

Our references: CIT FOI 2022–002



By email: 

DECISION ON YOUR ACCESS APPLICATION – CIT FOI 2022-002

I refer to the access application made under the *Freedom of Information Act 2016* (FOI Act) which was received by the Canberra Institute of Technology (CIT) via email on 8 June 2022. This application sought access to the following:

A copy of the document called “CIT Strategic Compass 2020 Onwards: A System That Learns.”

On 25 July 2022, your office agreed to an extension of time for the completion of this request. The new due date was agreed to be 25 August 2022.

Authority

I am a Senior Executive Officer appointed as a CIT Information Officer to make decisions about access to government information in accordance with section 18 of the FOI Act.

Third Party Consultation

In making this decision, consultation has been completed with relevant third parties in accordance with section 38 of the FOI Act. The views of these third parties were taken into account when making this decision.

Decision

A search of all CIT records has identified one document containing information that is within the scope of your access application. I have decided not to grant access to the identified document on the basis that its release is contrary to the public interest in accordance with the test established under section 17 of the FOI Act.

My access decision is detailed further in the following statement of reasons provided in accordance with section 54(2) of the FOI Act.

Statement of Reasons

In reaching my decision, I have taken the following into account:

- Your original access application.
- The documents that fall within the scope of your access application.
- The FOI Act.
- The ACT Ombudsman FOI Guidelines.
- Statements made by third parties identified for consultation.

Section 17(1) of the FOI Act sets out the test to be applied to determine whether disclosure of information would be contrary to the public interest. As part of this process, I must consider the factors favouring disclosure and factors favouring non-disclosure. These factors are found in subsection 17(2) and Schedule 2 of the FOI Act. As a decision maker I am required apply the prescribed test to determine where, on balance, public interest lies. In the event, I am not satisfied that there is a public interest in releasing the requested information, section 35(1)(c) of the FOI Act permits me to refuse access.

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors in determining the 'public interest'.

Factors favouring disclosure:

I consider that the following factors favouring disclosure apply in relation to the requested documents.

- promote open discussion and accountability (section 2.1 (a)(i));
- contribute to positive and informed debate (section 2.1(a)(ii)); and
- oversight of expenditure of public funds (section 2.1(a)(iv)).

The release of the requested document would promote open discussion and accountability by providing you with information about the deliverables provided under the contracts awarded to ThinkGarden and Redrouge Nominees Pty Ltd part of CIT transformation activities. Specifically, the release of the *CIT Strategic Compass 2020 Onwards: A System That Learns* document would allow for a positive and informed public debate on CIT procurement processes, particularly in relation to the deliverables provided under the contracts. The release of this information may improve accountability and transparency for future procurement actions. I consider these factors should be provided with a high weighting.

I further consider that release of the requested documents could reasonably be expected to ensure effective oversight of expenditure of public funds by information on how public money. The expenditure of public money should be undertaken in a manner that ensures value for money having regard to probity, ethical behaviour, management of risk and optimising whole of life costs. The release of the requested document would allow for visibility of the services provided under the contract. I consider this factor should also be given a high weighting.

Overall, I consider each of these three factors in favour of release should be given significant weighting as part of the process to determine the public interest under section 17 of the FOI Act. I further note that the FOI Act contains a pro-disclosure bias, which requires me to undertake the public interest test with the view that government information should be available to the public unless there are compelling reasons not to do so.

Factors favouring non-disclosure

On 23 June 2022 the ACT Integrity Commission (the Commission) made a public announcement that it has commenced an investigation into “the circumstances surrounding the awarding of over \$8.5 million worth of consultancy contracts by the CIT to ThinkGarden and Redrouge Nominees Pty Ltd”. The Commission noted that the investigation will “ensure the integrity of [the] process”.

Having regard to the statement made by the Commission, the information contained in the documents subject to this request, and the views of the Commission consulted pursuant to section 38 of the FOI Act, I consider that the following factors favouring non-disclosure apply:

- prejudice security, law enforcement or public safety (section 2.2(a)(iii)); and
- prejudice the conduct of considerations and/or investigations by the Commission (section 2.2(a)(xiv)).

As outlined in the factors favouring disclosure, the information contained in the requested document provides information about the deliverables provided under the ThinkGarden and Redrouge Nominees Pty Ltd contracts. I am of the view that the requested information falls within the purview of the Commission’s investigation on the basis that it assists in determining if the procurements were value for money. Releasing this information prior to the finalisation of this investigation will prejudice the investigation into this matter. I note that a previous access application for this document was refused on the basis that its release would be contrary to the public interest.

