



Decision on Freedom of Information Access Application 22/121837

I refer to your application made under section 30 of the *Freedom of Information Act 2016* (the Act), in which you sought access to documents relating to development at 32 Sturt Ave Narrabundah. Your application was initially received by Chief Minister, Treasury and Economic Development Directorate (CMTEDD). It was transferred to Community Services Directorate (CSD), and Environment, Planning and Sustainable Development Directorate (EPSDD) on 8 September 2022.

I am an Information Officer within EPSDD, appointed under section 18 of the Act to deal with access applications made under Part 5 of the Act. I am responding to your application in relation to documents held by EPSDD.

Scope

You are seeking information in relation to Development Application (DA) 202139347, and subsequent appeals to ACT Civil and Administrative Tribunal (ACAT). Staff from EPSDD contacted you between September and November 2022 seeking to clarify the scope of your request. The scope of your application remains as it was submitted:

“A) 32 Sturt Ave, Narrabundah DA. All written email/hard copy/ post it note/ text message correspondence internally between planners, architects, contractors, lawyers and inter/ intra department. Including housing directorate intake of complaints (including WHS issues and instructions to contractors), emails, phone transcriptions and file notes between all directorates on this matter and parties, and all escalations to SOG Cs, Bs and As and above Execs including DLOs and ministerial staff and Ministers of housing and ACT planning.

B) all ACAT correspondence between housing and ACTPLA re: matter above including 41/4022 and 44/2022 including audio of mediation and hearings and follow up internal meetings for government officials.

C) all transcriptions of conversations, emails, meetings (informal and formal) between Housing, ACT planning and ACAT prior to mediation and especially in hearings on these matters

D) anything that shows conversations about the Watson application to the ACAT tribunal in phone calls, emails, official files, from housing and ACTPLA and between these two organisations prior to the mediation, after the mediation and prior to next

steps.

E) a timeline, data and evidence to show planning iterations, communications and general maintenance and management of ACT Housing on this property, plus correspondence of this agency to ACTPLA and other relevant data such as documented reference points to highlight understanding of each community concern in the DA process, traffic studies undertaken (not just points of view but actual studies), socioeconomic impact analysis undertaken on the neighbourhood, bus access and route planning including topographical studies on alignment for supported housing, carbon emission studies from extra concrete proposed on the block and all instructions to Susan Lane and her direct reports and upper hierarchy from the Commissioner about this development - 32 Sturt Ave

F) measures taken to ensure no repeat of previous trespass and WHS issues to neighbours including emails, calls, file notes G) all data points, and digital communications regarding the decision to redevelop 32 Sturt Ave instead of selling it.”

Suspension of application and deemed decision

Your application was suspended under section 34 of the Act while we sought to clarify the scope. As EPSDD had not received a response from you within three months of the last request on 10 November 2022, a letter was sent to you on 23 February 2023 advising that we would no longer deal with your application. You responded on 23 February advising that your scope remained as submitted.

EPSDD had failed to advise you that your application could be closed if you did not respond within three months. Therefore EPSDD has not responded to your application within timeframes as defined in section 40 of the Act. Under section 39(1)(a) of the Act, a decision not made in time is taken to be a refusal to give access.

As advised in our email of 23 March 2023, we will notify the ACT Ombudsman of this deemed decision. We appreciate your patience while we have continued to deal with your application under section 39(3). The notice of decision follows.

Searches Conducted

Comprehensive searches were conducted within EPSDD. We identified 91 documents containing information within the scope of your application.

Decision on Access

I have included as **Attachment A** to this decision the schedule of 91 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 68 documents relevant to your application.

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

I have refused access to 19 documents, in accordance with Schedule 1, 1.2 of the Act.

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, 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.

Public Interest Considerations

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

Information Disclosure – Contrary to the Public Interest under 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.

Schedule 1, 1.2 – Legal Professional Privilege

Nineteen documents within scope of your request are legally privileged communications between EPSDD and its lawyers, and as such are refused under Schedule 1, 1.2 of the Act.

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.

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 of 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)(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, 2.2(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 internal details of proposed dwellings. 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.

“Refuse to deal” provisions of the Act

The Act allows an agency to refuse to deal with certain classes of documents. Under section 43(d) and section 45 of the Act I am refusing to deal with the following documents as the information is already available to you.

- Section 45(c) – Public register associated documents
 - These were provided to you through our system Objective Connect on 23 March 2023.
- Section 45(d) – Documents produced in accordance with an order from ACAT
- Section 45(f) – Documents otherwise previously provided to you
 - This includes any documents or correspondence provided to you from ACAT that were also provided to EPSDD.
- Section 45(g) – Documents available for purchase
 - Title documents are available for purchase from the ACT Land Titles Office.

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
Allara House
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 processing of your request to EPSDD, or would like further information, please contact EPSDD Customer Service on (02) 6207 1923 and ask for the Information Governance team, or email EPSDFOI@act.gov.au.

Yours sincerely

Signed electronically

Craig Weller
Information Officer
Executive Branch Manager, Statutory Planning
Environment, Planning and Sustainable Development Directorate

16 May 2023