



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 22/166793

Dear [REDACTED]

Decision on Freedom of Information Access Application 22/166793

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 21 December 2022.

Specifically, you are seeking:

"...22/91258 Ministerial Information Brief – Gentleman – Eastern Broadacre Options, Ministerial Information Brief – Rattenbury – Car – free day options."

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 3 February 2023.

Searches Conducted

Comprehensive searches were conducted and two 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 one document 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, 50, Schedules 1 and 2
- the content of the documents that fall within the scope of your request
- the advice provided by business units who prepared the documents

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

Four pages of the Eastern Broadacre Options Ministerial Brief have been identified as information the disclosure of which would reveal deliberations of Cabinet. Under section 1.6(1)(a) information that has been submitted, or that a Minister proposes to submit, to Cabinet for its consideration and that was brought into existence for that purpose and section 1.6(1)(d) information the disclosure of which would reveal any deliberation of Cabinet (other than through the official publication of a Cabinet decision) of Schedule 1 of the Act, is considered Cabinet information and is contrary to the public interest. The purpose of not disclosing this information is to maintain the confidentiality of the Cabinet process and to uphold the principle of collective ministerial responsibility.

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 the public.

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*.

- Schedule 2, 2.2(a)(x) – prejudice intergovernmental relations.
- Schedule 2, 2.2(a)(xiii) – prejudice the competitive commercial activities of an agency.

Personal Information

Documents relevant to your application contain information relating to the properties 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 information that I have determined to be in the public interest to release, copies of some documents have been prepared with information relating to the properties of members of the public redacted in accordance with section 50 and the Objects of the Act.

Intergovernmental Relations

Consideration has been given to the relevant documents and information held that relate to the ongoing negotiations and deliberations relating to the land, and whether the information contained within the documents contains information contrary to the public interest.

Relevant documents include information provided in confidence, and subject to ongoing negotiations and deliberations between the ACT and the Commonwealth. The release of this information may serve to further open discussion, government accountability, informed debate and reveal the reason for a government decision and any contextual or background information. However, on balance release of this information would be detrimental intergovernmental relations between the ACT and the Commonwealth. On balance, and the information available to me, I am satisfied that the disclosure of this information is not in the public interest at this time.

Commercial Activities

When the ACT Government engages or competes with commercial service providers in carrying out particular functions, to operate effectively, it is necessary that certain information relating to its functions is not disclosed. The disclosure of this information could reasonably be expected to prejudice the competitive commercial activities of the ACT Government.

On balance, I have decided that the detriment caused by the release of this information outweighs any anticipated benefit provided by its release. In this instance, my decision is that the prevailing weight favours nondisclosure and that this information should be redacted from the documents. I have decided that the remainder of the documents may be disclosed to you.

Charges

In accordance with the *Freedom of Information (Fees) Determination 2018* no charges are applicable to this application, 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



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

03 February 2023