



**ACT**  
Government

Environment, Planning and  
Sustainable Development

Phone: (02) 6207 1923

Reference: 23/129538

Dear [REDACTED]

### **Decision on Freedom of Information Access Application 23/129538**

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 15 December 2023.

Specifically, you are seeking:

*"...all documents on the following files:*

- *Territory Leasing (TL) file for Block 23 Section 41 Lyneham – parts that cover the years between 2008 and 2012 and 2022 – 2023.*
- *Territory Leasing (TL) file for Block 4 Section 41 Lyneham – parts that cover the years between 2008 and 2012 and 2022-2023.*

*And copies of any Development Applications approved for Block 4 Section 41 Lyneham between the years of 2008 and 2012. A copy of the approved Development Application of the construction of a carpark on Block 23 Section 41 Lyneham – between 2008 and 2012."*

On 15 January 2024, you confirmed the exclusion of draft (unsigned) documents.

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 40 of the Act, as third-party consultation as undertaken, a decision on your access application must be made on or by 27 February 2024.

### **Searches Conducted**

Comprehensive searches were conducted and 18 documents containing information within the scope of your application were identified.

This does not include public register associated documents which have been provided to you separately.

### **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 11 documents relevant to your application.

I have decided to grant partial access to six 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 one document on the basis that it consists of information that I am satisfied would be contrary to the public interest to disclose under Schedule 1 of the Act.

I have decided to refuse to deal with parts of your application under sections 43(1)(d) and sections 45(g) of the Act.

Three documents within the scope of your application (Title Search, Lease and Executed Lease)), are available as part of the Land Titles public register on the Access Canberra website:

<https://www.accesscanberra.act.gov.au/building-and-property/search-the-act-land-titles-register>

Under section 43(1)(d) of the Act a respondent agency may refuse to deal with an access application wholly or in part if the government information is already available to the applicant. Section 45 sets out the circumstances in which government information is already available to the applicant. Those circumstances include where the government information is available for purchase (section 45(g)).

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*
- the views of third party consulted
- 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**

One document contains advice from the ACT Government Solicitor, this information would be privileged from production or admission into evidence in a legal proceeding on the ground of legal professional privilege. This information is taken to be contrary to the public interest under Schedule 1, 1.2 of the Act.

This information 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*

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.

#### *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. 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 (signatures and non-ACT Government email address) 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.

### **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/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

Via email: [actfoi@ombudsman.gov.au](mailto: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](mailto:EPSDFOI@act.gov.au).

Yours sincerely

(signed electronically)

Craig Weller  
Information Officer  
Executive Branch Manager, Statutory Planning  
Environment, Planning and Sustainable Development Directorate  
27 February 2024