



Dear 

**Freedom of information request: 19/21466**

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Environment, Planning and Sustainable Development Directorate (EPSDD) on 2 July 2019, in which you sought access to information held by the City Renewal Authority relating to reports and briefings, prepared for the ACT Government by Ernst and Young regarding the Precinct Renewal Program for the City Hill development.

Specifically, you are seeking:

*"...Any documentation, including reports and briefings, prepared for the ACT Government by Ernst and Young regarding the "Precinct Renewal Program - City Hill S63 Development Strategy".*

I note on the 30 July 2019 you agreed to a 10-day extension of time extending the due date to 13 August 2019. On the 9 August 2019 you were advised that third-party consultation was required therefore, revising the due date to 3 September 2019.

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

**Decision on access**

Searches were completed for documents relevant to your access request and 22 documents were identified that fall within the scope of your request.

I have included as **Attachment A** to this decision the schedule of documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.



I have decided to refuse access in full, to twenty-two documents relevant to your request as I consider the content would be contrary to the public interest to disclose

My decisions on access are further detailed in the following statement of reasons.

### **Material considered**

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

- the *Freedom of Information Act 2016*, with consideration given to sections 17, 35, 38, 47, 54, Schedule 2;
- the content of the documents that fall within the scope of your request;
- Response from third-party consultation

### **Public Interest Considerations**

My reasons for deciding not to grant access to documents held on the schedule are as follows:

#### **Contrary to the public interest information under schedule 2 of the FOI 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 cascading test set out by section 17 of the Act which requires consideration of factors favouring disclosure, any factors favouring nondisclosure and the balance of those factors when considered cumulatively.

#### **Economy of the Territory**

Information within the scheduled items contains information relating to the economy of the agency. The information identifies land which is not yet publicly available and remains in the process of being developed for future sale.

I have considered whether the release of this information would contribute to inform the community of government dealings, accountability and promote open discussion under Schedule 2.1 of the Act. Disclosure of this information would reasonably have a substantial and adverse impact on land release and sales within the precinct, and could therefore disadvantage the public, and the economy of the Territory.

Protection of the economy of the Territory is a factor favouring nondisclosure under Schedule 2.2(a)(viii) of the Act. On balance these public interest considerations outweigh the benefits of disclosure this information, I have therefore concluded that the disclosure of this information including valuations and predicted sales to be a relevant factor against release.

I am satisfied that, on the information available, disclosure of the information identified as relevant to the economy of the Territory is contrary to the public interest.

#### **Infringement on the copyright**

Several of the documents within scope contain information relating to business information, and clearly labelled copyright information that if released would be contrary to the legal rights of the third-party copyright owners who have objected to the release of this information. The third-parties have identified that the release of this information would clearly impact on the copyright owner's revenue and market, and prejudice trade secrets and business affairs, a relevant factor in favour of non-disclosure under Section 47(5)(b) of the Act.

In reaching my decision I have weighed on balance these public interest considerations, and the information available, and whether disclosure of the information would better serve to contribute to informed debate, and effective oversight and enhance further open discussion, government accountability, and the provision of contextual and background information. I have concluded that the disclosure of copyright information, trade secrets and business affairs information would be an unreasonable disclosure and may prejudice trade secrets, business affairs or research of an agency and person under Schedule 2.2(a)(xi) of the Act and therefore, is contrary to the public interest to release.

### **Business Affairs**

Scheduled items identified contain information relating to business affairs.

In reaching my decision I have considered whether disclosure of this information would serve to advance open discussion of public affairs and enhance government accountability and reveal the reason for a government decision and background or contextual information that informs consideration to decisions.

I have considered the objections raised by the relevant third-party, including that the release of commercial-in-confidence information would prejudice their trade secrets and business affairs.

I have given regard to how trade secrets, business affairs or research may be prejudiced by the disclosure of this information; this is a factor favouring nondisclosure under Schedule 2.2(a) (xi) of the Act. I have deliberated on how the public interest is served by information assessed to be released to you, what is in the public domain and what further benefit may be derived from the release of this information.

On balance, I have decided that the potential detriment caused by the release of this business affairs information, which may constitute a breach of confidence, outweighs any anticipated benefit provided by its release.

I am therefore satisfied that, on the information available, disclosure of the identified business affairs information is contrary to the public interest.

### **Commercial activities**

Information identified within the schedule contains information which concerns commercially valuable information. I have given regard to the context of the information and factors favouring disclosure including government accountability and promoting open discussion under Schedule 2.1 of the Act.

I have considered whether the disclosure of the commercially valuable information would be reasonably expected to be destroyed or diminished as a result of disclosure. I am satisfied that release of this information would destroy and diminish the competitive commercial activities of the agency in regard to City Hill land release and therefore, on balance I am

satisfied that the information is contrary to the public interest and have refused the information under Schedule 2.2(a)(viii) of the Act.

In refusing information identified within scope of your request I have taken into consideration minority information which if released, could be misinterpreted and would therefore on balance be of little or no significance or contextual value. I am therefore satisfied that on balance to release would not better serve to inform public debate and have refused the documents in full.

### **Online publishing – disclosure log**

Under section 28 of the Act, EPSDD on behalf of the City Renewal Authority maintains an online record of access applications called a disclosure log. Your original access application and my decision will be published in the EPSDD disclosure log between three and ten working days after this decision is provided to you. Your personal contact details will not be published.

You may view the EPSDD's disclosure log at:

<http://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:

[http://www.ombudsman.act.gov.au/data/assets/pdf\\_file/0026/79190/40A-Reviews-Factsheet-and-Application-Form-final-A1569634.pdf](http://www.ombudsman.act.gov.au/data/assets/pdf_file/0026/79190/40A-Reviews-Factsheet-and-Application-Form-final-A1569634.pdf)

If you wish to request a review of my decision 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  
Level 4, 1 Moore St  
GPO Box 370  
Canberra City ACT 2601  
Telephone: (02) 6207 1740  
<http://www.acat.act.gov.au/>

If you have any queries concerning the City Renewal Authority'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)

Regards



Craig Gillman  
Information Officer  
City Renewal Authority

3 September 2019