



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference: 19/09397

Dear [REDACTED]

Freedom of Information 19/09397

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Environment, Planning and Sustainable Development Directorate (EPSDD) on 30 May 2019, in which you sought access to Development Application documents relating to 51 Ainsworth Street Mawson.

Specifically, you are seeking:

"In respect of the development at Block 16/17 of Section 13 or 51 Ainsworth Street, Mawson (the Property) by Hillcorp Developments Pty Ltd:

- 1. All development applications lodged by or on behalf of HillCorp in respect of the Property for the period 2008 - 2012;*
- 2. A copy of the development consent and any prescribed conditions for the Property for the period 2008 – 2012; and*
- 3. All other documents, records, certificates, reports and dealings in relation to the Property for the period 2008 – 2019."*

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

Part 3 of the scope relates to information held by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD). A partial transfer of part 3 was sought under section 58 of the Act. CMTEDD agreed to the transfer and will respond to that part separately.

As third party consultation was undertaken, EPSDD is required to make a decision on your access application by 9 August 2019.

Decision on Access

Searches were completed for relevant documents and 199 documents were identified that fall within the scope of your request.

I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

I have decided to grant access in full to 154 documents relevant to your request.

I have decided to refuse access to four documents in full, and parts of two documents under section 43(1)(d) as this information is available for purchase from <https://actlis.act.gov.au>

I have decided to refuse access to one document as I consider it to be information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

Duplicated items are identified on the schedule but have not been provided.

I have decided to grant access, under section 50 of the Act, to copies of documents with deletions applied to information that I consider would be contrary to the public interest to disclose. The release status of these 37 scheduled items is indicated on the attached schedule as 'partial release'.

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 17, 38, 45, 50 and schedule 2;
- the content of the documents that fall within the scope of your request;
- the views of relevant third parties;
- the *Information Privacy Act 2014* (Privacy Act).

Public Interest Considerations

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

Information Disclosure – Contrary to the Public Interest under 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 cascading test set out by section 17 of the Act which requires consideration of factors favouring disclosure, any favouring nondisclosure and the balance of those factors when considered cumulatively.

Personal Information

Scheduled items indicated for partial release contain information that falls within the meaning of personal information as defined by the Act.

I have considered the Territory Privacy Principles of the Privacy Act and the release of this information and my view in this instance is that the identification of these third parties would not serve to further open discussion, government accountability, informed debate and the provision of contextual or background information.

I am further satisfied that the disclosure of identified 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 2.2(a)(ii) of the Act.

In balancing public interest considerations, I am satisfied that, on the information available, disclosure of the identified personal information of members of the public may constitute a breach of privacy and disclosure is therefore contrary to the public interest.

Business Affairs

Several documents identified in scope contain business information. The release of this information would reasonably prejudice trade secrets and business affairs of an identified business, a factor favouring non-disclosure under Schedule 2.2(a)(xi) of the Act. I have considered the context of the information contained within the documents and whether disclosure of the information would serve to further open discussion, government accountability, and the provision of contextual, or background information.

In reaching my decision, I have weighed public interest considerations, and relevant factors under the provisions of the Act, and concluded that the disclosure of the identified trade secrets and business affairs information would be an unreasonable disclosure and may prejudice business affairs under Schedule 2.2(a)(xi) of the Act. Therefore, I have concluded that disclosure of this information is contrary to the public interest to release.

Third Party Consultation

One document is an email containing an individual's personal views which was sent from a business email address. This information would reasonably be of concern to a third party if released. Third party consultation was undertaken, and the third party objected to the release of information about their business. The third party confirmed the view of EPSDD that the email consisted of the personal views of an individual and did not represent the views of the business. I am satisfied that the release of information containing references to a business, entirely unrelated to this matter would prejudice the business affairs of the third party and would not contribute to positive and informed debate on important issues or matters of public interest. I have therefore decided to release the content of the email with any identifying information withheld.

Online Publication

Under section 28 of the Act, EPSDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the EPSDD disclosure log no earlier than three days after the date the decision is provided to you. Your personal contact details will not be published.

You may view the EPSDD's disclosure log at

<https://www.environment.act.gov.au/about/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:

http://www.ombudsman.act.gov.au/data/assets/pdf_file/0026/79190/40A-Reviews-Factsheet-and-Application-Form-final-A1569634.pdf

If you wish to request a review of my decision 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



George Cilliers

Information Officer
Environment, Planning and Sustainable Development Directorate

09 August 2019