



**ACT**  
Government

Environment, Planning and  
Sustainable Development

Phone: (02) 6207 1923  
Reference: 22/58756

## Decision on Freedom of Information Access Application 22/58756

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 22 May 2022, in which you sought access to documents relating to Combustible Cladding Risk Assessment. Your application was received by transfer from Major Projects Canberra.

On 6 June 2022, it was confirmed you were specifically seeking:

*“The Inter-agency Building Cladding Review Group’s Government Building Identification and Action List/Combustible Cladding Audit”*

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 18 July 2022.

### Searches Conducted

Comprehensive searches were conducted and one document containing information within the scope of your application was identified.

In 2017, the ACT Government formed the Inter-agency Building Cladding Review Group (the Review Group) to identify potentially combustible cladding materials on Territory-owned buildings. The Review Group developed a list of all Territory-owned buildings and applied an initial risk assessment test to each site that may have combustible cladding material present. This initial risk assessment is the document in scope of your application.

### Decision on Access

I have included as **Attachment A** to this decision the schedule of the relevant document. The schedule provides a description of the document that falls within the scope of your application and the access decision for that document.

I have decided to grant partial access to the document and, in accordance with section 50 of the Act, provide you with a copy 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
- the *Human Rights Act 2004*

### **Public Interest Considerations**

My reasons for deciding not to grant access to components of this document are as follows:

#### **Information Disclosure – Contrary to the Public Interest under Schedule 1 of the Act**

Information contained in the list falls under Schedule 1, Sections 1.3 (5), 1.14 (1) (c) and 1.14 (1) (h) and disclosure of this information is taken to be contrary to the public interest.

I have determined that the disclosure of the information in whole presents a risk to public safety in the Territory. The release of the information is expected to increase threats or risk to public safety and the efforts required by law enforcement agencies to protect the Canberra community, under Schedule 1, 1.14 (1) (c) (endanger a person's life or physical safety) and its disclosure would, or could reasonably be expected to increase the risk to the security of buildings or structures within the Territory, under Schedule 1, 1.14 (1) (h) (endanger the security of a building, structure or vehicle).

The list also contains information that falls within the definition of *protected information* for the purpose of the *Housing Assistance Act 2007*, under Schedule 1, 1.3 (5). Section 28 (c) of the *Housing Assistance Act 2007*, states information is *protected information* if it identifies land that is a housing assistance property as a housing assistance property.

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)(xi) – reveal environmental or health risks or measures relating to public health and safety.

#### *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)(iii) – prejudice security, law enforcement or public safety.

I have given consideration to how the release of the list would benefit the Canberra community. Disclosure of the list may provide building occupants awareness of an increased risk due to the type of building cladding used. However, the list contains information the release of which could increase threats to public safety such as through acts of arson. While there has been no specific threat, the release of the information would present a significant risk to the Canberra community and Territory-owned assets.

When assessing the likelihood and significance of risks associated with disclosure and non-disclosure of the list, on balance, I have determined the risk of disclosing the list of Territory-owned buildings that may contain combustible cladding to be of greater significance and threat to public safety than individual actions that may result from community awareness. Furthermore, releasing the list of buildings that do not contain combustible cladding would inadvertently reveal the buildings that do. I have determined that disclosing the list of buildings that have been remediated would not be contrary to the public interest.

The list contains some 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.

Having applied the test outlined in section 17 of the Act and deciding that release of certain information contained in the documents is not in the public interest to release, I have chosen to delete the contrary to the public interest information in accordance with section 50 of the Act. Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest ensures that the intent of the Act is met.

#### **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 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](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



Di Stewart

Information Officer

A/g Executive Group Manager, Planning and Urban Policy

Environment, Planning and Sustainable Development Directorate

15 July 2022