



Dear [REDACTED]

**Decision on Freedom of Information Access Application 22/114949**

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 23 August 2022, in which you sought access to copies of various Ministerial Briefs and Question Time Briefs.

On 8 December 2022, EPSDD received agreement to refine the application scope to exclude:

- copies of QTBs in the case where the content is identical (aside from date and approval officer) to those previously released which is publicly available via the EPSDD Disclosure Log
- the listed items that are not final briefs (email responses and records of conversations relating to enquires from constituents).

The finalised scope of your application:

*“...a copy of the Ministerial Briefs and Question Time Briefs with the titles outlined below:  
Duplicate documents as well as attachments to the ministerial briefs may be excluded.*

<b>Reference</b>	<b>Subject Line</b>
1-2022/13194	22/13194 Ministerial Information Brief – Barr – CRA 2021-22 Budget Rollover and forward estimate capital profile
1-2022/32215	22/32215 Ministerial Information Brief – Barr – CRA Board Meeting – 5 May 2022
1-2022/17152	22/17152 Ministerial Meeting Brief – Minister Gentleman - Minister Cheyne and Minister Steel – Land Release Community Groups – 11 April
1-2022/25694	22/25694 Ministerial Information Brief -Gentleman – Electric Vehicle Ready Infrastructure
1-2022/33888	22/33888 Ministerial Information Brief – Gentleman – Planning and Development Act 2007 – Tabling of Direct Sales for the period 1 January to 31 March 2022

1-2022/34042	22/34042 Ministerial Information Brief – Gentleman – Fyshwick Business Association – 26 April
1-2022/38891	22/38891 - Ministerial Information Brief – Gentleman – DV369 Living Infrastructure recommendation for progressing
1-2022/51788	22/51288 Ministerial Information Brief – Gentleman & Vassarotti – Mulligans Strategy
1-2021/112873	21/112873 Ministerial Information Brief – Gentleman – Recommended draft variation 357 End-Of-Trip Facilities General Code
1-2022/13073	22/13073 Ministerial Caveat Brief – Vassarotti – 2016 NCC amendment – prohibited combustible cladding
1-2022/22134	22/22134 Ministerial Information Brief – Vassarotti – Update on implementation of the Nature Conservation Strategy 2012-2023
1-2022/37559	22/37559 Ministerial Information Brief - Vassarotti – Gonacon Announcement 14 April 2022
1-2022/37852	22/37852 Ministerial Information Brief – Vassarotti – Heritage Council – Report on Public Consultation – Seventh Day Adventist Church
1-2022/38419	22/34819 Ministerial Information Brief – Vassarotti – Contaminated Sites Policy
1-2022/39101	22/39101 Ministerial Information Brief – Vassarotti – Draft NRM Plan Release for consultation
1-2022/40549	22/40549 Ministerial Information Brief – Vassarotti – Integration of Fertility Control into ACT Kangaroo Management Program
1-2022/44063	22/44063 Ministerial Information Brief – Vassarotti - Commissioner Amendment Bill 2022
1-2022/27201	22/27201 Ministerial Arrangements Brief – Rattenbury - Announcement of CZEG grant recipients (Round 5)- 11 May 2022
1-2022/29188	22/29188 Ministerial Information Brief – Rattenbury - Canberra Member's Branch Event – The role of Hydrogen Fuel Cell Vehicles in the Zero Emissions Transport Strategy of the ACT – 27 April
1-2022/36239	22/36239 Ministerial Information Brief – Rattenbury and Barr – Gas Transition Communication Approach
1-2022/37672	22/37672 Ministerial Information Brief – Rattenbury - Smart Energy Conference 4 May 2022
1-2022/38278	22/38278 Ministerial Information Brief – Rattenbury - Expenditure Review Committee consideration of Gas Transition Plan resourcing business case
1-2022/41079	22/41079 Ministerial Information Brief – Rattenbury - Hydrogen Refuelling Station
1-2022/47960	22/47960 Ministerial Information Brief – Rattenbury - Meeting with AER 28 April 2022
1-2022/38735	22/38735 Ministerial Information Brief – Rattenbury - Community Clubs Program EV Charger Incentive
1-2021/58820	21/58820 Ministerial Information Brief – Rattenbury - Outcome of Audit – REDACTED – pricing for delivering EEIS Activities
1/2021/117392	21/117392 Ministerial Information Brief – Rattenbury - Solar for Business Evaluation

*Question Time Briefs Planning and Land Management:*

Immediate Issues:

A.	<i>Parks and Conservation Service upkeep of parks and reserves</i>
D.	<i>Manor House DV375</i>
F.	<i>Gungahlin Town Centre Land releases and DV364</i>
G.	<i>Living Infrastructure (including DV 369)</i>
L	<i>PFAS in the ACT</i>
O	<i>Molongolo Group Centre</i>
R.	<i>Coombs Peninsula</i>

