



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923

Reference: 22/159871

Dear [REDACTED]

Decision on Freedom of Information Access Application 22/159871

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 13 December 2022.

Specifically, you are seeking:

“...the subject line of all final ministerial briefs from 12 September to 12 November 2022 generated for or directed to any ACT Government Minister.”

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

As agreed by you, EPSDD must make a decision on your application on or by 13 February 2023.

Searches Conducted

Comprehensive searches were conducted of the Directorate’s records management system.

One document, providing a listing of Ministerial Briefs within the timeframe of your application, was generated from these search results.

Eight existing documents were identified as containing information relevant to your application.

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 full access to eight documents relevant to your application.

I have decided to grant partial access to one document 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.

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, and Schedule 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 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)(i) – promote open discussion of public affairs and enhance the government's accountability.

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)(xiii) – prejudice the competitive commercial activities of an agency.

I have given regard to the public interest and that the release of the requested information may assist to promote transparency and accountability in government. I also considered the pro-disclosure bias of the Act, which reflects the importance of access to government information for the proper working of representative democracy.

I have refused access to a name of a member of the public where this information is included in the title of a brief. 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 protection of the

individual's personal information outweighs the benefit which may be derived from releasing them. I consider that individuals are entitled to expect that the personal information they have supplied to the ACT Government will be dealt with in a manner that protects their privacy. I consider that if this information was disclosed, it 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 based on the information available to me, I am satisfied that the disclosure of this personal information is not in the public interest.

I have refused access to information in the titles of briefs that may disclose the business affairs of private companies and their dealings or proposed dealings with the ACT Government.

Two brief titles contain information relating to commercial activities currently under negotiation between third parties and EPSDD. Release of the information would also prejudice the business affairs of a third party by disclosing sensitive commercial activities of the third party, factors in favour of non-disclosure under Schedule 2, 2.2(a)(xi) and Schedule 2, 2.2(a)(xiii) of the Act.

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. In this instance, my decision is that the prevailing weight favours nondisclosure and that this information should be redacted from the document.

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 information redacted in accordance with section 50 and the Objects of the Act.

Charges

In accordance with the *Freedom of Information (Fees) Determination 2018* no charges are applicable to this application, the number of pages to be released is below the minimum 50 page threshold.

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

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



Craig Simmons
Information Officer
Chief Operating Officer
Environment, Planning and Sustainable Development Directorate

13 February 2023