



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923

Reference: 21/58870

[Redacted]
By Email: [Redacted]

Dear [Redacted]

Freedom of Information 21/58870

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 5 July 2021, in which you sought access to documents relating to the Yellow Box Woodland Ecosystems – Protection Resolution.

Specifically, you are seeking:

“I write to request information held by the directorate in accordance with the Freedom of Information Act (2016).

My request is in relation to the Legislative Assembly resolution of 20 February 2020 on Yellow Box Woodland Ecosystems Protection.

I seek any information held by the directorate relating to debate on the resolution, the development of the subsequent government response and any assessments undertaken in response to the resolution (including any background notes, emails and other working documents).

I also seek copies of any information provided to the Minister for Planning and Land Management and the Minister for the Environment in relation to the resolution and the government's response, as well as any information relating to any meetings, or any other communications, held between representatives of the Watson Community Association, the portfolio ministers and / or EPSDD officers on the same matters.”

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 agreed, EPSDD must make a decision on your application on or by 12 November 2021.

Searches Conducted

Comprehensive searches were conducted and 21 documents containing information within the scope of your application were identified. 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.

Decision on Access

I have decided to:

- grant full access to 11 documents relevant to your application
- grant partial access to eight 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
- refuse access to two documents on the basis that release of this information is taken to be contrary to the public interest under Schedule 1, section 1.6 (1)(a) 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

The Act recognises the right of every person to obtain access, under its provisions, to government information (see section 7, the Act). In reaching my access decision, I have taken the following into account:

- the FOI Act, particularly sections 6, 9, 17, 50, Schedules 1 and 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 – Contrary to the Public Interest under Schedule 1 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, or the information is otherwise deemed to be contrary to the public interest to disclose.

Schedule 1 of the Act identifies the type of information that is taken to be contrary to the public interest to disclose unless the information identifies corruption or the commission of an offence by a public official or that the scope of a law enforcement investigation has exceeded the limits imposed by law.

Schedule 1, 1.6(1)(a) – Cabinet Information

Scheduled items 20 and 21 of Attachment A consist of information brought into existence to be submitted for consideration by Cabinet. Information such as this is taken to be contrary to the public interest under Schedule 1, section 1.6(1)(a) of the Act. This information does not identify corruption or the commission of an offence by a public official or that the scope of a law enforcement investigation has exceeded the limits imposed by law.

I note that the documents include the Government Response to the Resolution, which is itself publicly available via

https://www.parliament.act.gov.au/data/assets/pdf_file/0006/1621869/LIST_-ACT-

Information Disclosure – Schedule 2 of the Act

In deciding whether disclosure of information would, on balance, be contrary to the public interest (where Schedule 1 does not apply), I must apply the test outlined under section 17 of the Act. This test requires consideration of factors favouring disclosure, any favouring nondisclosure and the balancing 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
- Schedule 2, 2.1(a)(x) – contribute to protection of the environment.

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*.

Personal Information

Eight documents relevant to your application contain personal information of individuals (mobile phone numbers and contact information of members of the public). 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.

To provide you with the remaining information in these documents that I have determined to be in the public interest to release, I have decided to grant partial release of these eight documents with the personal information redacted in accordance with section 50 and the Objects of the Act.

Charges

In accordance with section 107(2)(b) of the Act any charges applicable are waived.

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/_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



Carolyn O'Neill
Information Officer
Executive Group Manager, Planning and Urban Policy
Environment, Planning and Sustainable Development Directorate

12 November 2021