



ACT
Government

Environment, Planning and
Sustainable Development



Dear 

Freedom of information request: 19/37586

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 28 November 2019, in which you sought access to information relating to

DA 201835106 (Block 17, Section 47, Turner), including representations, assessment of rear setback and approval, conservator reports, reports regarding trees, and driveway design versions.

Final clarification regarding the scope of your request was confirmed 11 December 2019, specifically seeking:

"...All documents relating to DA201835106 (B17, S47 Turner) as follows:

- *Representations (excluding yours')*
- *Assessments of the rear setback including information demonstrating:*
 - *why the encroachment was approved on the west side, and*
 - *how criteria were satisfied*
- *Conservator reports*
- *Correspondence pertaining to the trees, including:*
 - *all submitted arborist reports*
- *Versions of the driveway design"*

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

I appreciate your patience as your request was being processed. In accordance with section 41 of the Act, a decision must be made on your application on or by 10 February 2020.

Searches conducted

Comprehensive searches were conducted and 32 documents were identified to fall within the scope of your request.

Decision on Access

I have included as **Attachment A** to this decision the schedule of documents relevant to the scope of your request; the schedule provides descriptions and access decisions for each document.

I have decided to grant full access to 26 documents relevant to your application. I have decided to grant partial access to six documents and, in accordance with section 50 of the Act, provide you with copies of documents with redactions applied to 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 Act, particularly sections 17, 35, 50 and Schedule 2;
- The content of the documents that fall within the scope of your request;
- The *Information Privacy Act 2014* (Privacy Act).

Public Interest Considerations

My access decisions are set out in the following statement of reasons.

Information Disclosure - Contrary to the public interest 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 accessing the public interest, I must apply the test outlined under section 17 of the Act which requires consideration of factors favouring disclosure, any favouring non-disclosure and the balance of those factors when considered cumulatively.

Factors Favouring Disclosure

Disclosure of the identified information could reasonably be expected to do the following:

- Schedule 2.1(a)(i) – promote open discussion of public affairs and enhance the government's accountability;
- Schedule 2.1(a)(ii) – contribute to positive and informed debate on important issues or matters of public interest;
- Schedule 2.1(a)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.

I have given regard to advancing the public's understanding and transparency in government processes. It is for this reason that I have decided to release to you 32 documents in part or in full (as outlined at **Attachment B**).

Factors favouring Non-disclosure

In applying the public interest test, I have determined that disclosure of the information could reasonably be expected to do the following and meet relevant factors favouring non-disclosure:

- Schedule 2.2(a)(ii) – prejudice the protection of an individual's right to privacy or any other right under the *Human Rights Act 2004*.

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 Act.

I have considered the Territory Privacy Principles and definition of personal information in the Privacy Act. My view in this instance is that the personal information of third parties that has been identified 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 the identified personal information could reasonably be expected to prejudice the protection of an individual's right to privacy in accordance with 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 privacy and disclosure is therefore contrary to the public interest.

Online Publication

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 no earlier than three days after you receive 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 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

Alternately, you 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 6207 1923 and ask for the FOI team, or email to EPSDFOI@act.gov.au

Yours sincerely


George Cilliers
Information Officer
Environment, Planning and Sustainable Development Directorate

10 February 2020