a result of the FOI consultation process. Marist College noted they had contacted WorkSafe ACT on 30 May 2024 to provide information in response to the workplace visit on 28 May 2024 but did not receive a response.
11. On the same day, WorkSafe ACT confirmed the notice was recorded as 'complied with' on 26 June 2024 due to the provision of information in the 30 May 2024 email and advised they would seek the regulators view on cancelling the notice.
12. On 20 November 2024, CMTEDD made a primary decision to give full access to 7 documents and partial access to 71 documents. In respect of the improvement notice issued to Marist College (document 31), CMTEDD decided to give access to this information with the email address of a Marist College staff member deleted.
13. In respect to the documents relevant to Covenant, CMTEDD decided to give partial access with some information deleted relying on the protection of an individual's right to privacy, prejudice of security, law enforcement or public

safety and the agency's ability to obtain confidential information as factors favouring non-disclosure.

14. On 25 November 2024, the Acting Deputy Work Health and Safety Commissioner wrote to Marist College cancelling the improvement notice as a result of a technical defect (incorrect email address).
15. On 17 December 2024, Marist College requested an Ombudsman review of the primary decision in respect of the improvement notice issued to Marist College.
16. On 20 December 2024, the FOI applicant applied to participate in the Ombudsman review.
17. On 23 January 2025, Covenant applied to participate in the Ombudsman review.
18. All requests from third parties to participate in the review were approved.
19. On 15 August 2025, the Acting Senior Ombudsman provided their preliminary view to the parties in a draft consideration.
20. CMTEDD accepted the draft consideration and did not provide any further submissions.
21. The FOI applicant accepted the draft consideration and did not provide any submissions.
22. Marist College accepted the draft consideration and confirmed their view that the personal information such as names and contact details should be redacted.
23. Covenant did not accept the draft consideration and provided additional submissions regarding the proposed release of the school's name:

I respectfully ask that you examine the documents attached, and decide to:

Option 1: Redact the School's name in all relevant correspondence and documents,  
or

Option 2: If the decision is to NOT redact the School's name, then also release the School's response to Worksafe, including emails and documents.

24. I considered this request carefully. I am of the view, however, there is no reasonable ground to redact this information. The document is public in nature and must be displayed once issued.
25. The extra documents mentioned in the submissions cannot be released as they were neither subject documents of the primary decision nor of the review.

### **Information at issue**

26. The information at issue in this Ombudsman review is:
- the improvement notice issued by WorkSafe ACT on 29 May 2024 to Marist College (document 31). The applicant did not object to the release of the workplace visit report (document 32), and
  - 5 documents related to Covenant being 2 improvement notices, an improvement notice extension, a workplace visit report and an email from WorkSafe ACT to Covenant (documents 17-21).
27. The key issue to be decided in this Ombudsman review is whether the information at issue is contrary to public interest information or not.
28. In making my decision, I have had regard to:
- the applicant's review application
  - submissions made by the participants
  - CMTEDD's decision
  - the ACT FOI guidelines issued under section 66 of the FOI Act
  - the FOI Act, in particular Schedule 2
  - the *Human Rights Act 2004* (Human Rights Act)
  - the *Work Health and Safety Act 2011* (WHS Act)

- relevant case law:
  - *Canberra Metro Pty Ltd and Major Projects Canberra* [\[2020\] ACTOFOI 13](#) (6 May 2010), and
  - *Village 25 Pty Ltd, Downer EDI Works Pty Ltd and Chief Minister, Treasury and Economic Development Directorate* [\[2024\] ACTFOI 13](#) (26 July 2024).

## Relevant law

29. 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.<sup>1</sup>

30. 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.

31. 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 non-disclosure to decide whether, on balance, disclosure would be contrary to the public interest.

32. 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.

33. 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

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<sup>1</sup> Section 35(1)(c) of the [Freedom of Information Act 2016 \(ACT\)](#) (FOI Act).

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.

34. 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**

35. CMTEDD decided on balance to give partial access to the information at issue stating:

The release of this information can reasonably be expected to inform you of the guidelines and policies that WorkSafe ACT followed when a workplace visit is conducted...

