



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference: 20/08924

Dear [REDACTED]

Freedom of information request: 20/08924

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 February 2020, in which you sought access to information relating to the construction of the Centenary Trail, including emails, correspondence and meeting notes between EPSDD and the Village of Hall, District Progress Association, Hall residents and landholders.

Specifically, you are seeking:

“documentation in relation to the construction of the Centenary Trail;

- *the SHE relating to the Centenary Trail construction between the Barton Highway/Victoria Street Hall*
- *any emails or correspondence between the Village of Hall and District Progress Association (Progress Association), landholders or residents of Hall and your department*
- *any notes following meetings with members of the Progress Association, landholders or residents of Hall and your department.”*

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

In accordance with section 40 of the Act, a decision must be made on your application on or by 20 March 2020.

Searches conducted

Comprehensive searches were conducted and two documents relevant to your application were identified that fall within the scope of your request.

Decision on Access

ACT Heritage advised that there was no consultation was undertaken with the Progress Association, landholders or residents of Hall for this project. Therefore; under section 35(1)(b) of the Act this information is not held by the Directorate and there are no further relevant documents.

I have included as **Attachment A** to this decision the schedule of documents relevant to the scope of your request. The schedule provides a description and the access decision of each relevant document.

I have decided to grant partial access to both documents and, in accordance with section 50 of the Act, provide you with copies of documents with redactions applied to contrary to the public interest information.

My access decisions are detailed 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 *Freedom of Information Act 2016*, in particular, sections 6, 17, 35, 50, Schedule 2
- The content of the documents that fall within the scope of your request;
- The *Information Privacy Act 2014*; and
- The *Human Rights Act 2004*.

Public Interest Considerations

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

Information Disclosure - Contrary to the public interest 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 accessing the public interest, I must apply the test outlined under section 17 of the Act which requires consideration of factors favouring disclosure, any favouring non-disclosure and the balance of those factors when considered cumulatively.

Factors Favouring Disclosure

Disclosure of the identified information could reasonably be expected to do the following:

- Schedule 2.1(a)(i) – promote open discussion of public affairs and enhance the government’s accountability;
- Schedule 2.1(a)(ii) – contribute to positive and informed debate on important issues or matters of public interest;
- Schedule 2.1(a)(iii) – inform community of government operations and its dealings with community members;

- Schedule 2.1(a)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.

I have given regard to how the release of the information would advance the public's understanding and transparency in government processes. I have considered the full release of relevant information and the public interest bias in the Act. I have decided to release to you all information except for what I have determined, on balance, to be contrary to the public interest to release (set out below). The documents captured by your application are released to you in part (as outlined at **Attachment B**).

Factors favouring Non-disclosure

In applying the public interest test, I have determined that disclosure of the information could reasonably be expected to do the following and meet relevant factors favouring non-disclosure:

- Schedule 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(a)(xviii) – prejudice the conservation of any place or object of natural, cultural or heritage value, or reveal any information relating to Aboriginal or Torres Strait Islander traditional knowledge.

Personal information

The Cultural Heritage Assessment is scheduled for partial release as it contains information that falls within the meaning of personal information as defined by the 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 or 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 in accordance with 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 feedback regarding individual local Aboriginal representatives may constitute a breach of inter-group privacy, and disclosure is therefore contrary to the public interest.

Aboriginal Cultural Heritage conservation

I have given regard to Canberra Community interest in the decision-making process of ACT Heritage Council and impact of these decisions. I have also considered public benefit in relation to transparency of Government processes and protection of Aboriginal cultural heritage sites.

The Cultural Heritage Assessment contains information which identifies locations of sites where items of Aboriginal cultural heritage may have previously been found. I have decided, on balance, the disclosure of material that could identify these locations to be contrary to the public interest.

It is for these reasons that I have decided to release to you the relevant documents in part as outlined in the provided schedule.

Online publication

Under section 28 of the Act, EPSDD maintains an online record of access applications called a disclosure log. Your original access application and my decision and documents released to you in response to your access application 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's disclosure log at:

<http://www.environment.act.gov.au/about/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:

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

If you wish to request a review of my decision 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 6207 1923 and ask for the FOI team, or email to EPSDFOI@act.gov.au

Yours sincerely



Ian Walker
Information Officer
Environment, Planning and Sustainable Development Directorate

19th March 2020