



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923

Reference: 22/48666

Dear [REDACTED]

Decision on Freedom of Information Access Application 22/48666

I refer to your application made under section 30 of the *Freedom of Information Act 2016* (the Act) received by partial transfer to the Environment, Planning and Sustainable Development Directorate (EPSDD) on 22 April 2022.

On 27 May 2022 you confirmed you were specifically seeking:

All information from 1 January 2020 to date (applications, documents, online complaints, emails, file notes, meeting papers, records of conversation, images, audio recordings, field notes, inspection records, investigation reports [including draft reports], etc) relating to the:

1. *Development Application for building works at 121 Hopetoun Cct Yarralumla ACT (ie Block 22 Section 23 Yarralumla)*

2.

3.

In relation to Development Application 202139016 exclude draft documents, automated emails from eDevelopment, or plans.

I am an Information Officer appointed under section 18 of the Act to deal with access applications made under Part 5 of the Act.

You have granted an extension, therefore EPSDD must make a decision on your application on or by 30 June 2022. Thank you for your patience in this matter.

Searches Conducted

Development Application (DA) 202139016 documents within scope of your application that are public register associated documents under the *Planning and Development Act 2007* were made available to you on 17 June 2022 and are not included in this decision.

I have refused to deal with parts of your application under section 43(1)(d) of the Act. Under section 43(1)(d) a respondent may refuse to deal with an access application wholly or in part only if the government information is already available to the applicant.

Section 45 of the Act sets out the circumstances in which government information is already available to the applicant. Those circumstances include where the government information has previously been given to the applicant (section 45(1)(f)). The government information I am specifically referring to in this case is the correspondence authored by yourself held by EPSDD.

Comprehensive searches were undertaken, 38 documents and one audio file were identified as relevant to your application.

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 33 documents and one audio file relevant to your application.

I have decided to grant partial access to five 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.

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, 43, 45, 50 and Schedule 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

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)(xiii) – contribute to the administration of justice generally, including procedural fairness.

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*.

Personal Information

Documents relevant to your application contain personal information of individuals (including names, addresses, mobile phone numbers or identifying information). 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 protection of the individuals' personal information outweighs the benefit which may be derived from releasing them. I consider that these individuals are entitled to expect that the personal information they have supplied to ACT Government will be dealt with in a manner that protects their privacy. I consider that if this information was disclosed, it 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. These redactions are minor in nature.

Charges

In accordance with section 107(2)(b) of the Act any 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 Weller
Information Officer
A/g Executive Branch Manager, Statutory Planning
Environment, Planning and Sustainable Development Directorate

29 June 2022