



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 23/065067

Dear [REDACTED]

Decision on Freedom of Information Access Application 23/065067

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 19 June 2023, in which you sought access to documents relating to the agreement between Macropod management and the ACT Government.

Specifically, you are seeking:

"...I request the written agreements in relation to the following options that have been extended under the Macropod Management contact. I request the written agreements between Strathbogie Wildlife Pty Ltd and Environment, Planning and Sustainable Development Directorate that permitted both parties to execute the agreement to take up the following options.

*Option 1 – 8 Jun 2021 – 7 June 2022, and
Option 2 – 8 June 2022 – 7 June 2023 and
Option 3 – 8 June 2023 – 7 June 2024."*

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 must make a decision on your application on or by 14 August 2023.

Searches Conducted

In response to your application, comprehensive searches were conducted and 12 documents containing information within the scope of your application were identified.

Access Decision

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.

For the reasons set out below, I have decided to grant partial access to all documents relevant to your application, 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.

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

- the FOI Act, particularly sections 6, 17, 38, 50, Schedules 1 and 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;
- information publicly available;
- staff accounts of intimidating behaviour associated with objections to the kangaroo management program and;
- public media surrounding the kangaroo management program and associated protests
 - <https://www.canberratimes.com.au/story/6049526/animal-activists-prepare-for-act-governments-kangaroo-cull/>
 - <https://www.canberratimes.com.au/story/6110070/protests-loom-as-acts-largest-kangaroo-cull-begins/>
 - <https://www.canberratimes.com.au/story/6155391/kangaroo-cull-triggers-macabre-protest-plan/>
 - <https://www.canberratimes.com.au/story/6152226/anger-at-defence-cull-of-14000-kangaroos/>
 - <https://www.canberratimes.com.au/story/6139689/vandals-hit-parks-and-conservation-depot-to-protest-kangaroo-cull/>
 - <https://www.canberratimes.com.au/story/6066989/dead-joeys-stuffed-in-senior-public-servants-letterbox-as-kangaroo-cull-tensions-rise/>

The documents released to you by my decision are provided at Attachment B to this letter.

Reasons for decision

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

Information Disclosure – Contrary to the Public Interest under Schedule 1 of the Act *Schedule 1, 1.14 Law enforcement or public safety information*

Section 1.14 provides that the disclosure of information is taken to be contrary to the public interest if it would, or could reasonably be expected to, affect law enforcement or public safety. Schedule 1, 1.14(1)(c) applies where the disclosure of information would, or could reasonably be expected to, endanger a person's life or physical safety. Section 1.14(1)(d) applies where disclosure of the information would, or could reasonably be expected to, result in a person being subject to a serious act of harassment or intimidation.

The disclosure of names, initials, positions, work locations and signatures of EPSDD staff members, and the names and locations of third parties is taken to be contrary to the public interest under Schedule 1, 1.14(1)(c) and 1.14(1)(d). Disclosure of this information would or could reasonably be expected to result in endangering the physical safety of EPSDD staff members and/or the staff of third-party providers.

The extended history of protest activity associated with the kangaroo management program, which is evidenced in the links to newspaper articles above, is sufficient to consider that staff safety is a legitimate concern.

Due to the nature of work conducted by EPSDD staff, and third parties, release of this information would, or could reasonably be expected to result in serious harassment or intimidation from members of the public who feel strongly regarding animal welfare. Directorate staff involved in kangaroo management have been subject to serious harassment and intimidation in the form of aggressive phone calls, damage to personal property and invasion of privacy. EPSDD staff have also been the target of illegal activities such as those highlighted in the media article published on 29 May 2015 titled [“Dead joey stuffed in senior public servant's letterbox as kangaroo cull tensions rise.”](#) I am also aware of deliberate and sustained protest actions during the kangaroo management program.

On balance, in considering the safety of ACT Government employees and third-party service providers against the public right of access to information, I have determined that the safety of staff and contractors is the paramount consideration.

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.

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

Collectively, these factors demonstrate that the release of the requested information may assist in public understanding of government decisions and provide insights as to the context for them, promoting transparency and accountability.

Factors favouring Nondisclosure

I have however, also 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.

In my review of the requested information, I have given regard to the pro-disclosure bias of 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 within these documents 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. 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 to disclose. Accordingly, I have decided to grant partial access to these documents as they contain information that falls within the meaning of personal information as defined by the Act.

Several documents within scope identify the names and locations of third parties who are associated with kangaroo culling and the disposal of kangaroo bodies and meat. Public information sharing campaigns initiated by animal rights groups advocate for the boycotting of businesses that undertake kangaroo culling and use carcasses and meat. Disclosing this information would cause reputational harm to the third parties and prejudice their business affairs.

I have considered the disclosure of business affairs information in accordance with Schedule 2, 2.2(a)(xi) and whether or not the disclosure would advance the public interest. In reaching my decision I have weighed the public interest considerations, the information available and views of the third parties. On balance I have decided that there is a high potential of reputational harm in disclosing third parties’ business names, staff names, contact details and locations.

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 personal information redacted in accordance with section 50 and the Objects of the Act.

Charges

As per your request, and 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



Bren Burkevics
Information Officer
Executive Group Manager, Environment, Heritage and Water

10 August 2023