



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference: 19/40027

Dear [REDACTED]

Freedom of Information 19/40027

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 17 December 2019, in which you sought access to documents relating to requests for further information relating to the draft Environment Impact Statement (EIS) 201700053.

Specifically, you are seeking:

A copy of all documents, electronic or otherwise, (including notes of meetings, record of conversations, correspondence, etc.) with respect to EIS application 201700053, limited to:

- *requests to the proponents for further information or revisions to the EIS201700053 by representatives of the ACT Government, including referring entities, under section 224 of the Planning and Development Act 2007 or otherwise; and*
- *responses to these requests by the proponent.*

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 appreciate your patience in the processing of your application and your agreement to extend the deadline to 7 February 2020.

Searches Conducted

Comprehensive searches were conducted and 79 documents within the scope of your application were located.

Decision on Access

I have included as **Attachment A** to this decision the schedule of documents relevant to your application; the schedule provides descriptions and access decisions for each of these documents.

I have decided to refuse access to 15 documents under section 43(1)(d) of the Act. These documents are available via the EPSDD website and hyperlinks are provided in the schedule.

Twenty-one documents have been identified as duplicates and are listed on the schedule but not provided to you.

I have decided to refuse access to 43 documents as these documents contain information that I considered to be contrary to the public interest to disclose.

My access decisions are detailed further in the following statement of reasons.

Material Considered

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

- the FOI Act, particularly sections 17, 35, 37, 43 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), and
- the *Information Privacy Act 2014*.

Public Interest Considerations

My access decisions are set out in the following statement of reasons.

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 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)(iii) – inform the community of the government's operations including policies, guidelines and codes of conduct followed by the government in its dealings with members of the community.

I agree with your view, as raised in your application, that the release of the information requested would be expected to assist in the public understanding of government operations.

I have given regard to the special public interest in the decisions concerning EIS 20170053 and how the release of relevant information would advance public understanding and transparency in government processes.

Factors favouring Nondisclosure

In applying the public interest test, I have determined that disclosure of the information would 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)(xvi) – prejudice a deliberative process of government.

Personal Information

I have deliberated on the benefit that would be served to the public on release of the requested information in its entirety. I have considered how the content of the identified documents would promote open discussion, debate, and reveal government processes/ decision-making.

The documents relevant to your application contain personal information of members of the public, which I consider, if disclosed, could reasonably be expected to prejudice the protection of an individual's right to privacy. On balance, I have determined that it would be contrary to the public interest to disclose this information.

Deliberative Process of Government

I consider that there is a strong public interest in this EIS 201700053, however this EIS is an active assessment, with decisions still to be made on the EIS process, including the requested documents, by the ACT Planning and Land Authority and potentially the Minister for Planning and Land Management.

It is my view that the documents are subject an active deliberative process and contain information that was prepared or communicated in the course evaluating matters relating to EIS 201700053. The premature release of this information may impede the effective completion, and prejudice the integrity, of the EIS process.

The deliberative process may also be prejudiced by the release of these documents at this point in time as it may cause undue disruption and reallocation of resources to deal with further public debate or pressure.

The decision regarding assessment of EIS 201700053 will be published on the EPSDD website at

https://www.planning.act.gov.au/development_applications/da_assessment/environmental_assessment/environmental_impact_statements#completed

Charges

In accordance with the *Freedom of Information (Fees) Determination 2018*, fees are not applicable for 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, my decision and the schedule 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

Alternately, 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


George Cilliers

Information Officer

Environment, Planning and Sustainable Development Directorate

7 February 2020