

**Decision and reasons of Senior Assistant Ombudsman**

Application number:	AFOI-RR/25/80053
Applicant:	'DS'
Respondent:	Health and Community Services Directorate
Respondent reference:	ACTHDFOI24-25.19
Date	16 March 2026
Decision reference	[2026] ACTOFOI 4
Catchwords	<i>Freedom of Information Act 2016 – deciding access – documents previously provided to applicant – information of an administrative nature – whether information is contrary to the public interest information – reveal reason for government decision and any background or contextual information that informed decision – contribute to administration of justice – prejudice the protection of an individual’s right to privacy or any other right under the Human Rights Act – prejudice trade secrets, business affairs or research of an agency or person – 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.</i>

## Decision

1. For the purposes of s 82 of the *Freedom of Information Act 2016* (ACT) (**FOI Act**), I am a delegate of the ACT Ombudsman.
2. For the reasons set out below, I have decided to **vary** the Health and Community Services Directorate's (**HCSD**) decision under s 82(2)(b) of the FOI Act to refuse access to part of the information sought, including email correspondence, a draft report, and interview transcripts regarding the preliminary assessment (**PA**) of complaints raised by staff relating to the recruitment process for a senior position at the then ACT Health Directorate (**ACTHD**). I agree that confidential documents related to the PA should be refused as it would be, on balance, contrary to the public interest to disclose this information.
3. However, I am of the view the email chains the applicant was included in, a copy of legislation considered during the PA process, and other administrative correspondence (excluding third party personal information) is not contrary to the public interest information and should be released.

## Background to Ombudsman review

4. On 5 May 2025, the Chief Minister, Treasury and Economic Development Directorate transferred the applicant's access application to the ACTHD.
5. On 8 May 2025, ACTHD received a further access application from the applicant, and the scope of the requests were revised to:

...all documents, notes and correspondence regarding complaint from [the applicant] to Rebecca Cross, Director General ACT Health Directorate of 21 February 2023, which was referred to the Professional Standards Unit (PSU) of the ACT to undertake an independent preliminary assessment? The complaint was in relation to the recruitment of the [senior position at the then ACTHD], which was gazetted on [day] May 2022.

1. All documents pertaining to the selection of [panel member] as a member of the selection panel for recruitment of [senior position at the then ACTHD] as gazetted on [day] May 2022, including [their] conflict of interest declaration.
  2. Email correspondence dated 13 and 14 September 2023 showing [ACTHD staff member] notifying [ACTHD staff member] and PSC of an incident where [the applicant] injected [themselves] into a sensitive work matter within the [work area].
  3. Manager's statement by [ACTHD staff member] dated 12 November 2024 to EML for [the applicant] Claim number [identification number].
  4. All documents, emails, file notes and text messages pertaining to Preliminary assessment and preliminary assessment report into the recruitment of [senior position at the then ACTHD] as gazetted [day] May 2022.
  5. All documents, emails, file notes and text messages pertaining to work health and safety investigation resulting from the outcomes of the preliminary assessment.
  6. All documents, emails, file notes and text messages pertaining to the remedial actions taken as outlined on the letter to [the applicant] dated 19 June 2023 (or lack thereof).
  7. All documents, emails, file notes and text messages pertaining to decision to return [the applicant] to nominal position in [work area] and following advice and actions for [the applicant] employment between 20 July 2024 to 31 December 2024.
  8. All documents, emails, file notes and text messages pertaining to the investigation and outcomes of the Hazard Alert dated 10 September 2024.
6. On 1 July 2025, ACTHD and Community Services Directorate was abolished and replaced by the Health and Community Services Directorate (**HCSD**).<sup>1</sup>
  7. On 14 July 2025, HCSD identified 65 documents within the scope of the request; 18 documents were released in full, 12 documents were released in part, and access was refused to 35 documents.
  8. On 31 July 2025, the applicant applied for Ombudsman review under s 73 of the FOI Act.
  9. On 1 August 2025, the Ombudsman issued a notice of review under s 75 of the FOI Act to HCSD.

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<sup>1</sup> [Administrative Arrangements 2025 \(No 1\)](#).

