



Decision on Freedom of Information Access Application 22/21026

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 25 February 2022, in which you sought access to documents relating to Phillip Pool and Ice-Skating Rink, Block 2 Section 22 Phillip.

Specifically, you are seeking:

1. *“the full planning report or documentation provided to the Planning Minister in 2008 which recommended the granting of a 99 year lease to Glencora Pty Ltd for PHILLIP: Block 2, Section 22 - 1 , 3, 5 IRVING STREET, Phillip , ACT 2606. This may include emails between the then Planning Minister and the ACT Planning and Land Authority.*
2. *a Copy of second 99 year lease granted in 2015 -2016, for Block 2, Section 22.”*

You also requested information relating to inspections of the facility by Access Canberra or Sports and Recreation. That information request was transferred to the Chief Minister, Treasury and Economic Development Directorate.

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

You have granted an extension, consequently EPSDD must make a decision on your application on or by 28 April 2022.

Searches Conducted

Comprehensive searches were conducted and three 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 one document 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.

In relation to point 2 of your application, I have refused to deal with your application in so far as it relates to information in one of the relevant provisions under section 43 of the Act. Under section 43(1)(d) of the Act the respondent may refuse to deal with an access application wholly or in part if the government information is already available to the applicant. Section 45 sets out the circumstances in which the government information is already available to the applicant, under section 45(g) this includes information that is available for purchase. The documents referred to are a title search and copy of the Crown Lease (Volume: 2232 Folio:9) for Block 2 Section 22 Phillip. These documents are available to purchase via www.actlis.act.gov.au from ACT Land Titles.

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, 43, 45, 50 and Schedule 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 – 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)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.

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

Documents relevant to your application contain 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.

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.

Charges

In accordance with the *Freedom of Information (Fees) Determination 2018* no charges are applicable to this application as the number of pages to be released is below the minimum 50 page threshold.

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



Information Officer

a/g Executive Group Manager, Statutory Planning

Environment, Planning and Sustainable Development Directorate

28 April 2022