The parties involved did not provide their consent to release their personal information which include names, signature and contact information. These individuals are entitled to expect that the personal information they have supplied as part of this process will be dealt with in a manner that protects their privacy. Release of information concerning individuals working within the ACT Public Service is generally not considered to prejudice the protection of an individual's right to privacy. However, where mobile phone numbers may be used for home and work purposes, this information is redacted, as it could or would reasonably be expected to prejudice an individual's right to privacy under the *Human Rights Act 2004*...

I have also considered the impact of disclosing information which relates to business affairs. In the case of *Re Mangan and The Treasury* [2005] AATA 898 the term 'business affairs' was interpreted as meaning 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'. Schedule 2 section 2.2(a)(xi) allows for government information to be withheld from release if disclosure of the information could reasonably be expected to prejudice the trade secrets, business affairs or research of an agency or person...

Releasing information about a school's risk mitigation strategies specifically when dealing with violence and aggression in the workplace could prejudice the safety of staff and students. Additionally, this information was provided to WorkSafe as part of the workplace visit report with the expectation that it would be kept confidential. Public release of this information could prejudice the agency's ability to obtain confidential activity in the future.

36. Marist College in their submissions during the consultation under s 38 of the FOI Act objected to release stating:

- The FOI applicant is not known to the applicant.

- The Workplace visit was part of a “Proactive Private School Campaign” and not because a work, health and safety concern was raised by WorkSafe or because the College had received a WorkSafe Notice.
- Marist is concerned that disclosure of the information, if published further, could infer that Marist does not adopt safe practices and poses a risk to staff and students. Further, because Marist did not respond to the Improvement Notice due to it being sent to the wrong email address by WorkSafe, an inference could be made that Marist does not take the issue of health and safety seriously.
- Marist is also concerned that disclosure of the information could lead members of the public to assume the visit was due to a concern raised about the College not complying with areas of the relevant work health and safety legislation, and not part of a broader campaign involving all or most private schools across the ACT.

37. In the Ombudsman review application, Marist College submitted as WorkSafe ACT determined it was appropriate to cancel the improvement notice disclosure of the notice has a significant risk of misrepresenting what occurred following the workplace visit.

38. Covenant in their submissions to this review objected to the release of the school’s name and other information which may identify the school. Covenant stated the WorkSafe ACT action was incorrect and that this was demonstrated within the school responses to the improvement notice, which the respondent refused to include within the scope of the application.

## **Consideration**

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

39. To determine whether disclosure is contrary to the public interest, the FOI Act prescribes the following five steps:

- identify any factor favouring disclosure that applies in relation to the information (a relevant factor favouring disclosure), including any factor mentioned in schedule 2, section 2.1

- identify any factor favouring non-disclosure that applies in relation to the information (a relevant factor favouring non-disclosure), 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 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.

***Irrelevant factors***

40. Marist College has raised that disclosure of the improvement notice could result in a misrepresentation of what occurred between Marist College and WorkSafe ACT following the 28 May 2024 workplace visit and subsequent events.

41. In accordance with s 17(2)(b) of the FOI Act, I must not take into account the fact that access to information could result in a person misinterpreting or misunderstanding the information when deciding whether disclosure of information would, on balance, be contrary to the public interest.

**Factors favouring disclosure**

42. In the primary decision, CMTEDD identified 2 factors favouring disclosure of the information relating to the applicant and Covenant:

- Schedule 2, s 2.1(a)(iii)—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.

- Schedule 2, s 2.1(a)(viii)—reveal the reason for a government decision and any background or contextual information that informed the decision.

43. CMTEDD placed a significant weight on these factors.

44. I consider these factors apply in relation to the information at issue.

***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—Schedule 2, s 2.1(a)(iii)***

45. I consider this factor relevant here because release of the improvement notices and other material could inform the public of the operations of WorkSafe ACT when they conduct workplace visits. Release of the improvement notices and correspondence would demonstrate the actions taken by WorkSafe ACT to monitor and enforce compliance with work health and safety legislation.

46. I afford a significant weight to this factor as the relevant government operations involve public safety, and the workplaces inspected were schools where there is significant public interest in ensuring children are studying in a safe environment.

