



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 22/165230

Dear [REDACTED]

Decision on Freedom of Information Access Application 22/165230

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 16 December 2022.

Specifically, you are seeking:

“copies of ministerial and QT briefs”

Reference	Subject Line
1-2022/83957	22/83957 Ministerial Information Brief - Barr - Nominees for CRA Board Deputy Chair
1-2022/83962	22/83962 Ministerial Information Brief - Barr - City Renewal Authority Board Meeting Outcomes 5 May 2022
1-2022/83970	22/83970 Ministerial Information Brief - Barr - City Centre research findings
1-2022/84000	22/84000 Ministerial Information Brief - Barr and Cheyne - Second space pilot program
1-2022/84004	22/84004 Ministerial Information Brief - Barr - Dickson Shops Revitalisation - Update
1-2022/113106	22/113106 Ministerial Information Brief - Barr - City Renewal Authority brand refresh
1-2022/74298	22/74298 Ministerial-Information Brief - Rattenbury - Update to Energy Efficiency Improvement Scheme Eligible Activities Determination
1-2022/84992	22/84992 Ministerial-Information Brief - Rattenbury - Changes to the national energy objectives
1-2022/86818	22/86818 Ministerial-Meeting Brief - Rattenbury - Energy Ministers' Meeting - 12 August 2022
1-2022/87287	22/87287 Ministerial-Information Brief - Rattenbury - Victorian Gas Substitution Roadmap
1-2022/98963	22/98963 Ministerial-Information Brief - Rattenbury - Energy Ministers notification of pending changes to national gas law application

1-2022/108775	22/108775 Ministerial-Arrangements Brief - Rattenbury - Launch of Home Energy Support Rebate for Homeowners - 15 September 2022
1-2022/95847	22/95847 Ministerial-Caveat Brief - Vassarotti - Environment funding previous 3-5 years
1-2022/104791	22/104791 Ministerial Information Brief - Vassarotti - EPSDD 2022-23 Fees increases - Access Canberra Service Pressures
1-2022/104817	22/104817 Ministerial- Information Brief - Rattenbury - EPSDD 2022-23 Fees increases - Access Canberra Service Pressures
1-2022/99381	22/99381 Ministerial Information Brief - Berry - Territory Representation on the West Belconnen Joint Venture Board
1-2022/74776	22/74776 Ministerial Information Brief - Gentleman - Casey blocks 12 and 13 section 132
1-2021/56988	21/56988 Ministerial Information Brief - Gentleman - Demonstration Housing - Video Series Phase 2
1-2022/59350	22/59350 Ministerial-Information Brief - Gentleman - Reserve Management Plan (RMP) Review Issues
1-2022/14462	22/14462 Ministerial Information Brief - Rattenbury - Queanbeyan Sewage Treatment Plant - Policy Update
1-2022/83213	22/83213 Ministerial-Information Brief - Vassarotti - ACT Heritage Grants Successful Projects
1-2022/84030	22/84030 Ministerial Information Brief - Vassarotti - Public Consultation - Provisional Registration of Former Kingston Post Office
1-2022/87890	22/87890 Ministerial-Meeting Brief - Vassarotti - Agriculture Ministers' Meeting (AMM) - 20 July 2022
1-2022/98273	22/98273 Ministerial-Meeting Brief - Vassarotti - Agriculture Ministers' Meeting (AMM) - 9 September 2022
1-2022/106987	22/106987 Ministerial Information Brief - Vassarotti - (Follow-up Brief) Environment Protection Guidelines for Construction and Land Development in the ACT
1-2022/107522	22/107522 Ministerial-Information Brief - Vassarotti - Minister Plibersek - EPBC Act Listing decisions for the South-Eastern Glossy Black Cockatoo and the Mountain Skink
1-2022/109602	22/109602 Ministerial-Meeting Brief - Vassarotti - MEETING: Commissioner for Sustainability re Air Quality - 1 September 2022
1-2022/110421	22/110421 Ministerial-Information Brief - Vassarotti - RSPCA Pialligo Site
1-2022/106554	22/106554 Ministerial-Meeting Brief - Rattenbury - Community Clubs Ministerial Advisory Council
1-2022/10213	22/10213 Ministerial Information Brief - Gentleman - Unit Titles Reform Project Update - Stage 2
1-2022/57238	22/57238 Ministerial Information Brief - Gentleman - King Street Deakin Master Plan
1-2022/65308	22/65308 -Ministerial Information Brief - Gentleman - DV387 - Amend RZDC and MUHDC for number of dwellings permitted on non-standard blocks in RZ1 - for public consultation

