



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference: 19/35394

Dear [REDACTED]

Freedom of Information 19/35394

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by transfer from Transport Canberra and City Services (TCCS) to the Environment, Planning and Sustainable Development Directorate (EPSDD) on 5 November 2019, in which you sought access to documents relating to the project for non-potable water for firefighting at Tharwa (the Project).

Specifically, you are seeking:

All documents relating to non-potable water for firefighting at Tharwa Village project from the commencement of the ACT Budget process to 30 September 2019.

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 in the processing of your application and your agreement to extend the deadline to 20 January 2020.

Searches Conducted

Comprehensive searches were conducted and 70 documents within the scope of your application were located.

Decision on Access

I note that the EPSDD Information and Knowledge Management team has provided you with the public register associated documents relating to Development Application 201834840 on 19 December 2019 and therefore these documents have not been considered in my decision.

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

I have decided to grant full access to 53 documents relevant to your application.

I have decided to refuse access to six documents as these documents are either publicly available online, contain information that is deemed to be contrary to the public interest, or that I believe would, on balance, be contrary to the public interest to disclose.

I have decided to grant partial access to 11 documents and, in accordance with section 50 of the Act, provide you with copies of documents with deletions 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 FOI Act, particularly sections 17, 37, 43, 50, schedules 1 and 2 of the Act;
- the content of the documents that fall within the scope of your request;
- your views on the public interest in disclosing the government information applied for (as per section 37 of the Act);
- information publicly available;
- the *Information Privacy Act 2014*

Public Interest Considerations

My reasons for deciding not to grant access to certain documents and components of these documents are as follows:

Information Disclosure – Contrary to the Public Interest under Schedule 1 of the Act

Scheduled items 1, 3 and 6 are documents brought into existence for the purpose of a budget bid submission to Cabinet. Under Schedule 1.6(1)(a) of the Act this information is contrary to the public interest to disclose.

These documents do not identify corruption or the commission of an offence by a public official or that the scope of a law enforcement investigation has exceeded the limits imposed by law.

Information Disclosure – 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 outlined under section 17 of the Act which requires consideration of factors favouring disclosure, any favouring nondisclosure 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)(iv) – could reasonably be expected to ensure effective oversight of expenditure of public funds.

- Schedule 2.1(a)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.

I agree with your view, as raised in your application, that the release of some of the information requested may assist in the public understanding of government decisions and the expenditure of public funds.

I have given regard to the special public interest in the decisions concerning the Project and how the release of relevant information would advance public understanding and transparency in government processes. It is for this reason that I have decided to release to you 64 documents in part or in full (as outlined on the attached schedule).

Factors favouring Nondisclosure

In applying the public interest test, I have determined that disclosure of the information could reasonably be expected to do the following:

- 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*
- Schedule 2.2(a)(xiii) – prejudice the competitive commercial activities of an agency

Personal Information

The documents relevant to your application contain information that includes the contact information and signatures of individuals, which I consider, if disclosed, could reasonably be expected to prejudice the protection of an individual's right to privacy under the *Human Rights Act 2004*. I have considered whether public benefit would be served by the release of this information and I have decided, on balance, that it would be contrary to the public interest to disclose this information.

In accordance with section 50 and the Objects of the Act, I have decided to provide you copies of the documents with personal information redacted.

Competitive Commercial Activities of an Agency

Scheduled item 4 contains detailed cost estimates relating to the project. Whilst the release of this information could be considered to promote oversight of future public funds expenditure, the release of this information is expected to diminish the Territory's ability to negotiate competitive commercial services and may prejudice any future tender process for delivery of the Project.

On balance, I am satisfied that, on the information available, the disclosure of this commercial information is not in the public interest.

Charges

I have considered your application for fees to be waived. In this instance, I have decided to grant your request to waive fees under sections 107(2)(b) and (d) of the Act.

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

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

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

Yours sincerely



Bethel Sendaba

Information Officer

Environment, Planning and Sustainable Development Directorate

20 January 2020