

# OPEN ACCESS

POLICY NO. A15

ACT CORRECTIVE SERVICES



**ACT**  
Government

Justice and Community Safety

## Contents

1	PURPOSE .....	3
2	SCOPE .....	3
3	DEFINITIONS .....	3
4	PRINCIPLES .....	6
5	ROLES AND RESPONSIBILITIES.....	7
6	ADDING DOCUMENTS TO THE REGISTER .....	9
7	REMOVING DOCUMENTS FROM THE REGISTER .....	13
8	COMPLIANCE WITH THE FOI ACT.....	14
9	RELATED DOCUMENTS .....	14

## 1 PURPOSE

ACT Corrective Services (ACTCS) is committed to ensuring the transparency and accountability of the ACT Government to the public through open access information in accordance with the Freedom of Information Act 2016 (the FOI Act).

This policy outlines how ACTCS will meet its open access obligations under the FOI Act, including the publication process.

## 2 SCOPE

This policy applies to all staff and contracted service providers.

Where required, Divisional Executives will establish operational procedures under this policy.

## 3 DEFINITIONS

### Open Access

Pro-active publication of *government information* by ACTCS, including as required under the FOI Act. ACTCS will publish this information on:

- a. the ACT Legislation Register where required (i.e. notifiable instruments), with a link to be included on the ACTCS website; or
- b. the ACTCS website, with a link to be included on the ACT Open Access portal (the Register). The Register is available at: <https://www.act.gov.au/open-access>.

### Open Access Information

Certain categories of *government information* specified in s23 of the FOI Act that, at a minimum, must be considered for publication (that is, *open access information*)<sup>1</sup>. This includes *government information* held by ACTCS, created on or after 1 January 2018, that is, or is in one or more of the following:

- a. *functional information* about ACTCS;
- b. information about ACTCS tabled in the Legislative Assembly;
- c. ACTCS *policy documents*;
- d. information about any grants ACTCS is responsible for;

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<sup>1</sup> [ACT Ombudsman FOI Guideline 1](#) provides advice about the scope of each of these categories.

- e. a list of all boards, councils, committees, panels and other boards established by ACTCS to advise the Minister or ACTCS on policy;
- f. any report or recommendation prepared by a body mentioned in paragraph (e)- this does not include minutes, agendas or terms of reference;
- g. information that ACTCS have declared to make publicly available;
- h. information declared by the Ombudsman to be open access information; or
- i. information prescribed by regulation.<sup>2</sup>

### **Government Information**

Defined in s14 of the FOI Act as information in a *record* held by ACTCS, or that ACTCS is entitled to access, including:

- a. documents or other records in possession of ACTCS. For example, documents that include personal information about individuals, information about policy and/or public programs, or financial information; and
- b. information that ACTCS is entitled to access. For example, documents in the possession of a third party (such as a contractor).

### **Record**

Defined in the FOI Act as any document or other source of information compiled, recorded or stored in written form or by electronic process, or any other manner/means. The definition also includes copies of such records. Records could include documents, emails, electronic recordings, photographs, videos, social media posts, electronic diaries and post-it notes.

### **Functional information**

Under s23(1)(a) of the FOI Act, ACTCS must publish functional information that is not contrary to the public interest to disclose. This is information that provides the public with a greater understanding of the functions of ACTCS, including why and how it operates. This may include:

- a. strategic plan;
- b. mission statement;
- c. values statement;
- d. information about the functions of ACTCS (including a description of the range and scope of these functions) and the services that ACTCS provides to the community;

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<sup>2</sup> The definition of open access information also includes budget papers, but these are managed by Treasury, and an agency's disclosure log, which is managed by Justice and Community Safety Directorate Governance. At the time of writing, there is no information declared by ACTCS or the Ombudsman to be open access information, nor prescribed by the regulations.

- e. information that explains how and why functions are shared between ACTCS and other agencies;
- f. contact information for teams within ACTCS that have a public facing role, and a structure chart; and
- g. information about what kinds of government information ACTCS holds and how it can be accessed.