1-2022/91258	22/91258 Ministerial Information Brief - Gentleman - Eastern Broadacre Options
1-2022/107638	22/107638 Ministerial-Caveat Brief - Gentleman - Reference to Traditional Custodians in the Planning Bill
1-2022/121687	22/121687 Ministerial- Information Brief - Gentleman -Territory Plan Outline and Intersection with Planning Bill 2022
1-2022/95477	22/95477 Ministerial Information Brief - Vassarotti - 2022 Legislation Program
1-2021/65524	21/65524 Ministerial Information Brief - Berry - Affordable Housing Innovation Fund Outcomes
1-2022/78024	22/78024 Ministerial Caveat Brief - Gentleman - Senior Adviser Crossman - Regulation - ACAT appeal rights for greenfields EDPs
1-2022/87464	22/87464 Ministerial Information Brief - Gentleman - Planning and Development Act 2007 - Tabling of Direct Sales for the period 1 April to 30 June 2022
1-2022/91086	22/91086 Ministerial Meeting Brief - Barr - Meeting with Village Building Co - 15 September
1-2022/90922	22/90922 Ministerial Information Brief - Berry - Material Conflicts of Interest Declaration
1-2022/95424	22/95424 Ministerial Information Brief - Berry - Suburban Land Agency Shared Equity Scheme Update and Broader Landscape
1-2022/95894	22/95894 Ministerial Information Brief - Berry - Taylor Re-Release Options
1-2022/98678	22/98678 Ministerial Caveat Brief - Berry - Indicative Land Release Program 2021-22 Outcome
1-2022/95371	22/95371 Ministerial-Information Brief - Rattenbury - Embedded Networks
1-2022/118004	22/118004 Ministerial Information Brief - Rattenbury - Car-free day options
1-2022/109716	22/109716 Ministerial Information Brief - Gentleman - PaGA Status Report No.4
1-2022/109723	22/109723 Ministerial Information Brief - Vassarotti - PaGA Status Report No.4
1-2022/109709	22/109709 Ministerial Information Brief - Berry - PaGA Status Report No.4
1-2022/115520	22/115520 Ministerial Information Brief - Multiple Ministers - EPSDD Strategic Plan 2022-25
1-2022/16720	22/16720 Ministerial Meeting Brief - Gentleman - PACICERG - 15 September 2022
1-2022/77928	22/77928 Ministerial Meeting Brief - Vassarotti - PACICERG - 15 September 2022
	QTB - Kingston Arts Precinct
	QTB - Auditor-General's report on Acton Waterfront Project Procurement
	QTB - Odgers and Verity Lanes - renewal works

2.	Securing offset values along the Eastern Broadacre employment corridor	Parks and Conservation Service (Environment)
3.	ACT Planning Reforms - Implementation	Planning and Urban policy

