



Dear 

### Freedom of Information request 19/20236

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 24 June 2019, in which you sought access to documents in the possession of the EPSDD and the Suburban Land Agency.

Specifically, you are seeking:

*"emails related to the sale of Braddon and Turner on Northbourne from November 2018 to 24 June 2019 (both between ACT government officials and to the preferred tenderer). Exclude emails to media."*

As documents relevant to your request are also held by the City Renewal Authority (Authority), your application was forwarded to the Authority under section 57 of the Act.

Separate responses will be provided by the EPSDD and the Suburban Land Agency.

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

With the agreed extensions to the decision date, the Authority is required to make a decision by 6 September 2019.

### Searches Undertaken

Searches were completed for relevant documents, and 73 documents were identified that are within scope of your request.

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

### Decision on Access

I have decided to grant access in full to 10 documents relevant to your request.

Nine duplicates have been noted on the schedule but not provided.

Four documents held by the Authority have had access decided by the Suburban Land Agency, and details are provided on the schedule. These documents have not been provided in the Authority's response.

I have decided to refuse access to 12 documents as I consider them to be:

- contrary to the public interest information under Schedule 1 of the Act; or



- information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

There are 38 documents identified as relevant to your request contain information that I consider to be contrary to the public interest to disclose under the test set out in section 17 of the Act. I have decided to grant access to these documents under section 50 of the Act, with deletions applied to information that I consider would be contrary to the public interest to disclose.

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided in the schedule at **Attachment B** to this letter.

### **Material Considered**

In reaching my access decision, I have taken the following into account:

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

### **Public Interest Considerations**

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.

#### **Information Disclosure – Contrary to the Public Interest Under Schedule 1 of the Act**

Scheduled items 2, 3, 10, 55, 71 and 73 of the identified documents are entirely composed of, or contain information that is considered to be contrary to the public interest under schedule 1.2 of the Act. These documents contain information that is subject to legal professional privilege.

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

#### **Personal Information**

I have considered the release some of the personal information contained within the documents, and my view in this instance is that it 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.

#### Prejudice the Commercial Activities of an Agency

Scheduled items 16, 19, 20, 22, 27, 29, 35, 37, 57, 59, 62, 63 and 65 contain information relating to an ACT Government tender process and evaluation of tender applications.

The release of this information may serve to further open discussion, government accountability, informed debate and reveal the reason for a government decision and any contextual or background information.

However, the tender process concluded without sale of the subject sites and the future process regarding their sale has not yet been decided, therefore release of this information may provide an unfair advantage to future tender applicants.

Information contained within the documents would also disclose the reserve pricing for the sites, this could be reasonably be expected to have a detrimental impact on the ability of the Agency to operate competitively in the context of land sales.

On balance of public interest factors considered under the Act, it is my view that disclosure of commercially sensitive information that may impact upon the Agency's ability to carry out its functions and maintain competitiveness on behalf of the Territory is contrary to the public interest under Schedule 2.2(a)(xiii) of the Act.

#### Business Affairs

Scheduled items 11, 13, 16, 19, 20, 22, 29, 35, 37, 55, 57, 59, 62, 63 and 65 are composed of, or contain information relating to the tender application of third parties.

Consideration has been given to the documents and information provided by a third party, and whether the information identified within these documents contains information contrary to the public interest. The release of this information could prejudice the trade secrets and business affairs of an individual or agency, factor favouring nondisclosure under Schedule 2.2(a)(xi) of the Act.

The release of this information may serve to further open discussion, government accountability, informed debate and reveal the reason for a government decision and any contextual or background information. However on balance, release of this information would reveal the research and methodology of a tender application. The information contains substantial detail about the proposal from which competitors could discern their approach and methodology, consequently leaving them at a commercial advantage.

In balancing public interest considerations, I am satisfied that, on the information available, the disclosure of business affairs information would be an unreasonable disclosure and may constitute a breach of confidence, and prejudice and Agency's ability to obtain confidential information under schedule 2.2(a)(xii) of the Act.

## **Charges**

I have waived fees associated with your access application under section 107(2)(b) of the Act, as the information that is subject of the request is of special benefit to the public.

## **Online Publication**

Under section 28 of the Act the EPSDD, on behalf of the Authority, 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's disclosure log, no earlier than 3 working days and no later 10 working days after this decision is provided to you. 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/>

**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 02 6207 1923 and ask for the FOI team, or email to [EPSDFOI@act.gov.au](mailto:EPSDFOI@act.gov.au)

Yours sincerely



Craig Gillman

Information Officer  
City Renewal Authority

06 September 2019