



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference: 18/37522

Dear [REDACTED]

Freedom of information request: 18/37522 – Block 9 Section 26 Coombs

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 17 December 2018, in which you sought access to documents relevant to Block 9 Section 26 Coombs.

Specifically, you are seeking:

“These matters arise from Complaint 170814 - 002058 and a lot of the correspondence, in both directions, is available within that file/record.

A. *On 19th April we received advice that “Construction Services has issued the licensed builder with directions requiring them to take steps to resolve this breach.”*

B. *Please provide, under FOI, a copy of the information used to support that decision.*

C. *On 11th July we received advice that a Exempt Declaration Application was submitted for a minor departure of the building envelope. We were advised that for the application to be approved the authority must be satisfied that:*

- *the non compliance is minor*
- *the non compliance will not adversely affect anyone other than the applicant*
- *the non compliance will not increase the environmental impact of the dwelling alteration more than minimally.*

D. *Please provide, under FOI, all documentation, plans and briefing notes that define minor and that then support this variation as minor. Please also provide, under FOI, documents that support the statement that the non compliance will not affect us, as the occupants suffering the overshadowing. Please also provide, under FOI, copies of any documentation that supports a minimal only environmental impact. In particular we are interested in any rebuttal of the evidence provided by us that our natural light had been reduced to 1 hour and 29 minutes, against the 3 hours outlined in your rules. This was measured by a light meter, with print out, with a copy on your database.*

E. *On the 28th September we received advice from Mr Craig Weller that there had been an encroachment to a height of 570mm and a length of 14,000mm. Further advice was that “no encroachment into the solar building envelope was approved as part of the application.”*

F. *Please provide, under FOI, any documentation, including plans and progressive cut depth, that support the decision taken. Please also provide, under FOI, any documentation that*

explains the action taken under the “solar building envelope” that enabled the authority to rule against our overshadowing complaint.”

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

As agreed by you, and following third party consultation, EPSDD is required to make a decision on your access application by 1 March 2019.

Decision on access

Parts A and B of your request was transferred to the Chief Minister, Treasury and Economic Development Directorate as the relevant information is held by their office.

Searches were completed for relevant documents and 11 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.

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 six documents is indicated on the attached schedule as ‘partial release’.

Three documents are publicly available via the EPSDD website and ACT Legislation, links to this information has been included on the schedule.

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, 28, 50, and Schedule 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 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

Scheduled items indicated for partial release of **Attachment B** 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.

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



Brett Phillips

Information Officer

Environment, Planning and Sustainable Development Directorate

/ March 2019