4.	<i>Kippax capital works for future land release</i>	<i>Development and Implementation</i>
C.	<i>Planning System Review and Reform Project</i>	<i>Planning & Urban Policy</i>
D.	<i>Draft Variations & New Territory Plan</i>	<i>Planning & Urban Policy Development and Implementation</i>
E.	<i>YWCA, Rutherford Crescent, Ainslie</i>	<i>Statutory Planning</i>
F.	<i>PFAS in the ACT</i>	<i>Environment DDG EWER</i>
G.	<i>Molonglo Group Centre</i>	<i>Development & Implementation</i>
H.	<i>McKellar Shops</i>	<i>Statutory Planning</i>
1.	<i>Light Rail corridor planning (NEW)</i>	<i>Planning & Urban Policy</i>
2.	<i>Western Edge Investigations</i>	<i>Planning & Urban Policy</i>
3.	<i>Eastern Broadacre (including Majura Valley)</i>	<i>Planning & Urban Policy</i>
4.	<i>Five Year Indicative Land Release Program</i>	<i>Development & Implementation</i>
5.	<i>Land and Property Trends</i>	<i>Development & Implementation</i>
6.	<i>Gungahlin Community Facilities</i>	<i>Development & Implementation</i>
7.	<i>East Lake</i>	<i>Development & Implementation</i>
1.	<i>Gungahlin Development update</i>	<i>Suburban Development/SLA</i>
2.	<i>Molonglo Development Update (includes Whitlam)</i>	<i>Suburban Development/SLA</i>
3.	<i>West Belconnen Ginninderry Development Update</i>	<i>Suburban Development/SLA</i>
4.	<i>Land Pricing - Industry Comparison (including sales data)</i>	<i>Suburban Development/SLA</i>
5.	<i>Affordable, Public and Community Housing</i>	<i>Suburban Development/SLA</i>
6.	<i>Woden Town Centre Land Release</i>	<i>Suburban Development/SLA</i>
7.	<i>SLA Delivery of ILRP</i>	<i>Suburban Development/SLA</i>
8.	<i>Hot Topic - Recent Sales Results (NEW)</i>	<i>Suburban Development/SLA</i>
9.	<i>ILRP Housing Targets</i>	<i>Land Supply and Policy/EPSSD</i>

10.	<i>Housing Affordability</i>	<i>Land Supply and Policy/EPSDD</i>
11.	<i>Housing Strategy</i>	<i>Land Supply and Policy/EPSDD</i>
12.	<i>Build to Rent</i>	<i>Land Supply and Policy/EPSDD</i>
13.	<i>Five Year Indicative Land Release Program</i>	<i>Copies for Information</i>
3.	<i>Zero Emissions Vehicle Strategy</i>	<i>CCE</i>
4.	<i>Gas Transition Next Steps</i>	<i>CCE</i>
5.	<i>Electrification of Government gas assets</i>	<i>CCE</i>
B.	<i>Minimum Energy Efficiency Standards for rental properties</i>	<i>CCE</i>
WATER		
1.	<i>Water quality (Blue Green Algae)</i>	<i>EHW</i>
2.	<i>Healthy Waterways (Basin Project)</i>	<i>EHW</i>
ENERGY AND EMISSIONSREDUCTION		
6.	<i>Community Zero Emissions Grants Program</i>	<i>CCE</i>
7.	<i>Public Electric vehicle charging stations</i>	<i>CCE</i>
8.	<i>Electricity and gas prices</i>	<i>CCE</i>
9.	<i>Community Club Upgrades</i>	<i>CCE</i>
10.	<i>Energy Efficiency Improvement Scheme</i>	<i>CCE</i>
ENVIRONMENT		
5.	<i>Defence Housing Consultation - Multiple Threatened Species on Lawson Grasslands</i>	<i>Environment</i>
HERITAGE		
1.	<i>Swinger Hill cluster housing - heritage guidelines</i>	<i>Heritage</i>
2.	<i>Heritage ACT work pressures</i>	<i>Heritage</i>
5.	<i>DOMA Group development at Mount Ainslie</i>	<i>Heritage</i>
7.	<i>Council Membership</i>	<i>Heritage</i>
Budget Items		
2.	<i>Mr Fluffy Legacy - Place of Reflection</i>	<i>Building Reform</i>
SUSTAINABLEBUILDING AND CONSTRUCTION		

3.	<i>Property Developer Regulation</i>	<i>Building Reform</i>
5.	<i>Fidelity Fund</i>	<i>Building Reform</i>
8.	<i>Energy Efficiency and Minimum Energy Efficiency Standards for rental properties</i>	<i>Building Reform</i>
9.	<i>ACT Government - Response to Asbestos</i>	<i>Asbestos Response Taskforce</i>
10.	<i>Cladding rectification</i>	<i>Major Projects Canberra</i>

As agreed, EPSDD must make a decision on your application on or by 7 July 2023.