ACTPARKS AND CONSERVATION SERVICE:

1. *Kangaroo Management*

Planning and Land Management:

1.	<i>Curtin Horse Paddock</i>
5.	<i>Land and Property Trends</i>
7.	<i>McKellar Shops</i>
8.	<i>Giralang Shops</i>
11.	<i>Gungahlin Community Centre</i>
12.	<i>East Lake</i>
13.	<i>Build to Rent Initiative</i>
14.	<i>Affordable, Public and Community Housing (Urban Renewal/ Housing and Suburban Development)</i>
16.	<i>Gungahlin Cinema</i>
17.	<i>National Heritage List</i>
18.	<i>Kippax Flood Study and Erosion Downstream</i>

All Questions Time Briefs for Minister for Housing and Suburban Development.

*Question Time Briefs Water, Energy and Emissions Reduction*

Immediate Issues:

A.	<i>Costs and benefits of Climate Action</i>
B.	<i>Climate Change Strategy</i>
C.	<i>Transition to Zero Emissions Vehicles Action Plan</i>
D.	<i>Public Electric vehicle charging stations</i>
E.	<i>Electricity and gas prices</i>
F.	<i>ACT Climate Change policy- costs to community and consumers</i>
G.	<i>Transition from natural gas</i>
H.	<i>Minimum Energy Efficiency Standards for rental properties</i>
I.	<i>Vulnerable Household Energy Support Scheme</i>
K.	<i>Energy Efficiency Improvement Scheme</i>
M.	<i>Zero Emissions Government (including social cost of carbon)</i>
N.	<i>Cessation of Solar Business Program</i>

0.	Scope 3 Emissions
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Water:

1.	Water quality (Blue Green Algae)
2.	Water Security and Efficiency
3.	Healthy Waterways (Basin project)

Energy and Emissions Reduction:

10.	Living Infrastructure Plan (including DV369)
12.	Renewable energy programs · Next Generation Energy Storage program · Industry development/Renewable Energy Innovation Fund
13.	Energy Emergency Management

Question Time Briefs Environment

2.	Western edge - environmental values and conservator inputs (relating to the environmental assessment process)
4.	Red Hill Integrated Plan - Environmental Impacts
5.	Defence Housing Consultation - Multiple Threatened Species on Lawson Grasslands
27.	Drone regulatory policy in the ACT environmental considerations

Question Time Brief Heritage

0.	Hall Flooding Issue - NEW
2.	REDACTED – Narrabundah
4.	Planting at The Bradfield
5.	Heritage Nomination List
6.	REDACTED development at Mount Ainslie

Question Time Briefs Sustainable Building and Construction

2.	Property Developer licensing
3.	Minimum Accessibility Standards
4.	Fidelity Fund
5.	Government Response to the Building Quality Inquiry
6.	Building Reforms
7.	Energy Efficiency Standards
8.	Professional Indemnity insurance
9.	Implementation of Building Confidence Report in the ACT
10.	Building Quality Initiatives (Engineer Registration, and Government Certifiers)

As agreed, EPSDD must decide your application on or by 20 January 2023.

### **Access 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.

In response to your application, comprehensive searches were conducted and 96 documents containing information that I am satisfied is within the scope of your application, were identified.

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. For ease of reference, the identified documents have been ordered as per your above request.

For the reasons set out below, I have decided to:

- grant full access to 81 documents relevant to your application;
- grant partial access to 11 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; and
- refuse access to three documents on the basis that these consist of information that I am satisfied would be contrary to the public interest to disclose under Schedule 1 of the Act.

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

- the FOI Act, particularly sections 6, 17, 50 and Schedules 1 and 2;
- the content of the documents that fall within the scope of your request;
- the advice provided by business units who prepared the documents;
- the *Human Rights Act 2004*;
- information released to you previously; and
- information publicly available.

The documents released to you by my decision are provided at **Attachment B** to this letter.

### ***Reasons for decision***

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.

Section 16 of the Act relevantly defines ***contrary to the public interest*** to mean either information:

- that is taken to be contrary to the public interest to disclose under Schedule 1 of the Act; or
- the disclosure of which would, on balance, be contrary to the public interest under the test set out in section 17.

*Information Disclosure that is taken to be contrary to the public interest - Schedule 1 of the Act*

Schedule 1 of the Act recognises a range of information that is taken to be contrary to the public interest to disclose unless the information identifies:

- 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.

Relevant to documents 26, 27 and 28, is Schedule 1, section 1.6 'Cabinet information'. Subsection 1.6(1)(a) of Schedule 1 applies to information that 'has been submitted, or that a Minister proposes to submit, to Cabinet for its consideration and that was brought into existence for that purpose'. Subsection 1.6(1)(c) applies to information that is a copy of, or part of, or contains an extract from, information mentioned in paragraph (a).

