

Decision and reasons of Ombudsman

Application number:	AFOI-RR/25/80031
Applicant:	Deborah Morris MLA
Respondent:	Legal Aid ACT
Participants:	Referee listed for former employee
Date:	10 August 2026
Decision reference:	[2026] ACTOFOI 9
Catchwords:	<i>Freedom of Information Act 2016</i> – interpreting scope – reasonable steps to identify government information – deciding access – whether information is contrary to the public interest information – sensitive information – promote open discussion of public affairs and enhance the government's accountability – contribute to positive and informed debate on important issues or matters of public interest – inform the community of the government's operations – allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or public official – 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. The applicant applied for Ombudsman review of Legal Aid ACT's decision to refuse access to information about the employment of a former employee on the basis that this information was, on balance, contrary to the public interest information under the [Freedom of Information Act 2016 \(ACT\)](#) (**FOI Act**) (the **primary decision**).
2. For the reasons set out below, under s 82(2)(c) of the FOI Act, I **set aside and substitute** the primary decision. I have decided to make a substitute decision that additional information falls within the scope of the access application and grant partial access to information which I consider is not contrary to the public interest information.

Background

3. On 13 February 2025, the applicant made an access application under the FOI Act to Legal Aid ACT for access to the following information:

documents relating to the employment of [former employee], at Legal Aid ACT including but not limited to referee report/s, risk assessment/s, Working with Vulnerable People and police checks, and any other document related to the individual's employment...Duplicate documents may be excluded.
4. Legal Aid ACT determined there were 8 documents within scope, comprising 27 pages. These documents are listed as documents 1-8 in the Schedule below.
5. Legal Aid ACT identified that the information sought included information reasonably expected to be of concern to a third person, being the former

employee, and undertook third party consultation with the former employee under s 38 of the FOI Act.

6. On 28 March 2025, the former employee objected to the disclosure of their personal information on the grounds the information includes highly personal and sensitive information, and the public benefit of disclosure is minimal whereas disclosure would be a significant intrusion of their privacy. The former employee also stated that he had concerns about the handling of his personal information by Legal Aid ACT, and that disclosing further documents containing personal or sensitive information may compound these issues and create additional prejudice to his privacy interests. The former employee requested that Legal Aid ACT refuse access to the 8 documents in full, or at a minimum, extensively redact their personal information and the personal information of their referees.
7. On 17 April 2025, Legal Aid ACT decided to refuse access to 8 documents in full stating the documents 'contain information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the FOI Act.'
8. On 5 May 2025, the applicant applied for Ombudsman review of the primary decision stating disclosure of the information is in the public interest noting child safety concerns. The applicant submitted there was a strong public interest in understanding what happened, what processes were or were not followed and where the system failed, to ensure a similar situation cannot happen again.
9. On 7 May 2025, the Office of the ACT Ombudsman (**Office**) notified Legal Aid ACT of the review application and sought information for the purpose of the review.

10. On 9 May 2025 Legal Aid ACT notified the former employee of the review. The former employee did not contact the Office about the review.
11. By letter dated 21 May 2025, Legal Aid ACT responded to the Office's request of 7 May 2025. Its response included the provision of the 8 documents it had refused access to, and an additional 15 documents that were not referred to in its decision of 17 April 2025.
12. In its response, Legal Aid ACT told the Office that it held courtesy internal consultations with relevant staff and identified 3 additional people it considered would be concerned by a decision to disclose the information, namely two referees listed by the former employee, and a previous staff member who had conducted a risk assessment regarding the former employee. Legal Aid ACT told us it had taken reasonable steps to give these 3 individuals notice of the review application and of their opportunity to write to me or participate in the review.
13. On 20 May 2025, one of the listed referees contacted the Office and advised of their objection to disclosure of any information about them. The other 2 people did not contact the Office about this review.
14. On 1 July 2026, I provided my preliminary views to the parties in a draft consideration.
15. On 3 July 2026, the third party review participant responded and did not raise any objections to the draft consideration.
16. On 6 July 2026, Legal Aid ACT accepted the draft consideration.
17. The applicant did not provide any comments in response to the draft consideration.

