

OPEN ACCESS INFORMATION SCHEME SCHEDULE

Please be aware that under the *Freedom of Information Act 2016*, some of the information provided will be released to the public through the ACT Government's Open Access Information Scheme. The Open Access release status column of the table below indicates which records are intended for release online through open access via the Archives ACT, Access to Memory platform - <https://act.accesstomemory.org/ACT34#>

Personal information or business affairs information will not be made available under this policy.

Scope
Series ACT34 - Asbestos Response Taskforce Records - Proactive Release

File Number	Description	Status	Comment	Open Access release status
03/8530	Parliamentary Counsels Office - Dangerous Substances (Asbestos) Regulation 2003 (2003 134S).	Full Release	N/A	Yes
03/10327	Public Sector Management & Labour Policy Group, Work Safety & Labour Policy, Asbestos Issues.	Partial Release	Deferred release of one "Cabinet-In-Confidence" document	Yes
03/12171	Industrial Relations & Public Sector Management Group - Work Safety & Labour Policy - Dangerous Goods Act - Regulations (Asbestos Prohibition) 2003.	Partial Release	Two documents redacted under Schedule 2, 2.2(a)(ii) – individual privacy	Yes
04/4226	City Management - ACT Nowaste - Contracts & Commissioning - Business Unit - Occupational Health & Safety – Asbestos.	Partial Release	Four documents redacted under Schedule 2, 2.2(a)(ii) – individual privacy	Yes
04/4967	City Management - ACT Nowaste - Contracts & Commissioning - Business Unit - Asbestos Operational Matters.	Partial Release	Nine documents redacted under Schedule 2, 2.2(a)(ii) – individual privacy	Yes
04/9575	Policy & Regulatory Division - Legislation & Policy Branch - General Law Group - Private Members Bill - Introduced By Helen Cross - Residential Property (Awareness of Asbestos - Amendment Bill 2004.	Partial Release	Three documents redacted under Schedule 2, 2.2(a)(ii) – individual privacy	Yes
04/9639	Policy & Regulatory Division - Legislation & Policy Branch - General Law Group - Private Members Bill - Introduced By Helen Cross - Residential Property (Awareness of Asbestos) - Amendment Bill 2004 – Emails.	Partial Release	Two documents redacted under Schedule 2, 2.2(a)(ii) – individual privacy	Yes
04/9649	Policy & Regulatory Division - Legislation & Policy Branch - General Law Group - Private Members Bill - Introduced By Helen Cross - Residential Property (Awareness of Asbestos) - Amendment Bill 2004.	Partial Release	Two documents redacted under Schedule 2, 2.2(a)(ii) – individual privacy	Yes

04/15435	Legal Service - Contracting Out - Consultants - Asbestos Extent and Impact Pilot Study.	Partial Release/Refused	One document redacted under Schedule 2, 2.2(a)(xi) – business affairs One document redacted under Schedule 2, 2.2(a)(ii) – individual privacy One document refused under Schedule 2, 2.2(a)(ii) – individual privacy One document refused under Schedule 2, 2.2(a)(xi) - Business Affairs	Yes/No
04/13045	Financial Management - Budgeting - Asbestos Assessment Budget 2004/05 & 2005/06 Fiscal Years.	Partial Release	One document redacted under Schedule 2, 2.2(a)(ii) – individual privacy	Yes
04/10631	Industrial Relations & Public Sector Management Group - Office of Industrial Relations - Work Safety Policy - Asbestos - Helen Cross Private Members Residential (Awareness of Asbestos) Amendment Bill 2004.	Partial Release	One document redacted under Schedule 2, 2.2(a)(ii) – individual privacy	Yes
04/10441	Industrial Relations & Public Sector Management Group - Office of Industrial Relations - Work Safety Policy - Asbestos - Helen Cross Private Members Residential (Awareness of Asbestos) Amendment Bill 2004.	Full Release	N/A	Yes
04/15436	Community Relations - Enquiries - Asbestos Enquiries from the Public 2004-2005.	Partial Release	31 documents redacted under Schedule 2, 2.2(a)(ii) – individual privacy One document redacted under Schedule 1, 1.2 - Legal Professional Privilege	Yes
04/15437	Section 47 J Advisory Forms Returned to ACT Asbestos Task Force – Community Relations: Policy.	Partial Release	One document redacted under Schedule 2, 2.2(a)(ii) – individual privacy	Yes
04/15254	Strategic Management - Meetings – Asbestos.	Partial Release/Refused	Three documents refused under Schedule 1, 1.2 - Legal Professional Privilege	Yes/No
04/13046	Government Relations - Legislation - Asbestos Legislation Local - Interstate & Overseas.	Partial Release/Refused	Three documents refused under Schedule 1, 1.2 - Legal Professional Privilege	Yes/No
04/10632	Industrial Relations & Public Sector Management Group - Office of Industrial Relations - Work Safety Policy - Asbestos Issues.	Partial Release	Three documents redacted under Schedule 2, 2.2(a)(ii) – individual privacy	Yes
04/15438	Minutes – Asbestos Assessment Task Force – Meetings 2004-2005 – GOVERNMENT RELATIONS: Meetings.	Partial Release/Refused	Three documents redacted under Schedule 2, 2.2(a)(ii) – individual privacy One document refused under Schedule 2, 2.2(a)(xi) - Business Affairs	Yes/No
05/3786	Government Coordination - Analysing - Data - report of Asbestos Removal Program 1988-1993.	Full Release	N/A	Yes

