



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference: 18/12060



Dear 

Freedom of information request: 18/12060 – Direct Sale Section 8 Block 11 Fyshwick

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Environment, Planning and Sustainable Development Directorate (EPSDD) on 25 May 2018, in which you sought access to documents relating to **Direct Sale Section 8 Block 11 Fyshwick**

Specifically, you are seeking:

“all information and documents, electronic and otherwise including record of conversations, related to the direct sale of unleased territory land, Block 11 Section 8 Division Fyshwick, including but not limited to any lapse or extension of the Direct Sale offer original dated 17 October 2017. The documents would include evidence of;

- *CRS acceptance of the offer of sale on or before the due date.*
- *the specific nature of the “required works” giving CRS a discount of \$200,000 and*

CRS request for extension of the SLA offer of sale prior to the expiry date or dates at each extension expiry date as required”

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

The Act requires a response be provided within 20 days of receiving the application, which was 25 June 2018. However, as a result of third party consultation, this deadline was extended by 15 working days; the date for decision is 16 July 2018.

Decision on access

Searches were completed for relevant documents and 19 documents were identified that fall within the scope of your request.

I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

Documents identified as relevant to your request contain information that I consider to be:

- contrary to the public interest information under schedule 1; or
- information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

I have decided to grant access, under section 50 of the Act, to copies of documents with deletions applied to information that I consider would be contrary to the public interest to disclose.

I have decided to refuse access to one identified document as I consider it to be:

- information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

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 17, 38 and Schedule 1 and 2;
- the content of the documents that fall within the scope of your request;
- the views of third parties to whom disclosure of information may be reasonably expected to be of concern;
- information already available in the public domain; and
- your views on the public interest in disclosing the government information applied for (as per section 37 of the Act).

Exemptions claimed

Public Interest Assessment

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

Contrary to the public interest information under 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 (see section 17, the Act).

In assessing the public interest, I must apply the cascading test set out by section 17 of the Act which requires consideration of factors favouring disclosure, any favouring nondisclosure and the balance of those factors when considered cumulatively.

In relation to the documents identified as falling within the scope of your request (scheduled with the status of 'Partial Release' or 'Not for Release'), section 17 applies as follows.

Personal Information

I have considered the release of personal information and my view in this instance is that the identification of third parties 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 2.2 (a)(ii) of the Act.

In balancing public interest considerations I am satisfied that, on the information available, disclosure of the identified personal information of members of the public may constitute a breach of privacy and is therefore contrary to the public interest.

Business affairs

In accordance with section 38 of the Act, I sought the views of relevant third parties on whether government information identified within the scope of your request contained contrary to the public interest information. The third parties contested release of the information as it relates to trade secrets and business affairs, a factor favouring nondisclosure in the public interest under schedule 2.2(a)(xi).

I am not satisfied that disclosure of the business affairs information could reasonably be expected to benefit the public by enhancing government accountability, contributing to informed debate, or providing contextual information for government decisions as it is limited to specific aspects of businesses' affairs.

In balancing public interest considerations, I am satisfied that, on the information available, the disclosure of business affairs information would be an unreasonable disclosure and may constitute a breach of confidence.

Online publishing – disclosure log

Under section 28 of the Act, EPSDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the EPSDD disclosure log no sooner than three days after the date of decision. Your personal contact details will not be published.

You may view the EPSDD's disclosure log at

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

http://www.ombudsman.act.gov.au/data/assets/pdf_file/0026/79190/40A-Reviews-Factsheet-and-Application-Form-final-A1569634.pdf

If you wish to request a review of my decision 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/>

If you have any queries concerning the Directorate's processing of your request, or would like further information, please contact EPSDD Customer Service on 62071923 and ask for the FOI team, or email to EPSDFOI@act.gov.au

Yours sincerely



Paul Lewis

Information Officer
Environment, Planning and Sustainable Development Directorate

13 July 2018