Preliminary issue – scope of the review

18. Legal Aid ACT's access decision of 17 April 2025 identified 8 documents that it said held information within the scope of the applicant's access application. Its decision was to refuse access to these 8 documents.
19. However, as noted above, as part of its response to the Office on 21 May 2025, Legal Aid ACT provided my Office with an additional 15 documents that were not referred to in its decision of 17 April 2025.
20. The objects of the FOI Act include to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of the maximum amount of government information.¹ Respondents must take reasonable steps to identify all government information within the scope of an access application.² At any time when deciding an access application, a respondent may contact the applicant to clarify the scope of the application.³
21. Relevantly, part of the access application was for 'any other document related to the individual's employment'.
22. My Office contacted the applicant who confirmed they would like to have all documents identified under the scope of their access application included in this review. I note the applicant excluded duplicates from the scope of their access application. While there are different versions of some of the forms within the 23 documents containing the same information, I do not consider these versions to be duplicates (for example, there is a partially completed form as well as the completed form).
23. Having reviewed the 8 documents Legal Aid ACT considered to be in scope in its 17 April 2025 decision, and the additional 15 documents it provided to my Office (documents 9-23 In the Schedule below), I consider all 23 documents

¹ [FOI Act](#) s 6(f).

² [FOI Act](#) s 34(1).

³ [FOI Act](#) s 34(3).

fall within the scope of the access application, being information related to the employment of the former employee at Legal Aid ACT.

Information at issue

24. The information at issue in this Ombudsman review consists of the 23 documents relating to the employment of a former employee of Legal Aid ACT (**employment information**), itemised in the Schedule at the end of this decision.
25. The employment information concerns information about the suitability of the former employee for the role, the recruitment assessment process and reasons for the decision to employ the former employee. The employment information also includes administrative and other employment-related communications, including regarding the cessation of the former employee's employment with Legal Aid ACT.
26. The key issue in this review is whether all the employment information is contrary to public interest information.
27. In making my decision, I have had regard to:
 - the applicant's review application and submissions
 - Legal Aid ACT's decision of 17 April 2025
 - [FOI Act](#), particularly ss 6, 7, 16, 17, 35, 50, 72, 82, Schedules 1 and 2
 - [Freedom of Information Guidelines Volume 4- Considering the public interest](#), particularly regarding Schedule 2, sections 2.1(a)(i),(ii),(iii),(v) and (viii) and Schedule 2 sections 2.2(a)(ii), (xii) and (xv).
 - [Information Privacy Act 2014 \(IP Act\)](#), particularly section 11, Schedule 1, Part 1.3.

- Part 5 of the *Crimes (Child Sex Offenders) Act 2005* and the *Crimes (Child Sex Offenders) Amendment Act 2025*
- [Transcript of evidence](#) provided to the Standing Committee on Legal Affairs on 12 February 2025,⁴ and [answer to question on notice](#) dated 5 March 2025 to the Legal Aid Commission Act
- relevant case law including:
 - [Carver and Fair Work Ombudsman \[2011\] AICmr 5 \(27 July 2011\)](#) – transparency in investigations of the work-related conduct of public officials
 - [Robert Kenneth Wilson and Australian Postal Corporation \[1994\] AATA 189 \(11 July 1994\)](#) – disclosure of the Information under the FOI law as disclosure to the whole world

Relevant law

28. 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.⁵

29. 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.

⁴ [Legal Affairs 12 February 2025](#) from page 29.

⁵ [FOI Act](#) section 35(1)(c).

30. 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.
31. 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.
32. 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.
33. Section 72 of the FOI Act provides that a person seeking to prevent disclosure of government information has the onus of establishing that the information is contrary to the public interest information.
34. 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.
35. Schedule 2 of the FOI Act sets out the public interest factors which must be considered, where relevant, when determining the public interest.

The submission of the review applicant

36. The application for Ombudsman review of Legal Aid ACT's decision to refuse access relevantly states:

The documents I seek relate to a most serious matter of public concern involving child safety. The documents involve the employment by an ACT Government funded organisation, and before that an ACT Government Directorate, of a convicted child sex offender who, in the course of [their] government-funded

duties, might have had exposure to children. There is a strong public interest in understanding how that happened, what processes were/were not followed, and where the system failed to ensure that it can never happen again.

Consideration

Sensitive information—Schedule 1, s 1.4

37. Schedule 1, s 1.4 of the FOI Act relevantly provides that information the disclosure of which would involve the unreasonable disclosure of sensitive information about any individual is taken to be contrary to the public interest information.
38. The Dictionary in the FOI Act refers to the definition of 'sensitive information' in s 14 of the IP Act, which defines 'sensitive information' to include information that is about an individual's criminal record.
39. I have identified that documents 2, 3 and 14 contain information about the former employee's criminal record.
40. As part of the onboarding process, the former employee completed an Australian Federal Police National Police Check Application form and provided consent for information disclosed by the police to be collected by Legal Aid ACT for the purpose of their employment.⁶
41. Given the former employee has not consented to disclosure of documents 2, 3 and 14, and disclosure under the FOI Act is not directly related to the purpose for which this sensitive information was collected by Legal Aid ACT (employment of the former employee), I find disclosure of the sensitive information in documents 2, 3 and 14 may also amount to a breach of the Territory Privacy Principle 6.1 in Schedule 1 of the IP Act.

