



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 21/00163

Dear [REDACTED]

Freedom of Information 21/00163

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 29 December 2020, in which you sought access to documents relating to Block 25 Section 21 Braddon

On 4 January 2021, you confirmed you are seeking:

In relation to the Development Application (DA) files listed (201426689, 201527229, 201527925) you require the following documents :

- *Draft documents – where a final copy can be provided for example the signed pdf version of a letter*
- *Administrative checklists*
- *Automated emails from eDevelopment (the system used for lodgement of Development Applications) e.g. confirmation of creation of DA or payment received*
- *Failed documents – Documents that were replaced and not considered in the decision making*
- *Public notification package - This includes map of notified properties, sample letter to adjoining neighbours, signage template, letter to applicant and lessee advising of commencement of public notification, report listing notified properties*
- *Emails notifying the applicant, lessee, commenting agencies and representors of the decision*

We also request the noise management report dated 23/10/2017 which you identified and indicate was not submitted as part of the supporting documents for a DA.

Your request excluded public register associated document which were provided to you by Access Canberra Land and Planning Services.

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 third party consultation was undertaken, EPSDD must make a decision on your application on or by 18 February 2021.

Searches Conducted

Comprehensive searches were conducted and 56 documents within the scope of your application were located.

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 38 documents relevant to your application.

I have decided to grant partial access to 14 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.

I have refused access to four documents. Two documents are refused in accordance with sections 43(1)(d) and 45(g) of the Act as these documents are available for purchase; information is provided in **Attachment A**. Two documents are refused as I consider the information to be contrary to the public interest.

Third Party Consultation

Under section 38 of the Act, three third parties were consulted. One third party responded. The third party objected to release of the author's name in scheduled item 56. My decision has taken into consideration their views.

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, and schedule 2
- the content of the documents that fall within the scope of your request
- the *Information Privacy Act 2014*
- the *Human Rights Act 2004*
- the views of third parties consulted
- information released to you previously
- 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 2.1(a)(i) – promote open discussion of public affairs and enhance the government’s accountability
- Schedule 2.1(a)(ii) – contribute to positive and informed debate on important issues or matters of public interest.

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(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(a)(ix) – prejudice the trade secrets, business affairs or research of an agency or person
- Schedule 2.2(a)(xii) prejudice and agency’s ability to obtain confidential information.

Personal Information

Documents relevant to your application contain the 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.

Scheduled item 21, consists completely of personal information, duplicated from scheduled item 20. I have decided to refuse access to this document.

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.

Trade Secrets, business affairs or research

Consideration has been given to scheduled item 2 that concerns third parties, and whether the information contained within the documents contains information contrary to the public interest.

The document is a report authored by a third party and includes substantial details in outlining the methodology and research undertaken by this business from which competitors could discern their approach and methodology, consequently leaving them at a disadvantage, a factor favouring nondisclosure under Schedule 2.2(a)(xi) of the Act.

The release of this information may serve to further open discussion, government accountability and informed debate. However, on balance release of this information would

reveal the research and methodology of third parties. On balance, and the information available to me, I am satisfied that the disclosure of this business affairs information is not in the public interest and such I have decided to refuse access to scheduled item 2.

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/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

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 to EPSDFOI@act.gov.au.

Yours sincerely



Information Officer
Executive Branch Manager, Statutory Planning
Environment, Planning and Sustainable Development Directorate

18 February 2021