




ACT
Government

Suburban Land
Agency



Dear 

Decision on Freedom of Information Access Application 24/060899

I refer to your application made under section 30 of the *Freedom of Information Act 2016* (the Act), on behalf of , received by the Suburban Land Agency (SLA) on 11 June 2024.

Specifically, you are seeking:

“...copies of the following documents:

- 1. All communication around the need for “commercial advice” (Contract SL2211141) which should include all steps taken between (and including) the need for commercial advice being identified by the Suburban Land Agency and the contract being signed off by both parties.*
- 2. All communication around the decision for no: standards and key performance indicators, security requirements, delivery items, meetings or reports specified in the contract.*
- 3. All communication around the \$62,700 fee arrived at with Colliers International and the Directorate.*
- 4. All communication with the SLA Board, CEO or ACT Government Ministers officers around the contract. This should include any briefings, meeting minutes, emails or teams call logs and messages around this procurement.*
- 5. Any advice that was provided By Colliers International through this contract to the SLA or Ministers office. This should include any records of meetings and minutes, phone calls, reports or emails supplied by Colliers.”*

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 accordance with section 40 of the Act, as third-party consultation was undertaken, a decision on your access application must be made on or by 13 August 2024.

Searches Conducted

Comprehensive searches were conducted and six 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 four documents, and
- grant **partial** access to two documents relevant to your application.

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, 50 and Schedules 1 and 2
- the content of the documents that fall within the scope of your request
- the *Human Rights Act 2004*
- the views of the third party consulted.

Public Interest Considerations

My reasons for deciding not to grant access to components of these documents are as follows:

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)(iv) – ensure the effective oversight of expenditure of public funds.

There is public interest in transparency regarding management of public monies, and the ability of the public to discuss, debate, and hold the government accountable for its management of public funds when engaging third parties to provide advice or services. The pro-disclosure factors apply to this information and I have given considerable weight to these factors.

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
- 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.

Documents 5 and 6, contain personal information of individuals. This information includes the name and contact information of an individual employed by a third party and signatures of ACT Government staff. 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* (a factor favouring nondisclosure under schedule 2, 2.2(a)(ii) of the Act).

Document 5 contains information relating to the evaluations of a request for quote process, this includes the scores allocated to the three applicants, and comparative assessment of these applications, including pricing amounts for the proposed services. Disclosure of this information would be expected to provide an unfair advantage to applicants of a similar future procurement process. This advantage to applicants would be expected to negatively impact the SLA’s ability to obtain value for money services in future, and effect the competitive commercial activities of the SLA, (a factor favouring nondisclosure under schedule 2, 2.2(a)(xiii) of the Act)

When considering the disclosure of document 6 (Market Advice, dated 30 June 2021) prepared by Colliers, I have taken into account the objections to disclosure raised by Colliers, particularly regarding the research undertaken to present their findings and advice. I agree that disclosure of this research would provide competitors in a niche market an unfair advantage into the methodology used by Colliers and possibly affect their future business, a factor favouring nondisclosure under schedule 2, 2.2(a)(xi) of the Act. I have also considered the age of this information, noting that the advice provided is less than five years old and still relevant to future activities of the SLA.

In making my decision I have considered the two factors favouring disclosure and the three favours factoring nondisclosure. I have given minor weight to the personal information factor, and significant weight to the two other factors favouring nondisclosure. On balance, with the information available to me, I am satisfied that the disclosure of the information discussed above 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 documents 5 and 6 have been prepared with this 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, on behalf of the Agency, Environment Planning and Sustainable Development Directorate (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/accountability-and-oversight/freedom-of-information/foi-complaints-and-reviews>

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
15 Constitution Avenue
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 Agency's processing of your request, or would like further information, please contact the Information Governance Team email EPSDFOI@act.gov.au.

Yours sincerely



Joey Lee

Information Officer
Executive Director, Place Delivery – a/g

Suburban Land Agency

12 August 2024