



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 21/66107

Dear [REDACTED]

Decision on Freedom of Information Access Application 21/66107

I refer to your application made under section 30 of the *Freedom of Information Act 2016* (the Act) received by the Environment, Planning and Sustainable Development Directorate (EPSDD) on 23 July 2021.

Specifically, you are seeking:

...information held by EPSDD about the legislative review of the Lakes Act 1976 (ACT) conducted by the Lakes Managers Forum in 2016, including the report of the review.

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

With third party consultation and your agreement to extension, EPSDD must make a decision on your application on or by 25 February 2022. Your patience in this matter is appreciated.

Searches Conducted

Comprehensive searches were conducted and 39 documents containing information within the scope of your application have been 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 12 documents relevant to your application.
- I have decided to grant partial access to 24 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 three documents. These three documents are refused under Schedule 1 of the Act and are deemed 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.

Material Considered

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

- the FOI Act, particularly sections 6, 17, 38, 50 and Schedules 1 and 2
- the content of the documents that fall within the scope of your request
- the *Human Rights Act 2004*
- the views of a third party consulted
- information publicly available

Public Interest Considerations

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

Information Disclosure – Contrary to the Public Interest under Schedule 1 of the Act

Schedule 1, 1A Information in possession of a Court or Tribunal

Document 6 is a copy of the Reason for Findings relating to a Coronial Inquiry. This document has not been published or released in full and contains detailed information regarding the death of a member of the public. In accordance with the Coronial Practice Direction ([CPD 2 of 2019](#)) any other person may request a copy of the Coroner's findings or other documents on application in writing to the Court. This information is deemed contrary to the public interest under Schedule 1, 1.1A of the Act, information in possession of a court or tribunal.

Schedule 1, 1.2 Information Subject to Legal Professional Privilege

Documents 20 and 26 include information relating to legal advice obtained. Access to this information is refused under Schedule 1, 1.2 of the Act, being information that would be privileged from production of admission into evidence in a legal proceeding.

Schedule 1, 1.6 (a) Information Subject to Legal Professional Privilege

Documents 38 and 39 are copies of the Cabinet Submissions relating to the amendment to the *Lakes Act 1976* this information was created for and submitted to Cabinet.

The information referred to in these documents 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

In applying the public interest test, I have determined that disclosure of the information could reasonably be expected to do the following:

- Schedule 2, 2.1(a)(i) – promote open discussion of public affairs and enhance the government’s accountability
- Schedule 2, 2.1(a)(ii) – contribute to positive and informed debate on important issues or matters of public interest
- Schedule 2, 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, 2.2(a)(ii) – prejudice the protection of an individual’s right to privacy or any other right under the *Human Rights Act 2004*
- Schedule 2, 2.2(a)(x) – prejudice intergovernmental relations
- Schedule 2, 2.2(a)(xvi) – prejudice a deliberative process of government.

Personal Information

Documents relevant to your application contain personal and contact information of individuals not employed by ACT Government. 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 if disclosed, could reasonably be expected to prejudice the protection of an individual’s right to privacy under section 12 of the *Human Rights Act 2004*. On balance, and the information available to me, I am satisfied that the disclosure of this personal information is not in the public interest.

Intergovernmental Relations and Deliberative process of Government

Document 27 contains information relating to the Commonwealths’ work in reviewing and amending the *Lakes Ordinance 1976*. This information, if released, could be expected to prejudice intergovernmental relations. Premature release of this information could be expected to negatively affect the collaborative relationship of ACT Government and the Commonwealth as the deliberations are still in progress and not yet fully in the public realm.

To provide you with the information that I have determined to be in the public interest to release, copies of some documents have been prepared with 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 are waived.

Online Publication

Under section 28 of the Act, EPSDD maintains an online record of access applications called a disclosure log. Your original access application, this decision and documents released 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 disclosure log at

<https://www.environment.act.gov.au/about-us/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

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/>

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



Ian Walker
Information Officer
Executive Group Manager, Environment, Heritage and Water
Environment, Planning and Sustainable Development Directorate

25 February 2022