

Dear 

DECISION ON YOUR ACCESS APPLICATION

I refer to your application under section 30 of the *Freedom of Information Act 2016* (FOI Act), received by ACT Health Directorate (ACTHD) on **Thursday 25 June 2020**.

This application requested access to:

'I would like any briefing, advice, communications or notes of communication to the Director-General of Health, or anyone acting in that position, about Mr Bradley Burch from 1 July 2019 to date.'

I am an Information Officer appointed by the Director-General of ACT Health Directorate (ACTHD) under section 18 of the FOI Act to deal with access applications made under Part 5 of the Act. ACTHD was required to provide a decision on your access application by **Thursday 23 July 2020**.

I have identified 12 documents holding the information within scope of your access application. These are outlined in the schedule of documents included at [Attachment A](#) to this decision letter.

Decisions

I have decided to:

- grant full access to no documents;
- grant part access to 1 document/s; and
- refuse access to 11 document/s.

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided as [Attachment B](#) to this letter.

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

- The FOI Act;
- The contents of the documents that fall within the scope of your request;
- The views of relevant third parties; and
- The *Human Rights Act 2004*.

Refuse Access

Documents 2 and 5 - 11 are documents that are subject to Legal Professional Privilege and are therefore taken to be contrary to the public interest to release. Document 12 is information in the

possession of the Ombudsman for the purposes of an investigation under the *Ombudsman Act 1989* and is therefore taken to be contrary to the public interest to release.

Documents 3 and 4 are wholly made up of personal employment information.

Public Interest Factors Favouring Disclosure

The following factors were considered relevant in favour of the disclosure of the documents:

- Schedule 2.1 (a) (vi) reveal or substantiate that an agency or public official has engaged in misconduct or negligent, improper or unlawful conduct or has acted maliciously or in bad faith.

Public Interest Factors Favouring Non-Disclosure

The following factors were considered relevant in favour of the non-disclosure of the documents:

- Schedule 2.2 (a) (ii) Personal Information

On balance, the information identified is contrary to the public interest to release. I have decided that the factor favouring non-disclosure of the personal information contained in these documents significantly outweighs the factor for disclosing this information, as the conduct of the public official concerned is a matter of public knowledge and has been concluded by the agency.

Partial Access

Some information contained in document 1 is sensitive personal information as defined by the *Information Privacy Act 2014* and is therefore taken to be contrary to the public interest to release.

Charges

Processing charges are not applicable to this request.

Disclosure Log

Under section 28 of the FOI Act, ACTHD maintains an online record of access applications called a disclosure log. The scope of your access application, my decision and documents released to you will be published in the disclosure log not less than three days but not more than 10 days after the date of this decision. Your personal contact details will not be published.

<https://www.health.act.gov.au/about-our-health-system/freedom-information/disclosure-log>.

Ombudsman review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the FOI Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in ACT Health's disclosure log, or a longer period allowed by the Ombudsman.

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

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601
Via email: ACTFOI@ombudsman.gov.au
Website: ombudsman.act.gov.au

ACT Civil and Administrative Tribunal (ACAT) review

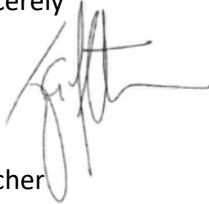
Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
Level 4, 1 Moore St
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

Further assistance

Should you have any queries in relation to your request, please do not hesitate to contact the FOI Coordinator on (02) 5124 9833 or email HealthFOI@act.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to be 'John Fletcher', written over a light grey background.

John Fletcher
Executive Group Manager
Corporate & Governance

22 July 2020

FREEDOM OF INFORMATION SCHEDULE OF DOCUMENTS

Please be aware that under the *Freedom of Information Act 2016*, some of the information provided to you will be released to the public through the ACT Government's Open Access Scheme. The Open Access release status column of the table below indicates what documents are intended for release online through open access.

Personal information or business affairs information will not be made available under this policy. If you think the content of your request would contain such information, please inform the contact officer immediately.

