



ACT
Government

Suburban Land
Agency

[REDACTED]
By Email: [REDACTED]

Dear [REDACTED]

Decision on Freedom of Information Access Application 23/040147

I refer to your application made under section 30 of the *Freedom of Information Act 2016* (the Act) received by the Suburban Land Agency (SLA) on 12 April 2023, in which you sought access to documents relating to the use of explosives in Throsby.

Specifically, you are seeking:

"... the timeframe is from 2013 onwards... documents detailing the strength of the blasts, the placement and the distance it could be felt and the strengths of the blasts at various distances... documents regarding its impact, including possible impact on the land including the land flowing into the nearby suburb of Harrison... documents regarding complaints received and studies about the effect of the use."

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

Due to the additional time allowed to undertake third party consultation, the Environment, Planning and Sustainable Development Directorate (EPSDD) must decide on your application on or by 2 June 2023. Additional time was agreed by you to finalise this matter and your patience is greatly appreciated.

Searches Conducted

Comprehensive searches were conducted and 52 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 12 documents relevant to your application, with information outside of the scope of your application removed.

I have decided to grant partial access to 38 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.

I have refused access to two documents.

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 *Human Rights Act 2004*
- the views of third parties consulted

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

Legal Professional Privilege 1.2

Two documents contain advice provided by the Government Solicitor's Office to the former Land Development Agency. This information is subject to legal professional privilege under Schedule 1, 1.2 of the Act and is refused as I consider the information to be contrary to the public interest.

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)(v) - allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or public official
- Schedule 2, 2.1(a)(viii) - reveal the reason for a government decision and any background or contextual information that informed the decision
- Schedule 2, 2.1(a)(xi) - reveal environmental or health risks or measures relating to public health and safety

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 section 107(2)(b) of the Act any charges applicable are waived.

Online Publication

Under section 28 of the Act, on behalf of SLA, the Environment Planning and Sustainable Development Directorate 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
15 Constitution Avenue
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 SLA'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 EPSDDFOI@act.gov.au.

Yours sincerely

Neil Bulless
Digitally signed by
Neil Bulless
Date: 2023.05.31
16:00:12 +10'00'

Neil Bulless

Information Officer
Deputy Chief Executive Officer

Suburban Land Agency