



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference: 20/96683

Dear [REDACTED],

Freedom of information request: 20/96683

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 4 December 2020, in which you sought access to information relating to the amended DA 201935278.

Your application sought:

All representations made against amended DA 201935278 that have been exempted for public inspection.

I am an Information Officer appointed under section 18 of the Act to deal with access applications made under Part 5 of the Act. Under section 38 of the Act consultation was required extending the due date by an additional 15 working days.

EPSDD is required to provide a decision on your access application in accordance with section 41 of the Act, by 1 April 2021. Thank you for your patience in this matter.

Searches conducted

Comprehensive searches were conducted by the EPSDD for documents relevant to your application.

Decision on Access

Five documents were located that fall within the scope of your request. Refer **Attachment A** for the schedule. The schedule also provides a description of the documents and the access decision.

I have decided to grant full access to two documents relevant to your application.

I have decided to refuse access to three documents, as I consider the information contained within these documents to be contrary to the public interest.

My access decision is detailed further in the following statement of reasons and the document released to you is 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, 41, 50, Schedule 2;
- the content of the document that falls within the scope of your request;
- the *Information Privacy Act 2014*;
- the *Planning and Development Act 2007*

- any views of third parties relating to the release of information that concerns them.

Public Interest Considerations

My reasons for deciding not to grant access to documents is explained below. These documents contain information that I consider to be contrary to the public interest to disclose.

Information Disclosure – Contrary to the Public Interest under schedule 2 of the Act

In assessing the public interest, I must apply the descending test as outlined under section 17 of the Act which requires consideration of all the factors favouring disclosure, any favouring nondisclosure and the balance of those factors when considered collectively.

Factors Favouring Disclosure

Disclosure of the identified information could reasonably be expected to do the following:

- Schedule 2.1(a)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.

I have given regard to the public interest in the amended development application DA 201935278, and that the release of the requested information may assist in public understanding of government decisions. I have also given regard to the advancing public understanding and transparency in government development application processes. It is for this reason that I have decided to release to you one document in full (as outlined in the attached schedule).

Factors favouring Non-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(a)(ii) – prejudice the protection of an individual's right to privacy or any other right under the *Human Rights Act 2004*

Personal Information

Some items are scheduled for non-release as they contain information that falls within the meaning of personal information as defined by the Act.

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

An exemption has been provided to the representors from the public register in accordance with the requirements of section 411(5) of the *Planning and Development Act 2007*. EPSDD has therefore determined not to release the representations. Where representations raise Territory Plan issues, the Planning and Land Authority will consider these matters in its assessment against the Territory Plan.

I have deliberated on how the release of this information would reveal reasons for government decisions, and how principles of transparency and accountability would be served.

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.

Online publication

Under section 28 of the Act, EPSDD maintains an online record of access applications called a disclosure log. Under the Open Access Information Scheme, documents associated with access applications are published on the disclosure log no earlier than three days after a decision on access is provided to the applicant. Documents containing your personal information will be published in redacted form to protect your privacy.

You may view the EPSDD's disclosure log at:

<http://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:

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
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
Executive Branch Manager Planning Delivery (E01072)
Environment, Planning and Sustainable Development Directorate

31 March 2021