



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference: 19/10546

Dear [REDACTED]

Freedom of information request: Manuka Tree

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 2 April 2019, in which you sought access to the present decision in relation to the manuka tree.

Specifically, you are seeking:

"I request all information – which may include submissions from the public, expert appraisals and other briefing notes, including from the Heritage Council, the Tree Advisory Panel and the Chief Panel – being considered by the Conservator of Flora and Fauna to make the present decision in relation to the registration of the tree at 15 Franklin Street in Manuka under the Freedom of Information Act 2016.

I also request any documents pertaining to the decision made by the Conservator as part of the process"

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.

EPSDD is required to make a decision on your access application by the 3 May 2019.

Decision on access

One file was identified as relevant to your request:

"- Environmental Management – Registration – ACT Tree Registration – Proposed cancellation of PTR093 Griffith"

The file consists of Transport Canberra and City Services records such as: representations and comments from members of the public on the proposed cancellation, tree register nomination documents, correspondence and tree reports.

A decision is yet to be made by the Conservator of Flora and Fauna on the proposal for cancellation of registration under the *Tree Protection Act 2005*.

I have decided to refuse access to all identified documents as I consider them 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.

Material considered

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

- the FOI Act, particularly sections 17, 54 and schedule 2.2;
- the content of the documents that fall within the scope of your request;

Exemptions claimed

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.

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. The following factors under schedule 2.2 favour nondisclosure in the public interest.

Impede the administration of justice generally, including procedural fairness - schedule 2.2 (a) (iv)

The decision is still under consideration by the Conservator. If documents relating to the application were to be released prior to a decision being made, this may prejudice the decision-making process which would in turn, prejudice the administration of justice for the applicant who is entitled to a decision free of undue influence or delays.

Prejudice the management function of an agency - schedule 2.2 (a) (xv)

To release documents under consideration, prior to a decision being made on the application for cancellation of a tree registration would prejudice the ability of the Conservator to perform delegated responsibilities under the *Tree Protection Act 2005*.

No factors favouring disclosure apply to the information while assessment of the application is still underway.

I am satisfied that to release the documents before a decision has been made on application is contrary to the public interest.

The factors favouring disclosure and non-disclosure in the public interest will change following a decision on the application.

Following a decision, the file and documents relevant to your Freedom of Information application will be returned to TCCS as the owner Agency. You may wish to reapply to TCCS.FOI@act.gov.au after the decision has been finalised.

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 disclosure log no sooner

than 3 days after the date of my decision. Your personal contact details will not be published.

You may view the 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



Ian Walker

Information Officer
Environment, Planning and Sustainable Development Directorate

3rd May 2019