



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference: 20/18508

Dear [REDACTED]

Freedom of information request: 20/18508

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) on 20 April 2020, in which you sought access to information regarding the Exemption Declaration Application for 53 Blamey Crescent, Campbell ACT.

As confirmed by you on 5 May 2020, you are specifically seeking:

All documents relating to the decision that residential building/renovation works at 53 Blamey Crescent, Campbell ACT (Block 31, Section 10) commenced on or about 2019 would be exempt from development approval, including but not limited to:

- any application for exemption, including supporting materials
- any decision to exempt the works from development approval, including any exemption declaration and any reasons for decision
- all correspondence, internal and external, created in the course of the decision-making process.

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 agreed by you, EPSDD is required to provide a decision on your access application, in accordance with Section 41 of the Act, on or by 26 June 2020.

Searches conducted

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

Decision on Access

Searches were completed for relevant documents and thirteen documents were located that fall within the scope of your request. These documents contained personal information that concerns relevant third parties. Consultation with relevant third parties was undertaken in accordance with section 38 of the Act.

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

I have decided to grant full access to seven documents.

I have decided to grant partial access to six 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 document 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, 38, 50, Schedule 2
- the content of the documents that fell within the scope of your request
- the *Information Privacy Act 2014*
- the *Human Rights Act 2004*, and
- the views of third parties relating to the release of information that concerns them.

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 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*;

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.

In balancing public interest considerations, and on the information available, 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. This is a factor favouring nondisclosure under Schedule 2, Section 2.2(a)(ii) of the Act.

Further, the public release of the identified personal information presents the risk of unlawful interference of a private residence. I have given consideration to the reason exempt declarations are not publicly notified and I have determined that the release of this information would likely constitute a breach of privacy, and therefore is 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, a disclosure log must not include an access application for personal information. I have determined that the information identified in this application is generally of a personal nature and is released to you with the support of relevant third parties.

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
Environment, Planning and Sustainable Development Directorate

26. June 2020