



**ACT**  
Government

Environment, Planning and  
Sustainable Development

Phone: (02) 6207 1923  
Reference: 22/159938

Dear [REDACTED]

## Decision on Freedom of Information Access Application 22/159938

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 16 December 2022, in which you sought access to documents relating to kangaroo management.

Specifically, you are seeking answers to the following questions:

*“With regard to ‘indigenous cultural use’ I request documents or documented and referenced information from 2009 to 2022 inclusive be provided to assist in answering the following questions:*

- 1. How many kangaroo bodies and/or what tonnage of kangaroo meat has been supplied for ‘indigenous cultural use’?*
- 2. To precisely which entity or entities representing Indigenous people was it supplied?*
- 3. What are the credentials of this entity in terms of providing verifiable representation for Indigenous people?*
- 4. What ‘cultural uses’ were proposed for this meat?*
- 5. In what form was the meat provided to these entities (e.g., corpses, butchered meat, boned meat)?*
- 6. Did the government or EPSDD require or receive any remuneration from the Indigenous people for the supply of this meat, and, if so, in what form and of what monetary value?*
- 7. What records has EPSDD required and received from the entity to which the meat was supplied, as to the fair and reasonable distribution of the meat to Indigenous people?*
- 8. Were other local First Nation people, besides the Ngunnawal, consulted about whether they wished to receive any of this meat? “*

As the *Freedom of Information Act 2016* does not provide for questions to be answered but rather access to the information held by an agency (essentially, information contained in a ‘record’ that is held by the agency or the agency is entitled to access), relevant documents will be provided rather than specific questions answered.

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 an extension was granted to, EPSDD must make a decision on your application on or by 9 February 2023.

### **Searches Conducted**

In response to your application, comprehensive searches were conducted and three documents containing information within the scope of your application were identified.

### **Access Decision**

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.

For the reasons set out below, I have decided to grant partial access to three 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.

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

- the FOI Act, particularly sections 6, 17, 50, 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 third parties consulted
- information publicly available
- staff accounts of intimidating behaviour associated with objections to the kangaroo management program
- public media surrounding the kangaroo management program and associated protests
  - <https://www.canberratimes.com.au/story/6049526/animal-activists-prepare-for-act-governments-kangaroo-cull/>
  - <https://www.canberratimes.com.au/story/6110070/protests-loom-as-acts-largest-kangaroo-cull-begins/>
  - <https://www.canberratimes.com.au/story/6155391/kangaroo-cull-triggers-macabre-protest-plan/>
  - <https://www.canberratimes.com.au/story/6152226/anger-at-defence-cull-of-14000-kangaroos/>
  - <https://www.canberratimes.com.au/story/6139689/vandals-hit-parks-and-conservation-depot-to-protest-kangaroo-cull/>
  - <https://www.canberratimes.com.au/story/6066989/dead-joey-stuffed-in-senior-public-servants-letterbox-as-kangaroo-cull-tensions-rise/>

The documents released to you by my decision are provided at **Attachment B** to this letter.

### **Reasons for decision**

My reasons for deciding not to grant access to components of these documents are as follows.

*Information Disclosure – Contrary to the Public Interest under Schedule 1 of the Act*  
*Schedule 1, 1.14 Law enforcement or public safety information*

Section 1.14 provides that the disclosure of information is taken to be contrary to the public interest if it would, or could reasonably be expected to, affect law enforcement or public safety. Schedule 1, 1.14(1)(c) applies where the disclosure of information would, or could reasonably be expected to, endanger a person's life or physical safety. Section 1.14(1)(d) applies where disclosure of the information would, or could reasonably be expected to, result in a person being subject to a serious act of harassment or intimidation.

The disclosure of names, initials, positions, work locations and signatures of EPSDD staff members, and the names and locations of third parties is taken to be contrary to the public interest under Schedule 1, 1.14(1)(c) and 1.14(1)(d). Disclosure of this information would or could reasonably be expected to result in endangering the physical safety of EPSDD staff members and/or the staff of third-party providers.

The extended history of protest activity associated with the kangaroo management program, which is evidenced in the links to newspaper articles above, is sufficient to consider that staff safety is a legitimate concern.

Due to the nature of work conducted by EPSDD staff, and third parties, release of this information would, or could reasonably be expected to result in serious harassment or intimidation from members of the public who feel strongly regarding animal welfare. Directorate staff involved in kangaroo management have been subject to serious harassment and intimidation in the form of aggressive phone calls, damage to personal property and invasion of privacy. Staff have also been the target of illegal activities such as those highlighted in the media article published on 29 May 2015 titled ["Dead joey stuffed in senior public servant's letterbox as kangaroo cull tensions rise."](#)

On balance, in considering the safety of ACT Government employees and third-party service providers against the public right of access to information, I have determined that the safety of staff and contractors is the paramount consideration.

This information 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.

Collectively, these factors demonstrate that the release of the requested information may assist in public understanding of government decisions and provide insights as to the context for them, promoting transparency and accountability.

*Factors favouring Nondisclosure*

I have however, also 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.

In my review of the requested information, I have given regard to the pro-disclosure bias of the Act and the benefit of open government and transparency in government processes and decision-making.

I have considered whether the release of the personal information within these documents would advance the public interest and it is my view that, in this instance, the release of this information would not serve to further open discussion, government accountability, informed debate and the provision of contextual or background information. I am satisfied that the disclosure of this personal information could reasonably be expected to prejudice the protection of an individual’s right to privacy under the *Human Rights Act 2004*. This is a factor favouring nondisclosure under Schedule 2, section 2.2(a)(ii) of the Act.

In balancing public interest considerations, I am satisfied that, on the information available, disclosure of the identified personal information may constitute a breach of privacy and is therefore contrary to the public interest to disclose. Accordingly, I have decided to grant partial access to these documents as they contain information that falls within the meaning of personal information as defined by the Act.

One document within scope identifies the names of third parties who are associated with the disposal of kangaroo carcasses and meat. Public information sharing campaigns initiated by animal rights groups advocate for the boycotting of businesses that use kangaroo carcasses and meat. Disclosing this information would cause reputational harm to the third parties and prejudice their business affairs.

I have considered the disclosure of business affairs information in accordance with Schedule 2, 2.2(a)(xi) and whether the disclosure would advance the public interest. In reaching my decision I have weighed the public interest considerations, the information available and

views of the third parties. On balance I have decided that there is a high potential of reputational harm in disclosing third parties' business names.

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**

As per your request, and 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](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



Bren Burkevics  
Information Officer  
Executive Group Manager, Environment, Heritage and Water

9 February 2023