47. However, I do not consider this factor applies to the email addresses of the Marist College and Covenant staff members, as this information was only included in the improvement notices as a contact and does not concern WorkSafe's operations in relation to those schools.

***Reveal the reason for a government decision and any background or contextual information that informed the decision—Schedule 2, s 2.1(a)(viii)***

48. I consider this factor is also applicable to the improvement notices and correspondence as disclosure could reveal contextual information regarding

the WorkSafe ACT visit to the schools and provide background information for the decision to issue an improvement notice to each school.

49. I afford a significant weight to this factor as the improvement notice details the issues identified and directions to remedy or prevent contravention or likely contravention of Work, Health and Safety obligations.

50. As noted above, in respect of the email addresses of the Marist College and Covenant staff members, similarly I do not consider this factor applies to this information noting disclosure of these email addresses would not reveal the reason for a government decision nor information informing the decision only contact details.

#### **Factors favouring nondisclosure**

51. In its original decision, CMTEDD identified 3 factors favouring nondisclosure of the documents relating to the applicant and Covenant.

#### ***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)***

52. A factor favouring nondisclosure of information is where disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act. Section 12 of the Human Rights Act states:

Everyone has the right—

- (a) not to have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
- (b) not to have their reputation unlawfully attacked.

53. In the decision notice, CMTEDD stated:

the parties involved did not provide their consent to release their personal information which include names, signature and contact information. These individuals are entitled to expect that the personal information they have supplied as part of this process will be dealt with in a manner that protects their privacy.

54. CMTEDD decided to refuse access to the email address of a staff member of Marist College within the improvement notice issued to Marist College. The format of the email address includes the first and last name of the individual.
55. CMTEDD also decided to refuse access to the email addresses of Covenant staff members and a mobile phone number of a WorkSafe ACT staff member within the information of concern to Covenant.
56. During the course of this review the applicant advised the relevant Marist College staff member has since left the organisation. I consider disclosure of this email address could prejudice the privacy of that individual noting they have not consented to disclosure and disclosure would be unrelated to their professional duties. As they are no longer an employee disclosure may amount to an arbitrary interference with their privacy.
57. I give some weight to the public interest factor favouring nondisclosure of the Marist College staff member's email address particularly noting the email address is incorrectly listed in the improvement notice but would still reveal the first and last name of the staff member.
58. In relation to the Covenant staff members' email addresses, I confirm the primary decision not to disclose the email addresses, as while the staff may still be employed by the school, I consider the disclosure could reasonably be expected to prejudice their privacy. Those individuals have not consented to disclosure, and release in response to an FOI application is not related to the primary purpose the information was collected, being the contact on behalf of the school for WorkSafe ACT activities.
59. I also confirm the primary decision to refuse access to the mobile phone of that WorkSafe ACT officer as it is personal information and its release may prejudice their right to privacy, as the release of the mobile number could reasonably be

expected to reveal a phone number which may enable the officer to be contacted outside of work hours.

60. I give some weight to this factor favouring nondisclosure as it applies to this information.

***Prejudice security, law enforcement or public safety—Schedule 2, s 2.2(a)(iii);  
Prejudice an agency's ability to obtain confidential information—Schedule 2,  
s 2.2(a)(xii)***

61. CMTEDD applied both these factors favouring nondisclosure in deciding the access application. Due to their similarity in this matter, I have considered these factors together below.

62. In the decision notice, CMTEDD identified the improvement notices contain information about risk mitigation strategies specifically dealing with violence and aggression, where release of this information could reduce the effectiveness of these strategies and prejudice the safety of students and staff. CMTEDD also noted this information was provided in confidence to WorkSafe ACT.

63. In the information at issue concerning Covenant, risk mitigation strategies are listed. WorkSafe ACT identified that the system for managing this risk was not effective. I consider release of the description of the control measures alone would therefore not impact their effectiveness. Further, even if effective, the descriptions themselves are not detailed and knowledge of the control measures in my view would not impact the occurrence or severity of a potential incident.

