



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 24/015251



Dear 

Decision on Freedom of Information Access Application 24/015251

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 15 February 2024.

Specifically, you are seeking:

- 1) *A copy of any and all photographs of Strathnairn Section 77 Block 1 on Deposited Plan 14529 on or around 9 November 2022.*
- 2) *A copy of any and all plans of Strathnairn Section 77 Block 1 on Deposited Plan 14529.*
- 3) *A copy of any and all construction/development plan requests of Strathnairn Section 77 Block 1 on Deposited Plan 14529.*
- 4) *A copy of any certifier records for Strathnairn Section 77 Block 1 on Deposited Plan 14529.*
- 5) *Any and all correspondence to and from Achieve Homes Pty Ltd in relation to Strathnairn Section 77 Block 1 on Deposited Plan 14529.*

As information within scope of your application was likely to be held on the building file, your application was partially transferred to Chief Minister, Treasury and Economic Development Directorate.

In accordance with section 40(2)(a) of the Act regarding third party consultation, an additional 15 working days was added to the initial decision date, a decision on access must be made on or by 23 April 2024.

Searches Conducted

Comprehensive searches were conducted and five documents containing information within the scope of your application were identified.

Decision on Access

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

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 two documents relevant to your application
- grant **partial** access to three documents as they contain personal information of a member of the public. This is in accordance with Schedule 2, 2.2(a)(ii) of the Act.
- **refuse** to deal with part of your application under sections 43(1)(d) and 45(g) of the Act.

One document within scope of your application (Deposited Plan 14529) is available for purchase as part of the ACT Land Information System on the Access Canberra website: <https://actlis.act.gov.au/>

Under section 43(1)(d) of the Act, a respondent agency may refuse to deal with an access application wholly or in part if the government information is already available to the applicant. Those circumstances include where the government information is available for purchase (section 45(g)).

Under section 38 of the Act, third parties were consulted on disclosure of the information. Two of those parties responded with no objections to the release of the relevant information, and one did not respond. If a third party does not respond, it is presumed that there are no objections to information access.

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, 38, 43, 45, 50, Schedule 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
- information publicly available.

Public Interest Considerations

My reasons for deciding not to grant access to 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)(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.

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 (names and contact information) is not in the public interest.

Documents relevant to your application include the plans of the interior of the lessee’s residence. I have considered how the public interest would be advanced by 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(a) of the *Human Rights Act 2004*. This states that everyone has the right to not have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily. 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.

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/accountability-and-oversight/freedom-of-information/foi-complaints-and-reviews>

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 the Directorate's processing of your request, or would like further information, please contact EPSDFOI@act.gov.au or call (02) 6207 1923 and ask for the Information Governance team.

Yours sincerely

(electronically signed)

Craig Weller
Information Officer
Executive Branch Manager, Statutory Planning
Environment, Planning and Sustainable Development Directorate

18 April 2024