⁶ Page 69 of Document 14

42. I acknowledge the former employee is known to be associated with the criminal record information, as the judgement with details of his criminal record is publicly available.⁷
43. Legal Aid ACT's employment of the former employee was also discussed at a [public hearing](#) of the Standing Committee on Legal Affairs. On 12 February 2025, the CEO of Legal Aid ACT responded to questions about the former employee's criminal record, the Police check that Legal Aid ACT requested for the former employee and the actions it took once it was aware of the former employee's offences.⁸ Further, in an [Answer to a Question on Notice](#) from the Committee on 21 February 2025, the CEO of Legal Aid ACT referred to the former employee identifying his 'criminal convictions' as 'unspent convictions' on the form that Legal Aid ACT sent to the Police. The specific details of the former employee's offences were not provided by Legal Aid ACT in the Committee Hansard or in the Answer to the Question on Notice.
44. The former employee's criminal record was also referred to in the Parliamentary debate regarding the Crimes (Child Sex Offenders) Amendment Bill 2025.⁹ The employee's criminal record has also been the subject of media reporting.¹⁰
45. Given the public disclosure of the criminal record of the former employee, and the public confirmation by Legal Aid ACT that the former employee identified 'criminal convictions' as 'unspent convictions' on the Police Check forms, I consider disclosure of the criminal record in document 2, and references to it

⁷ [R v Burch – ACT Supreme Court](#).

⁸ Committee [Hansard](#) from page 29.

⁹ [Hansard – 6 March 2025](#) at 477 and 480; [Hansard – 6 February 2025](#) at 209.

¹⁰ [Legal Aid ACT CEO John Boersig explains how office hired child sex offender | The Canberra Times | Canberra, ACT](#), [Convicted child sex offender Bradley Burch hired by Legal Aid ACT | The Canberra Times | Canberra, ACT](#)

in documents 3 and 14, would not involve the unreasonable disclosure of sensitive information about the former employee.

46. My consideration extends to the part of the pre-employment form in document 14 in which the former employee states his view of the relevance of his offences to the position.¹¹ This information has not been in the public domain. It was given in confidence by the former employee during the recruitment process, and goes to the former employee's views on his criminal record and its relevance to the Legal Aid ACT position. Given the public reporting and knowledge of this case, I do not consider disclosing this information would be an unreasonable disclosure of sensitive information about the former employee.

47. I have not identified any additional Schedule 1 categories which may be relevant to the employment information. I will now consider whether the remaining employment information is, on balance, contrary to the public interest information.

Public interest test

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

- identify any factor favouring disclosure that applies in relation to the information (a relevant factor favouring disclosure), including any factor mentioned in schedule 2, section 2.1
- identify any factor favouring nondisclosure that applies in relation to the information (a relevant factor favouring nondisclosure), including any factor mentioned in schedule 2, section 2.2

¹¹ Page 67 of Document 14.

- balance any relevant factor or factors favouring disclosure against any relevant factor or factors favouring nondisclosure
- decide whether, on balance, disclosure of the information would be contrary to the public interest
- unless, on balance, disclosure of the information would be contrary to the public interest, allow access to the information.

Factors favouring disclosure

49. Legal Aid ACT identified 3 public interest factors favouring disclosure in Schedule 2, namely sections 2.1(a)(i), (ii) and (iii).

50. I have identified 1 additional factor favouring disclosure of the employment information which I consider applies to the employment information in Schedule 2, namely section 2.1(a)(v).

Promote open discussion of public affairs and enhance the government's accountability—Schedule 2, s 2.1(a)(i)

51. A factor favouring disclosure of information is where disclosure could promote open discussion of public affairs and enhance the government's accountability.

52. This case was widely discussed in media¹² and in Parliament.¹³ The disclosure of the employment information could promote open discussion on the effectiveness of agencies' employment processes to ensure the protection of children in the community. In this way disclosure could also enhance government accountability by informing the public about the process and

¹² [Legal Aid ACT CEO John Boersig explains how office hired child sex offender | The Canberra Times | Canberra, ACT](#), [Convicted child sex offender Bradley Burch hired by Legal Aid ACT | The Canberra Times | Canberra, ACT](#)

¹³ Committee [Hansard](#) from page 29; [Hansard – 6 March 2025](#) at 477 and 480; [Hansard – 6 February 2025](#) at 209.

safeguards the government has in place to employ people who will have exposure to children and vulnerable people in the community.