### **Policy document**

Under s23(1)(c) of the FOI Act, ACTCS must publish policy documents that are not contrary to the public interest to disclose. This is defined in s23(2) of the FOI Act to include the final versions (i.e. not a draft) of:

- a. a document containing interpretations, rules, guidelines, statements of policy, practices or precedents;
- b. a document containing a statement about how an Act or administrative scheme is to be administered;
- c. a document describing the procedures to be followed in investigating a contravention or possible contravention of an Act or administrative scheme; or
- d. another document of a similar kind used to assist ACTCS to exercise its functions;

Includes all documents that inform decision-making. This includes all documents created under the *Policy Framework Policy*, except for documents recording how a matter is handled or a decision made.<sup>3</sup>

### **Contrary to the public interest information**

Information that:

- a. is taken to be contrary to the public interest to release, because it falls within one of the categories specified in in Schedule 1 of the FOI Act. This could include information which:
  - i. if disclosed would be in contempt of court (see Schedule 1.1);
  - ii. is subject to legal professional privilege (see Schedule 1.2);
  - iii. is protected from release under specific legislation (see Schedule 1.3);
  - iv. if disclosed would involve unreasonable disclosure of sensitive information about an individual (see Schedule 1.4);
  - v. is Cabinet information (see Schedule 1.6);

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<sup>3</sup> For further advice, on what is considered a policy document, including examples, see [ACT Ombudsman FOI Guideline 1.](#)

- vi. if disclosed would, or could reasonably be expected to damage Territory security (see Schedule 1.13));
- vii. is law enforcement or public safety information (see Schedule 1.14), which if disclosed would, or could reasonably be expected to, for example:
  - i. identify the existence of a confidential source;
  - ii. endanger a person's life or physical safety;
  - iii. result in a person being subject to serious harassment or intimidation;
  - iv. prejudice a fair trial;
  - v. prejudice the effectiveness of a lawful method for dealing with a contravention, or possible contravention, of the law;
  - vi. prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety;
  - vii. endanger the security of a building, structure or vehicle;
  - viii. prejudice a system or procedure for the protection of people or property; or
  - ix. facilitate a person's escape from lawful custody; or
- b. would, on balance, be contrary to public interest to disclose when applying the public interest test under s 17 of the FOI Act, and taking into account the factors for and against disclosure outlines in Schedule 2 of the FOI Act.<sup>4</sup>

#### **Officer**

A Senior Director of ACTCS.

#### **Open Access Co-ordinator**

ACTCS staff member that is responsible for arranging the publication and review of ACTCS information. The Records Manager and the Open Access Administrator in the ICT team are the nominated Open Access Co-ordinators.

## **4 PRINCIPLES**

- 4.1 ACTCS is committed to fulfilling the ACT Government's obligations to ensure transparency and accountability under the FOI Act by providing the public with open access to documents that are not contrary to the public interest to disclose.

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<sup>4</sup> Guidance on how to interpret these factors, as well as the provisions under Schedule 1 of the FOI Act, can be found in [the ACT Ombudsman FOI Guideline volume 4](#).

- 4.2 ACTCS is committed to ensuring the safe, secure, decent and humane management of offenders both in custody and the community, including by publishing information.
- 4.3 Divisional Executives will lead their division in fostering a proactive culture of open access to support the ACT Government's commitment to transparency and accountability to the public. This can be achieved through regularly encouraging staff to review documents for consideration for open access (i.e. biannually) and ensuring that all documents are assessed for open access as they are developed.

## 5 ROLES AND RESPONSIBILITIES

### Officer

- 5.1 Officers are responsible for:
  - a. identifying documents within their Business Unit for consideration for open access, including documents created by ACTCS and documents provided by other entities;
  - b. reviewing documents on the Register at least biannually;
  - c. assessing whether any identified open access information includes information that would be contrary to the public interest to release, and applying the public interest test to the document where required;
  - d. filling in the A15.F1: ACTCS Open Access Register Form; and
  - e. where required, redacting information from the document and completing the Partial disclosure form.

### Divisional Executive

- 5.2 Divisional Executives are responsible for:
  - a. ensuring documents are considered for open access within two weeks of finalisation;
  - b. regularly encouraging staff to review documents for consideration of open access (i.e. biannually);
  - c. reviewing documents under consideration for open access and associated A15.F1: ACTCS Open Access Register Forms;
  - d. reviewing the results of the public interest test; and
  - e. providing clearance for the recommendation.
- 5.3 Divisional Executives are responsible for ensuring policies are considered for open access in accordance with the Policy Framework Policy.

## **Open Access Co-ordinator**

### **Records Manager**

5.4 The Records Manager is responsible for:

- a. reviewing the recommendations provided by Business Units and providing outcomes of these reviews to the Office of the Commissioner;
- b. assessing what is appropriate to be published when documents are assessed as including information that is contrary to the public interest to disclose (a redacted version of the document, a description of the document or neither);
- c. liaising with the Divisional Executives as appropriate;
- d. maintaining a record of decision;
- e. completing the necessary forms (a description of the document, Access withheld form, Statement to Ombudsman);
- f. co-ordinating with the Office of the Commissioner for the biannual review of documents on the Register; and
- g. advising the Ombudsman where relevant.

