



ACT
Government

Suburban Land
Agency



Dear 

Freedom of information request: 20/15934

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 7 April 2020, in which you sought access to information regarding the naming, branding, and promotion of the suburb of Whitlam.

As confirmed by you on 13 May 2020, you are specifically seeking:

- *All documents related to the naming of the suburb Whitlam;*
- *Ministerial documents relating to the naming, branding, creative and promotion of Whitlam, including but not limited to correspondence, directions, approvals, input, briefs and minutes to or from the Minister or Minister's office;*
- *High level final minutes and briefing documents, creative documents or directions or approvals, presentations, plans and reports, research and marketing documents, event summaries, copies of promotional material, procurement documents, and invoices related to naming, branding, creative and promotion of the suburb of Whitlam.*

I am an Information Officer appointed under section 18 of the Act to deal with access applications made under Part 5 of the Act. As agreed by you, EPSDD is providing a single Portfolio response, and are required to provide a decision on your access application, in accordance with Section 41 of the Act, on or by 4 September 2020. We appreciate your patience and assistance as we worked with you to identify the information you are seeking.

Searches conducted

Comprehensive searches were conducted by the EPSDD for documents relevant to your application.

Decision on Access

Searches were completed for relevant documents and 234 documents were located that fall within the scope of your request. These documents contained personal and business information that concerns relevant third parties. Consultation with relevant third parties was undertaken in accordance with section 38 of the Act.



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I have included as **Attachment A** to this decision the schedule relating to the relevant documents. The schedule provides a description of the documents that fall within the scope of your request and the access decision relating to these documents.

I have decided to refuse access to 22 documents as I consider information contained within these documents would, on balance, be contrary to the public interest to disclose.

I have decided to grant full access to 64 documents.

I have decided to grant partial access to 148 documents relevant to your request as I consider information contained within these documents would, on balance, be contrary to public interest to disclose under the test set out in section 17 of the Act.

I have decided to grant access, under section 50 of the Act, to copies of these documents with deletions applied to the information that I consider would be contrary to public interest to disclose. My access decision is detailed further in the following statement of reasons and the document released to you is 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, 38, 50, Schedule 1 and 2;
- the content of the documents that fell within the scope of your request;
- the *Information Privacy Act 2014* and;
- the views of third parties relating to the release of information that concerns them;
- information in the public domain.

Public Interest Considerations

My reasons for deciding to not grant access to components of the documents are explained below; these documents contain information that I consider to be contrary to the public interest to disclose.

Information Disclosure – Contrary to the Public Interest under Schedule 1 of the Act

The Act identifies information that is contrary to the public interest. Information deemed to be contrary to the public interest is detailed in Schedule 1, section 1.2 of the Act.

Legal Professional Privilege

I have considered the release of information subject to legal professional privilege to be contrary to the public interest as described in Schedule 1, section 1.2 of the Act.



Information Disclosure – Contrary to the Public Interest 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.

In accessing the public interest, I must apply the test outlined under section 17 of the Act which requires consideration of factors favouring disclosure, any favouring non-disclosure and the balance of those factors when considered cumulatively.

Factors Favouring Disclosure

Disclosure of the identified information could reasonably be expected to do the following:

- Schedule 2.1(a)(i) – promote open discussion of public affairs and enhance the government’s accountability;
- Schedule 2.1(a)(iii) – inform community of government operations and its dealings with community members;
- Schedule 2.1(a)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.

Factors favouring Non-disclosure

In applying the public interest test, I have determined that disclosure of the information could reasonably be expected to do the following and meet relevant factors favouring non-disclosure:

- Schedule 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 2.2(a)(viii) – prejudice the economy of the Territory;
- Schedule 2.2(a)(xi) – prejudice trade secrets and business affairs;
- Schedule 2.2(a)(xvi) – deliberative process of government;
- Schedule 2.2(b)(ii) – Legal professional privilege;

Personal Information

In my review of the requested material, I have given regard to the pro-disclosure bias in the Act and the benefit of open government and transparency in government processes and decision-making. I have considered whether the release of the personal information identified would advance the public interest and it is my view that, in this instance, the release of this information would not serve to further open discussion, government accountability, informed debate and the provision of contextual or background information.

In balancing public interest considerations, and on the information available, I am satisfied that the disclosure of this personal information could reasonably be expected to prejudice the protection of an individual’s right to privacy. This is a factor favouring nondisclosure under Schedule 2, Section 2.2(a)(ii) of the Act.



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Business Affairs/Economy of the Territory

Several documents within scope contain information relating to third parties and benchmarks regarding a newly developing suburb, the release of this information would reasonably prejudice trade secrets and business affairs, a factor in favour of non-disclosure under Schedule 2.2(a)(xi) of the Act. I have considered the release of business affairs information and whether disclosure of the information would better serve to further open discussion, government accountability, and the provision of contextual, or background information.

In reaching my decision I have weighed on balance these public interest considerations, objections provided by third parties, and the information available in the public domain. On balance, I have decided that the detriment caused by the release of this information, which may constitute a breach of confidence, outweighs any anticipated benefit provided by its release.

I consider the documents contained within our files should be exempt from release as the release of their financial records would diminish the commercial value of the information and compromise the organisation's commercial and competitiveness and may prejudice the economy of the ACT Government under Schedule 2.2(a)(viii) of the Act and therefore, is contrary to the public interest to release.

Deliberative Process of Government

Documents identified have been prepared to provide opinion, advice and recommendations for consideration by the Agency. This information was provided to inform decisions made concerning contracts within a newly developing suburb.

I have deliberated on how release of this information would reveal reasons for government decisions and how principles of transparency and accountability would best be served. Certain matters addressed in the identified documents are currently still under consideration for the ongoing development of the new suburb.

It is my view that this information is subject to an active ongoing deliberate process and contains information that was prepared or communicated in the course of evaluating matters relating to the ongoing development of the suburb of Whitlam. The premature release of this information may impede the effective completion, and prejudice the integrity, of these commercial activities.

The deliberative process may also be prejudiced by the release of these documents at this point in time as it may cause undue disruption, and reallocation of resources to deal with further public debate or pressure.



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Online publication

Under section 28 of the Act, EPSDD maintains an online record of access applications called a disclosure log. Under the Open Access Information Scheme, a disclosure log must not include an access application for personal information. I have determined that the information identified in this application is generally of a personal nature and is released to you with the support of relevant third parties.

You may view the EPSDD's disclosure log at:

<http://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 the disclosure log, or a longer period allowed by the Ombudsman.

For more information and the application form for Ombudsman review, please visit:

https://www.ombudsman.act.gov.au/_data/assets/pdf_file/0026/79190/Apply-for-Ombudsman-review.pdf

Alternatively, 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/>



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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



Neil Bulless

Information Officer
Deputy Chief Executive Officer
Suburban Land Agency

4 September 2020