



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 22/119489



Decision on Freedom of Information Access Application 22/119489

I refer to your application made under section 30 of the *Freedom of Information Act 2016* (the Act) received by the Chief Minister, Treasury and Economic Development Directorate and transferred to the Environment, Planning and Sustainable Development Directorate (EPSDD) on 02 September 2022, in which you sought access to documents relating to Development Application 202139597 - Block 103 Section 22 HUME.

Specifically, you are seeking:

“Access to information is sought under the Freedom of Information Act 2016 (the Act) in respect of a recent DA application 202139597 relating to Block 103 Section 22 HUME. In particular, information relating to comments or advice from the following Referral Entities ; The Conservator of Flora and Fauna - any communication from or to with respect to the significant trees on the property -any comment or condition with respect to the fauna overlay that exists over part of the property ESPDD - any comment or condition with respect to the fauna overlay that exists over part of the property - any comment or condition with respect to the parking or setback Transport Canberra and City Services (TCCS) – any comment or condition in respect of the overland flood path or stormwater - any comment or condition with respect to the traffic Icon Water - any comment or condition with respect to the application Environmental Protection Authority (EPA) - any comment or condition with respect to the application Has the Environment, Planning and Sustainable Development Directorate or person issued a determination in respect of DA application 202139597, or otherwise rejected the application.”

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 04 October 2022.

Searches Conducted

Comprehensive searches were conducted and 22 documents containing information within the scope of your application were identified.

Decision on Access

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.

I have refused access to all 22 documents, as I consider the information to be contrary to the public interest.

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

Material Considered

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

- the FOI Act, particularly sections 6, 17, 50, Schedule 2
- the content of the documents that fall within the scope of your request

Public Interest Considerations

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

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.

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, 2.2(a)(xvi) – Prejudice a deliberative process of government.

Deliberative Process of Government

Documents identified in scope of the request have been prepared by the proponent for consideration prior to lodgement of a development application. These documents contain

current considerations relating to deliberative process by government, which if released, could compromise the development application 202139597 required for consideration under the *Planning and Development Act 2007*. The information has been provided to inform EPSDD regarding a decision concerning the development of Block 103 Section 22 Hume.

I have deliberated on how the release of this information would reveal reasons for government decisions and how principles of transparency and accountability would be served.

Certain matters raised within these documents are currently under consideration by the Agency and the proponent.

It is my view that this information is subject to an active deliberative process and contains information that was prepared or communicated in the course of evaluating matters relating to EPSDD and the proponent.

It is my view that the information contained in these documents are subject to an active deliberative process and contains information which was prepared and communicated in the course of evaluating consideration of this development application. The premature release of this information may impede the effective completion, and prejudice the integrity, of these activities.

The deliberative process may also be prejudiced under section Schedule 2.2(a)(xvi) of the Act, by the release of these documents at this point in times it may cause undue disruption and reallocation of resources to deal with further public debate or pressure.

The development application and associated documentation once considered will go to public notification and will be available for viewing at:

<https://www.planning.act.gov.au/development-applications-assessments/development-applications/decided-development-applications>

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

Signed Electronically

Craig Weller
Information Officer
A/g Executive Branch Manager, Statutory Planning
Environment, Planning and Sustainable Development Directorate
29 September 2022