



**ACT**  
Government

Environment, Planning and  
Sustainable Development

Phone: (02) 6207 1923  
Reference: 22/111824

[Redacted]

By Email: [Redacted]

Dear [Redacted]

### **Decision on Freedom of Information Access Application 22/111824**

I refer to your application made under section 30 of the *Freedom of Information Act 2016* (the Act) received by the Chief Minister, Treasury, and Economic Development Directorate (CMTEDD) and transferred to the Environment Planning and Sustainable Development Directorate for processing, on 18 August 2022.

Specifically, you are seeking:

*"...any prior investigations or studies on the possibility of a motor racing circuit in the ACT, including sites and feasibility studies."*

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

EPSDD must make a decision on your application on or by 4 October 2022.

#### **Searches Conducted**

Comprehensive searches were conducted and 4 documents containing information within the scope of your application were identified.

#### **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 application and the access decision for each of those documents.

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

I have decided to grant partial access to one document and, in accordance with section 50 of the Act, provide you with copies of documents with deletions applied to contrary to the public interest information.

I have refused access to one document as I consider the information to be contrary to the public interest.

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, 50, Schedule 2
- the content of the documents that fall within the scope of your request
- views of third parties consulted in regard to your request;
- the *Information Privacy Act 2014*

## **Public Interest Considerations**

My reasons for deciding not to grant access to certain documents and 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 2.1(a)(ii) – contribute to positive and informed debate on important issues or matters of public interest
- Schedule 2, 2.1(a)(iv) – ensure effective oversight of expenditure of public funds
- Schedule 2, 2.1(a)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.

#### *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*;
- Schedule 2,2.2(a)(xi) – prejudice trade secrets, business affairs or research of an agency or person.

I have given regard to the public interest and that the release of the requested information may assist in public understanding of government decisions. I have also given regard to the advancing public understanding and transparency in government public affairs and information which reveal the contextual background to inform government decisions. It is

for this reason that I have decided to release to you two documents in full (as outlined in the attached schedule).

### Personal Information

In my review of the requested material, I have given regard to the pro-disclosure bias in the Act and the benefit of open government and transparency in government processes and decision-making. I have considered whether the release of the personal information identified would advance the public interest and it is my view that, in this instance, the release of this information would not serve to further open discussion, government accountability, informed debate and the provision of contextual or background 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, including signatures, and personal associated references which could easily identify individuals.

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, section 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 may constitute a breach of privacy and is therefore contrary to 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.

### Business Information and research of an agency

Some scheduled documents in scope contains information relating to reports and business information provided to the Directorate under contractual agreements, including that which is subject to copyright protection. 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 its disclosure would provide relevant contextual, or background information.

In reaching my decision I have weighed on balance these public interest considerations, the information available and contractual agreements with third parties. On balance I have decided that the detriment caused by the release of this information, which may constitute a breach of confidence, outweighs any anticipated benefit provided by its release.

I have considered the rights of copyright owners, including that the release of this information would cause detriment to their revenue, prejudice their trade secrets, and business affairs. I have given regard to the disclosure of copyright information and how trade secrets, business affairs or research may be prejudiced; disclosure that is reasonably expected to prejudice trade secrets, business affairs or research is a factor favouring nondisclosure under Schedule 2.2(a)(xi) of the Act.

I have deliberated on how the public interest is served by the information assessed to be released to you, what is in the public domain, and what further benefit may be derived from the release of this information.

On balance, I have decided that the potential detriment caused by the release of this business affairs information may constitute a breach of confidence and copyright infringement, and therefore outweighs any anticipated benefit provided by its release.

I consider the information within the documents should be exempt from release, as the release of the information would diminish the commercial value of the information and compromise the organisation's commercial and competitiveness and may prejudice the economy of the ACT Government under Schedule 2.2(a)(viii) of the Act and therefore, is contrary to the public interest to release.

### **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/data/assets/pdf\\_file/0026/79190/Apply-for-Ombudsman-review.pdf](https://www.ombudsman.act.gov.au/data/assets/pdf_file/0026/79190/Apply-for-Ombudsman-review.pdf)

Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman  
GPO Box 442  
CANBERRA ACT 2601

Via email: [actfoi@ombudsman.gov.au](mailto: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](mailto:EPSDFOI@act.gov.au).

Yours sincerely



Di Stewart  
Information Officer  
Executive Branch Manager, Planning and Urban Policy  
Environment, Planning and Sustainable Development Directorate

4 October 2022