



ACT
Government

Suburban Land
Agency

[REDACTED]
By Email: [REDACTED]

Dear [REDACTED]

Decision on Freedom of Information Access Application 25/0010811

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 28 January 2025.

Specifically, you are seeking:

“...briefing documents relating to: the EOI process for the sale of Ginninderra Falls, any briefings on the potential acquisition of the land by ACT Government from NSW Government (whether relating to this EOI process or prior to the EOI); any briefings relating to the lobbying by [REDACTED] for the falls to be made into a national park...”

In accordance with section 40 of the Act, as third party consultation was undertaken, a decision on your access application must be made on or by 2 April 2025.

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 considering your application, I have taken the following into account:

- the FOI Act, particularly sections 6, 17, 38, 43, 45, 50, Schedules 1 and 2
- the content of the documents that fall within the scope of your request
- the *Information Privacy Act 2014*
- the *Human Rights Act 2004*
- the views of third parties consulted
- information publicly available in relation to the subject of your application.

Decision on Access

Comprehensive searches were conducted and 11 documents containing information within the scope of your application were identified. The documents are listed in the schedule of documents at **Attachment A**.

I have decided to:

- grant **partial** access to nine documents relevant to your application; and
- **refuse** access to two documents as I consider the disclosure of the information to be contrary to the public interest.

My reasons for deciding not to grant access to certain documents and components of these documents are set out in my statement of reasons below.

Publicly available documents

I have refused to deal with parts of your application under sections 43(1)(d) and section 45(a) of the Act as one document within the scope of your application, is publicly available as part of a response to a question on notice:

<https://questions.parliament.act.gov.au/questions/details/843a47fe659149c3a85bf9c299f0ec1d/download/attachment/f32a79d8-9005-4797-8125-32189bf0c335>

Under section 43(1)(d) of the Act, a respondent agency may refuse to deal with an access application wholly or in part if the government information is already available to the applicant. Section 45 sets out the circumstances in which government information is already available to the applicant. Those circumstances include where the government information is publicly available (section 45(g)).

Deferred release of documents

Section 38 of the Act provides that if the respondent (SLA) considers that disclosure of information may reasonably be expected to be of concern to a person or another entity, the respondent must take reasonable steps to consult with the relevant third party before deciding to give access to the information. In making this decision, I consulted with two private entities. The third parties objected to the disclosure of their information. My decision has taken into consideration the views and objections raised by the third parties. As I have decided to release the information in part, and in accordance with section 38(6)(b) of the Act, disclosure of the document to you is deferred to allow the third parties the opportunity to seek a review of my decision by the ACT Ombudsman. You will be notified if an application for review of the decision is received or when access is no longer deferred.

Statement of reasons

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.

The ability for the public to have informed debates and discussions regarding government administrative processes, while holding the government accountable, is of fundamental significance for the proper workings of representative democracy. Both factors apply to the information to a degree which carries considerable weight and is relevant to the decision before me.

Factors favouring Nondisclosure

I have also 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 of an agency or person.
- 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.

Personal Information

Nine documents contain personal information of members of the public. I have considered how the public interest would be advanced by releasing this information. 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*.

Business affairs, confidential information and commercial activities

Most of the documents contain descriptions of confidential discussions between third parties’ participating in an active external EOI process and descriptions of confidential strategic considerations to the third parties’ business interests. The disclosure of the documents will significantly prejudice the business affairs of the third parties causing them harm in the marketplace, as well as assisting its competitors to obtain a significant commercial advantage.

The information about the third parties’ business strategies and external activities has been communicated to the Suburban Land Agency by the third parties with the expectation that the information would be held in confidence. Although I accept that businesses that provide information to the Government do so with the knowledge that government held information may be subject to an access application made under the Act and those who do business with government must also recognise that government have to balance the commercial interests of businesses with the principles of openness and transparency. In this instance, disclosing the business information would reasonably be expected to significantly undermine the third parties’ ability to participate in the active external EOI process.

Furthermore, disclosure of the information would likely result in a loss of trust in the ACT Government and reluctance for the third parties to be forthcoming in sharing their information with SLA and the government in the future. I decided to afford the nondisclosure factor under Schedule 2, 2.2(a)(xi) and Schedule 2, 2.2(a)(xii) substantial weight.

Some of the documents contain information that if disclosed could reasonably be expected to prejudice the competitive commercial activities of the Suburban Land Agency. Schedule 2, 2.2(a)(xiii) reflects that when the ACT Government engages with agency’s in carrying out particular functions, to operate effectively, it is necessary that certain information relating to its functions is not disclosed. I have given this factor some weight.

Balancing relevant factors

On balance, I have decided that the detriment caused by the release of this information, which may constitute a breach of confidence, outweighs any anticipated benefit provided by its release. In this instance, my decision is that the prevailing weight favours nondisclosure and that this information should be withheld.

In accordance with section 50 and the Objects of the Act, I am providing access to some documents with the personal, business and confidential information redacted. The schedule of documents at **Attachment A** summarises these documents and is included to assist you see those which have been partially released as per this decision.

Charges

No charges are applicable to this application.

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 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 email EPSDFOI@act.gov.au or call (02) 6207 1923 and ask for the EPSDD Information Governance team.

Yours sincerely



Joey Lee

Information Officer
Executive Director, Place Delivery
Suburban Land Agency

02 April 2025