



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference: 18/26208

Dear [REDACTED]

Freedom of information request: Fraud Investigations

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Environment, Planning and Sustainable Development Directorate (EPSDD) on 7 September 2017, in which you sought access to documents relating to two fraud investigations.

Specifically, you are seeking:

“Investigation report, excluding attachments and notice of final disciplinary action to two employees in 2016-17, related to findings of fraud.”

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

Following your agreement to an extension of time, EPSDD is required to make a decision on your access application by 29 October 2018.

Decision on access

Searches were completed for relevant documents and four documents were identified that fall within the scope of your request.

I have included, as **Attachment A** to this decision, the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

All documents identified as relevant to your request contain information that I consider to be information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act. I have decided to grant access, under section 50 of the Act, to copies of documents with deletions applied to information that I consider would be contrary to the public interest to disclose.

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 schedule 2;
- the content of the documents that fall within the scope of your request;
- your views on the public interest in disclosing the government information applied for (as per section 37 of the Act);
- the *Information Privacy Act 2014*.

Statement of Reasons

My reasons for deciding not to grant access to components of these documents are as follows:

Public interest test

In assessing the public interest, I must apply the cascading test set out by section 17 of the Act which requires consideration of factors favouring disclosure, any favouring nondisclosure and the balance of those factors when considered cumulatively.

The following factors favouring disclosure in the public interest apply to the documents:

- Schedule 2.1 (a)(i) of the Act - promote discussion of public affairs and enhance the government's accountability.
- Schedule 2.1 (a)(vi) of the Act - reveal or substantiate that an agency or public official has engaged in misconduct or negligent, improper or unlawful conduct or has acted maliciously or in bad faith.
- Schedule 2.1 (a)(viii) of the Act - reveal the reason for a government decision and any background/contextual information that informed the decision.

Where possible I have released information about the allegations, investigation, decision, penalties and associated decision-making. Some information is personal information which if released would identify the individuals involved.

I have considered the release of personal information and my view in this instance is that the identification of third parties would not serve to further open discussion, government accountability, informed debate and the provision of contextual or background information. The information identified as contrary to the public interest would not serve to further the public's understanding of the identified misconduct nor the reasoning behind the outcome of the investigation.

I am satisfied that the disclosure of this personal information could reasonably be expected to prejudice the protection of an individual's right to privacy under the *Human Rights Act 2004*. This is a factor favouring nondisclosure under Schedule 2.2 (a)(ii) of the Act.

As penalties have been applied and the matter is closed, to identify the individuals who were the subject of the investigation would impede the administration of justice for those persons, which is a factor favouring nondisclosure in the public interest under schedule 2.2 (a)(v) of the Act.

Further, to release some information would prejudice the Directorate's ability to obtain confidential information, a factor favouring nondisclosure in the public interest under schedule 2.2(xii). If the identities of staff providing evidence to an investigation were to be disclosed, it may impede future investigations and leave witnesses vulnerable to potential repercussions.

On balance of these public interest considerations and the information available, I have concluded that disclosure of the identified personal information of individuals may constitute a breach of privacy and is therefore contrary to the public interest.

Online publishing – disclosure log

Under section 28 of the Act, EPSDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the disclosure log between three and ten days after the date of this decision. Your personal contact details will not be published.

You may view the agency's disclosure log at <http://www.environment.act.gov.au/about/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:

http://www.ombudsman.act.gov.au/_data/assets/pdf_file/0026/79190/40A-Reviews-Factsheet-and-Application-Form-final-A1569634.pdf

If you wish to request a review of my decision 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/>

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
Environment, Planning and Sustainable Development Directorate

29 October 2016