



ACT
Government

Suburban Land
Agency

Phone: (02) 6207 1923
Reference: 23/086478

By Email: [REDACTED]

Dear [REDACTED]

Decision on Freedom of Information Access Application 23/086478

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 18 August 2023, in which you sought access to documents relating to the ALN Project Delivery Deed and associated correspondence relating to delayed construction at Whitlam.

Specifically, you are seeking:

"...1. Project Delivery Deed between the SLA and ALN Construction in relation to the construction of dwellings in Whitlam under the Affordable Home Purchase Scheme. In particular, I am interested in requesting the Project Delivery Deed (or however that document may be described) that covers the construction of a 3 bedroom, one bathroom, one car, house on Section [REDACTED], Block [REDACTED] Whitlam (Street Address [REDACTED] Whitlam).

2. Correspondence including letters and emails between the SLA and ALN Construction in relation to delays regarding the construction of dwellings in Whitlam under the Affordable Home Purchase Scheme.

[REDACTED]

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 third-party consultation was undertaken, SLA must decide your application on or by 30 October 2023.

Searches Conducted

Comprehensive searches were conducted and forty-four documents containing information within the scope of your application were identified.



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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 two documents relevant to your application.

I have decided to grant partial access to forty-two documents, in accordance with section 50 of the Act, provide you with copies of documents with deletions applied to the contrary to the public interest information.

My access decisions are detailed further in the following statement of reasons.

Material Considered and Third Party Consultation

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

- the FOI Act, particularly sections 6, 17, 38, 50, and Schedule 2
- the content of the documents that fall within the scope of your request
- the views of third parties consulted
- Freedom of Information (Volume 4 – Considering the public interest) Guidelines 2020 ([NI2020-371](#))

In accordance with section 38 of the Act, as information within the documents may have been of concern to two third parties, consultation was undertaken. One third party objected to the disclosure information in full. The third party's objections to disclosure of the information included; disclosure would prejudice their business affairs, the information being provided in-confidence and also contained personal information.

I have considered the objections to disclosure raised in regard to business affairs, confidential and personal information, this is addressed below when considering the public interest test.

As my decision is contrary to one of the third parties' objections, access to the following documents is deferred pending the period allowed for the third party to seek a review of this decision with the ACT Ombudsman, specifically documents 1-10, 16-22, 24-25, 28-29, 31-32 and 43. You will be advised if an application for review of the decision is submitted.

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

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



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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 2.1(a)(i) – promote open discussion of public affairs and enhance the government’s accountability;

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;

Personal Information

Documents relevant to your application contain personal information of individuals, including sensitive personal information of members of the public. 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.

Business Information

Several of the documents in scope contain information relating to costs and business information provided to SLA under contractual agreements. 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



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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 objections provided by 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.

I consider the documents contained within our files should be exempt from release, as the release of these documents would diminish the commercial value of the information and compromise the organisation's commercial and competitiveness and therefore, is contrary to the public interest to release.

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 information redacted in accordance with section 50 and the Objects of the Act.

Charges

In accordance with the *Freedom of Information (Fees) Determination 2018* no charges are applicable to this application

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/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



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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 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



Nicholas Holt
Information Officer
Executive Director, Built Form and Divestment
Suburban Land Agency