



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference: 19/06159



Dear 

Freedom of Information Request: 19/06159

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 February 2019, in which you sought access to *“documents relating to the audit of data reported to the ACT Government from Evoenergy in relation the Feed-In Tariff Schemes. This may include, but is not limited to ministerial correspondence, briefings, correspondence between the Government and Evoenergy, contracts, negotiations and meeting minutes”*.

I note that you have subsequently agreed to refine the scope to exclude the following:

- duplicates of documents;
- copies of Legislation that are publicly available;
- drafts;
- internal working documents, provided that they do not contain information such as Ministerial briefs and similar, and that final documents are included; and
- inter-business unit correspondence that is of an administrative nature.

Further to the exclusions above, you clarified that you would like correspondence between business units, other Directorates, external entities and Ministers included if available.

I note that you have agreed to an extension of time with the decision deadline of 11 June 2019.

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

Decision on Access

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

I am granting access to 31 documents in full.

Fourteen documents identified as relevant to your request contain information that I consider would, on balance, be contrary to public interest to disclose under the test set out in section 17 of the Act.

Under section 50 of the Act, I am granting access to copies of these documents with deletions applied to the information that I consider would be contrary to public interest to disclose.

In accordance with section 43 (1) (d) of the Act, I am refusing access to two documents as they are publicly available.

My decisions on access are detailed further in the following statement of reasons.

Material Considered

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

- the Act, particularly sections 17, 38, 50 and Schedule 2;
- the *Information Privacy Act 2014* (Privacy Act);
- views of relevant third parties; and
- the content of the documents that fall within the scope of your request.

Public Interest Considerations

My reasons for deciding access to documents are set out below. In reaching my decision I have applied the public interest test under section 17 of the Act as follows:

Information Disclosure - Contrary to the Public Interest

The Act recognises the right of every person to obtain access, under its provisions, to government information (see section 7 of 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 factors favouring non-disclosure and the balance of those factors when considered cumulatively.

Business Affairs

Consultation was undertaken with relevant third parties on the release of documents identified to contain information relating to their business. Under section 38 of the Act, the relevant third parties were provided an opportunity to contest the release of information that they consider may prejudice trade secrets and business affairs, a factor favouring non-disclosure under Schedule 2.2 (a) (xi) of the Act; no objections were raised on this basis.

I have considered the release of business affairs information and whether the disclosure of that information would serve to further open discussion, government accountability, informed debate and the provision of contextual or background information.

On balance of these public interest considerations and the information available, I have concluded that the disclosure of this business information is in the public interest to release.

Personal Information

Some items are scheduled for partial release as they contain information that falls within the meaning of personal information as defined by the Act.

I have considered the Territory Privacy Principles of the Privacy Act and the release of this information, and my view in this instance is that the identification of these 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 identified 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 disclosure is therefore contrary to the public interest.

Online Publication – 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. Your personal contact details will not be published.

You may view our disclosure log at <http://www.environment.act.gov.au/about/access-government-information/disclosure-log>.

Ombudsman Review

My decision on your access application 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

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 EPSDFOI@act.gov.au

Yours sincerely



Gene McGlynn

Information Officer

Environment, Planning and Sustainable Development Directorate

11 June 2019