



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 22/146464

Dear [REDACTED]

Decision on Freedom of Information Access Application 22/146464

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 6 November 2022.

Specifically, you are seeking:

“The application by Canberra Grammar School to extend its use indefinitely, of a temporary car park on land zoned as Urban Open Space (PRZ1).”

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, EPSDD must make a decision on your application on or by 23 December 2022.

Searches Conducted

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

Decision on Access

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 available for purchase (section 45(g)). A copy of the Crown Lease and title search are available to purchase from ACTLIS@act.gov.au

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 six documents relevant to your application.

I have decided to grant partial access to seven 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 the Development Application (DA) documents submitted by the DA applicant, as I consider the information to be contrary to the public interest at this time.

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.

Third Party Consultation

In accordance with section 38 of the Act, consultation was undertaken with a third party as information that may have been of concern to them was identified. No objection to release of the particular information consulted on was provided by the third party.

Material Considered

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

- the FOI Act, particularly sections 6, 17, 43, 45, 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 government's accountability
- Schedule 2, 2.1(a)(ii) – contribute to positive and informed debate on important issues or matters of public interest.

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*.

Personal Information

I have refused access to names and contact information relating to 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 protection of the individuals’ personal information outweighs the benefit which may be derived from releasing them. I consider that these individuals are entitled to expect that the personal information they have supplied to ACT Government will be dealt with in a manner that protects their privacy. I consider that if this information was disclosed, it 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 based on 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.

- Schedule 2, 2.2(a)(xvi) – prejudice a deliberative process of government.

Deliberative Process of Government

I consider that there is public interest in this DA, however this DA has not been through the assessment process, with public notification and decisions still to be made on the DA process by the ACT Planning and Land Authority.

It is my view that the documents are subject to an active deliberative process and contain information that was prepared or communicated in the course evaluating matters relating to the DA. The premature release of this information may impede the effective completion, and prejudice the integrity, of the DA process.

Public notification regarding this DA will be published on the EPSDD website at <https://www.planning.act.gov.au/development-applications-assessments/development-applications/current-development-applications>

Charges

In accordance with the *Freedom of Information (Fees) Determination 2018* no charges are applicable to this application, the number of pages to be released is below the minimum 50 page threshold.

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


George Cilliers PSM
Information Officer
Executive Group Manager, Statutory Planning
Environment, Planning and Sustainable Development Directorate
19 December 2022