



**ACT**  
Government

Environment, Planning and  
Sustainable Development

Phone: (02) 6207 1923

Reference: 22/135476



Dear 

### **Decision on Freedom of Information Access Application 22/135476**

I refer to your application made under section 30 of the *Freedom of Information Act 2016* (the Act) received by the Environment, Planning and Sustainable Development Directorate (EPSDD) on 11 October 2022, in which you sought access to documents relating to Block 23 Section 41 Lyneham. This application was combined with a subsequent access application.

The combined and refined scope of your application being:

- *"Development application regarding Block 23 Section 41 Lyneham*
- *Agency advice regarding neighbourhood oval at Section 41 Lyneham*
- *Neighbourhood oval Block 23 Section 41 Lyneham*
- *Block 23 Section 41 – Direct Sale*
- *since 1 January 2009 all records, correspondence and documents that EPSDD (eg ACTPLA, LRAC, ACTMapi) hold regarding all subdivisions, or subdivision attempts of block 23, section 41. I am seeking all records, correspondence and documents regarding the creation or attempted creation of blocks 25, 26 or 27, Section 41, Lyneham."*

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

As third party consultation was undertaken and with your agreement to an extension to the decision due date, EPSDD must make a decision on your application on or by 10 January 2023. Your patience in this matter has been appreciated.

### **Searches Conducted**

Comprehensive searches were conducted and 117 documents containing information within the scope of your application were identified.

### **Decision on Access**

I have refused to deal with parts of your application under section 43(1)(d) of the Act. Under section 43(1)(d) a respondent may refuse to deal with an access application wholly or in part only if the government information is already available to the applicant. Section 45 of the Act sets out the circumstances in which government information is already available to the

applicant. Those circumstances include where the government information is made publicly available (section 45(a)). The information I refer to as publicly available includes documents released in response to a previous access application (reference number FOI 19/28355) which is available via the EPSDD disclosure log: [EPSDD 19/28355 - Environment, Planning and Sustainable Development Directorate - Environment \(act.gov.au\)](#).

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 decided to grant full access to 95 documents relevant to your application.

I have decided to grant partial access to 21 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 refused access to one document as the information is contrary to the public interest under Schedule 1 of the Act.

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.

### **Third Party Consultation**

In accordance with section 38 of the Act, consultation was undertaken with a third party as information that may have been of concern to them was identified. No objection to release of the particular information consulted on was provided by the third party.

### **Material Considered**

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

- the FOI Act, particularly sections 6, 17, 38, 43, 45, 50, Schedules 1 and 2
- the content of the documents that fall within the scope of your request
- the *Human Rights Act 2004*
- information publicly available

### **Public Interest Considerations**

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

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

Document 47 relates to a matter currently under investigation, this information is contrary to the public interest under Schedule 1, 1.14(1)(a), being that disclosure of the information would be reasonably expected to prejudice the investigation of a contravention or possible contravention of the law in a particular case.

This information does 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 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)(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 refused access to names and contact information relating to members of the public and the mobile numbers of ACT Government employees. I have considered how the public interest would be advanced by releasing this information in part or in whole. It is my view that the protection of the individuals' personal information outweighs the benefit which may be derived from releasing them. I consider that these individuals are entitled to expect that the personal information they have supplied to ACT Government will be dealt with in a manner that protects their privacy. I consider that if this information was disclosed, it could reasonably be expected to prejudice the protection of an individual's right to privacy under section 12 of the *Human Rights Act 2004*. On balance, and based on the information available to me, I am satisfied that the disclosure of this personal information is not in the public interest.

To provide you with the information that I have determined to be in the public interest to release, copies of some documents have been prepared with personal information redacted in accordance with section 50 and the Objects of the Act.

#### **Charges**

In accordance with section 107(2)(b) of the Act any charges applicable are waived.

#### **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](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](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/>

### **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](mailto:EPSDFOI@act.gov.au).

Yours sincerely

(Signed Electronically)

Craig Weller  
Information Officer  
Executive Branch Manager, Statutory Planning  
Environment, Planning and Sustainable Development Directorate

10 January 2023