53. However, given the employment of relatively junior public servants is a relatively standard and commonplace administrative process and is not of itself a public affair, I attribute minor weight to this factor.

Contribute to positive and informed debate on important issues or matters of public interest—Schedule 2, s 2.1(a)(ii)

54. A factor favouring disclosure of information is where disclosure could contribute to positive and informed debate on important issues or matters of public interest.

55. The applicant stated that they requested the employment information to understand the background or contextual information leading up to the decision to employ a person with convictions for serious offences against children to identify 'how that happened, what processes were/were not followed, and where the system failed to ensure that it can never happen again.'

56. In particular, the applicant stated in her request:

The documents I seek relate to a most serious matter of public concern involving child safety. The documents involve the employment by an ACT Government funded organisation, and before that an ACT Government Directorate, of a convicted child sex offender who, in the course of his government-funded duties, might have had exposure to children.

57. The former employee has since resigned, but this case was widely discussed in media, including concerns about the recruitment processes of Legal Aid ACT.¹⁴
58. Disclosure of information about the employment process of a person with child-related convictions to a role with exposure to children would contribute to positive and informed debate on the effectiveness of the government's employment processes for such positions of trust, including quality checks and guardrails for filling such positions.
59. I consider disclosure of the employment information could reasonably allow the public to be informed in its scrutiny of the employment process and the actions taken by Legal Aid ACT, for example if it shows when relevant information about the criminal record of the then employee became known to Legal Aid ACT.
60. I attribute significant weight to it.

Inform the community of the government's operations, including the policies, guidelines or codes of conduct followed by the government in its dealings with members of the community – Schedule 2, s 2.1(a)(iii)

61. Legal Aid ACT identified this as a factor favouring disclosure.
62. I do not give weight to this factor, given Legal Aid ACT employment matters do not generally relate to government operations in its dealings with the community. At most this factor would be relevant to the extent that the person to be recruited would have access to clients who are children and young people in the community.

¹⁴ [Legal Aid ACT CEO John Boersig explains how office hired child sex offender | The Canberra Times | Canberra, ACT, Convicted child sex offender Bradley Burch hired by Legal Aid ACT | The Canberra Times | Canberra, ACT](#)

Allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or public official—Schedule 2, s 2.1(a)(v)

63. A factor favouring disclosure of information is where disclosure could allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or public official.
64. Legal Aid ACT's CEO and staff assisting the CEO fall within the definition of an agency and public officials for the purpose of the FOI Act.¹⁵
65. The applicant in the review application referred to wanting to understand how an ACT Government funded organisation, and before that an ACT Government Directorate, employed a convicted child sex offender who, in the course of his government-funded duties, might have had exposure to children. The applicant wanted to know 'how that happened, what processes were/were not followed, and where the system failed to ensure that it can never happen again.'
66. I consider this is the principal factor favouring disclosure in the circumstances because of the importance of transparency 'in investigations of the work-related conduct of public officials'.¹⁶
67. Legal Aid ACT is accountable to the Government and the public for how it administers its official functions, including the engagement of employees, particularly to positions that have unsupervised interaction with children.
68. A lack of transparency in such circumstances could lead to speculation that Legal Aid ACT did not comply with necessary rules and procedures while employing such a person.

¹⁵ [FOI Act](#) s 15(1)(b); FOI Act Dictionary, meaning of 'public official'; *Legal Aid Act 1977* (ACT) definition of 'statutory officer of the commission'.

¹⁶ [Carver and Fair Work Ombudsman \[2011\] AICmr 5 \(27 July 2011\)](#) at [41].

69. In this case, Legal Aid ACT employed a person who had 2 convictions for child-related offences. The former employee referred to two 'unspent convictions' on a pre-employment form. The details of these offences only became apparent following the receipt of the result of the former employee's National Police Check conducted by the agency.
70. I attribute significant weight to this factor.

Factors favouring nondisclosure

71. Legal Aid ACT relied on the following factors favouring nondisclosure in Section 2.2(a) of Schedule 2 of the FOI Act:
- (ii) prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004
 - (xii) prejudice an agency's ability to obtain confidential information
 - (xv) prejudice the management function of an agency or the conduct of industrial relations by an agency.
72. I agree these three factors apply to this review, and will discuss them below. I do not agree with Legal Aid ACT that these factors apply comprehensively to the employment information. In my view, these factors apply only to part of the employment information.

Prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004—Schedule s 2.2 (a)(ii)

73. In addition to the sensitive information about the former employee discussed above, the employment information contains non-sensitive personal information about the former employee, their listed referees, staff at Legal Aid ACT and various third parties referred to in identification documents provided by the former employee.

