



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference: 20/11245

Dear [REDACTED]

Freedom of Information 20/11245

I refer to your application, made on behalf of your client, under section 30 of the *Freedom of Information Act 2016* (the Act) in which you sought access to documents relating to 1 Feltus Place, Kambah. Your application was received by Environment, Planning and Sustainable Development Directorate (EPSDD) on 4 March 2020.

I note that you have confirmed the below scope of your application in discussion with the Information and Knowledge Management Team on 6 May 2020.

Specifically, you are seeking:

Documents held within the following files relating to 1 Feltus Place, Kambah:

1. Acquisition File

Excluding communication between the lessee (at time of acquisition) and the Asbestos Response Taskforce.

2. Development Application Files

Excluding the new residences constructed after demolition of the original residence.

3. Territory Lease File

Excluding the documents relating to the new residences constructed after demolition of the original residence

The Act does not apply to public access records under the *Territory Records Act 2002* (Records Act). Some information applied for is 20 years or older and therefore, in accordance with section 13 of the Act, are not included in this access decision and will be dealt with separately under the Records Act.

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, this decision is due on/by 12 May 2020. We appreciate your patience and assistance as we worked with you to identify the information you are seeking.

Searches Conducted

Comprehensive searches were conducted and 72 documents within the scope of your application were located.

No documents were identified in the Development Application files 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 25 documents relevant to your application.

One duplicate is listed on the schedule but not provided.

I have decided to grant partial access to 41 documents 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.

I have refused access to five documents that are either publicly available for purchase or contain information that is taken to be contrary to the public interest.

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.

Third-party consultation was undertaken.

Material Considered

In reaching my access decision, I have taken the following into account:

- the FOI Act, particularly sections 13, 17, 38, 43, 45, 50, 57 and schedules 1 and 2 of the Act;
- the *Information Privacy Act 2014*;
- the content of the documents that fall within the scope of your request.

Public Interest Considerations

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

Information not in the Public Interest to Disclose – Schedule 1 of the Act

One document identified contains information identified to fall under Schedule 1.2 (legal professional privilege) and is therefore taken to be contrary to the public interest to disclose.

I confirm that this section applies as the document 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

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

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(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)(xi) – prejudice trade secrets, business affairs or research of an agency or person.

Personal Information

Documents relevant to your application contain information that includes the personal information of individuals which I consider, if disclosed, could reasonably be expected to prejudice the protection of an individual’s right to privacy. On balance, and the information available to me, I am satisfied that the disclosure of this personal information is not in the public interest.

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 that may advance open discussion, transparency and accountability is not specifically that which has been identified as personal information.

To provide you with the information that I have determined to be in the public interest to release, copies of these documents have been prepared with the personal information redacted in accordance with section 50 and the Objects of the Act.

Business Affairs

Consideration has been given to the relevant documents and information held that concern third parties, and whether the information contained within the documents contains information contrary to the public interest.

Relevant documents include reports authored by third parties and include substantial details in outlining the methodology and research undertaken by these businesses from which competitors could discern their approach and methodology, consequently leaving

them at a disadvantage, a factor favouring nondisclosure under Schedule 2.2(a)(xi) of the Act.

The release of this information may serve to further open discussion, government accountability, informed debate and reveal the reason for a government decision and any contextual or background information. However, on balance release of this information would reveal the research and methodology of third parties. On balance, and the information available to me, I am satisfied that the disclosure of this business affairs information is not in the public interest.

To provide you with the information that I have determined to be in the public interest to release, copies of some of these documents have been prepared with the business information redacted in accordance with section 50 and the Objects of the Act.

Online Publication

Under section 28 of the Act, EPSDD maintains an online record of access applications called a disclosure log. Your access application, 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

<https://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:

https://www.ombudsman.act.gov.au/_data/assets/pdf_file/0026/79190/Apply-for-Ombudsman-review.pdf

Alternately, 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



Brude Fitzgerald

Information Officer

Environment, Planning and Sustainable Development Directorate

12 May 2020