



**ACT**  
Government

Environment, Planning and  
Sustainable Development

Phone: 6207 1923  
Reference: 18/08245



Dear 

**Freedom of information request: 18/08245 – Land Development Agency Board Meeting Minutes**

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Environment, Planning and Sustainable Development Directorate (EPSDD) on 26 March 2018 in which you sought access to Land Development Agency (LDA) Board meeting minutes. The records relating to your request are managed by the Suburban Land Agency (the Agency).

Please refer to the table in your original request for specific detail regarding the information requested at **Attachment A**.

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

The Agency is required to make a decision on your access application by 17 July 2018, following your agreement to an extension of time request and third party consultation.

**Decision on access**

Searches were completed for relevant documents and 15 documents were identified that fall within the scope of your request.

I have included as **Attachment B** 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 grant full access to eight documents, partial access to six documents and access is not provided to one document, for which it is contrary to the public interest to release. The documents released to you are provided as **Attachment C** to this letter.

**Material considered**

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

- the Act, particularly sections 17 and 38 and Schedules 1 and 2; and
- the content of the documents that fall within the scope of your request.

## **Public interest assessment**

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 disclosure would be contrary to the public interest (see section 16, the Act).

My reasons for deciding not to grant access to the identified documents are as follows:

### **Contrary to the public interest information under Schedule 1 of the Act**

The Act identifies information that is contrary to public interest. Information deemed to be contrary to public interest is detailed in Schedule 1 of the Act.

#### Legal Professional Privilege

I have considered the release of information subject to legal professional privilege to be contrary to public interest as described in Schedule 1, section 1.2 of the Act.

#### Cabinet Information

I am satisfied that information within the requested documents is Cabinet information according to Schedule 1, section 1.6 of the Act. Cabinet information extends to information that has been submitted to Cabinet or a Cabinet committee or subcommittee.

### **Contrary to the public interest information under Schedule 2 of the Act**

In assessing information for which disclosure would, on balance, be contrary to the public interest, I must apply the cascading test set out by section 17 of the Act; this requires consideration of factors favouring disclosure, any favouring nondisclosure and the balance of those factors when considered cumulatively.

#### Personal Information

I have considered the release of personal information and my view in this instance is that the identification of third parties 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 of members of the public may constitute a breach of privacy and is therefore contrary to the public interest.

#### Business affairs

In accordance with section 38 of the Act, I sought the views of relevant third parties on whether government information identified within the scope of your request contained contrary to the public interest information. The third parties contested release of the information as it relates to trade secrets and business affairs, a factor favouring nondisclosure in the public interest under Schedule 2.2(a)(xi) of the Act.

I am not satisfied that disclosure of the information identified for nondisclosure could reasonably be expected to further advance these matters as it is limited to specific aspects of businesses' affairs.

In balancing public interest considerations, I am satisfied that, on the information available, the disclosure of business affairs information would be an unreasonable disclosure and may constitute a breach of confidence. Competitive Commercial Activities

Information identified as relevant to the request is subject to ongoing negotiations between the Agency and the successful party. The release of this information is anticipated to prejudice the competitive commercial activities of the Agency, a factor favouring nondisclosure under Schedule 2.2(a)(xiii) of the Act.

A function of the Agency is to enter into commercial arrangements on behalf of the ACT Government and to contribute to the Territory's economy and achieve value for money. I have considered the potential public benefit against the potential detriment of the release of the commercially sensitive information. In my deliberations, I have taken into account the level of information in the public realm, such as through community consultation, and the controls in place to ensure the effective oversight of the expenditure of public funds.

It is my view that the disclosure of commercially sensitive information that may impact upon the Agency's ability to carry out its function and maintain competitiveness on behalf of the Territory is contrary to the public interest. In balancing public interest considerations, I am satisfied that, on the information available, the disclosure of this information would be an unreasonable disclosure and may prejudice the competitive commercial activities of the Agency.

#### **Online publishing – disclosure log**

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 from three days after my decision, in accordance with section 28 of the Act. Your personal contact details will not be published.

You may view EPSDD's disclosure log at <http://www.environment.act.gov.au/about/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.

If you wish to request a review of my decision, you may apply for an Ombudsman review by completing the form at:

[http://www.ombudsman.act.gov.au/data/assets/pdf\\_file/0026/79190/40A-Reviews-Factsheet-and-Application-Form-final-A1569634.pdf](http://www.ombudsman.act.gov.au/data/assets/pdf_file/0026/79190/40A-Reviews-Factsheet-and-Application-Form-final-A1569634.pdf)

Further information can be obtained from the ACT Ombudsman at:

The ACT Ombudsman  
GPO Box 442  
CANBERRA ACT 2601

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  
Level 4, 1 Moore St  
GPO Box 370  
Canberra City ACT 2601

Telephone: (02) 6207 1740

<http://www.acat.act.gov.au/>

If you have any queries concerning the 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



Anthony Bailey  
Information Officer  
Suburban Land Agency

6 July 2018