



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923

Reference: 22/46260

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Decision on Freedom of Information Access Application 22/46260

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 20 April 2022.

On 26 April 2022, you agreed to point 1 of your application being refined to include bushfire related material only.

Specifically, you are seeking:

- *“2010-2012 – Minutes, agenda and meeting papers, Ministerial briefings and associated emails of the ACTPLA Working Group (AWG) and the associated Project Reference Group (PRG), including materials for the various workshops undertaken by the consultants for the Planning and Design Framework for Molonglo Stage Two. Note these processes were outlined in the Tender documentation (RFT 13128.110) for the Molonglo Stage 2 Planning and Design Framework. In particular we are seeking information on the bushfire risks and mitigation measures in regard to Block 12 and Block 13 on the western edge of the (now) Denman Prospect.*
- *Cabinet Papers relating to approvals of the final Molonglo Stage 2 Planning and Development Framework, noting these are now over the 10 year release timeframe.”*

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 third party consultation was undertaken and with your agreement to extensions to the decision due date EPSDD must make a decision on your application on or by 5 August 2022. Thank you for your patience in this matter.

Searches Conducted

Comprehensive searches were conducted and 56 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 refused to deal with parts of your application under section 43(1)(d) of the Act. Under section 43(1)(d) a respondent may refuse to deal with an access application wholly or in part only if the government information is already available to the applicant. Section 45 of the Act sets out the circumstances in which government information is already available to the applicant. Those circumstances include where the government information is made publicly available (section 45(a)). The information publicly available is listed on **Attachment A** and has not been included in this decision.

I have decided to grant full access to 34 documents relevant to your application.

I have decided to grant partial access to 21 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 one document (Document 56) as this information is contrary to the public interest in accordance with Schedule 1 of the Act.

In relation to point 2 of your application, under the *Territory Records Act 2002* (the Records Act) an executive document is a record that has been proposed by a Minister for consideration by the Executive and includes Cabinet documents and associated material. This may include Cabinet decisions, briefings, agency comments and/or submission attachments. Cabinet documents become accessible to the public after ten years under Part 3A of the Records Act. Under section 31C of the Records Act, the list of records that are available must be published electronically every Canberra Day as the information is not yet available for public release.

Further information is available on the Open Government website via

https://www.cmtedd.act.gov.au/open_government/inform/executive-documents

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 and Third Party Consultation

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

- the FOI Act, particularly sections 6, 17, 38, 43, 45, 50 and Schedules 1 and 2
- the content of the documents that fall within the scope of your request
- the *Human Rights Act 2004*
- information publicly available.

In accordance with section 38 of the Act, as information within the documents may have been of concern to a third party, consultation was undertaken. The third party did not raise any objections to the release of the information.

Public Interest Considerations

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

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

Documents 56 contain or consist entirely of information deemed to be contrary to the public interest under Schedule 1, 1.6(1) of the Act.

Document 56 is information was created for the purpose of being submitted to Cabinet (Schedule 1, 1.6(1)(a)).

This information does 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

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 government's accountability
- 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*.

Documents relevant to your application contain personal information of individuals. This information includes signatures, mobile numbers, the names and contact information of the employees of a third party or members of the public. 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.

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



Lisa Teburea
Information Officer
Executive Group Manager, Planning and Urban Policy
Environment, Planning and Sustainable Development Directorate

5 August 2022