



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference: 22/51609

Email: [REDACTED]

Dear [REDACTED],

Freedom of information request: 22/51609

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 27 May 2022, in which you sought access to information relating to the Western Edge Investigation.

The scope of your application was seeking:

“...scoping and land suitability investigations including but not limited to preliminary environmental, ecological, planning, heritage, drainage and infrastructure studies conducted by and/or on behalf of the EPSDD on Western Edge from 2019 till present. I ask that my request includes Ministerial Briefs as well as correspondence to and from ACT ministers in relation to Western Edge Investigation.”

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 in accordance with section 41 of the Act, by 8 July 2022. Thank you for your patience with this matter.

Searches conducted

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

Decision on Access

Eighty-three documents were located that fall within the scope of your request.

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

I have decided to refuse access to thirty-nine documents in full under section 37 of the Act, as I consider the information contained within these documents to be contrary to the public interest. Some of these documents contain reports regarding the Western Edge which are now available online via the link provided in the schedule.

I have decided to grant access in full, to twenty-nine documents relevant to the scope of your request.

I have decided to grant partial access to fifteen 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 documents 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, 41, 47, 50, Schedule 1 and 2;
- the *Information Privacy Act 2014*;
- the content of the documents that fell within the scope of your request;
- Concerns and views raised by third parties and;
- information contained within the public domain and on the ESPDD website.

Public Interest Considerations

My reasons for deciding to not grant access to documents, and 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

Cabinet

- Schedule 1.6(1)(a) – Cabinet information that has been submitted, or that a Minister proposes to submit, to Cabinet for its consideration and that was brought into existence for that purpose.

Several of the documents in scope contain information submitted to Cabinet and Cabinet in Confidence decisions, preliminary investigations, correspondence, and summaries. The Act identifies any official record of Cabinet or information which would reveal any Cabinet deliberation as being contrary to the public interest, a factor favouring of non-disclosure under the public interest provisions.

This information does not identify corruption or the commission of an offence by a public official or that the scope of a law enforcement investigation has exceeded the limits imposed by law.

Infringement on the copyright

Some of the documents within scope contain information relating to business information, and clearly labelled copyright information that if released would be contrary to the legal rights of the third-party copyright owners. The third parties have identified that the release of this information would clearly impact on the copyright owner's revenue and market, and

prejudice trade secrets and business affairs, a relevant factor in favour of non-disclosure under Section 47(5)(b) 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)(ii) – contribute to positive and informed debate on important issues or matters of public interest;
- 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)(xviii) – prejudice the conservation of any place or object of natural, cultural or heritage value, or reveal any information relating to Aboriginal or Torres Strait Islander traditional knowledge.

Personal Information

Some items are scheduled for partial release as they contain information that falls within the meaning of personal information as defined by the Act.

I have considered the release of personal information and my view in this instance is that the identification of third-party information 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 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, section 2.2(a)(ii) of the Act.

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

Aboriginal Cultural Heritage Sites

I have given regard to the general interest of the Canberra community in the decision-making processes of the Western Edge Investigation and the impact of decisions. I have further considered the public benefit of transparency in Government processes and the enduring protection of Aboriginal cultural heritage sites. Some documents relevant to your application contain information that identifies the location of sites where items of Aboriginal cultural heritage may have previously been found. I have decided on balance, the disclosure of material that would assist in identifying these locations would be contrary to the public interest to disclose.

In accordance with section 50 of the Objects of the Act, I have decided to refuse documents that identify locations and sites along with their cultural and heritage significance.

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, documents associated with access applications are published on the disclosure log no earlier than three days after a decision on access is provided to the applicant.

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/>

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,



Di Stewart
Information Officer
A/g Executive Group Manager
Environment, Planning and Sustainable Development Directorate (EPSDD)
8 July 2022