



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference: 19/36981

Dear [REDACTED]

Freedom of Information 19/36981

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 25 November 2019, in which you sought access to documents relating to Development Application (DA) 201835108.

Specifically, for the period between DA 201835108 submission and the notice of decision of 5 June 2019, you are seeking:

1. *All public representations except those specifically requesting confidentiality.*
2. *Minutes of any pre-DA consultation prior to the submission of the DA (including any time prior to the timeframe specified by the scope of the request).*
3. *The letter requesting agencies advice and the exact advice given by each agency which responded.*
4. *All communication via letter or email between ACTPLA and the proponent or his consultants requesting explanation, clarification or additional information.*
5. *Copies of all of the information as supplied by the proponent or his consultants in response to the above letters of request.*
6. *Copies of all correspondence with Institutions or experts which the Assessment Team may have consulted and the information provided by those bodies or individuals to assist the Authority with its decision-making process and copies of any advice or information provided.*
7. *Copies of the request for and the advice given from any internal body within the ACT Government Bureaucracy.*
8. *All documentation demonstrating the consideration given to each comment or objection raised by every representation including the agencies' responses. These should include but not be confined to emails, tables, graphs, notes, memos, minutes of meetings with the proponent and/or his consultants, minutes of team meetings including the final decision making one, correspondence with consulted experts and the record in any form of the conclusions drawn to inform the notice of decision.*

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

I appreciate your patience in the processing of your application and your agreement to extend the deadline to 31 January 2020.

Searches Conducted

Comprehensive searches were conducted and 27 documents within the scope of your application were located.

Decision on Access

I note that the EPSDD Information and Knowledge Management team has provided you with the relevant public register associated documents of DA 201835108 on 16 January 2020 and, therefore, these documents have not been considered in my decision.

I have included as **Attachment A** to this decision the schedule of documents relevant to your application; the schedule provides descriptions and access decisions for each of these documents.

I have decided to grant full access to 17 documents relevant to your application.

I have decided to grant partial access to six 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.

I have decided to refuse access to four documents as these documents contain information that is deemed to be contrary to the public interest to disclose.

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, 37, 50, schedules 1 and 2 of the Act;
- the content of the documents that fall within the scope of your request;
- your views on the public interest in disclosing the government information applied for (as per section 37 of the Act);
- the *Information Privacy Act 2014*

Public Interest Considerations

My access decisions are set out in the following statement of reasons.

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

Scheduled items 19, 20, 21, and 22 are documents consisting of legal advice provided by the ACT Government Solicitor to EPSDD. Under Schedule 1.2 of the Act, this information is deemed contrary to the public interest to disclose.

These documents do 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 non-disclosure and the balance of those factors when considered cumulatively.

Factors Favouring Disclosure

Disclosure of the identified information could reasonably be expected to do the following:

- Schedule 2.1(a)(i) – promote open discussion of public affairs and enhance the government’s accountability
- Schedule 2.1(a)(ii) – contribute to positive and informed debate on important issues or matters of public interest;
- Schedule 2.1(a)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.

I agree with your view, as raised in your application, that the release of some of the information requested would be expected to promote open discussion, assist in the public understanding of government decisions and provide background or contextual information.

I have given regard to the special public interest in the decisions concerning DA 201835108 and how the release of relevant information would advance public understanding and transparency in government processes. It is for this reason that I have decided to release to you 23 documents in part or in full (as outlined on the attached schedule).

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(a)(ii) – prejudice the protection of an individual’s right to privacy or any other right under the *Human Rights Act 2004*.

Personal Information

I have deliberated on the benefit that would be served to the public on release of the requested information in its entirety. I have considered how the content of the identified correspondence would promote open discussion, debate, and reveal government processes/ decision-making.

The documents relevant to your application contain personal information of members of the public, which I consider, if disclosed, could reasonably be expected to prejudice the protection of an individual’s right to privacy. On balance, I have determined that it would be contrary to the public interest to disclose this information.

In accordance with section 50 and the Objects of the Act, I have decided to provide you copies of the documents with personal information redacted.

Charges

I have considered your application for fees to be waived. As outlined above, I have considered that the public may benefit from the release of this information and, in this instance, I have decided to grant your request to waive fees under sections 107(2)(b) of the Act.

Online Publication

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 earlier than three days after you receive this 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:

https://www.ombudsman.act.gov.au/data/assets/pdf_file/0026/79190/Apply-for-Ombudsman-review.pdf

Alternately, 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



Bruce Fitzgerald

Information Officer

Environment, Planning and Sustainable Development Directorate

30 January 2020