



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 23/092547

By Email: [REDACTED]

Dear [REDACTED]

Decision on Freedom of Information Access Application 23/092547

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 19 September 2023.

Specifically, you are seeking:

Any and all documents, emails, decisions, information in full that pertains to the development of properties of Block 15 (previously blocks 2 and 3) Section 7 of Macquarie, between January 2016 (or from the earliest date of the sale of every property on block 15, before an application was made to consolidate the blocks) and 20 September 2023.

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 agreed by you, EPSDD must decide your application on or by 1 December 2023.

Searches Conducted

Comprehensive searches were conducted and 289 documents containing information within the scope of your application were identified.

This does not include public register associated documents which have been provided to you separately.

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 decided to grant full access to 188 documents relevant to your application.

I have decided to grant partial access to 101 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 to deal with parts of your application under sections 43(1)(d) and sections 45(g) of the Act.

Four documents within the scope of your application, are available as part of the Land Titles public register on the Access Canberra website:

[Search the ACT Land Titles Register - Access Canberra](#)

Under section 43(1)(d) of the Act a respondent agency may refuse to deal with an access application wholly or in part if the government information is already available to the applicant. Section 45 sets out the circumstances in which government information is already available to the applicant. Those circumstances include where the government information is available for purchase (section 45(g)).

Under section 38 of the Act, third parties were consulted on release of the information. A third party objected to release of information. My decision has taken into consideration the views and objections raised. Release of 111 documents is deferred under section 38(6)(b) to allow the third party the opportunity to seek a review of my decision. You will be notified of the outcome of the review process, and the documents may be released to you pending that outcome.

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 6, 17, 43, 45, 50 and Schedule 2
- the content of the documents that fall within the scope of your request
- the *Human Rights Act 2004*
- the views of third parties consulted
- 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 – 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*.
- Schedule 2, 2.2(a)(xi) – prejudice trade secrets, business affairs or research of an agency or person.

Personal Information

Documents relevant to your application contain personal information of individuals. 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 information if disclosed, 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 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.

Business Affairs

Three documents within scope contain information relating to a third party, the release of this information would reasonably prejudice 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 disclosure of the information would better serve to further open discussion, government accountability, and the provision of contextual, or background information.

In reaching my decision I have weighed these public interest considerations and the information available in the public domain. 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.

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

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
15 Constitution Avenue
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
Executive Branch Manager, Statutory Planning
Environment, Planning and Sustainable Development Directorate

1 December 2023