



**ACT**  
Government

Environment, Planning and  
Sustainable Development

Phone: (02) 6207 1923

Reference: 21/68594



Dear 

### **Decision on Freedom of Information Access Application 21/68594**

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 2 August 2021, in which you sought access to documents relating to energy minister briefs on Climate Change since October 2021.

Specifically, you are seeking:

*Correspondence and final briefs between EPSDD and any ministers, since October 2020 to 2 August 2021 regarding:*

- *The Energy Efficiency Improvement Scheme*
- *The brief referred to in the Incoming Ministers Briefs (Minister for Climate Change and Sustainability) on pg. 9 as “a brief that sets out the range of issues, including previous banking of credits, the exhaustion of some low cost, energy efficiency improvements and lack of exploitation of others, consistency with future emissions reduction targets, and recommended options.”*

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

I thank you for your patience during this process. EPSDD requested extensions to the timeframe and were granted by you. A scope refinement on 20 January 2022 extended the decision date by a further 12 working days.

Energetics was consulted as a third party to this application and raised no objection to their documents being released.

EPSDD must make a decision on your application on or by 25 February 2022.

### **Searches Conducted**

Comprehensive searches were conducted and 79 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 decided to grant full access to 57 documents relevant to your application.

I have decided to grant partial access to 18 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 five documents. Three documents are refused as the information is publicly available, available via the links provided in the documents schedule. Two documents are refused as the information is deemed to be contrary to the public interest under Schedule 1 of the Act.

No documents were identified relating to dot point two of your request.

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**

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

- the FOI Act, particularly sections 6, 17, 38, 45, 50 and Schedule 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
- 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 – Contrary to the Public Interest under Schedule 1 of the Act**

I have considered Schedule 1, section 1.6(1)(a), (b) and (d) of the Act, in relation the documents referenced at 80 and 81 of the schedule at **Attachment A**. This section of the Act relevantly provides:

#### **1.6 Cabinet information**

(1) Information –

- a. that has been submitted, or that a Minister proposes to submit, to Cabinet for its consideration
- b. that is an official record of Cabinet; or
- c. ...
- d. The disclosure of which would reveal any deliberations of cabinet (other than through the official publication of a cabinet decision).

The documents referenced at 80 and 81 of the schedules at **Attachment A** is information relied upon in for cabinet decision, which may reveal the deliberations of cabinet.

According, Schedule 1, 1.6(1)(a), (b) and (d) apply to these documents and access is refused on the grounds that disclosure would be contrary to the public interest.

I have considered the documentation and am satisfied that it 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)(ii) – contribute to positive and informed debate on important matters of public interest.
- Schedule 2, 2.1(a)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.
- Schedule 2, 2.1(a)(x) – contribute to the protection of the environment.

#### *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

Documents relevant to your application 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.

### **Charges**

In accordance with section 107(2)(e) 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](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](mailto: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](mailto:EPSDFOI@act.gov.au).

Yours sincerely



Fiona Wright  
Executive Group Manager, Climate Change and Energy  
Environment, Planning and Sustainable Development Directorate

22 February 2022