



Dear 

Freedom of Information 23/031365

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), transferred in part from the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) to the Environment, Planning and Sustainable Development Directorate (EPSDD) on 3 April 2023, in which you sought access to documents relating to the Canberra Olympic Pool or Civic Pool.

The refined scope of your request specifically sought:

...the following information and existing documents on the Canberra Olympic Pool or Civic Pool to answer the following questions.

1. *How many pool visits each year for Canberra Olympic Pool for the last 10 years?*
2. *What are the possible alternative sites that the ACT Government has identified for a new Civic Pool and/or a major aquatic complex? Acton Foreshore, West Basin, Campbell, Reid, Civic?*
3. *To what time is funding currently allocated to the Civic Pool?*
4. *Which agency and which specific Branch is responsible for planning and developing a new pool if the Civic Pool is closed or redeveloped?*
5. *Which agency and which specific Branch is responsible for managing the existing arrangements for the Civic Pool?*
6. *What is the criteria for deciding whether a pool is still required for the Civic area?*

Excludes: information on existing pools such as Dickson, Manuka, or any other public pool in Canberra.

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 4 May 2023.

Decision on Access

Your request was transferred in part to EPSDD for processing, searches were completed for relevant documents, and two documents were identified that fall within the scope relating to only point 2 of your request.



I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents. I have decided to refuse access in full to both documents relevant to your request.

Documents identified as relevant to your request contain information that I consider to be on balance, contrary to the public interest to disclose under the test set out in section 17 of the Act.

Material Considered

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

- the Act, particularly sections 17, 50, and Schedule 1 and 2.
- the content of the documents that fall within the scope of your request.

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 under schedule 1 of the Act

Information relevant to your application has been identified to fall under Schedule 1, 1.6 of the Act and is taken to be contrary to the public interest to disclose. 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.

Schedule 1, 1.6 (1) (a) and (d) – Cabinet Information

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 non-disclosure under the public interest provisions. Documents that you have requested contain information that falls within Schedule 1, section 1.6 of the Act as it is information which has been brought into existence and proposed to be submitted to Cabinet in its decision making and assist it in its deliberations that have not been officially published, and any disclosure of which would reveal those deliberations.

Information Disclosure – Contrary to the Public Interest – Schedule 2 of the Act

The Act recognises the right of every person to obtain access, under its provisions, to government information (see section 17, 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(a)(xi) – prejudice trade secrets, business affairs or research of an agency or person.
- Schedule 2, 2.2(a)(viii) – prejudice the economy of the Territory.

Business Information

One document contains information relating to ACT Government business affairs, including information which is subject to copyright protection.

I have deliberated on how the public interest is served by the information assessed to be released to you, information in the public domain including government media releases regarding the Civic Pool, and what further benefit may be derived from the release of this information.

On balance, I have decided that the detriment caused by the premature release of this information which may constitute a breach of confidence, outweighs any anticipated benefit provided by its release.

I have considered the rights of copyright owners, including that the release of this information would cause detriment to their revenue, prejudice their trade secrets, and business affairs. I have given regard to the disclosure of copyright information and how trade secrets, business affairs or research may be prejudiced; disclosure that is reasonably expected to prejudice trade secrets, business affairs or research is a factor favouring nondisclosure under Schedule 2.2(a)(xi) of the Act.



I consider the information in the documents should be exempt from release. The release of projections and opinions of future financing models, analysis of options would diminish the commercial value of the information, and compromise the organisation's commercial activities and therefore, also intergovernmental relations under Schedule 2.2(a)(x) of the Act. I am therefore satisfied that, on the information available, disclosure of the identified business affairs information is contrary to the public interest.

Economy of the Territory

The scheduled documents contain information relating to projections and opinions of future market values and benchmarks. The release of this information would reasonably prejudice trade secrets and business affairs information, a factor in favour of non-disclosure under Schedule 2.2(a)(xi) of the Act. I have considered the release of business information and these projections and opinions and whether disclosure of this 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, and the information available in the public domain. On balance, I have decided that the detriment caused by the release of this information in advance of Cabinet decisions, engagement and negotiations, which may constitute a breach of confidence, outweighs any anticipated benefit provided by its release.

I consider the information contained within the document should be exempt from release as the release of the financial information 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.

Charges

In accordance with section 107 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, my decision and documents released to you in response to your access application



will be published in the EPSDD disclosure log 3 days after the date of 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-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



Ben Naughton
Information Officer
A/g Executive Branch Manager, Development
City Renewal Authority
Environment, Planning and Sustainable Development Directorate

ey May 2023