Information about what is published on open access is available online at: <http://www.health.act.gov.au/public-information/consumers/freedom-information>

APPLICANT NAME	WHAT ARE THE PARAMETERS OF THE REQUEST	FILE NUMBER
[REDACTED]	I would like any briefing, advice, communications or notes of communication to the Director-General of Health, or anyone acting in that position, about Mr Bradley Burch from 1 July 2019 to date.	FOI20-28

Ref Number	Page Number	Description	Date	Status Decision	Factor	Open Access release status
1.	1 - 4	Email with attachment - Fw: Matter	14/5/20	Partial Release	Schedule 2.2 (a) (ii) Personal Information	Yes
2.	5 - 8	Email - Employment matter	15/5/20	Access Refused	Schedule 1.2 legal professional privilege	No
3.	9 - 17	Email - Response to DG	20/5/20	Access Refused	Schedule 2.2 (a) (ii) Personal Information	No
4.	18 - 19	Email - Without Prejudice Offer – Brad Burch – Employment Matter	20/5/20	Access Refused	Schedule 2.2 (a) (ii) Personal Information	No
5.	20 - 29	Email - Fwd: Employer Response	22/5/20	Access Refused	Schedule 1.2 legal professional privilege	No
6.	30 - 46	Email - Employment matter BB	22/5/20	Access Refused	Schedule 1.2 legal professional privilege	No

7.	47 - 54	Email - Fw: Matter - notes	26/5/20	Access Refused	Schedule 1.2 legal professional privilege	No
8.	55 - 64	Email - Employee issue – Deed	28/5/20	Access Refused	Schedule 1.2 legal professional privilege	No
9.	65	Email - Matter	29/5/20	Access Refused	Schedule 1.2 legal professional privilege	No
10.	66 - 70	Email - Fw: Employer Response	18/6/20	Access Refused	Schedule 1.2 legal professional privilege	No
11.	71 - 73	Email - RE DG Message (Advice from GSO)	22/6/20	Access Refused	Schedule 1.2 legal professional privilege	No
12.	74 - 80	Email - FW: CMTEDD-Internal-Minute Burch	24/6/20	Access Refused	Schedule 1.12 information in the possession of the ombudsman Schedule 2.2 (a) (ii) Personal Information	No
Total Number of Documents						
12						

Nolan, Julie (Health)

From: Nolan, Julie (Health)
Sent: Thursday, 14 May 2020 6:32 PM
To: Jonasson, Kylie (Health)
Subject: FW: Matter
Attachments: FW: Reportable conduct issue

UNCLASSIFIED Sensitive: Personal

Hi Kylie

See the attached email from Tamara Graham, and the subsequent correspondence from Therese Goodman. Noting the plea I suggest we move to termination.

<https://www.canberratimes.com.au/story/6756784/googong-man-arrested-on-child-exploitation-offences/?cs=14226>

4.5.2(a) Termination by the employer (post 1 September 2016 contracts)

Under section 38 of the Act the engager of an SES member may end the SES member's engagement, on behalf of the Territory, in accordance with any prescribed requirement or prescribed notice period—

- under section 41 (Loss of eligibility); or
- under section 42 (Invalidity retirement); or
- if a misconduct procedure finds the disciplinary action to be taken is to end the SES member's engagement; or
- if the engager loses confidence in the SES member's ability to exercise the functions which the SES member has been engaged to exercise; or
- if the SES member's SES position is no longer required for the efficient and effective operation of the service—if the engager is unable to give the SES member another suitable SES position; or
- if the engager considers it is in the interest of the service for the SES member's engagement to be ended.

From: Goodman, Therese <Therese.Goodman@act.gov.au>
Sent: Thursday, 14 May 2020 5:35 PM
To: Nolan, Julie (Health) <Julie.Nolan@act.gov.au>
Subject: RE: Matter

UNCLASSIFIED Sensitive: Personal

Hi Julie

Please find attached reportable conduct issue for your information.

