



**ACT**  
Government

Environment, Planning and  
Sustainable Development

Phone: (02) 6207 1923

Reference: 22/52495



Dear 

### **Decision on Freedom of Information Access Application 22/52495**

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 28 April 2022. Your application was received via transfer from Chief Minister, Treasury and Economic Development Directorate.

Your application is as follows:

*“The specific request is to:*

- *Identify to whom the following reporting requirements are sent (the position and ACT Directorate, and responsible Minister)?, and*
- *Who is the regulatory body?:*
  - *MBFF Claim decisions reporting –*
    - *Periodic claim statistics,*
    - *Annual claim statistics*
  - *MBFF Financial Reporting*
    - *Periodic*
    - *Annual*
  - *Reporting of changes to the scheme, including changes to the Trust Deed, Contingency and Compliance Plans*
  - *Reporting of any breaches*
- *Should these reporting requirements and regulatory functions be split, who has oversight of the MBFF reporting in its entirety to obtain a holistic picture of the Fund’s operation? Regulatory powers are the powers used by government agencies and regulators to ensure individuals and industry comply with legislative requirements, and to respond to instances of non-compliance.”*

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 was required to make a decision on your application on or by 26 May 2022. You agreed to an extension to 3 June 2022.

Your application was not finalised by the due date and therefore, is considered a deemed refusal under section 39 of the Act. As advised by the Information Governance Team on 31 May 2022, a notice will be made to the Ombudsman in accordance with section 39 of the Act.

Regardless of the deemed refusal, EPSDD has continued to progress your application. We appreciate your patience as we worked with you to finalise your application.

I note your application asks a series of questions rather than requesting access to specific documents. The responsible Minister and Directorate for the *Building Act 2004* are set out in the Administrative Arrangements 2020 (No 1). The Administrative Arrangements are made under the *Australian Capital Territory (Self-Government) Act 1988 (Cwlth)* and the *Public Sector Management Act 1994* and set out the Ministers and Directorates that are responsible for all ACT legislation. Administrative Arrangements are publicly available and the current version is available at <https://legislation.act.gov.au/ni/2022-157/>

The questions you have asked through this request are already being addressed as part of EPSDD's response to the questions raised in your meeting with Minister Vassarotti and summarised in your email of 31 March 2022.

### **Searches Conducted**

Comprehensive searches were conducted and 21 documents containing information relevant to your application were identified.

I have refused to deal with parts of your application under section 43(1)(d) of the Act. Under section 43(1)(d) a respondent may refuse to deal with an access application wholly or in part only if the government information is already available to the applicant.

Section 45 of the Act sets out the circumstances in which government information is already available to the applicant. Those circumstances include where the government information is made publicly available (section 45(a)). The government information I am specifically referring to in this case being the *Administrative Arrangements 2022 (No 2)* and the *Building Act 2004* and associated instruments.

### **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 four documents relevant to your application.

I have decided to grant partial access to 17 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.

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, 37, 43, 45, 50 and Schedule 2
- the content of the documents that fall within the scope of your request

- the *Human Rights Act 2004*
- your views regarding the public interest
- 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 – 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.

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

#### Personal Information

Documents relevant to your application contain personal information of individuals (including names, signatures, mobile phone numbers or identifying information). 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 protection of the individuals’ personal information outweighs the benefit which may be derived from releasing them. I consider that these individuals are entitled to expect that the personal information they have supplied to ACT Government will be dealt with in a manner that protects their privacy. I consider that if this information was disclosed, it 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.

## Business Affairs

Documents relevant to your application contain information relating to the business affairs of a third party. As the third party has objected to the release of any business information in a previous access application recently, consultation was not undertaken.

As one of two providers of home warranty insurance in the ACT, the release of their financial information would increase competitive pressures and provide a commercial advantage to existing and potential competitors which would be a detriment to the third party.

Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met and will provide you with access to the majority of the information held by the Directorate within the scope of your request

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 the *Freedom of Information (Fees) Determination 2018* no charges are applicable to this application, the number of pages to be released is below the minimum threshold.

## **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](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](mailto: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](mailto:EPSDFOI@act.gov.au).

Yours sincerely



Information Officer  
A/g Executive Branch Manager, Planning and Urban Policy  
Environment, Planning and Sustainable Development Directorate

15 July 2022