### **Open Access Administrator**

5.5 The Open Access Administrator is responsible for:

- a. managing the change process for the publication of approved record(s) on the Register;
- b. ensuring that the information is published on the Register to comply with ACT Government Open Access Information requirements;
- c. co-ordinating with the Office of the Commissioner for the biannual review of documents on the Register; and
- d. publishing or removing documents as a result of the biannual review of documents on the Register.

### **Office of the Commissioner**

5.6 The Office of the Commissioner are responsible for:

- a. co-ordinating the Commissioner's clearance of forms provided by the Records Manager;
- b. liaising with other entities as appropriate;
- c. advising the Records Manager and Open Access Administrator when policies are revoked; and
- d. biannual review of documents on the Register.



## **Commissioner**

- 5.7 The Commissioner is responsible for:
- a. reviewing open access recommendations; and
  - b. confirming the decision.

## **6 ADDING DOCUMENTS TO THE REGISTER**

- 6.1 A document should be considered for open access in the following circumstances:
- a. when a document is created;
  - b. when a document is provided to ACTCS;
  - c. during the scheduled review of the document;
  - d. during the biannual review of open access documents; or
  - e. in other circumstances co-ordinated with the Director, Office of the Commissioner.
- 6.2 When a document is created or provided to ACTCS, the document should be considered for open access within two weeks of this event, e.g. two weeks of finalisation of a new document.
- 6.3 An officer should first consider whether the document is, or includes, open access information (see the definition of Open Access Information).
- 6.4 The officer should then assess whether the information is, or includes, contrary to the public interest information by completing the public interest test according to the instructions in the *A15.F1: ACTCS Open Access Register Form*.
- 6.5 Additional guidance on applying the public interest test can also be found in the *ACT Ombudsman FOI Guideline Number 4* and the *Freedom of Information Bill 2016 Explanatory Statement*.

### **Documents not contrary to the public interest**

- 6.6 Open access information that is assessed as not being, or including, contrary to the public interest information (i.e. when all responses to step one of the public interest test are 'no') must be published under s24(1) of the FOI Act.
- 6.7 When publishing documents in this category or in accordance with sections 6.16-17:
- a. the officer will complete the *A15.F1: ACTCS Open Access Register Form* and attach the document being considered for open access;

- b. the officer will arrange for the A15.F1: ACTCS Open Access Register Form to be cleared by their Divisional Executive before providing to the Records Manager;
- c. the Records Manager will review and provide to the Office of the Commissioner;
- d. the Office of the Commissioner will arrange for the Commissioner to clear;
- e. the Records Manager will record the Commissioner's decision; and
- f. the Open Access Administrator will publish the document on the Register.

#### **Documents contrary to the public interest**

6.8 Consistent with ss24(2) and 26 of the FOI Act, there are three options for the publication of documents that are, or include, contrary to the public interest information (i.e. when one or more responses to step one of the public interest test are 'yes'):

- a. a redacted version of the document can be published;
- b. a description of the document can be published; or
- c. neither a redacted version nor a description of the document can be published.

6.9 The Annex B- Open Access Flowchart should be referred to in conjunction with this policy when considering options under section 6.8.

#### **A redacted version of the document can be published**

6.10 When an officer assesses that a document only contains **some** information that would be contrary to the public interest to disclose, s26 of the FOI Act provides that, if practicable, a redacted version of the document must be published together with a statement about the deleted information, and the reasons why the information is not available to access.

6.11 The Freedom of Information Bill 2016 Explanatory Statement may be used to guide the officer when there is uncertainty in balancing the factors to determine whether information is contrary to the public interest and therefore whether it should be published or redacted.

6.12 To publish a redacted version of the document:

- a. the officer will complete the Register form and attach the document being considered for open access;

- b. the officer will redact the necessary information in the document and complete the Partial disclosure form;
- c. the Divisional Executive will clear;
- d. the Records Manager will review and provide to the Office of the Commissioner;
- e. the Commissioner will clear;
- f. the Records Manager will record the Commissioner's decision and liaise with the Open Access Administrator; and
- g. the Open Access Administrator will publish the redacted version of the document with the Partial Disclosure Form. This will include a statement that the original record contained contrary to the public interest information that has been redacted and the reasons why (the grounds for nondisclosure under the FOI Act and the findings that led to the decision not to provide access).

