



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 23/038126

[REDACTED]

By Email: [REDACTED]

Dear [REDACTED]

Decision on Freedom of Information Access Application 23/038126

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 5 April 2023 via a partial transfer from the Chief Minister, Treasury and Economic Development Directorate.

Specifically, you sought access to the documents that provide answers to the following questions:

- “1. Please provide the most up-to-date list of businesses which have undertaken to comply with the ACT Firewood Code of Practice, including the dates that each business was entered on the register.*
- 2. Does the Government have statistics, or an estimate, of the total number of firewood merchants selling firewood to the ACT each year for the last 15 years.*
- 3. Each year for the last 15 years, what is the total amount in tonnes of firewood sold to the ACT and (a) what percentage of this is supplied by retailers compliant with the Firewood Code of Practice and (b) what is the percentage of this that is (i) hardwood, (ii) softwood, (iii) seasoned, (iv) unseasoned and (v) boxwood.*
- 4. By the year, what are the geographic regions for the firewood and whether the source of the timber was plantation or non-plantation.*
- 5. What auditing does the Government do of businesses that are registered as agreeing to the ACT Firewood Code of Practice, for example, to ensure they sell seasoned wood only and when were any audits last conducted.*
- 6. Please provide data on the results of compliance checks carried out under the Code of Practice by year from 1999 to 2023.*
- 7. What actions has the Environment, Planning and Sustainable Development Directorate - Environment taken to avoid institutional failure where the processes and structures relating to the enforcement of laws and policies on wood heaters do not operate efficiently or effectively in other parts of the ACT Government?*
- 8. What actions has the Commissioner for Sustainability and the Environment taken to avoid institutional failure where the processes and structures relating to the enforcement of laws and policies on wood heaters do not operate efficiently or effectively in other parts of the ACT Government?*

9. Which ACT Government Agency and ACT Govt Minister is responsible for the enforcement and regulation of the Wood heater emissions and efficiency standards and best practice management?
10. Over the last 5 years, what specific actions has the ACT Government taken to address the "Difficulty with enforcement of smoke standards" which Commissioner for Sustainability and the Environment discusses in her Investigation. Specifically, interested in any information on the lack of resources or inadequate co-ordination of enforcement in a manner that best makes use of the available resources.
11. Air quality in the ACT is generally excellent compared with other Australian cities and is considered clean by world standards. Over the last 15 years, has the ACT Government agency responsible for the Burn Right Tonight ever advised a Minister that the "Burn Right Tonight" campaign is not effective in improving air quality to safe levels in winter? Has this advice been explained in the Annual Report for the Agency?
12. Has the ACT Government agency responsible for the Wood Heater Replacement Program ever advised the responsible Minister that the Wood Heater Replacement Program has not been effective? Has this advice been explained in the Annual Report for the Agency? In what year did ACTEW AGL stop funding rebates for residents who installed gas heaters? What year did the program stop funding gas heaters? Does an industry or the ACT Government fund the Wood Heater Replacement Program?
13. What costing have been developed that describe the estimated costs for all trades for property owners to remove of wood heaters (and remediate the damaged area) before a property in any ACT suburb (excluding rural areas) can be sold? What assumptions are built into the costings?
14. What is the estimated cost to establish and maintain each year a register of wood heaters in the ACT to determine the number and age of wood heaters?
15. What is the estimated cost to develop and apply empirical criteria for determining environmental harm or nuisance from wood heater smoke, such as assessment of smoke composition and air quality monitoring at the affected sites, as part of EPA investigations.
16. What is the estimated cost urgently undertake an assessment of air pollutant emissions from diffuse sources to update the National Pollutant Inventory data (1999).
17. When will the Regulatory Impact Statement for the proposed rules mandating removal of wooden heaters be available publicly?
18. Which policy options to reduce the impact on wooden heaters were be eliminated as not feasible?
19. What is the estimated reduction in wood heater particulate emissions over the last 15 years in the ACT?

I already know that not all firewood sales occur at a fixed business location, nor do I need information on the health costs that relate to PM2.5."

I am an Information Officer appointed under section 18 of the Act to deal with access applications made under Part 5 of the Act. EPSDD must decide your application on or by 30 May 2023.

Decision on Access

Searches were conducted for relevant information maintained by EPSDD and the Commissioner for Sustainability and the Environment. One document containing information within the scope of your application was identified. I have decided to grant full access to this document. One document was created for the purpose of answering some of your questions in your application. Responses to most of your questions were addressed by the Chief Minister, Treasury and Economic Development Directorate in its decision at https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0007/2217337/2023-105.pdf.

I have provided a schedule of the relevant documents at **Attachment A**, and the relevant documents have been released to you as **Attachment B**. In accordance with section 54(2) of the Act, a statement of reasons outlining my decisions is below.

Statement of Reasons

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

- the FOI Act, particularly sections 6, 17, 43, 45, and Schedule 2
- the content of the documents that fall within the scope of your request
- the *Human Rights Act 2004*
- information publicly available.

As a decision maker, I am required to determine whether the information within scope is in the public interest to release. To make this decision, I am required to:

- assess whether the information would be contrary to public interest to disclose as per Schedule 1 of the Act
- perform the public interest test as set out in section 17 of the Act by balancing the factors favouring disclosure and factors favouring non-disclosure in Schedule 2.

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)(ii) – contribute to positive and informed debate on important issues or matters of public interest
- Schedule 2, 2.1(a)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.

I have placed substantial weight on the above factors favouring disclosure. It is reasonable to expect that the use of firewood in wood heaters and the work undertaken by government in this area is a topic of interest to the Canberra community. The release of this information can reasonably be expected to provide information that will inform the community, contribute to positive and informed debate and provide reasons and context on a government decision.

Factors favouring Nondisclosure

I did not identify any factor favouring nondisclosure and have decided to release this information to you in full.

Charges

Processing charges are not applicable for this request because the number of pages released to you is below the charging threshold of 50.

Online Publication – Disclosure Log

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 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



Bren Burkevics
Information Officer
Executive Group Manager, Environment, Heritage and Water

30 May 2023