



ACT
Government

Suburban Land
Agency

FOI Reference: 19/35434

Dear [REDACTED]

Decision Notice - Freedom of Information Application 19/35434

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Suburban Land Agency (the Agency) on 11 November 2019, in which you sought access to "final documents and reports provided in relation to contracts SL190062; SL180398; and SL190389".

The contracts listed by your application are as follows:

1. Contract SL190062 - Independent Review of the Ginninderry Joint Venture
2. Contract SL180398 - Summary Report on the Ginninderry Joint Venture
3. Contract SL190389 - Commercial Advisory - Ginninderry Joint Venture

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

I appreciate your patience in the processing of your application and your agreement to extend the deadline.

The Agency is required to make a decision on your access application on or before 7 February 2020.

Information Identified

Thorough document searches and assessment were conducted by the Agency and FOI Team. Two reports were identified to be relevant to your request and are listed on the schedule of documents at **Attachment A**.

1. Contract SL190062

This contract pertains to an Independent Review of the Ginninderry Joint Venture which entailed the production of a report of the same name, dated 20 December 2018. Two copies of this report were identified and are included as items 1 and 2 on the attached schedule.

2. Contract SL180398

Consultancy services were contracted as part of the process to determine appropriate funding mechanisms for the Ginninderry Joint Venture. These services included specialist accounting advice to assist with the treatment of past funding of the Joint Venture in the annual financial statements and to advise on taxation implications of the equity contribution option of short-term funding.

A report was prepared in accordance with Internal Audit Service Work Order "Summary Report on the Ginninderry Joint Venture". This report, *Financing Arrangements for the Ginninderry Joint Ventures* (June 2018), is listed as item 3 in the attached schedule.

3. Contract SL190389

Commercial advice was procured from KPMG to assist in the management of the Ginninderry Joint Venture. No reports were produced by KPMG under this contract and therefore the Agency holds no documents relevant to this point of your application.

Consultation

Consultation was undertaken with all identified relevant parties as required under section 38 of the Act.

I must consider the views of relevant third parties when deliberating the release of information that concerns them; however, I am not bound by the contentions they make.

During the consultation process, objections to the disclosure of the information relevant to your application were raised. I am obliged to defer access to the information that I have decided to release to you to allow these parties opportunity to seek review of my decision (as set out in my statement of reasons below).

Under section 74 of the Act, these parties are entitled up to 20 working days to seek review of my decision – or a longer period allowed by the ACT Ombudsman. Should any of these parties disagree with the Ombudsman's decision they may exercise further review rights.

In effort to reduce the period of deferment, the FOI Team will re-engage with the relevant third parties to ascertain if they do not intend to seek further review.

You will be notified of the end of the period of deferment and provided information accordingly.

Decision on Access

I have decided to partially release the information you have requested as it consists of information (either in part or in whole) that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

The schedule of documents at **Attachment A** provides descriptions and access decisions for each of these documents.

I have decided to grant partial access to the Independent Review of the Ginninderry Joint Venture report (refer scheduled items 1 and 2) and, in accordance with section 50 of the Act, with deletions applied to contrary to the public interest information.

I have decided to refuse access to the Financing Arrangements for the Ginninderry Joint Ventures report (refer scheduled item 3) as it contains information that, on balance, would be contrary to the public interest to disclose.

My access decisions are detailed further in the following statement of reasons.

Material Considered

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

- the Act, particularly sections 9, 17, 38, 50 and Schedule 2
- the content of the documents that fall within the scope of your request, and
- the views of relevant third parties.

Public Interest Considerations

My access decisions are set out in the following statement of reasons.

Information Disclosure – Schedule 2 of the Act

The Act recognises the right of every person to obtain access, under its provisions, to government information (refer section 7 of 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

- 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 the community of the government's operations including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community
- Schedule 2.1(a)(iv) – ensure effective oversight of the expenditure of public funds
- 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

- 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)(viii) - prejudice the economy of the Territory
- Schedule 2.2(a)(xi) - prejudice trade secrets, business affairs or research of an agency or person
- Schedule 2.2(a)(xii) - prejudice an agency's ability to obtain confidential information the economy of the Territory
- Schedule 2.2(a)(xiii) - prejudice the competitive commercial activities of an agency
- Schedule 2.2(a)(xvi) – prejudice the deliberative process of government

Personal Information

I have deliberated on the benefit that would be served to the public on release of the requested information in its entirety. I have considered how the content of the identified documents would promote open discussion, debate, and reveal government processes/ decision-making.

Scheduled items 1 and 2 contain personal information of consultants and stakeholders which I consider, if disclosed, could reasonably be expected to prejudice the protection of an individual's right to privacy.

I have given consideration to the extent that this information is publicly available, third-party consultation responses, and that these individuals were engaged in official business dealings with the ACT Government.

