



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference: 18/34516

Dear [REDACTED]

Freedom of information request: 18/34516 Final Briefing Packages for 2017-18 Annual Report Hearings.

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 20 November 2018, in which you sought access to briefing notes and documents prepared for the 2017-18 EPSDD Annual Report.

On 7 December 2018, you confirmed the scope of your application to cover:

"the final briefing packs prepared for the 2017-18 Annual Report hearings"

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 your Office, EPSDD is required to make a decision on your access application by 18 January 2019.

Decision on access

Searches were completed for relevant documents and 10 documents (466 pages) were identified that fall within the scope of your request.

I have included, at **Attachment A** to this decision, the schedule of relevant documents. This schedule provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

I have decided to grant access, in full, to four of the documents.

Duplicated pages have been identified on the schedule but have not been provided.

I have decided to grant access, under section 50 of the Act, to copies of documents with deletions applied to information that I consider would be contrary to the public interest to disclose. The release status of these seven documents is indicated on the attached schedule as 'partial release'.

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 decision, I have taken the following into account:

- the FOI Act, particularly sections 17, 50, and schedules 1.2, 1.6 and 2;
- the content of the documents that fall within the scope of your request; and
- the *Information Privacy Act 2014*

Exemptions claimed

My reasons for deciding not to grant access to documents in full are as follows:

Contrary to the public interest information under schedule 1 of the Act

Scheduled items 1, 2, 4, 7 and 10 of the identified documents contain information that is considered to be contrary to the public interest under Schedule 1 of the Act.

Scheduled item 10 contains information relating to advice provided by the ACT Government Solicitor's Office, this information cannot be disclosed on the ground of legal professional privilege under Schedule 1.2 of the Act.

Scheduled items 1, 2, 4, 7 and 10 of the identified documents contain information that has been submitted or proposed for submission to Cabinet and/or may reveal deliberations of Cabinet under Schedule 1.6 of the Act.

Contrary to the public interest information under 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 cascading test set out by section 17 of the Act which requires consideration of factors favouring disclosure, any favouring nondisclosure and the balance of those factors when considered cumulatively.

Personal Information

Scheduled items 1 and 9 of **Attachment B** contain information that falls within the meaning of personal information as defined by the FOI Act.

I have considered the release of this information and my view in this instance is that the identification of these third parties would not serve to further open discussion, government accountability, informed debate and the provision of contextual or background information.

I am further satisfied that the disclosure of identified personal information could reasonably be expected to prejudice the protection of an individual's right to privacy under the *Human Rights Act 2004*. This is a factor favouring nondisclosure under Schedule 2.2(a)(ii) of the Act.

In balancing public interest considerations, I am satisfied that, on the information available, disclosure of the identified personal information of members of the public may constitute a breach of privacy and disclosure is therefore contrary to the public interest. I have therefore partially released Scheduled items 1 and 9 of **Attachment B**.

Commercial Activities of an Agency

Scheduled item 4 of **Attachment B** contains information which prima facie may prejudice the competitive commercial activities of the Suburban Land Agency if released. The information identified matters that are not within the public domain related to the sale, release and development of specific projects/sites and associated revenue.

On deliberation of public interest, I have considered that the release of this information may promote open discussion of public affairs, contribute to positive informed debate, and provide reason or context for decisions associated with the Suburban Land Agency's sales program. Further, I have considered that a primary function of the Suburban Land Agency is to contribute to the Territory's economy by conducting Government land sales and strategic acquisitions.

On balance of public interest factors considered under the Act, it is my view that disclosure of commercially sensitive information that may impact upon the Agency's ability to carry out its functions and maintain competitiveness on behalf of the Territory is contrary to the public interest.

Online publishing – disclosure log

Under section 28 of the Act, EPSDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the EPSDD disclosure log from three days after the date of this decision. Your personal contact details will not be published.

You may view the EPSDD's disclosure log at

<https://www.environment.act.gov.au/about/access-government-information/disclosure-log>

Ombudsman review

My decision on your access application 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:

http://www.ombudsman.act.gov.au/data/assets/pdf_file/0026/79190/40A-Reviews-Factsheet-and-Application-Form-final-A1569634.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/>

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 send an email to EPSDFOI@act.gov.au.

Yours sincerely



Carolyn O'Neill
Information Officer
Environment, Planning and Sustainable Development Directorate

18 January 2019