



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference: 19/00738



Dear 

Freedom of information request: 19/00738 – SolarShare Project

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 10 January 2019, in which you sought access to documents relevant to the SolarShare Project.

Specifically, you are seeking:

“documents relating to subsidies, contracts or entitlements given or awarded by the ACT Government to the Solarshare Solar Farm project. This may include, but is not limited to ministerial correspondence, briefings, correspondence between the Government and Solarshare, contracts, negotiations and meeting minutes.”

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, EPSDD is required to make a decision on your access application by 1 March 2019.

Decision on access

Searches were undertaken, and 15 documents were identified that fall within the scope of your request.

As the information could be considered of concern to third parties, consultation was conducted.

I have included, at **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 grant access, in full, to two of the documents.

A duplicated attachment was identified on the schedule, but 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 11 documents is indicated on the attached schedule as ‘partial release’.

I have decided to refuse access to one document as I consider it to be contrary to the public interest information under Schedule 1.2 of the Act

I have decided to defer access to six of the identified documents as an affected third party has objected to disclosure of some information. This third party may apply for review of my release decision within 20 working days after my decision is published in the EPSDD disclosure log, or a longer period allowed by the Ombudsman. You will be advised when access is no longer deferred.

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 decision, I have taken the following into account:

- the Act, particularly sections 17, 38, 50, and Schedules 1 and 2;
- the content of the documents that fall within the scope of your request;
- the *Information Privacy Act 2014* (Privacy Act); and
- the views of third parties relating to the release of information of their concern.

Exemptions claimed

My reasons for deciding not to grant access to documents in full are as follows:

Contrary to the public interest information under Schedule 1 of the Act

Scheduled item 7 of the identified documents contain information that is considered to be contrary to the public interest under schedule 1.2 of the Act.

This document contains advice provided by a solicitor, this information cannot be disclosed on the grounds of legal professional privilege.

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.

Personal Information

Some items are scheduled for partial release as they contain information that falls within the meaning of personal information as defined by the FOI Act.

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

I am further 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 disclosure is therefore contrary to the public interest.

Business Affairs

Seven of the documents contain business information relating to a third party, the release of which would reasonably prejudice trade secrets and business affairs, a factor favouring nondisclosure under Schedule 2.2(a)(xi) of the Act. I have considered the release of this information and whether the disclosure of this information would serve to further open discussion, government accountability and informed debate.

In balancing public interest considerations, I have concluded that the disclosure of trade secrets and business affairs information within the document would be 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 the date of 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 application 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

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/>

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 send an email to EPSDFOI@act.gov.au.

Yours sincerely



Gene McGlynn
Information Officer
Environment, Planning and Sustainable Development Directorate

28 February 2019