



**ACT**  
Government

Environment, Planning and  
Sustainable Development

Phone: 6207 1923  
Reference: 18/20291

Dear [REDACTED]

**Freedom of information request: 18/20291 - 2007 and 2015 Direct sale proposals Block 11 section 8 FYSHWICK**

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 12 July 2018, in which you sought access to documents relating to **Direct Sale Section 8 Block 11 Fyshwick**

Specifically, you are seeking:

- a) *"Agenda and minutes (including attachments for both) and any other documents or record relating to the Land Advisory Committee meeting held 21 October 2015 in regard to the Direct Sales Application for Block 11 Section 8 Fyshwick by Access Recycling/Trading and any documents presented to the meeting to this end;*
- b) *The EPA entity advice provided to the LRAC around November 2015 in regard to the Direct Sale of Block 11 Section 8 Fyshwick;*
- c) *Record of any further LRAC meeting where the direct land sale of Block 11 Section 8 Fyshwick was discussed to inform the Agenda Item in regard to the Direct Sale Application by Somerset Rehabilitation Pty Ltd for the Direct Sales Panel meeting of 4 February 2016;*
- d) *The document, Attachment C of the Direct Sale Panel AGENDA ITEM 4.1 at January 2016 referred to in Attachment B above under head – ELIGIBILITY CRITERIA;*
- e) *A copy of the Direct Sale meeting record of or the documented information provided by the proponent, Somerset Rehabilitation Pty Ltd, as presented by the company's representative at the Direct Sale Panel meeting of 4 February 2016, which became Agenda Item 5.1: **DS 2015 – 217 – Direct sale Application by Somerset Rehabilitation Pty Ltd to acquire Block 11 Section 8 Fyshwick as recorded in Attachment B, above and***
- f) *All documents relating to the earlier Direct Sale Application for the same Block 11 Section 8, Fyshwick being unleased Territory land, in November 2007, as noted in the comment submitted to the LRAC circulation direct sale request (see attached). This would include;*
  - a. *The eligibility application submitted*
  - b. *LRAC circulation request and response from entities and agencies*
  - c. *Record of LRAC meeting where the land sale was discussed*
  - d. *Record of Direct Sales Panel meeting with decision arrived at*
  - e. *Any documents discussing reasons for the decision"*

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

The Act requires a response be provided within 20 days of receiving the application. In accordance with section 41 of the Act, the Directorate sought an extension of time in which to decide the FOI application until 21 August 2018. On 3 August you agreed to the extension of time.

#### Decision on access

Searches were completed for relevant documents and 22 documents were identified that fall within the scope of your request. In specific response to the information requested by you, please note the following:

Request Part	Doc Ref.	Note
a	1 and 2	There were no minutes produced for the meeting of 21 October 2015 due to resourcing requirements at the time.
b	n/a	No records identified. We note this part of your request has previously been considered by Chief Minister, Treasury and Economic Development Directorate (CMTEDD) and is available on their disclosure log at <a href="http://www.cmd.act.gov.au/_data/assets/pdf_file/0010/1188937/2018-0061.pdf">http://www.cmd.act.gov.au/_data/assets/pdf_file/0010/1188937/2018-0061.pdf</a> – Reference CMTEDD 2018-0061.
c	3	There were no LRAC meetings held in November or December 2015 and the first scheduled for 10 February 2016 therefore, there are no LRAC meeting records between the LRAC meeting on 21 October 2015 and the Direct Sale Panel meeting of 10 February 2016. "Document 3" provided to you is not an LRAC meeting record however it is advice to the LRAC panel representative.
d	4 and 5	Originally the Panel brief attachments were mislabelled (put in the wrong order as per the brief). The "Eligibility Criteria" document was shown as Attachment C in the brief but in fact had been labelled as Attachment B on the physical document. For your benefit, you have been provided both attachments.
e	n/a	No documents provided at verbal presentation.
f	6-21	No additional comment.

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.

Some documents identified as relevant to your request contain information that I consider to be:

- Publicly available; or
- information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

I have decided to grant full access to four documents and grant partial access, under section 50 of the Act, to copies of 17 documents with deletions applied to information that I consider would be contrary to the public interest to disclose.

I have decided to refuse access to one identified document as I consider it to be a publicly available to you, in accordance with section 43(1)(d) of the Act, however you have been provided a reference and link within the document schedule.

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, particularly sections 17, 43(1)(d), 45(c) and Schedules 1 and 2;
- the content of the documents that fall within the scope of your request;
- information already available in the public domain; and
- your views on the public interest in disclosing the government information applied for (as per section 37 of the Act).

#### **Exemptions claimed**

##### **Publicly available**

Section 43(1)(d) of the Act allows access to government information be refused if it is already available to the applicant.

Section 45(c) states that government information is already available to the applicant if the information is available as part of a public register established under a Territory law.

In accordance with the Act, access is being refused to information that is already available to you on the CMTEDD disclosure log available at <http://www.cmd.act.gov.au/functions/foi/disclosure-log>.

##### **Public Interest Assessment**

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

##### **Contrary to the public interest information under 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 (see section 17, the Act).

In assessing the public interest, I must apply the cascading test set out by section 17 of the Act which requires consideration of factors favouring disclosure, any favouring nondisclosure and the balance of those factors when considered cumulatively.

In relation to the documents identified as falling within the scope of your request and scheduled with the status of 'Partial Release', section 17 applies as follows.

#### 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 2.2 (a)(ii) of the Act.

In balancing public interest considerations I am satisfied that, on the information available, including your views on personal information provided with your application, 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

I have considered the release of information that contains business affairs or trade secrets and whether the disclosure of that information would serve to:

- further open discussion of public affairs and enhance government accountability – schedule 2.1(a)(i);
- contribute to informed debate – schedule 2.1(a)(ii);
- reveal the reason for a government decision and any contextual or background information – schedule 2.1(a)(viii).

I have also considered whether the release of the information would prejudice trade secrets, business affairs or research of an agency or person – schedule 2.2(xi) of the Act.

I am not satisfied that disclosure of the deleted information could reasonably be expected to further advance these matters as it is limited to specific aspects of third party business affairs.

In balancing public interest considerations, I am satisfied that, on the information available, the disclosure of trade secret and business affair information would be an unreasonable disclosure and may constitute a breach of confidentiality.

#### **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 no sooner than three 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/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:

[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)

If you wish to request a review of my decision 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  
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 Directorate's processing of your request, or would like further information, please contact EPSDD Customer Service on 62071923 and ask for the FOI team, or email to [EPSDFOI@act.gov.au](mailto:EPSDFOI@act.gov.au)

Yours sincerely



Bruce Fitzgerald  
Information Officer  
Environment, Planning and Sustainable Development Directorate

21 August 2018

