



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference: 21/38974

Ms Megan Doherty
Email: megan.doherty@canberratimes.com.au

Dear Ms Doherty,

Freedom of information request: 21/38974

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Environment, Planning and Sustainable Development Directorate (EPSDD) as a partial transfer from the *Chief Minister, Treasury and Economic Development Directorate* (CMTEDD) on 22 April 2021, in which you sought access to information relating to Block 16 Section 5 Ainslie.

Your original application sought:

I specifically require documents relating to the intended use of the houses (51 a and b) for aged care and or disability care, including the size and internal modifications to the homes to suit these purposes. I specifically require documents relating to the intended use of the houses (51 a and b) for aged care and or disability care, including the size and internal modifications to the homes to suit these purposes.

I seek information on any consideration ACT planning authorities may have given to effectively doubling the proportion of government housing in a small cul-de-sac which has only three other (privately owned) houses prior to, or following the development's completion.

I specifically request copies of information sent to neighbours and residents on the cul-de-sac outlining the planned development and intended use of the dual occupancies at the point in which the previous single dwelling at 51 Campbell street was demolished in preparation for the two new homes—more than a decade ago.

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 is required to provide a decision on your access application in accordance with section 41 of the Act, by 19 July 2021. Thank you for your patience with this matter.

Searches conducted

Comprehensive searches were conducted by the EPSDD for documents relevant to your application.

Decision on Access

Two hundred and forty-four documents were located that fall within the scope of your request.

I have included as **Attachment A** to this decision the schedule of documents relevant to the scope of your request. The schedule provides a description of each document and the access to these documents.

I have decided to refuse access to 23 documents as I consider information contained within these documents would, on balance, be contrary to the public interest to disclose.

I have decided to grant access in full, to 76 documents relevant to the scope of your request.

I have decided to grant partial access to 145 documents relevant to your request as I consider information contained within these documents would, on balance, be contrary to public interest to disclose under the test set out in section 17 of the Act.

I have decided to grant access, under section 50 of the Act, to copies of these documents with deletions applied to the information that I consider would be contrary to public interest to disclose.

My access decision is detailed further in the following statement of reasons and the documents released to you is 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 17, 41, 50, Schedule 1 and 2;
- the *Information Privacy Act 2014* and;
- the *Housing Assistance Act 2007*, particularly section 28; and
- the content of the documents that fell within the scope of your request.

Public Interest Considerations

My reasons for deciding to not grant access to components of the documents are explained below; these documents contain information that I consider to be contrary to the public interest to disclose.

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

The Act identifies information that is contrary to the public interest. Information deemed to be contrary to the public interest is detailed in Schedule 1, section 1.2 and Schedule 1.3 of the Act.

Legal Professional Privilege

I have considered the release of information subject to legal professional privilege to be contrary to the public interest as described in Schedule 1, section 1.2 of the Act.

Protected information under the Housing Assistance Act 2007

I have considered the release of information that could identify land that has been acquired for the sole purpose of development to the Commissioner for Housing for Housing assistance purposes. Schedule 1.3(5) states information that is protected under section 28 of the *Housing Assistance Act 2007* is contrary to the public interest under Schedule 1 of the Act.

Information Disclosure – Contrary to the Public Interest under 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 accessing the public interest, I must apply the test outlined under section 17 of the Act which requires consideration of factors favouring disclosure, any favouring non-disclosure and the balance of those factors when considered cumulatively.

Factors Favouring Disclosure

Disclosure of the identified information could reasonably be expected to do the following:

- Schedule 2.1(a)(i) – promote open discussion of public affairs and enhance the government's accountability;
- Schedule 2.1(a)(iii) – inform community of government operations and its dealings with community members;
- Schedule 2.1(a)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.

Factors favouring Non-disclosure

In applying the public interest test, I have determined that disclosure of the information could reasonably be expected to do the following and meet relevant factors favouring non-disclosure:

- Schedule 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(b)(ii) – Legal professional privilege;

Personal Information

In my review of the requested material, I have given regard to the pro-disclosure bias in the Act and the benefit of open government and transparency in government processes and decision-making. I have considered whether the release of the personal information identified would advance the public interest and it is my view that, in this instance, the release of this information would not serve to further open discussion, government accountability, informed debate and the provision of contextual or background information.

Some items are scheduled for partial release as they contain information that falls within the meaning or personal information as defined by the Act.

I am satisfied that the disclosure of this personal information could reasonably be expected to prejudice the protection of an individual's right to privacy under the *Human Rights Act 2004*. This is a factor favouring nondisclosure under Schedule 2, section 2.2(a)(ii) of the Act.

In balancing public interest considerations, I am satisfied that, on the information available, disclosure of the identified personal information may constitute a breach of privacy including adjoining lessees and personal information provided regarding the development, and subsequent concerns raised, signatures, contact details, and is therefore contrary to the public interest.

Online publication

Under section 28 of the Act, EPSDD maintains an online record of access applications called a disclosure log. Under the Open Access Information Scheme, documents associated with access applications are published on the disclosure log no earlier than three days after a decision on access is provided to the applicant.

You may view the EPSDD's disclosure log at:

<http://www.environment.act.gov.au/about/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

Information Officer
Executive Branch Manager Development Delivery (E01072)
Environment, Planning and Sustainable Development Directorate
19 July 2021