



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference: 19/28355

Dear [REDACTED]

Freedom of Information 19/28355

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Environment, Planning and Sustainable Development Directorate (EPSDD) on 6 September 2019, in which you sought access to documents relating to Brindabella Christian Colleges at Charnwood and Lyneham.

Specifically, you are seeking:

“all documents which make mention of the crown lease agreements for Vol 1596, folio 7 or Vol 1120, folio 96 or other lease agreements, the title deeds and sales contracts for Section 41, block 4 Lyneham or section 94 block 3 Charnwood,

all documents where citing changes to lease agreement conditions, change of use, or change of title deeds for Vol 1596, folio 7 or Vol 1120, folio 96 and for Section 41, block 4 Lyneham or section 94 block 3 Charnwood respectively.

All building approvals, notices and decisions for Section 41, block 4 Lyneham or section 94 block 3 Charnwood.

all documents making any reference to Brindabella Christian Education Limited or Brindabella Christian College, and the Planning and Development Act 2007.

All documents shared and correspondence between any directorate of the ACT government and BCEL.”

On 25 September 2019, the scope of your application was clarified based on documents held by EPSDD. The application, refined to:

*“Development Application documents for the below listed are to be included
DA-201629628 – Lyneham – new building (15 classrooms and assembly area)
DA-201834545 – Block 1 Section 41 Lyneham - Uniting Church Australia – Lease Variation to add education establishment to crown lease, refers to allowing Brindabella Christian College to use site when required.*

DA-201426427 – Blocks 21 and 23 Section 41 Lyneham – Oval - DA withdrawn proposal for sports pavilion and carpark.

Excluding any administrative documents (checklists and automated emails) and public notification preparation documents.

Documents relating to requests for advice regarding DA exemptions

*Documents relating to 2014/15 proposal to use part of Lyneham oval land for carpark and pavilion, including community consultation documents.
Any advice provided by Leasing Team regarding the uses of the land and leasing matters."*

I am an Information Officer appointed under section 18 of the Act to deal with access applications made under Part 5 of the Act.

With your agreement, the EPSDD is required to make a decision on your access application by 5 November 2019.

Decision on Access

Searches of documents relevant to your request were conducted, 240 documents were identified.

I have included at **Attachment A** to this decision, the schedule of documents. This provides a description of each document that falls within the scope of your request and the access decision for each of these documents.

I have decided to grant access in full to 154 documents relevant to your request.

I have decided to refuse access to six documents. Four of the scheduled items are refused under section 43(1)(d) of the Act, as these documents are available for purchase from ACT Land Titles. Two documents are refused under Schedule 2.2(a)(xi) as release could reasonable be expected to prejudice business affairs.

One duplicate document has been identified on the schedule but not provided.

Seventy-nine documents contain information that I consider to be contrary to the public interest to disclose under the test set out in section 17 of the Act I have decided to grant access to these document sunder section 50 of the Act, with deletions applied to information that I consider would be contrary to the public interest to disclose.

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.

Material Considered

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

- the FOI Act, particularly sections 17, 43, 45, 50 and schedule 2
- the content of the documents that fall within the scope of your request
- the *Information Privacy Act 2014*

Public Interest Considerations

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

Information Disclosure – Contrary to the Public Interest

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.

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

Personal Information

I have considered the release some of the personal information contained within the documents, and my view in this instance is that it would not serve to further open discussion, government accountability, informed debate and the provision of contextual or background information.

I am satisfied that the disclosure of identified 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.

Business Affairs

Scheduled item 9, contains information relating to the bond amount for a property.

Scheduled items 205 and 232, contain information relating to the research and methodology of a third party providing a property valuation.

Release of this information could reasonably be expected to prejudice the trade secrets and business affairs of a third party, a factor favouring nondisclosure under Schedule 2.2(a)(xi) of the Act. I have concluded that the disclosure of this information would not serve to further open discussion, government accountability, informed debate and reveal the reason for a government decision and any contextual or background information.

Charges

I have waived fees associated with your access application under section 107(2)(b) of the Act, as the information that is subject of the request is of special benefit to the public.

Online Publication

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 no earlier than 3 days, and no later than 10 days after you are provided this decision. Your personal contact details will not be published.

You may view the EPSDD's disclosure log at

<https://www.environment.act.gov.au/about/access-government-information/disclosure-log>

Under section 28 of the Act, [agency] maintains an online record of access applications called a disclosure log. As your request sought your own personal information, section 28(6) of the Act provides that your access application will not be published in EPSDD's 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 the disclosure log, or a longer period allowed by the Ombudsman. For more information and the application form for Ombudsman review, please visit:

http://www.ombudsman.act.gov.au/data/assets/pdf_file/0026/79190/40A-Reviews-Factsheet-and-Application-Form-final-A1569634.pdf

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

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 Information

If you have any queries concerning the Directorate's processing of your request, or would like further information, please contact EPSDD Customer Service on 02 6207 1923 and ask for the FOI team, or email to EPSDFOI@act.gov.au

Yours sincerely



Brett Phillips

Information Officer
Environment, Planning and Sustainable Development Directorate

5 November 2019