74. I need to consider whether disclosure of the employment information could reasonably be expected to prejudice the protection of these individuals' right to privacy or any other right under the [Human Rights Act](#).
75. Section 12(a) of the [Human Rights Act](#) provides that everyone has the right 'not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily'. It does not provide a general right to privacy.
76. As a result, I need to consider whether disclosure could reasonably be expected to result in a breach of privacy legislation for those individuals whose personal information is contained in the employment information.
77. The IP Act states that 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.¹⁷

Former employee

78. TPP 6 relevantly provides that if an agency holds personal information about an individual that was collated 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 applies.
79. In this matter, the former employee did not consent to the disclosure of their personal information, and objected to the disclosure of their personal information on the grounds of it being highly personal and sensitive information and that disclosure would be a significant intrusion of his privacy. The former employee also stated that he had concerns about the handling of his personal information by Legal Aid ACT, and that disclosing further

¹⁷ Section 11 of the [IP Act](#).

documents containing personal or sensitive information may compound these issues and create additional prejudice to his privacy interests.

80. TPP 6.2 relevantly allows an agency to use or disclose non-sensitive personal information for a secondary purpose if:

- the individual would reasonably expect the agency to use or disclose the information for the secondary purpose, and the secondary purpose is related to the primary purpose, or
- the use or disclosure is required or authorised by law.

81. The personal information of the former employee within the employment information was obtained by Legal Aid ACT for the primary purpose of recruitment, employment and management of the former employee. I do not consider that the former employee would reasonably expect Legal Aid ACT to use or disclose this information to the public.

82. As already outlined above, I acknowledge that the former employee's criminal record, and the fact of his employment with Legal Aid ACT, is in the public domain through the finalisation of his criminal matter,¹⁸ Parliamentary debates and hearings and media reporting. In the access application, the applicant also identified the names, criminal record and other personal Information of the former employee.

83. However, it is a well-established practice that disclosure of information under the FOI Act is in fact '*disclosure to the whole world*',¹⁹ and potential consequences of the disclosure must be considered, even where the same material had already been disclosed under another regime. Information previously disclosed needs to be retrieved using time and effort, and some

¹⁸ [R v Burch \[2020\] ACTSC 192 \(15 July 2020\)](#).

¹⁹ Robert Kenneth Wilson and Australian Postal Corporation [\[1994\] AATA 189](#) (11 July 1994) at [17].

knowledge of the event. The same information disclosed under the FOI Act will be instantly publicly available.

84. I also consider there is public interest in ensuring that public sector agencies comply with their obligations to only use and disclose personal information in accordance with the IP Act, where public availability of information is not an exception to restrictions on secondary use and disclosure.
85. On balance, I do not consider disclosure of the name/s of the former employee, and the fact of their recruitment, employment and cessation of employment with Legal Aid ACT, would reasonably be expected to prejudice the protection of their right to privacy. This is because the former employee's engagement at Legal Aid ACT, and their two legal names, are already in the public domain.
86. However, the situation is different for the former employee's personal information which goes beyond their current and former names, the fact of their criminal record, and the fact of their application to, and employment at, Legal Aid ACT. This includes for example the former employee's contact details, salary, tax, banking and superannuation details; identification documents, signatures, work history information (including application letter and Resume), diversity data, past employment experience; employee number and interview responses. I consider the disclosure of this additional personal information would reasonably be expected to prejudice the protection of the former employee's right to privacy. Further, there is nothing in this additional personal information that shows that the former employee mentioned his criminal record to Legal Aid ACT, including in his letter of application, interview responses or resignation. As such, there is no compelling reason to prejudice the privacy of the former employee by releasing the additional personal information in these documents, when it would not provide information

relevant to Legal Aid ACT's knowledge of the former employee's criminal record at the time of his employment.

87. Several of these identification documents also include third-party witnesses and signatories. Given I do not consider these identification documents should be released, I have not needed to separately consider the release of these third party details.

Listed referees of former employee

88. The employment information contains identification and contact details of two referees listed by the former employee. Legal Aid ACT told us it had taken reasonable steps to give these two referees notice of the review application and of their opportunity to write to me or participate in the review.
89. On 20 May 2025, one of these referees contacted the Office and advised of their objection to the disclosure of any information about them, stating that the information they provided is considered to be personal and was provided on the assumption of confidentiality. The referee objected to any information related to them to being made available to third parties, including but not limited to their name, address, contact details, occupation, opinions and internal notes taken by Legal Aid ACT during the verbal reference.
90. The other referee did not contact the Office about this review.
91. The disclosure of the referees' information for a secondary purpose would not reasonably be expected by the two listed referees, and I consider the disclosure of the personal information of the 2 listed referees would reasonably be expected to prejudice the protection of their right to privacy.
92. Further, there is nothing in the information provided by the referees, and the notes taken about discussions with the referees, that mention the former employee's criminal record. As such, there is no compelling reason to

prejudice the privacy of the referees by releasing this personal information, when it would not provide information relevant to Legal Aid ACT's knowledge of the former employee's criminal record at the time of hiring him.