Decision on Access

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 response to your application, comprehensive searches were conducted and 105 documents containing information that I am satisfied is within the scope of your application, were identified.

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.

For the reasons set out below, I have decided to:

- grant full access to 84 documents relevant to your application;
- 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; and
- refuse access to three documents on the basis that these consist of information that I am satisfied would be contrary to the public interest to disclose under Schedule 1 of the Act.

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

- the FOI Act, particularly sections 6, 17, 50, Schedules 1 and 2
- the content of the documents that fall within the scope of your request
- the *Human Rights Act 2004*
- information released to you previously
- information publicly available.

The documents released to you are provided as **Attachment B** to this letter.

Reasons for Decision

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.

Section 16 of the Act relevantly defines ***contrary to the public interest*** to mean either information:

- that is taken to be contrary to the public interest to disclose under Schedule 1 of the Act; or
- the disclosure of which would, on balance, be contrary to the public interest under the test set out in section 17.

Information Disclosure that is taken to be contrary to the public interest - Schedule 1 of the Act

Schedule 1 of the Act recognises a range of information that is taken to be contrary to the public interest to disclose unless the information identifies:

- 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.

Relevant to documents 17, 21, 36, 37, 43 and 50 is Schedule 1, section 1.6 'Cabinet information'. Subsection 1.6(1)(a) of Schedule 1 applies to information that 'has been submitted, or that a Minister proposes to submit, to Cabinet for its consideration and that was brought into existence for that purpose'. Subsection 1.6(1)(c) applies to information that is a copy of, or part of, or contains an extract from, information mentioned in paragraph (a).

To apply, I must be satisfied that these terms are met, and that the information is not purely factual. Factual information may be taken to be contrary to the public interest under this provision if its disclosure would involve disclosure of a deliberation or decision of Cabinet and the fact of the deliberation or decision has not been officially published.

I have considered the requirements of Schedule 1 and specifically, section 1.6, and am satisfied documents 17, 21, 36, 37, 43 and 50 contain information that is proposed to be, or has been submitted to Cabinet, for its consideration and that was brought into existence for that purpose. Moreover, I am satisfied that the disclosure of this information would not reveal 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.

Accordingly, under Schedule 1, 1.6(1)(a) and (c) of the Act, this information is taken to be contrary to the public interest to disclose and it is my decision to refuse access in full to documents 17, 36 and 37 and partial access to documents 21, 43 and 50.

Relevant to document 11 is Schedule 1, section 1.2 'Information subject to legal professional privilege'. Components of document 11 refer to legal advice which I consider information that would be privileged from production or admission into evidence in a legal proceeding on the ground of legal professional privilege. I am satisfied that disclosure of the information would not reveal 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.

Accordingly, I have decided to grant partial access to document 11 as it contains information that falls within the meaning of legal professional privilege as defined by the Act.

Information Disclosure and the public interest test – Schedule 2 of the Act

In assessing whether disclosure of the remaining information identified in relation to your request would, on balance be contrary to the public interest, I must apply the test outlined under section 17 of the Act.

This requires consideration of factors favouring disclosure, any favouring nondisclosure and the balancing of those factors when considered cumulatively. Unless, on balance, disclosure would be contrary to the public interest, access to the information must be allowed.

In applying the public interest test to the documents identified in relation to your request, 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; and
- Schedule 2, 2.1(a)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.

Collectively, these factors demonstrate that the release of the requested information may assist in public understanding of government decisions and provide insights as to the context for them, promoting transparency and accountability.

