



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference: 18/00220

Dear 

Freedom of information request: 18/00220 – Land Contiguous to Block 3 Section 346 Kambah

I refer to your applications under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Environment, Planning and Sustainable Development Directorate (EPSDD) on 4 January 2018, in which you sought access to:

1. *Valuations and reports for the 3 parcels of land offered by direct sale in relation to the land contiguous to Block 5 Section 346 Kambah;*
2. *Documents relating to position and impact of loading dock (shown on the south) not in accordance with the master plan location on the west;*
3. *Documents relating to Kambah Master Plan adherence regarding the land contiguous to Block 5 Section 346 Kambah;*
4. *Documents relating to provision and parking requirements for proposed land grant*
5. *Documents relating to the [sic] any adverse effects on parking, access, pedestrian flow, noise, fumes, heavy vehicle manoeuvring, frequency and valuation to name a few in relation to Block 37 and its tenants;*
6. *Documents relating to the location, storage and disposal of trade waste and garbage.*

I am an Information Officer appointed under section 18 of the Act to deal with access applications made under Part 5 of the Act. EPSDD is required to provide a decision on your access application by 8 March 2018. Thank you for agreeing to this extension of time.

Decision on Access

I have decided to grant access to the majority documents relevant to your request. I have decided to refuse access to documents/ portions of documents as I consider them to be:

- already available to you; or
- contrary to the public interest to disclose.

My access decisions are detailed further in the following statement of reasons and outlined in the schedule at Attachment A); a copy of the corresponding documents released to you is enclosed with this letter.

I have decided to grant access, under section 50 of the Act, to copies of documents with deletions applied to information that I consider would be contrary to the public interest to disclose. The schedule sets out the release status as 'full release', 'partial release' or 'exempt'.

Material considered

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

- The FOI Act, and
- The content of the documents that fall within the scope of your request.

Exemptions claimed

My reasons for deciding not to grant access to the identified documents and components of these documents are as follows:

Contrary to the public interest information under Schedule 2 of the Act

The Act recognises the right of every person to obtain access, under its provisions, to government information (see section 7, the Act). As an Information Officer I am required to allow access to information subject to the Act unless, on balance, disclosure would be contrary to the public interest (see section 17, the Act).

In assessing the public interest, I must apply the cascading test set out by section 17 of the Act which requires consideration of factors favouring disclosure, any favouring nondisclosure and the balance of those factors when considered cumulatively.

In relation to the documents identified as falling within the scope of your request (scheduled with the status of 'partial release' or 'exempt'), section 17 applies as follows.

Upon my assessment, I am unable to identify any factors favouring disclosure of the deleted information, in accordance with Schedule 2, section 2.1 of the Act.

Personal Information

I have considered the capacity in which representation is provided through a public consultation process I am satisfied that the identification of the external entities providing comment may further open discussion, government accountability, informed debate and the provision of contextual or background information.

I am not satisfied that disclosure of the deleted information could reasonably be expected to further advance these matters as it is limited to the personal information of members of the public.

I am therefore satisfied that the disclosure of this personal information could reasonably be expected to prejudice the protection of an individual's right to privacy under the *Human Rights Act 2004*. This is a factor favouring nondisclosure under Schedule 2.2 (a)(ii) of the Act.

In balancing these matters I am satisfied that, on the information available, disclosure of the identified personal information of members of the public may constitute a breach of privacy and is therefore contrary to the public interest.

Accordingly, documents identified through communications with between external parties and the Territory undertaken are released in part under section 50 of the Act with material deleted that would be contrary to the public interest to release.

Business affairs

In accordance with section 38 of the Act, I sought the views of relevant third parties on whether government information identified within the scope of your request contained contrary to the public interest information. The third party provided a compelling argument for the information to be exempt from release as it contains information relating to trade secrets and business affairs, a factor favouring nondisclosure in the public interest under schedule 2.2(a)(xi).

I have considered information that is already in the public domain and that which must be made public through the consultation process. It is my view that the public consultation process provides for open discussion, government accountability, informed debate and the provision of contextual or background information.

I am not satisfied that disclosure of the deleted information could reasonably be expected to further advance these matters as it is limited to specific aspects of businesses' affairs.

In balancing these matters, I am satisfied that, on the information available, the disclosure of business affairs information would be an unreasonable disclosure and may constitute a breach of confidence. Some of the information identified to relate to business affairs has been provided with a clear expectation of maintained confidence.

Wherever possible, I have partially released information, under section 50 of the Act, with material deleted that would be contrary to the public interest to release.

Information already available

Information identified as relevant has already been released to you, in full, in response to your request under the *Freedom of Information Act 1989* on 21 December 2017 (regarding blocks adjacent to Block 5, Section 346 Kambah). Therefore, I am satisfied that this government information is already available to you and I have refused this portion of the application in accordance with section 43(1)(d) of the Act.

Costs

Fees associated with access applications are determined under section 104 of the Act. No fees have been charged in relation to your request.

Online Publishing – Disclosure Log

Under section 28 of the Act, EPSDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the EPSDD disclosure log from three days after this decision. Your personal contact details will not be published.

You may view EPSDD's disclosure log at <https://www.environment.act.gov.au/about/access-government-information/disclosure-log>.

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the 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 EPSDD'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

Or via email to: ombudsman@ombudsman.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.

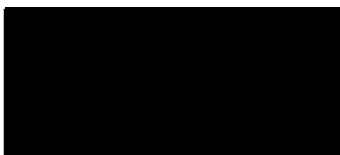
Further information may be obtained from the ACAT at:

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/>

If you have any queries concerning the Directorate's processing of your request, or would like further information, please contact EPSDD's Customer Service Centre on (02) 6207 1923 and ask for the Information Management Team.

Yours sincerely



Brett Phillips
Information Officer
Environment, Planning and Sustainable Development Directorate

8 March 2018