Open Access Information release outcome decision:

Access Refused

Document Category: Agency Publication Undertaking, Functional Agency Information, Policy Documents.

Title of document:

- 04/15254 - D013 - Letter - ACT Government Solicitor - Protection of ACT Public Servants in relation to Section 47J Dangerous Substances Act 2004
- 04/15254 - D034 - Letter – ACTGS - copy/draft advice regarding tenant
- 04/15254 - D037 - Letter - ACT Government Solicitor - Interpretation of Section 47J of the Dangerous Substance (Asbestos) Amendments Act 2004 and Advisory Notice
- 04/13046 - D007 - Consultation – ACTGS - Formal advice - application of S 47J, Liability of owners and occupiers to inform - Dangerous Substances (Asbestos) Amendment Act 2004
- 04/13046 - D008 - Email - Peter Garrisson - preparation for meeting with GSO on asbestos taskforce legal issues
- 04/13046 - D016 - Email - Penny Shakespeare - Request for GSO advice - binding of the crown in right of the Commonwealth within Dangerous Substances Act
- 04/15438 - D036 - Report - Tabled - The Arthur Group Pty Ltd - Proposal for Facilitation of Risk Assessment Workshops for The ACT Government/ACT Asbestos Taskforce

Description of the information:

The information contained in the listed documents relates to and includes information that was used by Cabinet members during Cabinet deliberation. The list includes documents that also contain information that is legal advice or opinion provided by a legal professional in relation to the activities of the Asbestos Response Taskforce, and information that relates to the specific business affairs of private individuals performing activities on behalf of the Asbestos Response Taskforce.

Grounds for decision to refuse access:

I have decided that access to this information would **not** be made available because it is taken to be contrary to the public interest under schedule 1 of the *Freedom of Information Act 2016* (the FOI Act).

The relevant grounds under schedule 1 of the FOI Act and the reasons why they were applicable in this case are outlined below:

- The information is considered to be information subject to legal professional privilege under schedule 1.2. The information is contrary to the public interest because the documents relate to legal advice has been provided to the Asbestos Response Taskforce in relation to elements of its operations and practices.

I have decided that information contained in 04/15438 - D036 should not be disclosed because, on balance, it would be contrary to the public interest, as per the test set out in section 17 of the FOI Act.

Factors favouring disclosure of this information, as outlined in schedule 2 included:

- reveal the reason for a government decision and any background or contextual information that informed the decision.

The document reveals the detailed proposal for the facilitation of risk assessment workshops for the Asbestos Response Taskforce, which includes the methodology and approach proposed for the workshops supporting the operations of the taskforce which would outline and provide information relating to the contextual information for activities undertaken.

Factors favouring non-disclosure of this information, as outlined in schedule 2 included:

- 2.2(a)(ii) - Prejudice the protection of an individual's right to privacy or any other right under the *Human Rights Act 2004*
- 2.2(a)(xi) - Prejudice trade secrets, business affairs or research of an agency or person.

The documents contain business-specific information provided as part of a tendering process and include information relating to the proposed plan, methodology and approach to facilitating workshops, with reference to previous experiences and details of other organisations.