On balance of these factors and the reasonableness of the release of this information I have weighed up the competing public interest factors and the pro-disclosure bias to be exercised under the Act.

I have determined to release the names but not contact details of these individuals with regard to the diminished prejudice expected to result by the release of this information.

Prejudice the Economy of the Territory

The Agency has responsibility to contribute to growth and diversification of the Territory's economy, encourage and promote urban renewal outside declared urban renewal precincts, and social and environment sustainability.

The Ginninderry Joint Ventures manage a significant land holding and associated activity in the land release and sales program under a cross-border project between the ACT and NSW. I have considered the extent to which the public would benefit from the identified information relating to the structuring and management of the Ginninderry Joint Venture agreement.

I have determined that it is in the public interest to disclose joint venture information under this application.

Information relating to the funding of the joint venture has been identified which, if released, would be expected to place the Territory at a disadvantage in negotiating with private sector entities on a commercial basis. I have considered how the public's perception of, and confidence in, certain entities or an industry may be affected.

The reports include significant detail surrounding the current commercial arrangement and future financing of the joint venture. The release of this information may prejudice the future land transactions of the Territory thereby diminishing the economy of the Territory.

In fulfilling my obligations under the Act, I have decided that the detriment of the release of information concerning the Territory economy outweighs the public interest in accessing the level of detail contained in the reports. It is for this reason, I apply section 50 of the Act as appropriate (refer scheduled items 1 and 2).

Business Affairs or Research

The documents contain current information of relevant third parties that is not common knowledge; this includes details of their methodology and research, which if released, could reasonably be expected to provide an advantage to their competitors, increase competitive pressures, and may diminish the value of that information.

Information contained in the report includes intellectual property and research of a third-party. I have weighed this against the expectations of the delivery of services to the Territory under a contractual arrangement.

I have taken into consideration the competitiveness of the market and how the release of this information may impact on relevant third-parties. I have balanced third parties' view with the overall public interest in the operations of government dealings, context for decisions made and expenditure of public moneys.

I have identified certain information that, if released, is reasonably expected to negatively impact third-parties by diminishing the value of the research and intellectual property and impact their business affairs.

Confidential Information

There is a clear expectation by the relevant third parties that the information communicated in the identified reports would remain confidential. I have regarded the nature of the engagement with the parties and sensitivity of the information against how the reports would advance the community's understanding of the joint ventures' operations and the transparency in government dealings.

I have deliberated on the extent to which the information is known and its currency. I have determined that the release of certain information relevant to your application could reasonably be expected to harm the future supply of such confidential information.

It is in the public interest that the Agency may pursue thorough and confidential assessment of its operations and industry advice to the benefit to the ACT community.

It is my view that the release of this information may prevent the Territory from obtaining commercial and investment advice in the future without concern of broader disclosure.

Competitive Commercial Activities

In exercising its functions, the Agency must operate effectively, in a way that delivers value for money, in accordance with sound risk management practices.

The reports provide contextual information on the decisions and structuring of the expenditure of public moneys.

I have given thought to how the release of the reports would possibly enable critical assessment of the expenditure and efficiency of the joint venture's commercial activities.

These documents provide granular detail of commercial information, including valuable commercial advice to improve the process of selling land. It is imperative that the Agency maintains the ability to operate in a commercial manner.

I have considered that the release of some of the information identified is reasonably expected to diminish the Agency's bargaining power or ability to negotiate competitive commercial terms. It is my view that releasing this information would compromise the Agency's ability to operate commercially in the land market and would prejudice the competitive commercial activities of the Agency.

Deliberative Process of Government

The reports were prepared to provide opinion, advice and recommendations for consideration by the Agency. This information was provided to inform decisions made concerning the joint ventures.

I have deliberated on how release of this information would reveal reasons for government decisions and how principles of transparency and accountability would best be served.

Certain matters addressed in the reports are currently under consideration by the Agency and the joint ventures.

It is my view that the reports are subject to an active deliberative process and contain information that was prepared or communicated in the course evaluating matters relating to the joint ventures. The premature release of this information may impede the effective completion, and prejudice the integrity, of these commercial activities.

The deliberative process may also be prejudiced by the release of these documents at this point in time as it may cause undue disruption and reallocation of resources to deal with further public debate or pressure.

Charges

Pursuant to section 107(2)(e) of the Act, processing charges are waived for this application.

Online Publication

Under section 28 of the Act, the Environment, Planning and Sustainable Development Directorate, (EPSDD) maintains an online record of access applications called a disclosure log, on the Agency's behalf. Your original access application, my decision and the schedule released to you in response to your access application will be published in the EPSDD disclosure log from three days after this decision is provided to you. 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



Tom Gordon
Information Officer
Suburban Land Agency

7 February 2020