10. On 11 August 2025, HCSD provided a schedule of documents, the information at issue and written submissions.
11. On 14 August 2025, the applicant provided further submissions and supporting documentation. The applicant also confirmed they were only contesting the part of the decision to refuse access to 35 documents in full.
12. On 18 August 2025, our Office informed HCSD of the clarified scope of the review and invited them to provide further submissions.
13. On 22 August 2025, HCSD provided further written submissions and an updated schedule of documents.
14. On 23 December 2025, I provided my preliminary views to the parties in a draft consideration.
15. On 5 January 2026, the applicant responded to the draft consideration. The applicant agreed with the draft consideration, except for my views that the preliminary assessment should not be released.
16. On 21 January 2026, the respondent replied that it would comply with the decision in the draft consideration. However, it submitted that, to protect the business affairs of the agency, the details of a file path contained in document 12 should not be released.

### **Information at issue**

17. The information at issue in this Ombudsman review is the 35 documents access was refused to in full.<sup>2</sup>
18. These documents consist of email chains, interview transcripts, a draft report, the final PA report, and supporting documents that pertain to a PA. The PA was conducted by an external agency in response to complaints lodged by 2 staff

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<sup>2</sup> Documents 7, 10-13, 15-19, 21, 23, 26, 28-29, 31-40, 42, 44-49, 52-53, 60.

members (including the applicant) regarding the recruitment process for the senior position at the then ACTHD.

19. A key issue to be decided in this Ombudsman review is whether the documents, on balance, contain contrary to the public interest information.

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

- the applicant's review application of 31 July 2025 and further submissions dated 14 August 2025 and 5 January 2026
- HCSD's decision of 14 July 2025
- submissions of HCSD dated 11 August 2025, 22 August 2025 and 21 January 2026 (as clarified on 3 February 2026)
- unredacted copies of the information at issue
- the ACT FOI guidelines, made under s 66 of the FOI Act
- the [FOI Act](#), particularly ss 7, 9, 16, 17, 34, 35, 50, 72, and Schedule 2
- the [Information Privacy Act 2014](#), and
- the [Human Rights Act 2004](#).

### Relevant law

21. 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>3</sup>

22. 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

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<sup>3</sup> Section 35(1)(c) of the [Freedom of Information Act 2016 \(ACT\)](#).

- (b) the disclosure of which would, on balance, be contrary to the public interest under the test set out in section 17.

23. 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.
24. 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.
25. 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.
26. Schedule 1 of the FOI Act sets out categories of information taken to be 'contrary to the public interest information' for the purposes of the definition in s 16.
27. 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**

28. In its decision notice, HCSD said:

Documents at references 10-11 and 21 are entirely comprised of information that may prejudice the protection of individual's right to privacy, disclose the business affairs of non-ACT Government entities and could divulge information that may impede the management function or the conduct of industrial relations by an agency.

Documents at references 13, 15-19, 23, 26, 38-39, 42, 44, 46-49 and 60 are entirely comprised of information that may prejudice the protection of individual's right to privacy and could divulge information that may impede the management function or the conduct of industrial relations by an agency.

Documents at references 28, 31-36 and 52 are entirely comprised of information that may prejudice the protection of individual's right to privacy, be detrimental to the agency's ability to obtain confidential information and could divulge information that may impede the management function or the conduct of industrial relations by an agency.

Document at reference 37 is entirely comprised of information that may prejudice the protection of individual's right to privacy, the business affairs of non-ACT Government entities and could divulge information that may impede the management function or the conduct of industrial relations by an agency.

Document at reference 53 is entirely comprised of information that may be detrimental to the agency's ability to obtain confidential information and could divulge information that may impede the management function or the conduct of industrial relations by an agency.

I have given significant consideration to the factors favouring disclosure and I believe the factors favouring non-disclosure outweighed these as the information could reasonably be expected to have a detrimental effect for the agency. The release of information regarding Preliminary Assessments may impede the management function and the conduct of industrial relations by the agency. This could also reduce the ability to obtain confidential information gathered from those involved in future investigations. Additionally, interviews for Preliminary Assessments are conducted on a confidential basis, and if released, may reduce the engagement of participation from staff members.

Employee relations is an area that relies on the ability for all to be able to provide honest views regarding a matter or incident without fear of reprisal. I consider personal statements made by all members involved in a Preliminary Assessment to be personal information, release of which could be detrimental to the resolution of a workplace matter. Therefore, I determined the information identified is contrary to the public interest and I have decided not to disclose this information.