Legal Aid ACT staff

93. The employment information includes information of various Legal Aid ACT staff, including positions, contact details and signatures.
94. In its response to my Office on 21 May 2025, Legal Aid ACT told the Office that it held courtesy internal consultations with relevant staff. It also said it had identified a previous staff member who had conducted a risk assessment regarding the former employee. Legal Aid ACT said it had taken reasonable steps to give this previous staff member notice of the review application and of the opportunity to write to me or participate in the review. The previous staff member did not contact the Office about this review.
95. The definition of 'personal information' in the Dictionary to the FOI Act relevantly provides that for an individual who is or has been an officer of an agency, personal information does not include information about the individual's position or functions as an officer, or things done by the individual in exercising functions as an officer.
96. I would not usually consider the release of the Legal Aid ACT staff information in the employment information would prejudice the protection of the relevant staff members' right to privacy. The staff members' information is related to their work duties, and its release contributes to accountability and transparency of government action and decision-making. However, given the sensitive circumstances of this case, there is a risk that the Legal ACT staff involved in making decisions to employ the former employee could face detriment or targeting in the community. As such, I have decided not to disclose those staff members' names or contact details. This does not apply

to the CEO of Legal Aid ACT, who is already on the public record regarding this matter as discussed above, or to staff undertaking purely administrative functions regarding the cessation of the employment of the former employee.

97. I also have decided not to disclose parts of the employment information that is not solely related to staff members' duties, namely the personal mobile of one staff member and staff signatures. I consider the disclosure of this personal information would reasonably be expected to prejudice the protection of the relevant staff members' right to privacy.

Conclusion

98. I attribute significant weight to this factor regarding the personal information of the parties above contained in the employment information.

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

99. A factor favouring nondisclosure is that disclosure of the information could prejudice an agency's ability to obtain confidential information.

100. Legal Aid ACT applied this factor to the entirety of the 8 documents it considered to be within the scope of the access request.

101. Given the employment information involves Legal Aid ACT employing a person, it is reasonable to conclude that the employment information is of a confidential nature, and much of the material provided by the former employee was provided in confidence. Generally, individuals expect information provided to a potential employer as part of recruitment activities would only be used for that purpose.

102. For these reasons, it might be argued disclosure of the employment information could prevent the agency from obtaining confidential information to be used in future recruitment. At the same time, however, this FOI

application is not seeking details of a simple employment exercise, but rather a very specific employment in very specific circumstances.

103. The employment by Legal Aid ACT of the former employee has been discussed publicly, through the Parliament and media as mentioned above. For this reason, the fact of the former employee's employment with Legal Aid ACT is no longer confidential in itself.

104. For these reasons, I only attribute minor weight to this factor.

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

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

106. Legal Aid ACT applied this factor to the entirety of the 8 documents it considered within the scope of the access request on the ground that disclosure 'may in turn inhibit the ability of the Commission to conduct future recruitment effectively and discourage suitable candidates from applying'.

107. I agree that if this information was disclosed outside of the agency, it could inhibit the ability of Legal Aid ACT to deal with the process of employment in so far as it discloses the recruitment procedure and assessment processes.

108. However, I consider this factor applies at most to some of the information revealing internal deliberations or processes regarding recruitment decision-making. As noted above, there are very specific and unusual circumstances to this particular recruitment, and factors in favour of disclosure here would not apply to the average recruitment exercise conducted by Legal Aid. As such, I consider the aspects of the documents recording the recruitment decision would not inhibit the ability of the agency to recruit in the future.

109. Further, I do not consider the entirety of the employment contract, interview questions and employment forms need to be redacted. Except for details of position numbers and remuneration, these documents contain general information about the position, its term, responsibilities and entitlements which would be made available to persons applying for the position, receiving an offer of employment or ending the position. Further, the interview questions are standard questions, similar to that which would be expected and experienced by Legal Aid ACT staff.
110. I attribute moderate weight to this factor, having regard to the public interest in maintaining the integrity of management activities including the effective handling of workplace recruitment functions.

Balancing the factors

111. 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.
112. 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.
113. In this matter, I identified 3 factors favouring disclosure. I attribute minor weight to the factor regarding the promotion of open discussion of public affairs and enhancing government accountability. I attribute significant weight to the factors relevant to contributing to informed debate on important issues or matters of the public interest; and into deficiencies in the conduct or administration of an agency or public official. I considered, but

gave no weight to, the factor relevant to informing the community of the government's operations in its dealings with members of the community.