I have however, also determined that disclosure of some of the information identified in relation to your request 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)(viii) – prejudice the economy of the Territory;
- Schedule 2, 2.2(a)(x) – prejudice intergovernmental relations;
- Schedule 2, 2.2(a)(xi) – prejudice trade secrets, business affairs or research of an agency or person;
- Schedule 2, 2.2(a)(xiii) - prejudice the competitive commercial activities of an agency; and
- Schedule 2, 2.2(a)(xvi) – prejudice a deliberative process of government.

Schedule 2, 2.2(a)(ii).

In my review of the requested material, I have given regard to the pro-disclosure bias of 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 within these documents (1, 3, 4, 12, 13, 18, 21, 23, 28 and 34) 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.

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 to disclose. Accordingly, I have decided to grant partial access to these documents as they contain information that falls within the meaning of personal information as defined by the Act, including mobile numbers, and personal associated references which could easily identify individuals.

To provide you with the information that I have determined to be in the public interest to release, copies of these documents have been prepared with personal information redacted in accordance with section 50 of the Act.

Schedule 2, 2.2(a)(x)

Document 34 includes information provided in confidence, and subject to ongoing negotiations and deliberations between the ACT and the Commonwealth. The release of this information may serve to further open discussion, government accountability, informed debate and reveal the reason for a government decision and any contextual or background information. However, on balance release of this information would be detrimental to intergovernmental relations between the ACT and the Commonwealth. On balance, and the information available to me, I am satisfied that the disclosure of this information is not in the public interest at this time.

Schedule 2, 2.2(a)(xi)

Documents 7, 18, 20, 21 and 32 contain information that the release of would be expected to diminish commercial value and compromise commercial competitiveness in a limited market and provide a commercial advantage to other businesses. The release of this information would reasonably prejudice trade secrets and business affairs, a factor in favour of non-disclosure under Schedule 2.2(a)(xi) of the Act.

I have considered the release of business affairs information and whether its disclosure would provide relevant contextual, or background information. In reaching my decision my decision I have weighed on balance these public interest considerations, the information available and contractual agreements with third parties. 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.

To provide you with the information that I have determined to be in the public interest to release, copies of documents 7, 18, 20, 21 and 32 have been prepared with business information redacted in accordance with section 50 of the Act.

Schedule 2, 2.2(a)(xiii) and Schedule 2, 2.2(a)(viii)

Documents 34 and 44 contain information that if disclosed could prejudice the competitive commercial activities of an agency. Schedule 2, 2.2(a)(xiii) reflects that when the ACT Government engages or competes with commercial service providers in carrying out particular functions, to operate effectively, it is necessary that certain information relating to its functions is not disclosed. The Suburban Land Agency, established under the *City Renewal Authority and Suburban Land Agency Act 2017* (the CRASLA Act), carry out a range of activities in a competitive commercial environment, including 'to buy and sell land on behalf of the Territory' - section 39(a) of the CRASLA Act. The disclosure of this information could reasonably be expected to prejudice the competitive commercial activities of the Suburban Land Agency by affecting potential future land sales or commercial negotiations,

and in turn, document 44 contains information that if disclosed, may prejudice the economy of the ACT Government (Schedule 2, 2.2(a)(viii)).

Schedule 2, 2.2(a)(xvi)

Document 35 contains information that if disclosed could be expected to prejudice the deliberative process of Government (schedule 2, 2.2(a)(xvi)).

If these deliberations were disclosed, it could inhibit employees from having robust discussions that support the deliberations of government. It is in the public interest to allow the government to have robust discussions if the resulting outcome is a more effective framework for supporting the community. Disclosure of this information would go against this principle.

Additionally, the purpose of some of the communication is to advise the Minister on possible courses of action in response to the draft planning bill. This advice does not constitute the government's final view. I find the information at issue in those documents could therefore reasonably be expected to prejudice the ACT government's deliberative process. I have decided that such prejudice could reasonably be expected to have a considerable effect on that deliberative process. I have given this nondisclosure factor significant weight.

Charges

In accordance with section 107(2)(e) of the Act 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

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

(signed electronically)

Craig Simmons
Information Officer
Chief Operating Officer
Environment, Planning and Sustainable Development Directorate

7 July 2022