



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 24/046703

Dear [REDACTED]

Decision on Freedom of Information Access Application 24/046703

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 2 May 2024.

Specifically, you are seeking:

Information relating to "...the decision by Planning and Land Authority (the Authority) to grant lease approval of Majura Block 474 commencing 11 December 2019. I request copies of the following documents:

- 1. All written communications from the Authority to the applicant in relation to lease approvals relevant to Majura Block 474, whether by letter, email, SMS, file notes, diary entries or records of telephone conversations, together with any attachments or enclosures, including any drafts, revisions and final versions and all electronic exchanges in whatever form, together with attachments and other material relating to the decision to grant a lease on, or about, 11 December 2019 to the ACT Regional Transport and Distribution Industry Training Council (RTDITC).*
- 2. All communications from the applicant to the Authority in relation to lease approvals relevant to Majura Block 474, whether by letter, email, SMS, file notes, diary entries or records of telephone conversations, together with any attachments or enclosures, including any drafts, revisions and final versions and all electronic exchanges in whatever form, together with attachments and other material relating to the decision to grant a lease on, or about, 11 December 2019 to the RTDITC.*
- 3. Any briefs, file notes, reports, minutes, summaries, diary entries or other records, for financial arrangements, agreements, or transactions relevant to the granting of the lease and for the maintenance of crown infrastructure at Majura Block 474 since the commencement of the lease."*

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

In accordance with section 40 of the Act, and as third party was undertaken, a decision on your access application must be made on or by 8 July 2024.

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 two documents relevant to your application
- grant **partial** access to five 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.

Under section 43(1)(d) of the Act, a respondent agency may refuse to deal with an access application wholly or in part if the government information is already available to the applicant. Those circumstances include where the government information is available for purchase (section 45(g)).

Three documents in scope (Determination/Surrender of a crown lease form, Company Execution Panel form and a copy of the Crown Lease) are available to purchase via the ACT Land Information System on the Access Canberra website: <https://actlis.act.gov.au/>

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, 43, 45, 50, Schedule 2
- the content of the documents that fall within the scope of your request
- the *Human Rights Act 2004*
- 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.

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

Personal Information

Documents 1, 2, 4, 5 and 7 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.

Information relating to the business affairs of an agency

Document 2 contains information relating to financial investments of the third party. I have considered how the public interest would be advanced by releasing this information. It is my view that the information if disclosed, could reasonably be expected to prejudice the business affairs of the third party. On balance, and the information available to me, I am satisfied that the disclosure of this 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.

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 50 page 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/accountability-and-oversight/freedom-of-information/foi-complaints-and-reviews>

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
15 Constitution Avenue
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 EPSDFOI@act.gov.au or (02) 6207 1923 and ask for the Information Governance team.

Yours sincerely

(signed electronically)

Craig Weller
Information Officer
Executive Branch Manager, Statutory Planning
Environment, Planning and Sustainable Development Directorate
08 July 2024