



ACT
Government

Environment, Planning and
Sustainable Development

Email [REDACTED]

Dear [REDACTED]

Freedom of information request: 19/25329

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 13 August 2019, in which you sought access to information relating to the Territory Plan Variation 350 (including Draft Variation 350).

Specifically, you are seeking:

"...all information including but not limited to, documents, emails, meeting minutes, correspondence, notes of discussions, transcripts, Ministerial correspondence and Ministerial Briefs regarding Territory Plan Variation 350 (and corresponding Draft Variation 350)"

I note on the 10 September 2019 you agreed to a 3-day extension of time extending the due date to 13 September 2019. On the 13 September 2019 you agreed to a further extension of time until 18 September 2019.

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

Decision on access

Searches were completed for documents relevant to your access request and 83 documents of 329 pages in total were identified that fall within the scope of your request.

I have included as **Attachment A** to this decision the schedule of documents relevant to the scope of your request. The schedule provides a description of each document and the access to these documents.

My decisions on access are further detailed in the following statement of reasons.

Material considered

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

- the *Freedom of Information Act 2016*, with consideration given to sections 17, 35, 47, 50, Schedules 1 and 2;
- the content of the documents that fall within the scope of your request;
- The *Information Privacy Act 2014*
- The *Human Rights Act 2004*

Public Interest Considerations

My reasons for deciding not to grant access to components of documents are explained below; these documents contain information that I consider to be contrary to the public interest to disclose.

Information Disclosure - Contrary to the Public Interest Under schedule 2 of the Act

In assessing the public interest, I must apply the descending test outlined under section 17 of the Act which requires consideration of all factors favouring disclosure, any favouring nondisclosure and the balance of those factors when considered collectively.

Business Affairs

Scheduled items identified contain information relating to business affairs.

In reaching my decision I have considered whether disclosure of this information would serve to advance open discussion of public affairs and enhance government accountability and reveal the reason for a government decision and background or contextual information that informs consideration to decisions.

I have considered the release of commercial-in-confidence information and the potential to prejudice trade secrets and business affairs.

I have given regard to how trade secrets, business affairs or research may be prejudiced by the disclosure of this information; this is a factor favouring nondisclosure under Schedule 2.2(a) (xi) of the Act. I have deliberated on how the public interest is served by information assessed to be released to you, what is in the public domain and what further benefit may be derived from the release of this information.

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

I am therefore satisfied that, on the information available, disclosure of the identified business affairs information is contrary to the public interest.

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 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*. Disclosure of the information could reasonably be expected to interfere with the protection of the privacy of the individual's concerned and this is a factor favouring nondisclosure under Schedule 2.2 (a) (ii) of the Act.

Cabinet

Several of the documents in scope contain information submitted to Cabinet and Cabinet in Confidence decisions, committee meetings and summaries. 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 of non-disclosure under the public interest provisions.

Information contained within these documents has been announced by government for the purpose of making the information more readily available to the community to allow open policy decisions and allow feedback for individuals that may be significantly affected by the legislative change to the Territory Plan Variation 350.

The summary of the Cabinet decision is available, and the legislative changes have come into effect therefore, the release of this information is in line with the Government's policy decision to be proactive in releasing Cabinet information to make it readily available to the community, a factor on balance in this instance I believe outweighs non-disclosure.

On balance of these public interest considerations and the information available, I have concluded that the documents in scope include personal identifiers and correspondence received from the public providing personal views of the Draft Territory Plan Variation 350. Third-party consultation was not undertaken for the purpose of processing this request. The identified individuals may have objected to the disclosure of their personal information contained within the documents which therefore may constitute a breach of those individuals' privacy and is therefore on balance contrary to the public interest to disclose.

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 and my decision will be published in the EPSDD disclosure log after 24 August 2018. Your personal contact details will not be published.

You may view the 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. 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

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

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

Yours sincerely



Brett Phillips

Information Officer

Environment, Planning and Sustainable Development Directorate

18 September 2019