



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 24/056444

Dear [REDACTED]

Decision on Freedom of Information Access Application 24/056444

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 28 May 2024.

Specifically, you are seeking:

Documents regarding the open tender process to establish permanent members of the National Capital Design Review Panel including the:

- *Expression of Interest document and any associated documents*
- *Briefs, advice, and other documents establishing the Expression of Interest and the framework of the Panel of permanent members of the National Capital Design Review Panel*
- *Briefs, advice and other documents to the Chief Planner/Director-General, Environment, Planning and Sustainable Development, the Minister for Planning and other agencies on the Expression of Interest and establishing the permanent panel of the National Capital Design Review Panel*
- *Correspondence with the Government Procurement Board on the Expression of Interest process to be used when establishing the permanent panel of the National Capital Design Review Panel*

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, EPSDD must make a decision on your application on or by **8 August 2024**.

Searches Conducted

Comprehensive searches were conducted and 70 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 **full** access to 24 documents relevant to your application
- grant **partial** access to 46 documents relevant to your application 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, 38, 43, 45, 50, Schedules 1 and 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
- information publicly available

Public Interest Considerations

My reasons for deciding not to grant access to certain documents and components of these documents are as follows:

Publicly Available Information

Since receiving your access application, the NCDRP Request for Tender and associated documents were published on the [Tenders ACT](https://www.tenders.act.gov.au) website at <https://www.tenders.act.gov.au/tender/view?id=272783>. Under section 43(1)(d) and 45(a), a respondent may refuse to deal with an access application wholly or in part if the information is publicly available. As such the documents available on Tenders ACT are not dealt with under this decision.

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

Schedule 1 of the Act recognises a range of information that is taken to be contrary to the public interest to disclose unless the information identifies:

- 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.

Six documents were identified to contain information referencing ACT Government Solicitor advice. This information would be privileged from production or admission into evidence in a legal proceeding on the grounds of legal professional privilege, and is therefore, taken to be contrary to the public interest under schedule 1, 1.2 of the Act.

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)(iv) – ensure effective oversight of expenditure of public funds.

There is a compelling public interest in transparency regarding the conduct, administration and management of government processes and oversight of public monies. The ability for the public to have informed debates and discussions regarding government administrative processes, while holding the government accountable, is of fundamental significance for the proper workings of representative democracy. All three of these factors apply to the information to a degree which carries considerable weight.

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)(xvi) – prejudice a deliberative process of government.

Personal Information

Documents relevant to your application contain personal information of individuals (names and phone numbers). 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.

Deliberative process of government

Documents relevant to your application contain information relating to the names of the tender evaluation team members. As the tender process is currently underway, disclosure of this information could reasonably interrupt or create difficulties for the integrity and effectiveness of the tender process.

Additionally, if the evaluation panel members are known at this stage of the process, there is potential for a person submitting a tender to attempt to influence a decision in their favour. I find the information contained within these documents could therefore reasonably be expected to prejudice the ACT Government's deliberative process at this time and have given this nondisclosure factor considerable weight.

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 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 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/accountability-and-oversight/freedom-of-information/foi-complaints-and-reviews>

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:

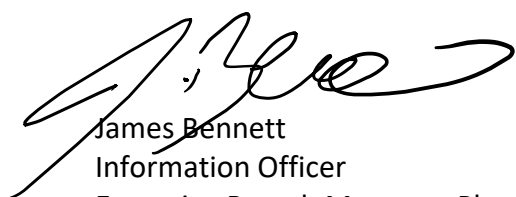
ACT Civil and Administrative Tribunal
15 Constitution Avenue
GPO Box 370
CANBERRA CITY ACT 2601
Telephone: (02) 6207 1740

<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



James Bennett
Information Officer
Executive Branch Manager, Planning and Urban Policy
Environment, Planning and Sustainable Development Directorate

8 August 2024