On balance, I consider release of the information to be contrary to the public interest, because the release of this information would unreasonably disclose the business's confidential information supplied in a tendering process, with the identification of methodology and approach potentially revealing commercial practices of the business. While the information can be reasonably considered to provide contextual details regarding the business, the public identification of the business's clients and experience may disadvantage the organisation.

If disclosed, I consider the harm to the public interest that can reasonably be expected to occur could include prejudicing an individual's right to privacy (such as a revealing individual's name, contact details and experiences), as well as unreasonably impacting on the business's commercial activities.

Review rights:

Ombudsman review

The decision to withhold this information is a reviewable decision as identified by schedule 3 of the FOI Act.

You have the right to seek Ombudsman review of this decision. Under section 74 of the FOI Act, an application for Ombudsman review must be made within 20 working days from the day this decision was published on the agency's website, or a longer period allowed by the Ombudsman.

If you wish to request a review of this decision you may write to the ACT Ombudsman at:

The ACT Ombudsman
Attention: ACT Strategy and FOI Section
GPO Box 442
CANBERRA ACT 2601
Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) review

Under section 84 of the FOI Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
GPO Box 370
CANBERRA ACT 2601
Telephone: (02) 6207 1740
<https://www.acat.act.gov.au/>

Authorised by:



***Asbestos Response Taskforce Information Officer, Lea Durie, Executive Branch Manager,
Development and Implementation***

23/06/2022

Open Access Information release outcome decision: **Partial access granted**

Document Category: Agency Publication Undertaking, Functional Agency Information, Policy Documents.

Title of document: Refer to attached document schedule at [Attachment B](#).

Description of the information: The documents described in the schedule relate to broad range of functions and activities undertaken by the Asbestos Response Taskforce (the Taskforce) relating to loose-fill asbestos management and remediation efforts of affected properties in the ACT.

The original record of these documents contains information the release of which would be contrary to the public interest. This information has been deleted from this publicly available copy of the documents for the reasons outlined below.

Grounds for decision to withhold disclosure:

Certain information has been redacted before the publication of these documents, as marked, because it is taken to be contrary to the public interest information under schedule 2 of the *Freedom of Information Act 2016* (FOI Act).

I have decided that this information should not be disclosed because, on balance, it would be contrary to the public interest, as set out in the test in section 17 of the FOI Act.

Factors favouring disclosure of this information, as outlined in schedule 2 include:

- Schedule 2, item 2.1(a)(i) – promote open discussion of public affairs and enhance the government’s accountability
- Schedule 2, item 2.1(a)(ii) – contribute to positive and informed debate on important issues or matter of public interest
- Schedule 2, item 2.1(a)(iii) – inform the community of the government’s operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community
- Schedule 2, item 2.1(a)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision
- Schedule 2, item 2.1(a)(xi) – reveal environmental or health risks or measures relating to public health and safety.

The information contained within the identified documents relates to the operations and activities of the Taskforce in dealing with and managing the effects of loose-fill asbestos (“Mr Fluffy”) houses in the ACT. This information contains planning, reporting and legislative drafting activities which demonstrate how the Taskforce established, executed and fulfilled its mandate over the course of several years. Also included is information relating to community engagement, education and communication in assisting residents and industry in assessing and managing loose-fill asbestos.

Factors favouring non-disclosure of this information, as outlined in schedule 2 include:

- Schedule 2, item 2.2(a)(i) - prejudice the collective responsibility of Cabinet or the individual responsibility of members to the Assembly
- Schedule 2, item 2.2(a)(ii) - prejudice the protection of an individual’s right to privacy or any other right under the [Human Rights Act 2004](#)

- Schedule 2, item 2.2(a)(xi) - prejudice trade secrets, business affairs or research of an agency or person

On balance, I consider the release of this information to be contrary to the public interest, because release of the information would reveal the basis of discussion or decision made through the Cabinet process where the information is provided to support the Cabinet decision-making function, identify personal details when legitimately engaging with the Taskforce or reveal business practices and processes of services providers engaged by the Taskforce.

If disclosed, I consider the harm to the public interest that can reasonably be expected to occur includes unreasonably disclosing the personal information of a person's contact details and address, undermining the proper process of Cabinet and hindering or limiting the commercial interests of service providers who performed work for the Taskforce.

Review rights:

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Authorised by:



***Asbestos Response Taskforce Information Officer, Lea Durie, Executive Branch Manager,
Development and Implementation***

23/06/2022