



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 22/129294



Decision on Freedom of Information Access Application 22/129294

I refer to your application made under section 30 of the *Freedom of Information Act 2016* (the Act) received by the Environment, Planning and Sustainable Development Directorate (EPSDD) on 23 September 2022, in which you sought access to documents relating to 2022 Budget Estimates Hearings.

Specifically, you are seeking:

“any final briefs prepared for any ACT Minister(s) or ACT Government witnesses during 2022 Budget Estimates Hearings”

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 3 November 2022.

Searches Conducted

Comprehensive searches were conducted and 5 documents (200 pages) 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 4 documents relevant to your application.

I have decided to grant partial access to 1 document and, in accordance with section 50 of the Act, provide you with copies of documents with deletions applied to remove 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 FOI Act, particularly sections 6, 17, 50, Schedule 2
- the content of the documents that fall within the scope of your application
- the *Human Rights Act 2004*

- information released to you previously
- information publicly available.

Public Interest Considerations

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, 2.1(a)(ii) – contribute to positive and informed debate on important issues or matters of public interest.

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)(xi) – prejudice the economy of the Territory
- Schedule 2, 2.2(a)(xi) – prejudice trade secrets, business affairs or research of an agency or person
- Schedule 2, 2.2(a)(xii) – prejudice an agency’s ability to obtain confidential information
- Schedule 2, 2.2(a)(xiii) – prejudice the competitive commercial activities of an agency
- Schedule 2, 2.2(a)(xvi) – prejudice a deliberative process of government.

I have given regard to the public interest and that the release of the requested information may assist public understanding of government decisions and promote transparency and accountability in government. I also considered the pro-disclosure bias of the Act, which reflects the importance of access to government information for the proper working of representative democracy. It is for this reason that I have decided to release to you 4 documents in full (as outlined in the attached schedule).

Contrary to the public interest

One document within scope of your application contains information relating to a confidentiality agreement between Suburban Land Agency and a third party. The release of this information would reveal confidential details about a commercial matter which could diminish the Suburban Land Agency’s ability to negotiate competitive commercial terms.

Schedule 2, 2.2(a)(xiii) reflects that fact that when the ACT Government engages or competes with commercial service providers in carrying out particular functions, to operate effectively, it is necessary that certain information relating to its functions is not disclosed. The Suburban Land Agency, established under the *City Renewal Authority and Suburban Land Agency Act 2017* (the CRASLA Act), carry out a range of activities in a competitive commercial environment, including 'to buy and sell land on behalf of the Territory' - section 39(a) of the CRASLA Act. The disclosure of this information could reasonably be expected to prejudice the competitive commercial activities of the Suburban Land Agency, and in turn may prejudice the economy of the ACT Government.

Release of the information would also prejudice the business affairs of a third party by disclosing sensitive commercial activities of the third party, a factor in favour of non-disclosure under Schedule 2, 2.2(a)(xi) of the Act. It is my view that the information is also subject to an active ongoing deliberate process and contains information that was prepared or communicated relating to confidential commercial matters.

In review the documents, I found that the information at issue could reasonably be expected to promote two public interest factors to a significant degree. On the other hand, five factors favour nondisclosure, including economy of the Territory, business affairs, confidential information, competitive commercial activities and deliberative process. As there is an express agreement of confidentiality currently in place and the details are only known to a limited group of people, I decided to afford the nondisclosure factor considerable weight.

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. In this instance, my decision is that the prevailing weight favours nondisclosure and that this information should be redacted from the document. I have decided that the remainder of the document may be disclosed to you.

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

Alternatively, 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

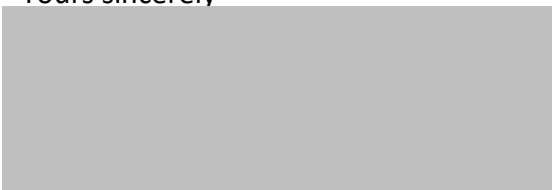
Telephone: (02) 6207 1740

<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



Craig Simmons
Information Officer
Chief Operating Officer
Environment, Planning and Sustainable Development Directorate

3 November 2022