I consider that section 2.2(a)(iii) is a relevant factor in determining the public interest of the documents within the scope of your application as the release of the information contained within the documents could reasonably be expected to prejudice law enforcement activities. The term ‘law enforcement’ is defined by the ACT Ombudsman in the Freedom of Information Guidelines as ‘the enforcement of any Act, subordinate law, statutory instrument or the common law’. For this section to apply, as a decision maker I must be satisfied that the information has a connection with the criminal law or the processes of upholding or enforcing civil law or administering a law. This extends to agencies administering legislative schemes and requirements, monitoring compliance and investigating breaches. It has been publicly acknowledged that an investigation is being undertaken by the Commission into the process of awarding of contracts to ThinkGarden and Redrouge Nominees by CIT. I am further satisfied for the purposes of this section, that activity being undertaken by the Commission meets the definition of ‘law enforcement’.

The second element which must be met for this factor to apply is that the release of the information could be reasonably expected to prejudice the ability for the Commission to undertake its law enforcement functions. The Commission's task is to decide whether a report of wrongdoing involves corruption, maladministration or conduct that poses a substantial and specific danger to public health or safety, or the environment. To effectively discharge this duty, the Commission requires unfettered access to all documents within the scope of the investigation it is undertaking. The ability for the Commission to obtain information that is not publicly available is a key enabler in determining if there has been wrongdoing in relation to the matter that is being investigated. I consider that releasing information within the scope of your request at this time would undermine the ability for the Commission effectively discharge its law enforcement duties, impacting on its ability to investigate the circumstances and identify any issues in the awarding of the contracts. Accordingly, I give this factor very high weighting. I have also decided that this factor and its very high weighting, outweighs the sum of all factors favouring disclosure as previously described above.

In addition to prejudicing law enforcement activities, I also consider that the release of the information within the scope of your request would prejudice the investigation processes and considerations of the Commission. As outlined in my consideration of the prejudice of law enforcement activities factor, a key enabler for the Integrity Commission to investigate matters thoroughly is the ability to obtain documents, maintain a high degree of secrecy and undertake investigations covertly. In considering this factor, I note in the public announcement of 23 June 2022, the Commissioner expressly stated that:

“Commission investigations are almost always conducted covertly, particularly in their early stages. This minimises the risk of the investigation, or indeed the safety and reputation of witnesses and other persons of interest, being compromised”

The Commission further stated:

“I want to make it very clear to any persons who have received, or do receive, a summons to appear before the Commission and/or provide information as part of this investigation, that they must at all times adhere to the conditions of their summons, including any confidentiality requirements.

Failure to act in accordance with the conditions of a summons is a criminal offence and may result in a period of imprisonment.”

These statements made by the Commission as part of their media release on 23 June 2022 reiterate the importance of maintaining secrecy and confidentiality in relation to the ongoing investigation. Accordingly, I am satisfied that release of the identified document, would negatively impact the Commission's ability to investigate the processes surrounding the awarding of these contracts as it would make information that is not publicly known available to the public, this information could then be used in a manner which could negatively impact the investigative processes being undertaken by the Commission. I am satisfied that this factor should also be given a very significant weighting.

Consideration of factors

Taking into account the factors favouring disclosure and factors favouring non-disclosure and having undertaken the test under section 17 of the Act I have determined that release of the requested information at this time would be contrary to the public interest. Therefore, I have decided pursuant to section 35(1)(c) of the FOI Act not to release any of documents found to be within the scope of your request. This decision does not prevent you from applying for the requested information following the completion of the Commission's investigation into these matters.

Charges

Pursuant to Freedom of Information (Fees) Determination 2018 processing charges are not applicable for this request because the total number of pages to be released to you is below the charging threshold of 50 pages.

Disclosure log

Section 28 of the FOI Act requires publication of access applications and any information subsequently released on CIT's disclosure log at: https://cit.edu.au/about/freedom_of_information/disclosure_log.

This access decision will be published online not less than with 3 days after the date of this decision.

Review rights

You may apply to the ACT Ombudsman to review my decision under section 73 of the FOI Act. An application for review must be made in writing within 20 days of my decision being published in the disclosure log on 13 September 2022.

You may submit a request for review of my decision to the ACT Ombudsman by writing in one of the following ways:

Email (preferred): actfoi@ombudsman.gov.au
Post: The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

More information about ACT Ombudsman review is available on the ACT Ombudsman website at: <http://www.ombudsman.act.gov.au/improving-the-act/freedom-of-information>.

Yours sincerely



Steven Wright
A/g Executive Director, Corporate Services &
Information Officer
25 August 2022