



**ACT**  
Government

Environment, Planning and  
Sustainable Development

Phone: 6207 1923  
Reference: 21/27095

Dear [REDACTED]

**Freedom of information request: 21/27095**

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 24 March 2021, in which you sought access to information relating to Direct Sale Panel, Kippax Fair Holt.

Your original application sought:

*I write to request under the Freedom of Information Act 2016 (FOI Act) the following documents generated or received by the ACT Government and its divisions in relation to this application, its assessment, and its outcome:*

- *documents generated or received by the Direct Sale Panel as part of assessing the eligibility of the direct sale applicants and their proposed use of land;*
- *all comments on this proposal received by EPSDD from directorates (including EPSDD itself) when this application was circulated across the ACT Government for this purpose; and*
- *EPSDD's request to the ACT Government to make a formal decision regarding this proposal, the government's response, and all other documents generated or received in relation to this request and response, excluding those of a purely administrative nature.*

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 is required to provide a decision on your access application in accordance with section 41 of the Act, by 2 July 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. Please refer to **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 one document relevant to your application.

I have decided to grant partial release to four documents in scope of your application with deletions applied to information I consider to be out of scope of your request and, contrary to the public interest.

My access decision is detailed further in the following statement of reasons and the documents 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, 41, 50, Schedule 2;
- the content of the documents that fall within the scope of your request;
- Information in the public domain.

### **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)(i) – promote open discussion of public affairs and enhance the government’s accountability.
- Schedule 2.1(a)(iii) – inform the community of government’s operations and it’s dealings with community members;
- 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 Kippax Fair Holt 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 processes. It is for this reason that I have decided to release to you one document in full, and three documents with redactions applied to information considered out of scope of your application (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)(viii) – prejudice the economy of the Territory

## Economy of the Territory

One document within scope contains information relating to market values and benchmarks regarding Kippax Fair, Holt. The release of this information would reasonably prejudice trade secrets and business affairs information, a factor in favour of non-disclosure under Schedule 2.2(a)(xi) of the Act. I have considered the release of business information and benchmarks and whether disclosure of this 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 on balance these public interest considerations, objections provided by third parties, 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.

I consider the information contained within the document should be exempt from release as the release of the financial information would diminish the commercial value of the information and compromise the organisation's commercial and competitiveness and may prejudice the economy of the ACT Government under Schedule 2.2(a)(vii) of the Act and therefore, is contrary to the public interest to release.

### **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.

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](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



Ben Green

Information Officer

A/g Executive Group Manager Development & Implementation

Environment, Planning and Sustainable Development Directorate

1 July 2021