



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference: 22/127068

Dear [REDACTED],

Freedom of information request: 22/127068

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), which was transferred to the Environment, Planning and Sustainable Development Directorate (EPSDD) on 19 September 2022, in which you sought access to information relating to DA 20213949 including Ministerial briefs, correspondence, research and comments of residents of McKellar regarding the refusal of McKellar Shops.

Your request is specifically seeking:

"...documents generated or received by the ACT Government in relation to Development Application no. 20213949.

Documents should include the following:

- *Correspondence between the Minister and ACT Planning*
- *Any Ministerial briefings*
- *Any correspondence between the Minister and any ACT Labor or ACT Greens MLA's*
- *Any research/information the ACT Government has in relation to the commercial viability of the site and the desires of the residents of McKellar.*
- *Any information the ACT Government has in relation to the closing of the previous commercial tenants up until 2010."*

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 19 October 2022.

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 thirty-five documents were located that fall within the scope of your request.

Please refer to **Attachment A** for the schedule. The schedule also provides a description of the documents and the access decision.

I have decided to release in full fifteen documents in scope of your application.

I have decided to grant partial release to twenty documents in scope of your application with deletions applied to information I consider to be contrary to the public interest.

My access decision is 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, 47, 50, Schedule 2;
- the content of the document that falls within the scope of your request;
- the *Information Privacy Act 2014*;

Public Interest Considerations

My reasons for deciding not to grant access to documents is 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 2 of the Act

In assessing the public interest, I must apply the test as outlined under section 17 of the Act which requires consideration of all the factors favouring disclosure, any favouring nondisclosure and the balance of those factors when considered collectively.

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.

I have given regard to the public interest regarding development applications and potential impacts, specifically the development of McKellar Shops, and that the release of the requested information may assist in public understanding of government decisions. I have also given regard to the advancing public understanding and transparency in government application processes. It is for this reason that I have decided to release to you 15 documents in full and 20 documents in part (as outlined in the attached schedule).

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:

- 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*;

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.

Some items scheduled for partial release contain information that falls within the meaning of personal information as defined by the Act, including addresses, mobile numbers, and personal information which could easily identify individuals or personal information relating to associated with private residences.

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 is contrary to the public interest.

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. Documents containing your personal information will be published in redacted form to protect your privacy.

You may view the EPSDD's 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

Electronically signed

Craig Weller

Information Officer
Executive Branch Manager Statutory Planning Branch
Environment, Planning and Sustainable Development Directorate

19 October 2022