64. The words '*could reasonably be expected*' in relation to factors favouring nondisclosure should be given their ordinary meaning. In the case of *Canberra*

*Metro Pty Ltd and Major Projects Canberra* [2020] ACTOFOI 13 (6 May 2020)<sup>2</sup>

regarding the similar kind of material the Senior Assistant Ombudsman stated that the risk to public safety must be reasonably based, likely and not merely speculative, conjectural or hypothetical.

65. CMTEDD did not explain how the release of this material would reasonably be expected to prejudice security of the employees in situations of risk of psychological harm.
66. It is my view that release of this information alone would not increase risk of harm because those strategies are general in nature.
67. I do not consider the release of this information could reasonably be expected to prejudice security, law enforcement or public safety and I do not award any weight to this factor.
68. In relation to the factor—prejudice an agency's ability to obtain confidential information, I note the relevant information was obtained during the workplace inspection. The information was provided as required by the inspector under the WHS Act and may not have otherwise been provided voluntarily.<sup>3</sup>
69. As such I do not consider the release of the information may prejudice the ability of WorkSafe ACT to obtain confidential information in the future, noting the prohibitions set out in the WHS Act.<sup>4</sup>
70. I do not consider this factor applies to the information at issue in these circumstances.

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<sup>2</sup> *Canberra Metro Pty Ltd and Major Projects Canberra* [2020] ACTOFOI 13 (6 May 2010) at [57].

<sup>3</sup> *Village 25 Pty Ltd, Downer EDI Works Pty Ltd and Chief Minister, Treasury and Economic Development Directorate* [2024] ACTFOI 13 (26 July 2024) at [123].

<sup>4</sup> *Work Health and Safety Act 2011* (ACT) (WHS Act) Division 7.7.

***Prejudice trade secrets, business affairs or research of an agency or person—  
Schedule 2, s 2.2(a)(xi)***

71. A factor favouring nondisclosure of information is where release could reasonably be expected to prejudice trade secrets, business affairs or research of an agency or person.
72. CMTEDD did not apply this factor to the material in relation to Marist and Covenant but it was considered for other material within the scope of the application. However, Covenant raised this issue stating in their submissions:
- the School's position is that if the WorkSafe Improvement Notice is disclosed under this FOI, without either redacting the name of the School, or without providing the School's response to this Improvement Notice, it will be unfairly prejudicial to the School's reputation.
73. Covenant did not explain how the release of the school's name may prejudice the reputation of the school or otherwise affect their business affairs.
74. Business affairs can be interpreted as the money-making activities of an entity. In its ordinary business functions, Covenant school is a private school and provides education services to the public.
75. Relevant to my consideration of this factor is the legal requirement to display an improvement notice.<sup>5</sup> The improvement notice identifies and describes safety concern and provides recommendations as how to remedy contraventions of the WHS Act.
76. I therefore do not consider the information at issue contains any material which may prejudice the school's reputation.
77. As such I do not consider this factor applies.

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<sup>5</sup> WHS Act s 210.

### ***Balancing the factors***

78. 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.
79. In this matter, I considered 2 factors favouring disclosure and 4 factors favouring nondisclosure. I found 2 factors favouring nondisclosure did not apply.
80. 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.
81. The FOI Act has a pro-disclosure bias,<sup>6</sup> 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>7</sup>
82. I attributed significant weight to the 2 factors favouring disclosure, and some weight to one factor favouring nondisclosure.
83. In respect of the email addresses, I do not find disclosure of this information would promote the factors favouring disclosure as this personal information as they neither concern the operations of government nor reveal the reason for government decisions or information informing those decisions.

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<sup>6</sup> Section 17 of the [FOI Act](#).

<sup>7</sup> [Explanatory Statement, Freedom of Information Bill 2016](#).

84. I consider the email addresses of Marist and Covenant staff and the mobile number of the WorkSafe ACT officer is, on balance, contrary to the public interest information.

85. I consider the remainder of the information at issue is not contrary to the public interest information.

### **Decision**

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

87. I have decided to give access to the improvement notices, improvement notice extension, workplace visit report and email because this information is not contrary to the public interest information.

88. I have decided to refuse access to the email addresses of Marist College and Covenant staff and the mobile number of the WorkSafe ACT staff member.

**Katrina Dwyer**

**Senior Assistant Ombudsman**

**Defence, Investigation, ACT & Legal Branch**