



ACT
Government

Suburban Land
Agency

Phone: (02) 6207 1923
Reference: 21/101584



Dear 

Decision on Freedom of Information Access Application 21/101584

I refer to your application made under section 30 of the *Freedom of Information Act 2016* (the Act) received by the Environment, Planning and Sustainable Development Directorate (EPSDD) on 29 October 2021, in which you sought access to documents relating to possible future land purchases in NSW and the development of the City Renewal Authority and Suburban Land Agency Amendment Bill 2021 held by EPSDD and the Suburban Land Agency.

Specifically, you are seeking:

1. Any information held by EPSDD and the Suburban Land Agency around the possible future purchase of land in NSW, particularly blocks of land in NSW under consideration.
2. Any documents, correspondence or ministerial briefings around the development of the City Renewal Authority and Suburban Land Agency Amendment Bill 2021.

As agreed, on 6 December 2021, documents/information that is classified as Cabinet Information, is Legal Professional Privilege, Drafts – where a final version of a document is available, and emails of an administrative nature (such as calendar invites, meeting acceptances, and internal coordination emails) are out of scope of the request.

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

EPSDD requested an extension of time of 10 working days on 12 November 2021 and a scope refinement on 30 November extending the decision date by a further four days. EPSDD must make a decision on your application on or by 16 December 2021.

Searches Conducted

Comprehensive searches were conducted and 35 documents containing information within the scope of your application were identified.

Decision on Access

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 three documents relevant to your application.

I have decided to grant partial access to four 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.

I have refused access to 28 documents. These documents are refused as I consider the release of the information to be contrary to the public interest.

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 6, 17, 50, and Schedule 2
- the content of the documents that fall within the scope of your request
- the *Human Rights Act 2004*
- information publicly available

Public Interest Considerations

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

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

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

- Schedule 2, 2.1(a)(i) – promote open discussion of public affairs and enhance the governments accountability.
- Schedule 2, 2.1(a)(ii) – contribute to positive and informed debate on important issues or matters of public interest.

- Schedule 2, 2.1(a)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.

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, 2.2(a)(ii) – prejudice the protection of an individual's right to privacy or any other right under the *Human Rights Act 2004*.
- Schedule 2, 2.2(a)(xi) – prejudice trade secrets, business affairs or research.
- Schedule 2, 2.2(a)(xii) – prejudice an agency's ability to obtain confidential information.
- Schedule 2, 2.2(a)(xiii) – prejudice the competitive commercial activities of an agency.

Individual Privacy

Documents relevant to your application contain personal information of individuals. I have considered how the public interest would be advanced by releasing this information in part or in whole. It is my view that the information if disclosed, could reasonably be expected to prejudice the protection of an individual's right to privacy under section 12 of the *Human Rights Act 2004*. On balance, and the information available to me, I am satisfied that the disclosure of this personal information is not in the public interest.

To provide you with the information that I have determined to be in the public interest to release, copies of some documents have been prepared with personal information redacted in accordance with section 50 and the Objects of the Act.

Business Affairs

I have also considered the impact of disclosing information which relates to business affairs. In the case of *Re Mangan and The Treasury [2005] AATA 898* the term 'business affairs' was interpreted as meaning 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs'. Schedule 2 section 2.2(a)(xi) allows for government information to be withheld from release if disclosure of the information could reasonably be expected to prejudice the trade secrets, business affairs or research of an agency or person. Information at schedule item 1 contains sensitive business costings that unfairly prejudice the business affairs of Riverview and partners to the West Belconnen Joint Venture (WBJV) in revealing the expected costs to a private business arrangement. I am satisfied that the disclosure of this business affairs information is not in the public interest.

To provide you with the information that I have determined to be in the public interest to release, copies of the documents have been prepared with the information relating to the business affairs of Riverview and partners redacted in accordance with section 50 and the Objects of the Act.

The information (at schedule item 22) withheld from release could reasonably be expected to unfairly prejudice the business affairs of KPMG by revealing the breakup of their scheduled fees, hourly rates and work methodologies that are intrinsic to the performance

of its business. I am satisfied that the release of this information would have an impact on the business affairs of KPMG and is contrary to the public interest.

Competitive commercial activities and confidential information

Several of the scheduled documents identified as relevant to this request would be expected to prejudice the competitive commercial activities of the Suburban Land Agency if released. The information identifies confidential negotiation and valuation details that are not within the public domain and related to potential land purchases as part of the WBJV.

On deliberation of the public interest, I have considered the release of this information may promote open discussion of public affairs, contribute to positive informed debate, and provide reason or context for decisions associated with the possible future land purchases in NSW. I have also considered that a primary function of the Suburban Land Agency is to contribute to the Territory's economy by acquiring and selling land.

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

Charges

In accordance with section 107(2)(b) of the Act any charges applicable are waived.

Online Publication

Under section 28 of the Act, EPSDD maintains an online record of access applications called a disclosure log. Your original access application, this decision and documents released 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 disclosure log at

<https://www.environment.act.gov.au/about-us/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

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/>

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



Tom Gordon
Executive Director, Development Delivery
Suburban Land Agency

13 December 2021