



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 02 6207 1923
Reference: 20/47841

Dear [REDACTED]

Freedom of Information 20/47841

I refer to your application made under section 30 of the *Freedom of Information Act 2016* (the Act) received by Environment, Planning and Sustainable Development Directorate (EPSDD) on 16 July 2020, in which you sought access to documents relating to the Environmental Impact Statement (EIS) 201700053 process for Blocks 9 and 11 Section 8 Fyshwick.

Specifically, you are seeking:

Electronic copies of the following documents, correspondence and records in regard to the EIS201700053 process for Blocks 9 and 11 Section 8 Fyshwick;

Emails, records of phone conversations and all other communication between ACTPLA and/or EPSDD and Minister Gentleman and the Chief Minister Barr, between August 1st 2019 and the present, regarding CRS's EIS201700053 for a Materials Recovery Facility at Fyshwick.

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

EPSDD is required to make a decision on access on or by 20 August 2020. Thank you for your patience and agreement to a five day extension.

Searches Conducted

Comprehensive searches were conducted and 59 documents 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 20 documents relevant to your application.

I have decided to grant partial access to four 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 two documents, under section 45(a) of the Act, this information is available online. A hyperlink to the information is included on the schedule.

Thirty-three documents were identified containing duplicate information, these documents are listed on the schedule but will not be provided to you.

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, 43, 45, 50, 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

Scheduled item 46 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 the 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*.

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.

Charges

In accordance with section 107(2)(b) of the Act, any charges applicable for this application have been waived due to the public interest in the subject matter.

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 information 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



Brett Phillips

Information Officer

Environment, Planning and Sustainable Development Directorate

18 August 2020