



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 22/81510



Decision on Freedom of Information Access Application 22/81510

I refer to your application made under section 30 of the *Freedom of Information Act 2016* (the Act) received by the Environment, Planning and Sustainable Development Directorate (EPSDD) on 24 June 2022, in which you sought access to documents relating to the Listening Report phase 2, Minimum energy efficiency standard for rentals.

Specifically, you are seeking:

“a copy of the detailed feedback considered for the Listening Report (phase 2) of the “Minimum energy efficiency standards for rental home” project including but not limited to all survey questions and answers, as well as the written submissions and agendas/minutes from the workshops conducted with stakeholders.”

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

You have granted an extension, consequently EPSDD must make a decision on your application on or by 26 August 2022.

Searches Conducted

Comprehensive searches were conducted and 36 documents containing information within the scope of your application were identified.

Decision on Access

I have included as **Attachment A** to this decision the schedule of relevant documents. The schedule provides a description of each document that falls within the scope of your application and the access decision for each of those documents.

I have decided to grant full access to 29 documents relevant to your application. I have decided to grant partial access to seven documents and, in accordance with section 50 of the Act, provide you with copies of documents with deletions applied to the information that is contrary to the public interest.

Under section 38 of the Act, third parties were consulted on release of the information. Some parties objected to release of information. My decision has taken into consideration the views and objections raised. Release of one document is deferred under section 38(6)(b) to allow third parties the opportunity to seek a review of my decision. You will be notified of the outcome of the review process, and the document will be released to you pending that outcome.

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 6, 17, 50, and Schedule 2
- the content of the documents that fall within the scope of your request
- the *Human Rights Act 2004*
- the views of third parties consulted.

Public Interest Considerations

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

Information Disclosure – 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 assessing the public interest, I must apply the test outlined under section 17 of the Act which requires consideration of factors favouring disclosure, any favouring nondisclosure and the balance of those factors when considered cumulatively.

Factors favouring disclosure

In applying the public interest test, I have determined that disclosure of the information could reasonably be expected to do the following:

- Schedule 2, 2.1(a)(i) – promote open discussion of public affairs and enhance the government's accountability,
- Schedule 2, 2.1(a)(ii) – contribute to positive and informed debate on important issues or matters of public interest.

Factors favouring nondisclosure

In applying the public interest test, I have determined that disclosure of the information could reasonably be expected to do the following:

- Schedule 2, 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, 2.2(a)(xi) – prejudice trade secrets, business affairs or research of an agency or person

- Schedule 2, 2.2(a)(xii) – prejudice an agency’s ability to obtain confidential information.

Documents relevant to your application contain personal information of individuals, including names, addresses, phone numbers and/or other identifying information. This information has been provided in the expectation that it will be managed appropriately by the ACT Government. Respondents to YourSay Surveys are advised that their identifying information will remain confidential.

I have considered how the public interest would be advanced by releasing this information in part or in whole. It is my view that the protection of the individuals’ personal information outweighs the benefit which may be derived from releasing them. I consider that these individuals are entitled to expect that the personal information they have supplied to the ACT Government will be dealt with in a manner that protects their privacy. I consider that if this information was disclosed, it could reasonably be expected to prejudice the protection of an individual’s right to privacy under section 12 of the *Human Rights Act 2004*. Further, failure to protect this information could prejudice the ability of the ACT Government to obtain confidential information in future surveys.

One document relevant to your application contains business information which was submitted in the expectation that it remained confidential. I consider that if this information was disclosed, it could reasonably be expected to prejudice the trade secrets, business affairs or research of an organisation.

On balance, and the information available to me, I am satisfied that the disclosure of this personal information and business information is not in the public interest. To provide you with the information that I have determined to be in the public interest to release, copies of some documents have been prepared with information redacted in accordance with section 50 and the Objects of the Act.

Charges

In accordance with section 107(2)(b) of the Act any charges applicable are waived.

Online Publication

Under section 28 of the Act, EPSDD maintains an online record of access applications called a disclosure log. Your original access application, this decision and documents released will be published in the EPSDD disclosure log no earlier than three days after you receive this decision. Your personal contact details will not be published.

You may view the EPSDD disclosure log at

<https://www.environment.act.gov.au/about-us/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



Daniel Harding

Information Officer
Executive Branch Manager, Climate Change and Energy Policy
Environment, Planning and Sustainable Development Directorate

25 August 2022