



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 24/070924

Dear [REDACTED]

Decision on Freedom of Information Access Application 24/070924

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 4 July 2024.

Specifically, you are seeking:

"all "operational reports" provided to the EPSDD Incident Controller from the shooting team for each night of the cull in 2024."

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 decide your application on or by 14 August 2024.

Searches Conducted

Comprehensive searches were conducted and 8 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 granted partial access to all 8 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.

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, 50, Schedules 1 and 2

- the content of the documents that fall within the scope of your request
- staff accounts of intimidating behaviour associated with objections to the kangaroo management program
- public media surrounding the kangaroo management program and associated protests
 - <https://www.canberratimes.com.au/story/6049526/animal-activists-prepare-for-act-governments-kangaroo-cull/>
 - <https://www.canberratimes.com.au/story/6110070/protests-loom-as-acts-largest-kangaroo-cull-begins/>
 - <https://www.canberratimes.com.au/story/6155391/kangaroo-cull-triggers-macabre-protest-plan/>
 - <https://www.canberratimes.com.au/story/6152226/anger-at-defence-cull-of-14000-kangaroos/>
 - <https://www.canberratimes.com.au/story/6139689/vandals-hit-parks-and-conservation-depot-to-protest-kangaroo-cull/>
 - <https://www.canberratimes.com.au/story/6066989/dead-joev-stuffed-in-senior-public-servants-letterbox-as-kangaroo-cull-tensions-rise/>

Public Interest Considerations

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

Information Disclosure – Contrary to the Public Interest under 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;
- the commission of an offence by a public official; or
- that the scope of a law enforcement investigation has exceeded the limits.

Schedule 1, 1.14 Law enforcement or public safety information.

Section 1.14 provides that the disclosure of information is taken to be contrary to the public interest if it would, or could reasonably be expected to, affect law enforcement or public safety.

Schedule 1, 1.14(1)(c) applies where the disclosure of information would, or could reasonably be expected to, endanger a person's life or physical safety.

Section 1.14(1)(d) applies where disclosure of the information would, or could reasonably be expected to, result in a person being subject to a serious act of harassment or intimidation. Section 1.14(1)(h) applies where disclosure of the information would, or could reasonably be expected to, endanger the security of a building, structure or vehicle.

The disclosure of names, positions, work locations and shift times of EPSDD staff members and public contractors, and observations regarding protestor activity are taken to be contrary to the public interest under Schedule 1, 1.14(1)(c), 1.14(1)(d) and 1.14(1)(h).

Disclosure of this information would or could reasonably be expected to result in endangering the physical safety of EPSDD staff members and public contractors and/or endanger the security of an ACT Government asset.

The extended history of protest activity associated with the kangaroo management program, which is evidenced in the links to newspaper articles above, is sufficient to consider that staff safety is a legitimate concern.

Due to the nature of work conducted by EPSDD staff and public contractors, release of this information would, or could reasonably be expected to result in serious harassment or intimidation from members of the public who feel strongly regarding animal welfare.

Directorate staff involved in kangaroo management have been subject to serious harassment and intimidation in the form of aggressive phone calls, damage to personal property and invasion of privacy. Staff have also been the target of illegal activities such as those highlighted in the media article published on 29 May 2015 titled ["Dead joey stuffed in senior public servant's letterbox as kangaroo cull tensions rise."](#)

On balance, in considering the safety of ACT Government employees and public contractors against the public right of access to information, I have determined that the safety of staff and contractors is the paramount consideration.

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.

Charges

In accordance with the *Freedom of Information (Fees) Determination 2018* no charges are applicable to this application.

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



Bren Burkevics
Information Officer
Executive Group Manager, Environment, Heritage and Parks

29 July 2024