



Dear [REDACTED]

Freedom of Information 19/34958

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 6 November 2019, in which you sought access to documents relating to the direct sale of Block 11 Section 8 Fyshwick (the site).

Specifically, you are seeking access to evidence/ information relating to the site as follows:

- *“The advice in July 2018 to the applicant for the direct sale from Chief Planner, Ben Ponton, that or similar ‘CRS would be permitted to reapply for a direct sale of the block and for the application to be assessed for consistency with the Territory Plan and Ministerial approval under section 240(1)(b) of the P&D Act’;*
- *The new application that was required for eligibility of land under direct sale as advised above;*
- *The advice to Adam Perry/CRS that the Direct Sale approval to CRS was re-instated following the Supreme Court Decision – ACT [2019] ACTSC58 (15 March 2019);*
- *The offer of sale to Adam Perry following the Supreme Court Decision – ACT [2019] ACTSC58 (15 March 2019);*
- *CRS acceptance in writing of the offer of sale on or before the due date;*
- *CRS request in writing for extension of the SLA offer of sale prior to the expiry date or dates at each extension expiry date as required by law;*
- *Record of SLA granting of such extension;*
- *CRS purchase of former unleased Territory land Block 11 Section 8 Division Fyshwick.”*

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 the EPSDD is required to make a decision on your access application on or by 10 January 2019.

Searches Conducted

Comprehensive searches were conducted for documents relevant to your application and 33 were located.

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 request and the access decision for each of those documents. Two duplicated email threads are identified on the schedule but not provided.

I have decided to grant access in full to 11 documents relevant to your application.

I have decided to grant partial access to 15 documents, 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.

I have decided to refuse access to five documents that are either publicly available for purchase or contain information that I believe 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.

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.

A number of documents were identified to concern a relevant third party. Under section 38 of the Act, consultation was undertaken with Canberra Recycling Solutions Pty Ltd (CRS). CRS raised no objection to the release of information in their response.

Material Considered

In reaching my access decision, I have taken the following into account:

- the FOI Act, particularly sections 17, 37, 38, 50, and schedule 2
- the content of the documents that fall within the scope of your application
- your views on the public interest in disclosing the requested government information
- the views of the third party consulted
- the *Information Privacy Act 2014*.

Public Interest Considerations

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

Information Disclosure – Contrary to the Public Interest Under 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 2.1(a)(i) – promote open discussion of public affairs and enhance the government's accountability
- Schedule 2.1(a)(ii) – contribute to positive and informed debate on important issues or matters of public interest;
- Schedule 2.1(a)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.

Further to these factors, I have given consideration to the views on public interest that you raised in your application. In addition to the relevant factors favouring release (as listed above), I have considered the factors under Schedule 2.1 (a)(iv), (v), and (ix) of the Act. I have deliberated on whether the specific information captured by your application would ensure effective oversight of expenditure of public funds; allow/assist inquiry into possible conduct or administration deficiencies; or reveal information was incorrect, out-of-date, misleading, gratuitous, unfairly subjective or irrelevant.

I have determined that the information identified within the scope of your application to be refused does not fall under these categories as it does not contain evidence of conduct/administrative deficiencies; serve to correct, update or clarify information; nor concern expenditure.

I have given regard to the special public interest in the decisions concerning the site and how the release of the relevant information would advance public understanding and transparency in government processes. It is for this reason that I have decided to release to you 26 documents in part or in full (as outlined on the attached schedule).

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(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(a)(xi) – prejudice trade secrets, business affairs or research of an agency or person
- Schedule 2.2(a)(xiii) – prejudice the competitive commercial activities of an agency.

Personal Information

The documents relevant to your application contain information that includes the contact information and signatures of individuals, which I consider, if disclosed, could reasonably be expected to prejudice the protection of an individual’s right to privacy under the *Human Rights Act 2004*. I have considered whether public benefit would be served by the release of this information and I have decided, on balance, that it would be contrary to the public interest to disclose this information.

In accordance with section 50 and the Objects of the Act, I have decided to provide you copies of the documents with personal information redacted.

Business information

The valuation reports contain current information of relevant third parties that is not common knowledge; this includes details of their methodology and research which, if released, could reasonably be expected to provide an advantage to their competitors, increase competitive pressures, and may diminish the value of that information.

Scheduled item 26 contains information relating to bank account details, release of this specific information would not advance factors favouring release and would likely expose the agencies to undue risk. Therefore, in accordance with section 50 and the Objects of the Act, I have decided to provide you copies of the documents with business information

redacted where possible. The release of these items is indicated in the schedule as 'partial release'. Section 50 of the Act does not apply to three documents containing business information and, in the public interest, access to those documents is refused.

Commercial Activities of an Agency

The valuation reports prepared for EPSDD were used to determine the sale price of the site. Scheduled item 10 includes the summarised values provided in the reports. These documents provide detail of the valuation process, price setting inputs and other commercial advice which is fundamental to the process of selling land in a commercial setting. I have considered that it is not in the public interest to release information that would compromise the ACT Government's competitiveness in the land market.

On balance, I am satisfied that, on the information available, the disclosure of this commercial information is not in the public interest.

Charges

I have considered your application for fees to be waived. In this instance, I have decided to grant your request to waive fees under section 107(2)(b) of the Act in recognition of the particular community interest in the decisions surrounding the site.

Online Publication

Under section 28 of the Act, the 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 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's disclosure log at

<https://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:

https://www.ombudsman.act.gov.au/data/assets/pdf_file/0026/79190/Apply-for-Ombudsman-review.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>

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



Bruce Fitzgerald

Information Officer

Environment, Planning and Sustainable Development Directorate

9 January 2020