



ACT
Government

Environment, Planning and
Sustainable Development

Dear [REDACTED]

Freedom of information request: 19/32808

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 15 October 2019, in which you sought access to information relating to the DA 201732500, DA 201528541 and the Minister for Planning and Land Management's approval of the 2nd Electricity Supply Project and the Environmental Impact Statement 201700005.

Final clarification regarding the scope of your request was confirmed 13 December 2019, specifically seeking:

"...For the timeframe: 9 November 2015 (lodgement of DA201732500) to 15 October 2019 (date of receipt of your FOI application)

- *Development Application file 201732500 (Easement)*
- *All documents regarding the Minister's decision to use his call-in powers to approve DA 201732500*
- *Environment Impact Statement file EIS 201700005 – ACT Second Electricity Supply Project*
- *The formal agreement between TransGrid and the Belconnen Magpies Golf Club and Woodhaven Investments Pty Ltd that is referenced in Woodhaven's submission to draft EIS no. 201700005*
- *Development Application file 201528541 (Ginninderra Estate, lodged 9/11/15)"*

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

On 15 November 2019 you were advised that third-party consultation was required, revising the due date to 13 December 2019. I appreciate your patience regarding the processing of

your application and agreement to an extension of time, extending the due date to 20 January 2020.

Searches conducted

Comprehensive searches were conducted and 62 documents relevant to your application were identified that fall within the scope of your request.

Decision on Access

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

I have decided to grant full access to 21 documents relevant to your application.

I have decided to refuse access to twelve documents as these documents are either publicly available online, contain information that is deemed to be contrary to the public interest, or I believe would, on balance, be contrary to the public interest to disclose.

I have decided to grant partial access to 29 documents and, in accordance with section 50 of the Act, provide you with copies of documents with redactions 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 *Freedom of Information Act 2016*, with consideration given to sections 17, 35, 38, 47, 50, 54, Schedule 1 and 2;
- The content of the documents that fall within the scope of your request;
- Response from third-party consultation;
- The *Information Privacy Act 2014*; and
- The *Human Rights Act 2004*.

Public Interest Considerations

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

Information Disclosure - Contrary to the public interest under schedule 1 of the Act

Scheduled items 7 and 9 are documents that would be privileged from disclosure as the documents were made in confidence by a lawyer acting in their professional capacity and are therefore contrary to the public interest on the grounds of legal professional privilege.

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 accessing the public interest, I must apply the test outlined under section 17 of the Act which requires consideration of factors favouring disclosure, any favouring non-disclosure and the balance of those factors when considered cumulatively.

Factors Favouring Disclosure

Disclosure of the identified 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.

I have given regard to the special public interest in the Minister of Planning and Land Management’s decision to use his call-in powers to approve ACT Government’s 2nd Electricity Supply Project for Ginninderra Estate and the release of some of the requested information may assist in public understanding of government decisions.

I have also given regard to advancing the public’s understanding and transparency in government processes. It is for this reason that I have decided to release to you 62 documents in part or in full (as outlined at **Attachment B**).

Factors favouring Non-disclosure

In applying the public interest test, I have determined that disclosure of the information could reasonably be expected to do the following and meet relevant factors favouring non-disclosure:

- Schedule 1.2 – information subject to legal professional privilege;
- 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*; and
- Schedule 2.2(a)(xi) – prejudice trade secrets, business affairs

Legal professional privilege

Information contained within documents in scope of your request contains correspondence and advice that is subject to legal professional privilege. I am satisfied that the communications were made in circumstances of confidentiality and satisfy the requirements for attracting legal professional privilege therefore, my decision is to refuse access to this specific information.

Personal information

Some items are scheduled for partial release as they contain information that falls within the meaning of personal information as defined by the Act.

I have considered the Territory Privacy Principles of the *Privacy Act* and the release of this information, and my view in this instance is that the identification of these third parties would not serve to further open discussion, government accountability, informed debate and the provision of contextual or background information.

I am further satisfied that the disclosure of identified personal information could reasonably be expected to prejudice the protection of an individual's right to privacy under the *Human Rights Act 2004* and further under Schedule 2.2(a)(ii) of the Act.

In balancing public interest considerations, I am satisfied that, on the information available, disclosure of the identified personal information of members of the public may constitute a breach privacy and disclosure is therefore contrary to the public interest.

Business Affairs

Several of the documents within scope contain information relating to proposed valuation and benchmark values of proposed work within the developing suburb and regarding the Belconnen Golf Club. The release of this information would reasonably prejudice trade secrets and business affairs, a factor in favour of non-disclosure under Schedule 2.2(a)(xi) of the Act. I have considered the release of business affairs information and whether disclosure of the information of contextual, or background information.

In reaching my decision I have weighed on balance these public interest considerations, and the information available. I have concluded that the disclosure of trade secrets and business affairs information would be an unreasonable disclosure and may prejudice the business affairs of the Belconnen Golf Club under Schedule 2.2(a)(ii) of the Act and therefore, contrary to the public interest to release.

Information already available

Information contained within the documents has been identified as already within the public domain and readily accessible. Therefore, I am refusing access to this information under section 45 (a) of the Act as I am satisfied the information identified is already available by the links provided within the document schedule (**Attachment A**).

Online publication

Under section 28 of the Act, EPSDD maintains an online record of access applications called a disclosure log. Your original access application and 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:

<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/>

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 6207 1923 and ask for the FOI team, or email to EPSDFOI@act.gov.au

Yours sincerely



George Cilliers
Information Officer
Environment, Planning and Sustainable Development Directorate

20 January 2020