29. In their application for Ombudsman review, the applicant said:

The reasons for this request are as follows:

- Decisions made in documents that were refused release had a material impact upon my employment and health;
- Lack of information provided to me about investigation outcomes, including detailed reasons addressing my allegations, and which had a material impact upon my health;
- Denying access to information contained within my personnel file; and
- As there was a stakeholder on a selection panel, who had at least a perceived conflict of interest for the recruitment of the [senior position at the then ACTHD], there is a public interest in disclosing this information to ensure transparency and probity in decision making and ensuring compliance with section 9 of the *Public Sector Management Act 1994*.

30. In its response to the Ombudsman's s 75 notice, HCSD said:

Careful consideration was given to the decision to release information identified within the scope of this application. Much of the material pertains to a Preliminary Assessment (PA) conducted by an external agency in response to complaints lodged by two staff members regarding a workplace matter. The information associated with the PA constitutes joint personal information, involving not only the applicant but also other individuals connected to the matter. In my view, disclosing personal information of this nature would represent a significant intrusion into the privacy of those individuals, particularly noting the information was provided in confidence.

Effective employee relations rely heavily on the ability of all staff to engage in investigative processes truthfully, comprehensively and promptly, without fear of reprisal. The release of documentation and communications related to the PA has potential to cause harm to the individuals involved and undermine the effective resolution of workplace matters. In my view, disclosing such information outside the formal investigation process – where no safeguards exist to restrict its use, dissemination or republication – could discourage employees from fully participating in future investigations. This reluctance may hinder the flow of critical information to investigators and adversely affect the Directorate's ability to conduct thorough workplace investigations and manage staff effectively and supportively.

31. In their additional submissions of 14 August 2025, the applicant said:

The premise of my request is that an assessment was undertaken into allegations that the ACT Health Directorate allowed a lobbyist from the [employers' organisation], which lobbies on the behalf of [healthcare providers], to participate in the selection process of the [senior position at the then ACTHD]. The position of [senior position at the then ACTHD] regulates the registration and operation of [healthcare providers]. My allegation that precipitated the assessment was an alleged breach of section 9 (1)(a) of the *Public Sector Management Act 1994* as there was at least a perceived conflict of interest that could have been reasonably avoided by selecting another person to sit on the selection committee.

Ms Angela Schacht have decided to refuse access to the documents at references 7, 10-13, 15-19, 21, 23, 26, 28-29,31-40, 42, 44-49, 52-53 and 60 as they contain information that she consider, on balance, to be contrary to the public interest to disclose under the test set out in section 17 of the FOI Act.

...

As I was a participant in the selection process and the following assessment I disagree with the decision on the non-disclosure of the above document documents because:

- The allegation was an allegation of mal-administration in the recruitment process of the [senior position at the then ACTHD].
- Transparency, as a candidate, that the recruitment process was carried out in accordance with the *Public Sector Management Act 1994*. The process

has had a material impact on my health and wellbeing and affected my work prospects since this process.

- Not being provided with reasons to my allegations as part of the preliminary assessment.

Due to the involvement of lobbying activities, disclosure in the public interest outweighs the factors against disclosure. The ACT public needs to have confidence that regulators do not have regulatory capture by powerful lobbying and undue influence in regulatory matters.

32. In its additional submissions of 22 August 2025, HCSD said:

In my view, disclosing personal information of this nature would represent a significant intrusion into the privacy of those individuals particularly noting the information was provided in confidence. I believe this type of documentation must be kept confidential before, during and after the PA process to help ensure fair treatment and maintaining a cohesive work environment. It also helps to develop and maintain employee confidence in the process.

Some of the documents I refused in full, in particular information provided as evidence to the assessor completing the PA, were partially released in other parts of the overall document package. The decision to fully redact these was based around these being provided for the PA and I applied a consistent approach in non-disclosure of this information.

Documents at references 52 and 60 contains information regarding other ACT Government employees related to the situation but not to the applicant. I consider that the release of this information to the applicant would be an unreasonable interference with these staff members personal information under the *Human Rights Act 2004* and potential prejudice to workplace mediation outcomes.

The document at reference 53 relates to a personnel management function of the Directorate, disclosure of which is likely to prejudice the ongoing effectiveness of the suggested recommendations for remedial actions.

33. In response to the draft consideration, the applicant agreed with my preliminary views, except regarding release of the preliminary assessment.

