



ACT
Government

Suburban Land
Agency

By Email: [REDACTED]

Dear [REDACTED]

Decision on Freedom of Information Access Application 24/046938

I refer to your application made under section 30 of the *Freedom of Information Act 2016* (the Act) received by the Suburban Land Agency (SLA) on 3 May 2024.

Specifically, you are seeking:

“...documents including Board minutes, executive decisions and briefings, Board briefings, minutes of the SLA Audit and Risk Committee, relevant Ministerial briefings, emails and other electronic communications including:

- 1) The decisions to develop the program and in particular consideration by the SLA executive and Board to not take on the risks of construction and shift the construction risk away from SLA (as above).*
- 2) What was the Board talked about how the program would work and how the Project Delivery Deeds and building contracts would be employed?*
- 3) What consideration and enquiries did the Board, Board Chair, SLA Audit and Risk Committee, and SLA executives and managers give to informing successful AHPS applicants about the SLA Project Delivery Deed and the 48-month construction completion period for their homes?*
- 4) Who was present at the relevant Board meetings? [Minutes]*
- 5) What did the SLA executive and Board inform the Minister about regarding the use of AHPS building contracts and the Deed and informing successful AHPS applicants before they signed building contracts?”*

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

In accordance with section 40, in addition to third party consultation and an extension of time, a decision on your access application must be made on or by 9 July 2024.

Searches Conducted

Comprehensive searches were conducted and 24 documents containing information within the scope of your application were identified.

Decision on Access

In regard to question 1 of your application, on the 8 May 2020, the Board attended a workshop to develop the Affordable Housing Scheme, where delivery and risk models were presented to the Board, there were no minutes from the workshop.

In regard to question 4 of your application, there were no minutes for the workshop attended by all the Board members in May 2020. Minutes from the Board meetings are not publicly available, however a Meeting Summary of topics discussed is publicly available via the SLA website at: <https://suburbanland.act.gov.au/about-us/who-we-are>

There was no information identified in scope of your application relating to questions 2, 3 and 5.

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 ten documents relevant to your application
- grant **partial** access to five documents relevant to your application
- **refuse** access to nine documents, three of which are refused under schedule 1, 1.2 of the Act.

Material Considered

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

- the FOI Act, particularly sections 17, 38, 50, Schedules 1 and 2
- the content of the documents that fall within the scope of your request
- the *Human Rights Act 2004*
- the views of third party consulted.

Public Interest Considerations

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

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

Schedule 1 of the Act recognises a range of information that is taken to be contrary to the public interest to disclose unless the information identifies:

- 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 Subject to Legal Professional Privilege

Documents 10, 12-13 were identified to contain legal advice between legal representatives and the SLA. This information would be privileged from production or admission into evidence in a legal proceeding on the

ground of legal professional privilege. This information is taken to be contrary to the public interest under schedule 1, 1.2 of the Act.

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)(iii) – inform the community of the government’s operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community.

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)(xii) – prejudice an agency’s ability to obtain confidential information.
- Schedule 2, 2.2(a)(xvi) – prejudice the deliberative process of government.

Personal Information

Seven documents 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.

Confidential Information

Three documents contain information identifying specific block information for the Affordable Housing Purchase Scheme within a newly developing suburb, which if disclosed would reveal business activities and strategies of competing parties regarding negotiations with the ACT Government which are ongoing.

Some information contained within the documents have been communicated to the ACT Government by third parties regarding business strategies and activities with the expectation of confidence. Disclosure of the information would likely result in a loss of trust in the ACT Government and reluctance to be forthcoming in the future.

In balancing the factors supporting disclosure and nondisclosure under Schedule 2, 2.2(a)(xii), I am satisfied that disclosure of the information contained in the documents is not in the public interest.

Deliberative process

Five documents contain information that if disclosed would be expected to prejudice the deliberative process of Government under Schedule 2, 2.2(a)(xvi) of the Act. These deliberations reveal internal discussions of the Board concerning a deliberative process, and release would prejudice the ability of the agency to objectively consider all options put to the Board for consideration for future decisions by limiting the extent and quality of opinions and advice for future policy decisions. It is in the public interest to the government to have robust discussions if resulting framework is a more effective framework for supporting the community. Disclosure of this information would be against this principle. The purpose of communications to the Board is to provide advice and opinions for best possible courses of action in response to considerations for the Affordable Housing Purchase Scheme, this advice and opinion do not form the final view. I find the information contained within these documents could therefore reasonable be expected to prejudice the ACT Governments deliberative process and have given this nondisclosure factor considerable weight.

Charges

Any charges applicable to this application are waived under section 107(2) of the Act.

Online Publication

Under section 28 of the Act, on behalf of the Agency, Environment Planning and Sustainable Development Directorate (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 information and 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/accountability-and-oversight/freedom-of-information/foi-complaints-and-reviews>

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
15 Constitution Avenue
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 Agency's processing of your request, or would like further information, please contact EPSDFOI@act.gov.au or call (02) 6207 1923 and ask for the Information Governance team.

Yours sincerely



Nicholas Holt

Information Officer
Executive Director, Thriving Communities Group

Suburban Land Agency

9 July 2024