



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923

Reference: 21/112871

Dear [REDACTED]

Decision on Freedom of Information Access Application 21/112871

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 3 November 2021.

Specifically, you are seeking:

"...any final briefs prepared for any ACT Minister(s) or ACT Government witnesses during 2021-2022 Budget Estimates Hearings".

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 by you, EPSDD must make a decision on your application on or by 23 February 2022. Thank you for your patience in this matter.

Searches Conducted

Comprehensive searches were conducted and 10 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 grant full access to eight documents relevant to your application.

I have decided to grant partial access to two 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.

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 and Schedules 1 and 2
- the content of the documents that fall within the scope of your request
- 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

Schedule 1, 1.2 Information Subject to Legal Professional Privilege

Document 9 (Suburban Land Agency Talking Points) includes information relating to legal advice obtained from the ACT Government Solicitor. Access to this information is refused under Schedule 1, 1.2 of the Act, being information that would be privileged from production of admission into evidence in a legal proceeding.

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.

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, 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)(iii) – inform the community of the government's operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community
- Schedule 2, 2.1(a)(iv) – ensure effective oversight of expenditure of public funds.

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)(xvi) – prejudice a deliberative process of government.

Deliberative Process of Government

Document 4 (Minister Berry – SLA – Estimates Briefing Pack) includes information, if released would be expected to prejudice a tender proposal currently being evaluated. I have considered how release of this information could interfere with a competitive process under deliberation, on balance, I have decided this information is not in the public interest to release.

To provide you with the information that I have determined to be in the public interest to release, a copy of the document has been prepared with this redacted in accordance with section 50 and the Objects of the Act.

Charges

In accordance with section 107(2)(e) 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



Craig Simmons
Information Officer
Chief Operating Officer
Environment, Planning and Sustainable Development Directorate

17th February 2022