34. The applicant, noting their views about the appropriateness of the recruitment process for the senior position at the then ACTHD, submitted that it is in public interest to at least partially release the preliminary assessment. The points raised by the applicant are consistent with their earlier submissions.

35. In response to the draft consideration, HCSD said it would comply with my decision. However, it submitted that, to protect the business affairs of the agency, the details of a file path contained in document 12 should not be

released. Our Office contacted HCSD on 3 February 2026 to clarify its views on this issue. HCSD stated its submission is based on its concerns that releasing the file path will reveal the location of the information subject to this access application and thereby compromise the security of the information. It additionally stated that there is no benefit in releasing the file path.

## **Consideration**

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

36. To determine whether disclosure of information 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***

37. In its original decision, HCSD identified 2 factors favouring disclosure applied to the documents within scope.

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

38. A factor favouring disclosure is the information could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision.

39. The PA was an extensive process that provided detailed information about the factors taken into consideration by the external reviewer, including the assessments of the selection panel against the recruitment criteria, conflict of interest assessments, correspondence pertaining to the rationale behind forming the selection panel, and the expectations for the role.

40. I am of the view that this information would reveal the reasoning behind the decision to hire the successful applicant and the relevant information (resumes, recruitment scores, candidate rankings) that informed the hiring decision. Additionally, releasing the documents pertaining to the PA would reveal the background information as to why a formal investigation into the alleged conflict of interest during the recruitment process was determined not to be necessary by HCSD.

41. The applicant has raised that release of the information at issue is in the public interest as they allege that one of the members included on the recruitment panel gave rise to a perceived conflict of interest in the recruitment process that was not managed appropriately.

42. I acknowledge that release of the information at issue would likely allow a person to examine or evaluate these perceptions about the panel.

43. Revealing the reason for a government decision can serve to provide transparency and accountability to the decision-making process. However, in complaint investigation processes, the principles of transparency and

accountability do not require everything relating to the complaint be disclosed.<sup>4</sup>

44. I afford this factor moderate weight.

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

45. HCSD identified that release of the information could reasonably be expected to contribute to the administration of justice generally, including procedural fairness.

46. I am of the view that releasing the information at issue would reveal why the external reviewer concluded that a formal investigation was not necessary and enhance community confidence in the integrity of the recruitment of a senior public servant.

47. However, in terms of procedural fairness, the applicant was given the opportunity to be heard during the PA process, and the complaint did not proceed further as the external reviewer concluded that a formal investigation was not warranted in the circumstances.

48. I afford this factor minor weight.

***Factors favouring nondisclosure***

49. In its original decision, HCSD identified 4 factors favouring nondisclosure of the documents relating to the externally conducted preliminary assessment.

***Prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act—Schedule 2, 2.2 (a)(ii)***

50. A factor favouring nondisclosure is where disclosure of information could reasonably be expected to prejudice the protection of an individual's right to

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<sup>4</sup> ['AK' and Education Directorate \[2019\] ACTOFOI 4.](#)

privacy or any other right under the *Human Rights Act 2004* (**Human Rights Act**).

51. 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.

52. Section 12 of the Human Rights Act provides:

Everyone has the right -

- not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
- not to have his or her reputation unlawfully attacked.

53. Having reviewed the information at issue, information including resumes, interview responses as part of the PA process, conflict of interest declarations, candidate scores in the recruitment process, and contact information are captured in the documents. I consider this information to be personal information of individuals who are not the applicant.

54. I am of the view that the third parties would be reasonably identifiable from the information contained in the documents.

55. The *Information Privacy Act 2014* 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>5</sup>

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<sup>5</sup> Section 11 of the [Information Privacy Act 2014](#) (IP Act).

56. 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.
57. I do not consider the individuals to whom the personal information relates would have consented to the disclosure of this information to the applicant.
58. I consider disclosure of the personal information captured in the documents 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. I am not of the view that any exceptions contained in the TPPs apply.
59. I consider the disclosure of the information at issue for a secondary purpose unrelated to the PA process (disclosure in response to an access application) would not be reasonably expected. Disclosure of the PA draft/final report and related information in these circumstances is not related to the primary purpose of the collection.
60. I afford this factor significant weight.

