



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923

Reference: 21/68813



Dear 

Decision on Freedom of Information Access Application 21/68813

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 30 July 2021, in which you sought access to documents relating to ActewAGL annual compliance plans and reports.

Specifically, you are seeking:

I write to request under the Freedom of Information Act 2016, for the years 2018, 2019 and 2020:

- *ActewAGL's annual compliance plans and annual compliance reports as required by the Energy Efficiency (Cost of Living) Improvement Act 2012.*
- *Any audit reports or evaluations of the ActewAGL annual compliance plans and annual compliance reports mentioned above.*

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

You have granted two extensions, consequently EPSDD must make a decision on your application on or by 29 November 2021.

Searches Conducted

Comprehensive searches were conducted and 15 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 decided to grant partial access to 14 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 refused access to one document as I consider the information to be contrary to the public interest.

Under section 38 of the Act, third parties were consulted. A third party objected to release of the information. My decision has taken into consideration the views and objections raised. Access to the documents is deferred to allow the third party the opportunity to seek a review of this decision. You will be notified when access is no longer deferred, and documents will be released to you pending the outcome of the third party review process.

My access decisions are detailed further in the following statement of reasons.

Material Considered

In reaching my access decision, I have taken the following into account:

- the FOI Act, particularly sections 6, 17, 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 party consulted

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)(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,

- Schedule 2, 2.2(a)(xii) – prejudice an agency’s ability to obtain confidential information,
- Schedule 2, 2.2(a)(xiii) – prejudice the competitive commercial activities of an agency.

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.

Business Affairs, Confidential Information and Competitive commercial activities of an agency

Documents relevant to your application contain information that is commercially sensitive to an organisation. It has been supplied to EPSDD in strict confidence. It is my view that the information if disclosed, could reasonably be expected to prejudice trade secrets, business affairs, and the competitive commercial activities of an organisation. It is also my view that disclosure of information could prejudice the ability of EPSDD to collect commercial information from organisations. On balance, I am satisfied that the disclosure of this commercial 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 commercial and personal information redacted in accordance with section 50 and the Objects of the Act.

Charges

In accordance with section 107(2)(e) 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 access application and this decision 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. Pending the third party review process, documents will be published in the disclosure log.

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
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



Adrian Piani
Information Officer
Acting Executive Group Manager, Climate Change and Energy
Environment, Planning and Sustainable Development Directorate

29 November 2021