



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 23/095701



Dear Mr Hemsley

Decision on Freedom of Information Access Application 23/095701

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 September 2023, via partial transfer from Transport Canberra and City Services.

Specifically, you are seeking:

...any documentation, correspondence and related records regarding the planned light rail extension to Russell.

This documentation may include (but not be limited to), studies and reports, concepts and design drawings, supporting material for development applications and works approvals, as well as email exchanges and meeting minutes between the National Capital Authority and the former Capital Metro Agency, as well as meeting minutes, emails and related correspondence between the ACT Government and any Commonwealth Government department.

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

As third party consultation was undertaken, and with your agreement to an extension to the decision due date, EPSDD must decide your application on or by 1 December 2023.

Searches Conducted

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

On 24 October 2024, you advised you were only seeking public register associated documents relating to Development Application Development Application 201528508 (Capital Metro Light Rail - Civic to Russell), These documents were provided to the you directly and not considered in this access decision.

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 three 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 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, 38, 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 the third party consulted
- information publicly available.

Public Interest Considerations

My reasons for deciding not to grant access to components of certain 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.

Relevant to documents 5, 6 and 7 is schedule 1, section 1.6 Cabinet Information. Subsection 1.6(1)(c) being information that is a copy of, or part of, or contains an extract from information that has been submitted to Cabinet for its consideration and that was brought into existence for that purpose.

To apply, I must be satisfied that these terms are met, and that the information is not purely factual.

The information within the documents refers to Cabinet Submissions and information relating to those submissions where the deliberation or decision has not been officially published.

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

Document 4, contains the personal information of individuals (names of employees of a third party). 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.

Charges

In accordance with the *Freedom of Information (Fees) Determination 2018* no charges are applicable to this application, the number of pages to be released is below the minimum 50 page threshold.

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
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



Ben Green
Information Officer
Executive Group Manager, Planning and Urban Policy
Environment, Planning and Sustainable Development Directorate

01 December 2023