



Dear [REDACTED]

**Decision on Freedom of Information Access Application 23/067694**

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 26 June 2023.

As advised on 29 June and 13 July 2023, specifically, you are seeking:

*...all documents, information, communications, file notes, surveys, measurements, photos, investigations, records and decisions, in any format relating to:*

1. [REDACTED]

*This includes all documents, information, communications, file notes, investigations, records and decisions, in any format, made, accessed or held by Mr David Kyburz at the Regulatory Response Team related to Evoenergy's development of a substation on [REDACTED] Campbell. We note that this includes Mr David Kyburz's communications with [REDACTED] at Evoenergy and Mr David Kyburz's communications with registered surveyor [REDACTED]*

2. *The decision of Evoenergy to build a substation on, or in the vicinity of, [REDACTED], Campbell, ACT.*

3. *The decision to relocate a substation that was on, or in the vicinity of, [REDACTED], Campbell, ACT.*

4. *The Wattle tree located on [REDACTED], Campbell, ACT, including plans, decisions, investigations and work undertaken by the Tree Protection Unit, Transport Canberra and City Services and Evoenergy. This includes anything to do with the Tree Protection Act.*

5. *The protected trees located on [REDACTED], Campbell, ACT, including plans, decisions, investigations and work undertaken by the Tree Protection Unit, Transport Canberra and City Services and Evoenergy. This includes anything to do with the Tree Protection Act.*

6. *Any investigations and decisions made by ACTPLA related to the above points 1-5 (inclusive). This includes all information and decisions related to whether the substation located in the vicinity of [REDACTED], Campbell, ACT is exempt from development approval.*

7. Case (and/or reference number) [REDACTED] to Worksafe ACT on 14 April 2023.

8. Complaint submitted to Andrew Barr's Office [REDACTED].

9. Applications for development approval submitted by EVOENERGY (including ActewAGL, ActewAGL Distribution partnership, Icon, Icon Water, and the ACT Utility Joint Venture) for substation(s) located on [REDACTED], Campbell, from 2018 to present, and any information, records and decisions by the Department in relation to such applications.

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 some information within scope was likely to be held by other agencies your application was partially transferred to Chief Minister, Treasury and Economic Development Directorate and Transport Canberra and City Services.

Under section 40(1) of the Act, an access application must be decided not later than 30 working days after the date of receiving the application.

As we requested clarification of your application on 26 June 2023 and a response was received on 29 June 2023, your application was considered suspended for three working days. The original decision due on or by date of 7 August 2023, was therefore extended by three working days.

EPSDD must make a decision on your access application on or by 10 August 2023.

### **Searches Conducted**

Under section 34 of the Act, reasonable steps must be taken to identify all government information within the scope of the application.

Searches were undertaken by the relevant business units and included searches of EPSDD's electronic data and records management system.

No documents within scope of points 2-9, were identified as being held by EPSDD.

Four documents containing information within scope of point 1 of your application were identified.

Please note any Development Applications submitted after receipt of your revised scope on 13 July 2023, but prior to this decision date have not been included as these are considered out of scope of the application.

### **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 two documents relevant to your application, and
- partial access to two documents and, in accordance with section 50 of the Act, provide you with copies of documents with deletions applied to contrary to the public interest information.

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
- the content of the documents that fall within the scope of your application
- the *Human Rights Act 2004*.

### **Public Interest Considerations**

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

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

Schedule 1 of the Act recognises a range of information that is taken to be contrary to the public interest to disclose unless the information identifies:

- 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.

I have applied Schedule 1.14(1)(d) to disclosure of an ACT Government employee's direct phone line (within documents 1 and 3).

As the employee is a member of the Rapid Regulatory Response team which investigates compliance matters disclosure of their direct contact number could result in harassment if made publicly available.

#### **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, and
- Schedule 2, 2.1(a)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.

### *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*.

### Personal Information

Documents 1 and 3 contain the personal information of an individual (the mobile number of an ACT Government employee). 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 information if disclosed, could reasonably be expected to prejudice the protection of an individual’s right to privacy under section 12 of the *Human Rights Act 2004*.

On balance, and the information available to me, I am satisfied that the disclosure of this personal 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 these two documents have been prepared with the personal information redacted in accordance with section 50 and the Objects of the Act.

### **Charges**

In accordance with the *Freedom of Information (Fees) Determination 2018* no charges are applicable to this application.

### **Online Publication**

Under section 28 of the Act, EPSDD maintains an online record of access applications called a disclosure log. Your 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 and any other identifying information 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](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](mailto: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  
15 Constitution Avenue  
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](mailto:EPSDFOI@act.gov.au).

Yours sincerely

(Signed electronically)

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

4 August 2023