



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 24/112270

By Email: [REDACTED]

Dear [REDACTED]

Decision on Freedom of Information Access Application 24/112270

I refer to your application made under section 30 of the *Freedom of Information Act 2016* (the FOI Act) which was partially transferred from the Community Services Directorate (CSD) and received by the Environment, Planning and Sustainable Development Directorate (EPSDD) on 15 October 2024.

Specifically, you are seeking:

"...I am seeking "all documents" in relation to the current proposed development at the former 100 and 102 Macarthur Place O'Connor and not just "all correspondence and emails" I request copies of all documents and records relating to information including but not limited to:

- *the ACT government's sale and repurchase of the block at 100 Macarthur Place O'Connor ACT*
- *all correspondence and emails relating to the current proposed development at 100 and 102 Macarthur Place O'Connor ACT (ref 202342029)*
- *information about whether the proposed development will consist entirely of government housing or any private units*
- *the cost of the kitchen renovation that was undertaken at 102 Macarthur Place O'Connor prior to its demolition*
- *all correspondence with the architects who have been involved with the development proposal at 100 and 102 Macarthur Place, Philip Leeson Architects*
- *information relating to the likely timeline and duration of the proposed development*
- *information about any changes to the original plans for development at 100 and 102 Macarthur Place, if they changed at any point in time*
- *information relating to any consideration of the impact of the proposed development on the current residents and community of Macarthur Place*
- *any consideration of the impact of the proposed development on the traffic in and access to Macarthur Place*
- *all correspondence between Housing ACT and any other ACT or Federal Government agency relating to the proposed development at 100 and 102 Macarthur Place, and any related federal funding*
- *any concerns about redevelopment of the site, or possible obstacles or impediments to redevelopment"*

I am an Information Officer appointed under section 18 of the Act to deal with access applications made under part 5 and now write to provide notice of my decision in relation to your application. EPSDD must decide your application on, or by 26 November 2024.

Decision on access

In response to your application, comprehensive searches were conducted and 149 documents containing information within the scope of your application were identified. As agreed by you on 22 November 2024, representation documents regarding development application 202443268 have been released to you informally.

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.

In considering your application, I have taken the following into account:

- the FOI Act, particularly sections 6, 17, 43, 45, 50 and Schedule 2;
- the content of the documents that fall within the scope of your request;
- the *Freedom of Information (Volume 4 – Considering the public interest) Guidelines 2023* (Notifiable Instrument [NI2023-751](#));
- *Planning Act 2023*; and
- the *Human Rights Act 2004*.

I have decided to:

- grant **full access** to 128 documents.
- refuse access to three documents.
- grant **partial access** to 18 documents 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.

Under section 43(1)(d) of the Act, a respondent may refuse to deal with an access application wholly or in part if the government information is already available to the applicant. Section 45 of the Act sets out the circumstances in which government information is already available to the applicant.

Those circumstances include where the information is usually available for purchase (section 45(g)).

Attachments to documents itemised on the schedule are available via the EPSDD website at:

<https://actlis.act.gov.au>

The hyperlinks to these documents have been included as part of the schedule of documents (**Attachment A**).

The documents released to you by my decision are provided at **Attachment B** to this letter.

Public interest considerations

Information Disclosure – Schedule 2 of the Act

In assessing whether disclosure of the remaining information identified in relation to your request would, on balance be contrary to the public interest, I must apply the test outlined under section 17 of the Act.

This requires consideration of factors favouring disclosure, any favouring nondisclosure and the balancing of those factors when considered cumulatively. Unless, on balance, disclosure would be contrary to the public interest, access to the information must be allowed.

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)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.

Factors favouring non-disclosure

In applying the public interest test to the documents identified in relation to your application, I have determined that disclosure of the information could reasonably be expected to do the following:

- Schedule 2, 2.2(a)(ii) – disclosure of the information could reasonably be expected to prejudice the protection of an individual’s right to privacy or any other right under the *Human Rights Act 2004*; and
- Schedule 2, 2.2(a)(xi) – disclosure of the information could prejudice trade secrets, business affairs or research of an agency or person.
- Schedule 2, 2.2(a)(xvi) – disclosure of the information could reasonably prejudice the deliberative process of an agency.

Personal information

Seventeen documents contain personal information, including mobile numbers, and email addresses of individuals. I am satisfied that the factors in favour of release can still be met while protecting relevant personal information. I have therefore weighed the factor for non-disclosure more highly than the factor in favour of release in this instance. As a result, I have decided that release of this information could prejudice the individual’s right to privacy under the *Human Rights Act 2004*. Having applied the test outlined in section 17 of the Act and deciding that release of personal information contained in the documents is not in the public interest to release, I have chosen to redact this specific information in accordance with section 50(2) of the Act.

Business information

One document contains business information including financial account details and information regarding a development application which is yet to be decided. I have considered the disclosure of business affairs information in accordance with Schedule 2, 2.2(a)(xi) and whether or not the disclosure would advance the public interest.

In reaching my decision I have weighed the public interest considerations, and the information available. On balance I have decided that there is a high risk of harm in disclosing this information, therefore I have chosen to redact specific information in accordance with section 50(2) in accordance with schedule 2, 2.2(a)(xi) of the Act.

Deliberative process

Two documents contain information that if disclosed would be expected to prejudice the deliberative process of Government under Schedule 2, 2.2(a)(xvi) of the Act. These deliberations reveal considerations regarding an active development application which is yet to be decided, and release would prejudice the ability of the agency to objectively consider this decision by limiting the extent and quality of opinions and advice. It is in the public interest for the government to have robust discussions for supporting the interests of the community. Any disclosure of this information would be against this principle. I find any disclosure of the information contained within these documents may also be in breach of the *Planning Act 2023* and could therefore reasonably be expected to prejudice the ACT Governments deliberative process a factor given considerable weight for non-disclosure.

Charges

In accordance with section 107(2) of the Act any charges applicable are waived.

Online Publication

Under section 28 of the Act, on behalf of the SLA, Environment Planning and Sustainable Development Directorate (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/accountability-and-oversight/freedom-of-information/foi-complaints-and-reviews>

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
15 Constitution Avenue
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 Agency's processing of your request, or would like further information, please email EPSDFOI@act.gov.au or call (02) 6207 1923 and ask for the Information Governance team.

Yours sincerely



Alix Kaucz
Information Officer

Executive Branch Manager, Statutory Assessments
Environment, Planning and Sustainable Development Directorate

26 November 2024