



ACT
Government

Environment, Planning and
Sustainable Development

Phone: 6207 1923
Reference: 20/27026

Dear [REDACTED]

Freedom of Information 20/27026

I refer to your application, under section 30 of the *Freedom of Information Act 2016* (the Act) received by Environment, Planning and Sustainable Development Directorate (EPSDD) on 13 May 2020.

Specifically you are seeking:

All documents, of whatever description, in the possession of the ACT Government, related to or concerning in any way the negotiation of and finalisation of the agreed land swap between the ACT and Commonwealth Governments, involving the Curtin Horse Paddocks and land at West Basin.

Included in the request is any and all documents concerning the valuation of the land included in the land swap and any and all documents emanating from or considered by the Procurement Board which are relevant to the land swap.

On 26 May 2020, the scope of your application was refined to the following:

That the request relates to all documents included within the scope of the request from 1 January 2019 with the exception of documents submitted to or generated by the Procurement Board, in relation to which I do not refine the original request.

That documents that would be privileged, pursuant to the FOI Act, from release on the ground of legal professional privilege be excluded from the request.

That drafts where a final version is available be excluded from the request.

That emails of an administrative nature be excluded from the request; and

That information that is Cabinet information be excluded but only where that information may be lawfully withheld from release pursuant to the FOI Act

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 41(3) of the Act, this decision is due on/by 27 July 2020. We appreciate your patience in this matter.

Searches Conducted

Comprehensive searches were conducted and 34 documents within the scope of your application were identified, this includes one document transferred to EPSDD from Major Projects Canberra.

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 relevant to your application.

I have decided to grant partial access to nine 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.

I have refused access to 21 documents that are either publicly available or contain information that is taken to be contrary to the public interest.

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.

Objections raised by a third-party have been taken into consideration.

Material Considered

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

- the Act, particularly sections 17, 38, 43, 45, 50, 57, 58 and schedules 1 and 2;
- the *Information Privacy Act 2014*;
- the views of relevant third parties;
- the content of the documents that fall within the scope of your request.

Public Interest Considerations

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

Information not in the Public Interest to Disclose – Schedule 1 of the Act

A number of documents identified contain information identified to fall under Schedule 1.6 (cabinet information) and is therefore taken to be contrary to the public interest to disclose.

I confirm that this section applies as the document does not identify 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.

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

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.

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(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)(x) – prejudice intergovernmental relations;
- Schedule 2.2(a)(xi) – prejudice trade secrets, business affairs or research of an agency or person;
- Schedule 2.2(a)(xvi) – prejudice a deliberative process of government.

Personal Information

Documents relevant to your application contain information that includes the personal information of individuals which I consider, if disclosed, could reasonably be expected to prejudice the protection of an individual’s right to privacy. On balance, and the information available to me, I am satisfied that the disclosure of this personal information is not in the public interest.

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 that may advance open discussion, transparency and accountability is not specifically that which has been identified as personal information.

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

Intergovernmental Relations

Consideration has been given to the relevant documents and information held that relate to the negotiations and deliberations of the land agreement, and whether the information contained within the documents contains information contrary to the public interest.

Relevant documents include 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 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.

Business Affairs

Consideration has been given to the relevant documents and information held that concern third parties, and whether the information contained within the documents contains information contrary to the public interest.

Relevant documents include reports authored by third parties and include substantial details in outlining the methodology and research undertaken by these businesses from which competitors could discern their approach and methodology, consequently leaving them at a disadvantage, a factor favouring nondisclosure under Schedule 2.2(a)(xi) of the Act.

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 reveal the research and methodology of third parties. On balance, and the information available to me, I am satisfied that the disclosure of this business affairs 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 of these documents have been prepared with the business information redacted in accordance with section 50 and the Objects of the Act.

Online Publication

Under section 28 of the Act, EPSDD maintains an online record of access applications called a disclosure log. Your access application, my decision and documents released to you in response to your access application 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's disclosure log at

<https://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

Alternately, 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)

Lesley Cameron

Information Officer

Environment, Planning and Sustainable Development Directorate

27 July 2020