To apply, I must be satisfied that these terms are met, and that the information is not purely factual. Factual information may be taken to be contrary to the public interest under this provision if its disclosure would involve disclosure of a deliberation or decision of Cabinet and the fact of the deliberation or decision has not been officially published.

I have considered the requirements of Schedule 1 and specifically, section 1.6, and am satisfied documents 26, 27 and 28 contain information that is proposed to be, or has been submitted to Cabinet, for its consideration and that was brought into existence for that purpose. Moreover, I am satisfied that the disclosure of this information would not reveal 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.

Accordingly, under Schedule 1, 1.6(1)(a) and (c) of the Act, this information is taken to be contrary to the public interest to disclose and it is my decision to refuse access in full.

Relevant to document 25 is Schedule 1, section 1.2 'Information subject to legal professional privilege'. Components of document 25 refer to legal advice which I consider information that would be privileged from production or admission into evidence in a legal proceeding on the ground of legal professional privilege. I am satisfied that disclosure of the information would not reveal 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.

Access to document 25 is refused for this reason and other factors favouring non-disclosure under Schedule 2, 2.2 as outlined further below.

*Information Disclosure and the public interest test – Schedule 2 of the Act*

In assessing whether disclosure of the remaining information identified in relation to your request would, on balance be contrary to the public interest, I must apply the test outlined under section 17 of the Act.

This requires consideration of factors favouring disclosure, any favouring nondisclosure and the balancing of those factors when considered cumulatively. Unless, on balance, disclosure would be contrary to the public interest, access to the information must be allowed.

In applying the public interest test to the documents identified in relation to your request, 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; and
- Schedule 2, 2.1(a)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.

Collectively, these factors demonstrate that the release of the requested information may assist in public understanding of government decisions and provide insights as to the context for them, promoting transparency and accountability.

I have however, also determined that disclosure of some of the information identified in relation to your request 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;
- Schedule 2, 2.2(a)(xi) – prejudice trade secrets, business affairs or research of an agency or person;
- Schedule 2, 2.2(a)(xii) – prejudice an agency’s ability to obtain confidential information; and
- Schedule 2, 2.2(a)(xiii) - prejudice the competitive commercial activities of an agency.

#### Documents 1, 2, 6, 7, 11, 13, 14, 16-18

In my review of the requested material, I have given regard to the pro-disclosure bias of the Act and the benefit of open government and transparency in government processes and decision-making.

I have considered whether the release of the personal information within these documents would advance the public interest and it is my view that, in this instance, the release of this information 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, section 2.2(a)(ii) of the Act.

In balancing public interest considerations, I am satisfied that, on the information available, disclosure of the identified personal information may constitute a breach of privacy and is therefore contrary to the public interest to disclose. Accordingly, I have decided to grant partial access to these documents as they contain information that falls within the meaning or personal information as defined by the Act, including mobile numbers, and personal associated references which could easily identify individuals.

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

## Document 24

Document 24 contains information the release of which may diminish the commercial value and compromise tier 2 business' commercial competitiveness in a limited market and provide a commercial advantage to another business. Further, the information contained in this document reveals the potential lost revenue in Energy Savings Contribution that may be experienced if larger Tier 2 retailers were to participate in activity delivery. These dollar figures can be reverse engineered to reveal the retailers' electricity sales data. The release of this information would reasonably prejudice trade secrets and business affairs, a factor in favour of non-disclosure under Schedule 2.2(a)(xi) of the Act.

I have considered the release of business affairs information and whether its disclosure would provide relevant contextual, or background information. In reaching my decision my decision I have weighed on balance these public interest considerations, the information available and contractual agreements with third parties. On balance I have decided that the detriment caused by the release of this information, which may constitute a breach of confidence, outweighs any anticipated benefit provided by its release.

To provide you with the information that I have determined to be in the public interest to release, copies of document 24 has been prepared with business information redacted in accordance with section 50 of the Act.

## Document 25

This document contains detailed information relating to the business activities of two third parties, the release of which would not only reveal financial information but reveal business activities and strategies to competing parties and detail regarding negotiations with ACT Government that I understand are ongoing.

Some information such as business finances, strategies and activities within the document were communicated to ACT Government by third parties with an expectation of confidence. Disclosure in the information would likely result in a loss of trust in ACT Government and a reluctance to be forthcoming with information in future.

Release of this information would also be reasonably expected to prejudice the commercial activities of an agency, as disclosure would diminish the Government's bargaining power and ability to negotiate competitive commercial terms.

I am satisfied in balancing factors supporting disclosure and nondisclosure (schedule 2, 2.2(a)(xi), (xii) and (xiii)) this document is not in the public interest to release at this time. On that basis, access to the document is refused in full.

## **Charges**

In accordance with section 107(2)(e) of the Act 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



Carolyn O'Neill  
Information Officer  
A/g Chief Operating Officer  
Environment, Planning and Sustainable Development Directorate

20 January 2023