



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference:19/25250

Dear [REDACTED]

Freedom of Information 19/25250

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 09 August 2019, in which you sought access to documents concerning the removal of MST4 and that MSYB1 (Spook Tree).

Specifically, you are seeking the following:

Part 1

Registered as MST4

1. All documents concerning the removal of MST4, including:
 - a. All documents relating to the notification of ACT Heritage that MST4 had been removed.
 - b. All minutes of Heritage Council meetings on this matter (confirm removal of MST4.)
 - c. Correspondence and advice provided by the ACT Government to the Representative Aboriginal Organisations about the removal of MST4.
 - d. The investigation of the removal, including:
 - i. the scope of the investigation;
 - ii. the investigation's findings; and
 - iii. materials collected as part of the investigation such as documentation on the circumstances of the removal, works authorisation and plans, and documents related to when relevant authorities such as ACT Heritage were notified of the removal of the tree.
2. All documents relating to the current whereabouts of the remainder of MST4, including its current management and plans for its future

Part 2

Registered as MSYB1 (Spook Tree)

1. All documents concerning the removal MSYB1 (Spook Tree), including:
 - a. All documents relating to the notification of ACT Heritage that MSYB1 (Spook Tree) had been removed.
 - b. All minutes of Heritage Council meetings on this matter (confirm removal of MSYB1 (Spook Tree)).

- c. Correspondence and advice provided by the ACT Government to the Representative Aboriginal Organisations about the removal of MSYB1 (Spook Tree).

Part 3

PCS procedures

1. Materials that establish or document the procedures the Parks and Conservation Service use prior to undertaking, and during, works to ensure compliance with heritage legislation, such as operations manuals, standard operating procedures and standard terms of contract for contractors.

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

As agreed via email on 16 September 2019, EPSDD is required to decide on your access application by 14 October 2019.

Searches Conducted

Searches were completed for relevant documents, and 205 documents have been identified as relevant to your application.

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

Decision on Access

I have decided to grant access in full to 68 documents relevant to your request.

Duplicates are listed on the schedule but have not provided. Information within documents that is considered out of scope of the application have been redacted (this includes information regarding other Heritage listed items not related to the request). In addition, duplicate documents or emails of an administrative nature have not been provided.

I have refused access to two documents. Scheduled item 145 is refused under Schedule 2.2 (a)(xviii) of the Act. Scheduled item 203 contains Cabinet information that would be contrary to the public interest to release.

Documents identified as relevant to your request contain information that I consider 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. I have decided to grant access to these 137 documents, under section 50 of the Act, to copies of documents with deletions applied to information that I consider would be contrary to the public interest to disclose. These documents are indicated on the schedule as for 'Partial Release'.

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 17, 50, schedules 1 and 2;
- the content of the documents that fall within the scope of your request;

- the *Information Privacy Act 2014* (Privacy Act)
- the *Human Rights Act 2004*

Public Interest Considerations

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

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

Cabinet information

Some of the documents relevant to your application contain information that includes Cabinet information that has been submitted to Cabinet for its consideration. This information is contrary to the public interest to disclose under schedule 1.6 of the Act.

Information Disclosure – Contrary to the Public Interest under Schedule 2 of the Act

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 collectively.

Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that is not in the public interest to release, while releasing the rest of the information will ensure the intent of the Act is met and will provide you with access to the majority of information held by EPSDD within the scope of your request.

Factors favouring disclosure (Schedule 2 section 2.1)

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factor in favour of disclosure is relevant to determine if release of the information contained within these documents is within the 'public interest'.

Disclosure of the information could reasonably be expected to do the following:

2.1(a)(i) promote open discussion of public affairs and enhance the government's accountability;

2.1(a)(ii) contribute to positive and informed debate on important issues or matters of public interest;

2.1(a)(viii) reveal the reason for a government decision and any background or contextual information that informed the decision.

Having considered the above factors identified as relevant in this matter, I consider that release of the information within the scope of the request may contribute to open discussion of public affairs and enhance the government's accountability. I consider there is a public interest in the operations of the ACT Government in relation to the investigation of the removal of the heritage listed scarred tree listed on the register as MSYB1 and MST4. The documents identified as being within the scope of your request provides this information. I am satisfied that the release of this information is within the public interest as it provides background and context to this matter thereby promoting public discussion.

Personal Information

I have considered that the release of information relevant to your application may promote open discussion of public affairs and enhance the government's accountability, contribute to positive and informed debate and reveal the reason for a government decision and any background or contextual information that informed the decision.

Some of the documents relevant to your application contain information that includes the names and contact details of third party individuals, which I consider, if disclosed, could reasonably be expected to prejudice the protection of an individual's right to privacy under the *Human Rights Act 2004*. I have considered whether public benefit would be served by the release of this information and I have decided, on balance, that it would be contrary to the public interest to disclose this information.

Business affairs

I have identified as relevant in considering your access application is the prejudice that could occur in releasing trade secrets, business affairs or research of an agency or person. Having reviewed the documents identified, I am satisfied that the documents contain information related to the business affairs of Treeworks (ACT/NSW) Pty Ltd. I am of the view that the information contained in the documents is sensitive in nature as it contains a quoted figure provided to the ACT Government not publicly known.

Conservation of Heritage value

I also find that disclosure of parts of the Regulatory Advisory Committee Submission if released publicly could provide an understanding of the considerations and processes taken into account by the Committee. This could subsequently be used to remove heritage listed trees on an unauthorised basis across the ACT without fear of prosecution.

In addition, documents which refer to the current location of MST4 have been redacted as I believe there could be a potential of risk to this artefact from vandalism if the location was to become public knowledge.

Online Publication

Under section 28 of the Act, the 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 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's 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

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



Ian Walker

Information Officer
Environment, Planning and Sustainable Development Directorate

14 October 2019