



**ACT**  
Government

Environment, Planning and  
Sustainable Development

Phone: 6207 1923  
Reference: 18/28924

Dear [REDACTED]

**Freedom of information request: 18/28924 Continued Contamination of former Mr Fluffy Sites**

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 1 October 2018, in which you sought access to documents relating to former loose-fill asbestos contaminated sites ('Mr Fluffy' sites).

Specifically, you are seeking:

*"All emails, meeting minutes, ministerial briefs and third party reports related to the discovery of an amosite brick on 13 Mitchell Street Griffith between 1 February 2018 and 1 October 2018.*

*Any ministerial briefs and third party reports related to the continuing contamination of former Mr Fluffy blocks from 1 January 2016 to 1 October 2018."*

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

Following third party consultation and your agreement to extend the due date for decision, EPSDD is required to make a decision on your access application by 17 December 2018.

**Decision on access**

Searches were completed for relevant documents and 94 documents were identified that fall within the scope of your request.

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

I have decided to defer access to 15 of the identified documents and pages 9 to 16 of item 86 of the schedule, as the affected third parties have objected to disclosure. The third parties may apply for review of my release decision within 20 working days after my decision is published in EPSDD's disclosure log, or a longer period allowed by the Ombudsman. You will be advised when access is no longer deferred.

I have decided to grant access in full to six documents relevant to your request.

Three duplicated documents have been identified, they are mentioned in the schedule but have not been provided.

I have decided to grant access, under section 50 of the Act, to copies of documents with deletions applied to information that I consider would be contrary to the public interest to disclose. The

release status of these 58 documents is indicated on the attached schedule as 'partial release'. This includes item 86 which will be partially released excluding pages 9 to 16.

I have decided to refuse access to 12 documents as I consider them to be contrary to the public interest information under schedule 1.2 and 1.12 of the Act.

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 17, 38, 50, schedule 1.2, 1.12 and schedule 2;
- the content of the documents that fall within the scope of your request;
- the *Information Privacy Act 2014*;
- the views of third parties relating the release of information of their concern.

### **Exemptions claimed**

My reasons for deciding not to grant access to the identified documents and components of documents are explained below; these documents contain information that I consider to be contrary to the public interest to disclose.

#### **Contrary to the public interest information under schedule 1 of the Act**

Folios 11, 28, 33, 39, and 40 of the identified documents contain information that is considered to be contrary to the public interest under schedule 1.2 of the Act.

These documents contain advice provided to the Asbestos Response Taskforce by the ACT Government Solicitor, this information cannot be disclosed on the grounds of legal professional privilege.

Folios 50 and 53 to 60 of the identified documents contain information that is considered to be contrary to the public interest under schedule 1.12 of the Act. These documents were provided or created in response to an investigation undertaken by the Ombudsman under section 9 of the *Ombudsman Act 1989*.

#### **Contrary to the public interest information 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 assessing the public interest, I must apply the cascading test set out by section 17 of the Act which requires consideration of factors favouring disclosure, any favouring nondisclosure and the balance of those factors when considered cumulatively.

In relation to the documents scheduled with the reason of Schedule 2.2(a)(ii), Personal Privacy, section 17 applies as follows:

## Personal Information

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

I am 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*. This is a factor favouring nondisclosure 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 of privacy and is therefore disclosure is contrary to the public interest.

## **Online publishing – disclosure log**

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 documents released to you in response to your access application will be published in the EPSDD disclosure log from three days after date of 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:

[http://www.ombudsman.act.gov.au/\\_data/assets/pdf\\_file/0026/79190/40A-Reviews-Factsheet-and-Application-Form-final-A1569634.pdf](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](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/>

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



Bruce Fitzgerald  
Information Officer

Environment, Planning and Sustainable Development Directorate

11 December 2018