I have provided a screen shot of this bail conditions below.

ORIGINAL

Details of accused:

Surname: BURCH

Other names: BRADLEY JOHN

Bail Conditions:



Thanks

Therese

From: Nolan, Julie (Health) <Julie.Nolan@act.gov.au>
Sent: Thursday, 14 May 2020 5:25 PM
To: Goodman, Therese <Therese.Goodman@act.gov.au>
Subject: Matter

UNCLASSIFIED Sensitive: Personal

Hi Therese

Thanks for the information. I can confirm that neither People Strategy or our SERBIR were aware of these matters. We will do some further investigating as to whether the matter was notified to his supervisor. Could you please forward me any information that you can that includes relevant times/dates, and any bail conditions we should be aware of

Many thanks

Julie

Julie Nolan | Senior DirectorPh: 5124 9835 | Email: julie.nolan@act.gov.au**People Strategy, Corporate & Governance | ACT Health Directorate**

Level 4, 2 Bowes Street Phillip ACT 2606

health.act.gov.au**ACT**
Government**ACT Health**

Respect

Collaboration

Integrity

Innovation

Allen, Jonas (Health)

From: Graham, Tamara
Sent: Thursday, 14 May 2020 4:19 PM
To: Goodman, Therese
Subject: FW: Reportable conduct issue

UNCLASSIFIED Sensitive: Personal

Hi Therese

I seek your advice on the email below.

The offender, Mr Bradley BURCH, is charged with multiple charges relating to child sex offences. The offender has entered a plea of guilt and we are in the process of writing a PSR. He currently holds a SES Band 1 role within ACT Health in Corporate.

For your guidance.

Tamara.

From: Powsey, Jack <Jack.Powsey@act.gov.au>
Sent: Thursday, 14 May 2020 12:43 PM
To: Graham, Tamara <Tamara.Graham@act.gov.au>
Subject: Reportable conduct issue

UNCLASSIFIED Sensitive: Personal

Hi Tamara

I want to formally follow up in respect of the issue with Shannon's client, Bradley BURCH (27/10/1984); the offender we spoke about briefly this morning. To summarise, Mr Burch holds a senior position in ACT Health and is currently charged with child sex offences. OIS indicates that during interview for PSR, Mr Burch disclosed to Shannon that he has informed ACT Health that he has been charged with an offence, however not the nature of this offence. Shannon has been in contact with CSORT, who have advised that there is no obligation to inform Mr Burch's employer from their perspective.

As you will be aware, the *Ombudsman Act 1989* (ACT) has been amended in recent years to incorporate the Reportable Conduct Scheme, a scheme arising from the Royal Commission into Organisation Responses to Child Sexual Abuse. This legislation places an obligation onto an employer to investigate allegations of misconduct against their employees, relating to, or in the presence of children. The legislation does not compel any organisation to proactively share information in respect of an employee of another agency, however it does provide protection from civil or criminal recourse if a person shares information in good faith, and to facilitate the exercise of a function under that Act (S33(3) and S36). I would suggest that functions of the Act are carried out by both ACT Health and the Ombudsman's Office in respect of Mr Burch.

Given we are an ACT public service agency, and additionally, an agency with a focus on public safety, I believe that ACT Health need to be made aware of the nature of Mr Burch's alleged offences (I note that the Reportable Conduct Scheme applies at allegation stage, and does not require any finding of fact to be established). I believe that ACTPS codes of conduct and the Public Sector Management Act 1994 would also support a decision to share this information with ACT Health/the Ombudsman. I would also seek to protect the ACTPS from any issues that may arise from these circumstances.

Can you please escalate this matter to Therese to seek her views on the above, and/or to determine how our agency might go about sharing the information?

Thank you

Jack Powsey | Director

Phone: 6207 5058 | **Email:** jack.powsey@act.gov.au

Community Corrections & Release Planning | Justice and Community Safety | ACT Government

2 Constitution Ave, Canberra City | PO BOX 158, CANBERRA ACT 2601 | act.gov.au



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