**A description of the document can be published**

6.13 If an officer assesses that a document cannot be published because it contains contrary to the public interest information, a description of the document must be published that explains why the information has not been made available, unless in exceptional circumstances under sections 6.14-6.15. Where it is assessed that a description can be published:

- a. the officer will complete the A15.F1: ACTCS Open Access Register Form and attach the document being considered for open access;
- b. the Divisional Executive will clear;
- c. the Records Manager will ensure that a description of the document can be published without endangering life or safety, be an unreasonable limitation on human rights under the Human Rights Act 2004 or significantly prejudice an ongoing criminal investigation;
- d. the Records Manager will complete the Access Withheld Form and provide to the Office of the Commissioner;
- e. the Commissioner will clear;
- f. the Records Manager will record the Commissioner's decision and liaise with the Open Access Administrator; and
- g. the Open Access Administrator will publish the Access Withheld Form. This form includes a statement as to why the information is not being made

available (that is, what were the grounds for nondisclosure under the FOI Act and the findings of fact that led to the decision not to provide access).

**A description of the document cannot be published**

- 6.14 If an officer assesses that a document cannot be published because it contains contrary to the public interest information, a description of the document must generally be published, which explains why the information has not been made available. This is the case, **unless**, as provided for under s24(2) of the FOI Act this would, or could reasonably be expected to:
- a. endanger the life or physical safety of a person; or
  - b. be an unreasonable limitation on a person's rights under the Human Rights Act 2004; or
  - c. significantly prejudice an ongoing criminal investigation.
- 6.15 Where it is assessed that a description should not be published for the above listed reasons:
- a. the officer will complete the A15.F1: ACTCS Open Access Register Form and attach the document being considered for open access;
  - b. the Divisional Executive will clear;
  - c. the Records Manager will ensure that the above listed circumstances apply, before completing the Statement to the Ombudsman form explaining why not even a description of the information can be published and provide to the Office of the Commissioner;
  - d. the Commissioner will clear;
  - e. the Records Manager will record the Commissioner's decision; and
  - f. the Records Manager will email the Ombudsman regarding the decision to not publish a description of the document.

**Documents at the discretion of ACTCS**

- 6.16 The Commissioner may release other documents not explicitly stated in this policy where appropriate and relevant.
- 6.17 ACTCS may consider documents other entities provide to ACTCS for publication on the Register as appropriate and in consultation with that entity where:
- a. the information directly affects the public; and
  - b. ACTCS have the copyright entitlement.

## 7 REMOVING DOCUMENTS FROM THE REGISTER

- 7.1 When a document needs to be removed from the Register or parts of the document redacted, for example when a policy is revoked or there is a change in circumstances:
- a. the officer will:
    - i. reassess whether the document is, or contains, contrary to the public interest information;
    - ii. complete the A15.F1: ACTCS Open Access Register Form (indicating that the document is currently on the Register and should be altered or removed); and
    - iii. redact information from the document and complete the Partial Access Form if required;
  - b. the Divisional Executive will clear;
  - c. the Records Manager will review and provide a recommendation to the Commissioner that either:
    - i. a redacted version of the document should be published;
    - ii. a description of the document should be published; or
    - iii. neither a redacted version nor a description of the document should not be published;
  - d. the Commissioner will clear;
  - e. the Records Manager will record the decision and liaise with the Open Access Administrator; and
  - f. one the following will then occur depending on the recommendation:
    - i. the Open Access Administrator will publish the redacted document with the Partial Disclosure Form;
    - ii. the Open Access Administrator will publish the Access Withheld Form; or
    - iii. the Records Manager will email the Ombudsman regarding the decision to not publish a description of the document.
- 7.2 The justification for why a document should be removed from the Register should be clearly explained on the A15.F1: ACTCS Open Access Register Form and any supporting forms.
- 7.3 When policies are revoked, the Office of the Commissioner are responsible for arranging with the Open Access Administrator to remove these documents from the Register.

## 8 COMPLIANCE WITH THE FOI ACT


- 8.1 ACTCS documents on the Register will be reviewed biannually in accordance with this policy.
- 8.2 Individual policy documents on the Register will be reviewed in accordance with the review schedule specified in the individual document.

## 9 RELATED DOCUMENTS

- A – Annex A - Open Access Flowchart
- B – A15.F1: ACTCS Open Access Register Form



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