



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference: 21/61475

Email: [REDACTED]

Dear [REDACTED],

Freedom of information request: 21/61475

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 13 July 2021, in which you sought access to information relating to Block 18 Section 11 Mitchell.

On the 28 July and 23 August 2021 EPSDD contacted you seeking clarification on your request. On 26 August 2021, the scope of your request was revised to specifically seeking:

All documents from 2015 to the 13 July 2021, relating to the development application Block 18, Section 11, Mitchell including:

Any preliminary through to final decision approval documents.

All correspondence received and sent from the Health Protection Service, the Environment Planning Authority and the Children's Education and Care Assurance.

All correspondence and reports prepared, sent and received from the relevant Minister and Referral Entities.

Any recommendations, memoranda, minutes of meeting (including notes of attendees and diary entries), records of inspections, and proposals involving referral agencies.

Any working papers prepared by or on behalf of ACTPLA involving the referral Entities, including original documents which are no longer in the control of ACTPLA.

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 May 2022. Thank you for your patience in this matter.

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 585 were located that fall within the scope of your request. Some documents contained business information that concerns relevant third parties. Consultation with relevant third parties was undertaken in accordance with section 38 of the Act.

Please refer to **Attachment A** for the schedule. The schedule also provides a description of the documents and the access decision.

I have decided to grant full access to 306 documents relevant to your application.

I have decided to grant partial release to 129 documents in scope of your application with deletions applied to information I consider to be contrary to the public interest.

I have decided to refuse access to 150 documents in their entirety as I consider the information would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

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, 41, 47, 50, Schedules 1 and 2;
- the content of the document that falls within the scope of your request;
- views of third-parties consulted in regards to your request;
- the *Information Privacy Act 2014*;

Public Interest Considerations

My reasons for deciding not to grant access to documents is 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

Information in the possession of a court or Tribunal

I have considered the release of information which has been subject to ACAT proceedings and produced under subpoena including non-party material which not been tendered as evidence in proceedings, to be contrary to the public interest as described in Schedule 1, 1.1A 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.

Cabinet

Some of the documents in scope contain information which was prepared for Cabinet. Information contained within these documents has been prepared for submission to cabinet for the purpose of making policy decisions regarding the suitability of developments in several industrial areas.

The Act identifies any official record of Cabinet or information which would reveal any Cabinet deliberation as being contrary to the public interest, a factor favouring of non-disclosure under Schedule 1 1.6 of the Act.

Information Disclosure – Contrary to the Public Interest under schedule 2 of the Act

In assessing the public interest, I must apply the descending test as outlined under section 17 of the Act which requires consideration of all the factors favouring disclosure, any favouring nondisclosure and the balance of those factors when considered collectively.

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)(ii) contribute to positive and informed debate on important issues or matters of public interest;
- Schedule 2.1(a)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.

I have given regard to the public interest to regarding commercial development applications, specifically Block 18 Section 11, Mitchell, and that the release of the requested information may assist in public understanding of government decisions. I have also given regard to the advancing public understanding and transparency in government development application processes. It is for this reason that I have decided to release to you 306 documents in full (as outlined in the attached schedule).

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:

- 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(a)(xi) – prejudice trade secrets, business affairs or research of an agency or person.

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 of personal information as defined by the Act, including email addresses, signatures, and personal associated references which could easily identify individuals.

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 and is therefore contrary to the public interest.

Business Information and research of an agency

Some scheduled items contain information relating to business affairs, including that which is subject to copyright protection.

In reaching my decision I have weighed on balance these public interest considerations, objections provided by third parties, and the information available in the public domain. 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.

I have considered the rights of copyright owners, including that the release of this information would cause detriment to their revenue, prejudice their trade secrets, and business affairs. I have given regard to the disclosure of copyright information and how trade secrets, business affairs or research may be prejudiced; disclosure that is reasonably expected to prejudice trade secrets, business affairs or research is a factor favouring nondisclosure under Schedule 2.2(a)(xi) of the Act.

I have deliberated on how the public interest is served by the information assessed to be released to you, what is in the public domain, and what further benefit may be derived from the release of this information.

On balance, I have decided that the potential detriment caused by the release of this business affairs information, which may constitute a breach of confidence, and copyright infringement, and therefore outweighs any anticipated benefit provided by its release.

I am therefore satisfied that, on the information available, disclosure of the identified business affairs information 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, 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. Documents containing your personal information will be published in redacted form to protect your privacy.

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
a/g Executive Group Manager, Statutory Planning
Environment, Planning and Sustainable Development Directorate

24 May 2022