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

61. 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. In this matter, it is the business affairs of the external company which conducted the PA which is relevant.
62. The information at issue contains the external company's response to HCSD's request for quote, including pricing calculations and examples of work

previously conducted by the company. Additionally, invoices for the PA are captured in the information at issue which also contain pricing calculations and information related to billing. Additionally, detailed notes about the external reviewer's investigation methodologies are contained in the documents.

63. I find the external company operates in a competitive industry and disclosure of information could reasonably be expected to reveal how they perform their services and their pricing structure.
64. I am of the view that the information is commercially sensitive, and it could reasonably be expected to prejudice the business affairs of the external company if this information was made publicly available and accessible to competitors who may obtain a competitive advantage.
65. I afford this factor significant weight.

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

66. A factor favouring nondisclosure of the information is where release could reasonably be expected to prejudice an agency's ability to obtain confidential information.
67. The PA documents contain confidential information in the form of interview transcripts of participants in the PA investigation, the draft and final versions of the PA report, and records of outcomes of a human resources facilitated meeting between multiple staff members following the conclusion of the PA process.
68. I am of the view that full disclosure of relevant information is vital when conducting PAs and confidentiality requirements allows for participants to engage freely during the process. HCSD raised in their submissions that

interviews for PAs are conducted on a confidential basis, and if released, may reduce the engagement of and participation from staff members. I agree with this view.

69. I afford this factor significant weight.

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

70. A factor favouring nondisclosure of the information is where release could reasonably be expected to prejudice the management function of an agency or the conduct of industrial relations by an agency.

71. The ‘management function’ of an agency includes activities such as recruitment, management, promotion and compensation. The ‘conduct of industrial relations’ refers to an agency’s management of employment-related entitlements and obligations.<sup>6</sup>

72. Further, the ability to obtain confidential information from employees is a central element of the management function of the conduct of industrial relations by an agency.<sup>7</sup>

73. HCSD, in its decision, noted effective employee relations rely heavily on the ability of all staff to engage in investigative processes truthfully, comprehensively and promptly, without fear of reprisal.

74. I consider that disclosure of the information could reasonably be expected to prejudice HCSD's management functions, by potentially undermining the confidence of staff in having confidential discussions about sensitive matters relating to workplace disputes, especially since the participants in the PA process were assured that their responses would remain confidential.

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<sup>6</sup> [Freedom of Information \(Volume 4 – Considering the public interest\) Guidelines 2023](#).

<sup>7</sup> [DK and Community Services Directorate \[2025\] ACTOFOI 7](#).

75. Further, I am of the view that it is likely that disclosure of the information may inhibit future PA investigations, and facilitated human resources meetings, as staff would be less likely to engage with the process due to a fear of reprisal or concerns the process would not be conducted in the manner expected.
76. I afford this factor significant weight.

Documents previously provided to the applicant

77. Access to some of the documents that were considered by the external reviewer was refused in full on the basis that they were considered as evidence when drafting the PA report (attachments to document 33).
78. HCSD explained these were partially released in other parts of the overall document package and the decision to fully redact these was based around these being provided for the PA and applying a consistent approach in nondisclosure of this information.
79. HCSD also raised that disclosure of the information would be considered a release to the world at large, with no basis under the FOI Act restricting use, dissemination or republication.
80. The applicant raised in their request for Ombudsman review and further submissions that they are, in part, requesting access to information contained within their own personnel file.
81. I am of the view that an argument can be made that the applicant should be given access to the documents they already have copies of and, in some cases, authored.
82. I do not consider there is a reasonable basis to conclude in circumstances where the applicant participated in the complaint process and is aware of the PA that disclosure of this correspondence would prejudice HCSD's ability to manage personnel; obtain confidential information or protect personal

information (besides the personal information of an external staff member not involved in the PA on page 356). Further, I do not consider this information would prejudice the business affairs of the external company.

83. For this reason, I find the factors favouring nondisclosure do not apply to this information within document 33.

Information of an administrative nature

84. Several documents that were refused in full are internal administrative emails. These documents do not contain any substantive information that goes to the substance of the PA, rather they are routine emails for the purpose of filing and circulating information that is expected for the operation of usual business.

85. In my draft consideration, I set out a preliminary view disagreeing that the emails would impede the management function of HCSD as the documents were sent in the course of typical business and would be expected for any PA/complaint process. For example, document 12 is an internal administrative email circulating a link to a file in the recordkeeping system.