114. I identified 3 factors favouring nondisclosure. For the reasons outlined above I attribute significant weight to the factor relevant to protection of personal information, minor weight to the factor relevant to agencies' ability to obtain confidential information and moderate weight to the factor relevant to agencies' management functions.

115. 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'.²⁰

116. For the reasons set out above, I consider the information which is sensitive in the employment information should be disclosed.

117. For the additional employment information, my view is that on balance, the public interest factors favouring nondisclosure outweigh the public interest factors favouring disclosure for the following information:

- personal information of the former employee that is in addition to their name/s and the fact of their recruitment, employment. criminal record and cessation of employment with Legal Aid ACT
- personal information and opinions of the former employee's listed referees
- personal information of Legal Aid ACT staff involved in the recruitment of the former employee
- signatures of Legal Aid staff.

²⁰ [Explanatory Statement, Freedom of Information Bill 2016.](#)

118. The release of the information listed directly above would prejudice personal privacy and would also interfere with Legal Aid ACT's management functions and its ability to obtain confidential information. Given the information does not reveal that the former employee mentioned his criminal record to Legal Aid ACT, or that Legal Aid ACT was aware of the former employee's criminal record prior to hiring him, the public interest factors favouring its disclosure do not outweigh the factors favouring non-disclosure.

Conclusion

119. For the reasons set out above in this decision, I set aside and substitute Legal Aid ACT's decision under s 82(2)(c) of the FOI Act.

120. The effect of my decision will be to give access to 2 documents in full, 19 documents in part and refuse access in full to 2 documents.

Iain Anderson

ACT Ombudsman

10 August 2026

Schedule - Disclosed documents					
Document number	Page number	Description	Record date	Legal Aid ACT decision	Ombudsman decision
1.	1 - 10	Employment contract	15 June 2023	Refuse access Schedule 2, s 2.2(a)(ii), (xii) and (xv)	Partial access Schedule 2, s 2.2(a)(ii) Redact supervisor name, address, contract signatures and remuneration.
2.	11-14	National Police Certificate as at 4 July 2023, dated 31 July 2023	31 July 2023	Refuse access Schedule 2, s 2.2(a)(ii), (xii) and (xv)	Partial access Schedule 2, s 2.2(a)(ii) Redact AFP case reference number, former employee date of birth and AFP Coordinator signature.
3.	15-16	Risk Assessment	3 August 2023	Refuse access	Partial access

Schedule – Disclosed documents					
Document number	Page number	Description	Record date	Legal Aid ACT decision	Ombudsman decision
				Schedule 2, s 2.2(a)(ii), (xii) and (xv)	Schedule 2, s 2.2(a)(ii). Redact name and signature of assessment officer.
4.	17-18	Appointment recommendation including summary of referee check	14 June 2023	Refuse access Schedule 2, s 2.2(a)(ii), (xii) and (xv)	Partial access Schedule 2, s 2.2(a)(ii); 2.2(a)(xii); 2.2(a)(xv). Redact staff names, details of interview responses, notes regarding referee check and referee personal details.
5.	19-20	Referee notes (Handwritten)	n/a	Refuse access Schedule 2, s 2.2(a)(ii), (xii) and (xv)	Refuse access Schedule 2, s 2.2(a)(ii); 2.2(a)(xii); 2.2(a)(xv).

Schedule – Disclosed documents					
Document number	Page number	Description	Record date	Legal Aid ACT decision	Ombudsman decision
6.	21-22	Interview notes	13 June 2023	Refuse access Schedule 2, s 2.2(a)(ii), (xii) and (xv)	Partial access Schedule 2, s 2.2(a)(ii), 2.2(a)(xii) and 2.2(a)(xv). Redact details of interview.
7.	23-24	Nominated referees list	14 June 2023	Refuse access Schedule 2, s 2.2(a)(ii), (xii) and (xv)	Partial access Schedule 2, s 2.2(a)(ii) and 2.2(a)(xii) Redact staff names and contact details; former employee email address and mobile number; referee names and contact details.

Schedule – Disclosed documents					
Document number	Page number	Description	Record date	Legal Aid ACT decision	Ombudsman decision
8.	25-27	Collation of interview notes	17 December 2024	Refuse access Schedule 2, s 2.2(a)(ii), (xii) and (xv)	Partial access Schedule 2, s 2.2(a)(ii); 2.2(a)(xii); 2.2(a)(xv). Redact staff names and contact details; name of referee, notes from phone call with referee, employee's previous employment information.
Additional information identified in scope by Ombudsman					
9.	28 – 32	Application and resume	15 May 2023	Out of scope	Partial access Schedule 2, s 2.2(a)(ii) and (xii).

