



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 22/43004

Dear [REDACTED]

Decision on Freedom of Information Access Application 22/43004

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 6 April 2022.

Specifically, you are seeking:

“FOI - Identification of expense/transfer of funds from Master Builders Fidelity Fund to MBA Skills Centre Building Fund Refer to docs from FOI 22/00134 response and Disallowable Instrument DI2009-92 - Building (Master Builders Fidelity Fund Assets) Determination 2009:

** Request any information on transfer/expenditure of funding from the Master Builders Fidelity Fund (MBFF) to MBA Skills Centre Building Fund identified in the MBFF Annual Financial Reports listed below (see FOI 22/00134 response).*

** Request totals of transfer/expenditure of funds from the MBFF to MBA Skills Centre Building Fund, identified in the MBFF Annual Financial Reports listed below (see FOI 22/00134 response)...”*

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

EPSDD was required to make a decision on your application on or by 31 May 2022. A request for extension to 14 June 2022 was not agreed.

As such, your application was not finalised by the due date and therefore, is considered a deemed refusal under section 39 of the Act. As advised by the Information Governance Team on 31 May 2022, a notice will be made to the Ombudsman in accordance with section 39 of the Act.

Regardless of the deemed refusal, EPSDD has continued to progress your application. We appreciate your patience as we worked with you to finalise your application.

Searches Conducted

Four documents containing information within the scope of your application were identified.

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 refuse access to the four documents as I consider the information to be contrary to the public interest.

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

Material Considered and Third Party Consultation

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

- the FOI Act, particularly sections 6, 16, 38 and Schedule 1
- the content of the documents that fall within the scope of your request
- the views of third party consulted

In accordance with section 38 of the Act, as the requested information may have been of concern to a third party, consultation was undertaken. Even though consultation was undertaken with the third party in relation to the full documents (Annual Reports) during a previous access application, consultation was undertaken in an effort to facilitate release of the specific information with agreement from the third party. The third party objected to release of the specific information requested.

Public Interest Considerations

My reasons for deciding not to grant access to these documents are as follows:

Information Disclosure – Contrary to the Public Interest under Schedule 1 of the Act

The information you have specifically requested is contained within documents subject to a previous access application. Access to these documents was refused in EPSDD's decision of 31 March 2022. This decision is currently under review by the ACT Ombudsman.

As part of this review, EPSDD has provided copies of the Annual Reports to the ACT Ombudsman. Section 16 and Schedule 1, clause 1.12 of the Act consider information in the possession of the Ombudsman that has been obtained in relation to a review to be taken to be contrary to the public interest. The operation of these sections in relation to the documents requires me to refuse this application.

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.

Online Publication

Under section 28 of the Act, EPSDD maintains an online record of access applications called a disclosure log. Your original access application and this decision 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



James Bennett

Information Officer

A/g Executive Branch Manager, Planning and Urban Policy Division
Environment, Planning and Sustainable Development Directorate

30 June 2022