86. I also put the parties on notice that I am not satisfied disclosure of the administrative emails could reasonably be expected to prejudice the business affairs of the external company or impede HCSD from obtaining confidential information.

87. I then invited the parties to make further submissions on releasing emails of an administrative nature.

88. The applicant did not make submissions on this point.

89. HCSD submitted that, to protect the business affairs of the agency, the file link contained in document 12 should not be released. In support of its position, HCSD claimed that releasing the file link would compromise the security of the

information stored within that file path by enabling people with access to the record keeping system to easily find and access that information. HCSD's submission did not point to any particular details displayed within the file link that it considers to be business information or commercially sensitive information.

90. The file link displays the procurement reference number, a description of the procurement, a work area, and the record keeping system's identification number for the folder containing the documents. In my view, this information does not engage the public interest factor at s 2.2(a)(xi) of the FOI Act because it is internal information related to a procurement conducted by the then ACTHD in connection with internal workplace affairs rather than any money-making affairs.
91. For completeness, even if the information were to be business information, I am not satisfied that disclosure of the file link could reasonably be expected to result in the harm claimed by HCSD.
92. I do not agree that knowing the name and identification number for a folder where information is stored is reasonably likely to lead to a person accessing that information without permission.
93. In forming this view, I have considered that the risk of unauthorised access can be controlled by setting appropriate access permissions for the folder. I have also considered that people working in the ACT public sector are subject to legal and ethical obligations in relation to their conduct, including accessing information, and people who breach these standards can face serious consequences.<sup>8</sup> Given these deterrents, I am not satisfied that there are real and substantial grounds for the expectation that unauthorised

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<sup>8</sup> For example, see the [ACT Public Sector Code of Conduct](#) dated 20 May 2022.

access to the relevant information would flow from disclosure of the link to the file in the record keeping system.

94. HCSD also submitted there is no benefit in releasing the file link. I consider that refusing access for this reason would not be consistent with the pro-disclosure bias in the FOI Act.

95. My view is that the factors favouring nondisclosure do not apply to this information, excluding the personal information of third parties which I find the factor favouring nondisclosure (prejudice the protection of the right to privacy) does apply to and should be given significant weight.

96. I have highlighted the relevant documents in green in the below schedule.

***Balancing the factors***

97. 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.

98. In this matter, I identified 2 public interest factors favouring disclosure and I have attributed moderate weight to one of the factors, and minor weight to the other.

99. I identified 4 public interest factors favouring nondisclosure and I attribute significant weight to these factors. However, I determined these 4 factors did not apply to correspondence sent by or received by the applicant previously and extracts of legislation. Additionally, I consider these 3 factors do not apply to information which is administrative in nature.

100. 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.

101. The FOI Act has a pro-disclosure bias,<sup>9</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>10</sup>

### **Conclusion**

102. My view is, on balance, the public interest factors favouring nondisclosure outweigh the public interest factors favouring disclosure.

103. I agree that release of the documents would increase public confidence in the integrity of the recruitment of a senior public servant.

104. However, due to the sensitivity of the information at issue, the likely detriment to the individuals involved, HCSD, and the external company who conducted the PA, the factors favouring nondisclosure outweighs the factors favouring release.

105. In relation to information the applicant was privy to, and legislation considered by the external reviewer, as I found no factors favouring nondisclosure applied to this information, in my view it is in the public interest to disclose this information.

106. In respect of the administrative correspondence, I find the factor favouring nondisclosure of the personal information of third parties outweighs the factors favouring disclosure.

107. For the remainder of the administrative correspondence, the factors favouring disclosure outweigh the factors favouring nondisclosure.

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<sup>9</sup> Section 17 of the [FOI Act](#).

<sup>10</sup> [Explanatory Statement, Freedom of Information Bill 2016](#).

**Decision**

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

109. I have decided information that was considered as part of the PA drafting process which would only reveal correspondence the applicant previously sent or received, an extract of legislation and administrative correspondence (excluding third party personal information) should be released.

110. The effect of my decision is that Document 12; the cover page (page 356), part of Attachment 3 (p. 371-385), Attachment 4 (pg. 387-394, and 396-406), and Attachment 7 (p. 435-438) of Document 33; and Documents 46-48 (excluding third party personal information) should be released to the applicant.

**Katrina Dwyer**

**Senior Assistant Ombudsman**

**16 March 2026**