Schedule – Disclosed documents					
Document number	Page number	Description	Record date	Legal Aid ACT decision	Ombudsman decision
					Redact detail in application letter. Redact Resume.
10.	33 – 34	Interview notes (2)	13 June 2023	Out of scope	Partial access Schedule 2, s 2.2(a)(ii). 2.2(a)(xii); 2.2(a)(xv). Redact interview responses, staff initials.
11.	35 – 37	Email – confirming start date	14 June 2023	Out of scope	Partial access Schedule 2, s 2.2(a)(ii); 2.2(a)(xii); 2.2(a)(xv). Redact staff names and contact details; details of

Schedule – Disclosed documents					
Document number	Page number	Description	Record date	Legal Aid ACT decision	Ombudsman decision
					former employee availability; comments on former employee's interview and reference check.
12.	38 – 52	Email – offer of employment and attachments (forms for completion)	15 June 2023	Out of scope	Partial access Schedule 2, s 2.2(a)(ii); 2.2(a)(xii); 2.2(a)(xv). Redact staff names and contract details; former employee contact and address details, client code, and remuneration.

Schedule - Disclosed documents					
Document number	Page number	Description	Record date	Legal Aid ACT decision	Ombudsman decision
13.	53 - 64	Email – former employee providing signed contract	15 June 2023	Out of scope	Partial access Schedule 2, s 2.2(a)(ii); 2.2(a)(xii); 2.2(a)(xv). Redact staff names and contact details; former employee email address, mobile number and mobile mail details, address; signatures, and remuneration in contract.
14.	65 - 96	Legal Aid ACT Employment forms (AFP police check consent	18 June 2023	Out of scope	Partial access Schedule 2, s 2.2(a)(ii); 2.2(a)(xii); 2.2(a)(xv).

Schedule - Disclosed documents					
Document number	Page number	Description	Record date	Legal Aid ACT decision	Ombudsman decision
		form, birth certificate, certificate of marriage, tax file number declaration, superannuation standard choice form)			Redact contact, bank, identification, diversity, superannuation and emergency contact details. Redact employee number, redundancy and workplace injury responses. Redact client code and signature. Redact birth certificate. Redact marriage certificate. Redact Tax File Number declaration.

Schedule – Disclosed documents					
Document number	Page number	Description	Record date	Legal Aid ACT decision	Ombudsman decision
					Redact Superannuation choice form. Redact Superannuation fund statement.
15.	97-99	Email – sharing contact details, schedule discussion	3 July 2023	Out of scope	Partial access Schedule 2, s 2.2(a)(ii); 2.2(a)(xii); 2.2(a)(xv). Redact staff names and contact details; former employee email address, supervisor personal mobile number, personal attendance details.

Schedule – Disclosed documents					
Document number	Page number	Description	Record date	Legal Aid ACT decision	Ombudsman decision
16.	100-101	Email – resignation	14 August 2023	Out of scope	Partial access Schedule 2, s 2.2(a)(ii); 2.2(a)(xii); 2.2(a)(xv). Redact staff names and contact details; former employee personal details.
17.	102	Email – request to cancel uber account	23 August 2023	Out of scope	Full access
18.	103	Email – request to ICT, remove employee accounts	23 August 2023	Out of scope	Full access
19.	104-109	Payroll Service ticket	8 September 2023	Out of scope	Partial access

Schedule – Disclosed documents					
Document number	Page number	Description	Record date	Legal Aid ACT decision	Ombudsman decision
					Schedule 2, s 2.2(a)(ii); 2.2(a)(xii); 2.2(a)(xv). Redact final monies estimate, signature, employee number, email address.
20.	110-111	Superannuation employer report form	28 September 2023	Out of scope	Refuse access Schedule 2, s 2.2(a)(ii)
21.	112-113	Letter to former employee – final entitlements	30 August 2023	Out of scope	Partial access Schedule 2, s 2.2(a)(ii); 2.2(a)(xii); 2.2(a)(xv). Redact former employee address, money payment and signature.

Schedule - Disclosed documents					
Document number	Page number	Description	Record date	Legal Aid ACT decision	Ombudsman decision
22.	114-115	Finalising an employee checklist	No date	Out of scope	Partial access Schedule 2, s 2.2(a)(ii) Redact signature.
23.	116-118	Pay advice	17 August 2023	Out of scope	Partial access Schedule 2, s 2.2(a)(ii) Redact all pay details.