



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923

Reference: 22/141361

Dear Mr Lowe

Decision on Freedom of Information Access Application 22/141361

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 25 October 2022.

Specifically, you are seeking for the time period 29 August to 25 October 2022:

- *“Copies of any documents (including drafts) being emails, meeting notes, file notes, briefing papers, minutes, working papers, reviews, assessments, reports or other written items prepared by Development and Implementation Strategic Projects EPSDD in relation to Application DS2022-330 within the relevant period.*
- *Copies of any documents (including drafts) being emails, meeting notes, file notes, briefing papers, minutes, working papers, reviews, assessments, reports or other written items prepared by other ACT Government entities in relation to Application DS2022-330 within the relevant period.*
- *Copies of any written communications or records of verbal communication between EPSDD and UGL and/or Transport NSW in relation to Application DS2022-330 within the relevant period.*
- *Copies of any documents (including drafts) being emails, meeting notes, file notes, briefing papers, minutes, working papers, reviews, assessments, reports or other written items relating specifically to the scope, objectives and time frames for the Executive inquiries in relation to Application DS2022-330 within the relevant period.”*

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 third party consultation was undertaken, EPSDD must make a decision on your application on or by 13 December 2022.

Searches Conducted

Comprehensive searches were conducted and 37 documents containing information 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 26 documents relevant to your application.

I have decided to grant partial access to 10 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 one document, as I consider the information to be contrary to the public interest at this time.

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 Schedule 2
- the content of the documents that fall within the scope of your request
- the *Human Rights Act 2004*
- the views of third party consulted

Third Party Consultation

In accordance with section 38 of the Act, consultation was undertaken with a third party as information that may have been of concern to them was identified. The third party did not object to release of the information concerning them.

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
- 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)(xvi) – prejudice a deliberative process of government.

Personal Information

Documents relevant to your application contain personal information of individuals. 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.

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.

Deliberative process of government

I have decided to withhold access to document 37 from release. Document 37 relates to a draft document that will be considered by the Minister and is being prepared as a basis for intended deliberations. It would be contrary to the public interest to disclose the information given its deliberative nature and the works have not yet been achieved. At this time, I am satisfied that the nondisclosure factor under Schedule 2, 2.2(a)(xvi) outweighs the factors favouring disclosure.

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. Additional redactions regarding personal and business information will be applied to the documents.

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



Lynette Marsh
Information Officer
A/g Executive Branch Manager, Development and Implementation
Environment, Planning and Sustainable Development Directorate

13 December 2022