



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference:24/056063

Dear [REDACTED]

Decision on Freedom of Information Access Application 24/056063

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 24 May 2024.

Specifically, you are seeking:

...the following information in relation to the recently released "Independent" Review of the ACT's Eastern Grey Kangaroo: Controlled Native Species Management Plan recently undertaken by Professor Sarah Legge...

1. *All briefing material that were sent to Professor Legge when requesting the report including:*
 - a) *any letter, memo, email regarding the request for the report to Professor Legge or any other independent ecologists - including information pertaining to Professor Legge's final appointment to undertake the report.*
 - b) *any background materials provided to Professor Legge*
 - c) *any photographic evidence, powerpoint presentations or maps provided to Professor Legge*
 - d) *any other reports provided to Professor Legge*
 - e) *any EPSDD reviews provided to Professor Legge, that are not currently publicly available*
 - f) *any 'draft' reports provided to Professor Legge prior to the submission of her final report*
 - g) *any comments made on the draft report from any area of ACT Government including EPSDD*
2. *Any communications from Minister Vassarottis office in regards to the report*
3. *Any agreement regarding the payment of any fee, stipend or any other agreement reached for the production of the report*
4. *Any agreement reached or fee paid for slaughter being classified as "extremely impressive"*

5. *Any file notes or records of phone conversations from the Conservator of Conservation to Professor Legge and/or Minister Vassarottis office.*
6. *Any file notes or records of phone conversations from either Rosie Cooney, Claire Wimpenny or Chris Glennon to Professor Legge.*
7. *Any ministerial correspondence between any MLA offices in regards to this report.*

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 conducted and with your agreement, a decision on your access application must be made on or by 20 August 2024.

Searches Conducted

Comprehensive searches were conducted and 105 documents containing information within the scope of your application were identified.

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 36 documents
- **refuse** access to one document, and
- grant **partial** access to 68 documents and in accordance with section 50 of the Act provided copies of these documents with information not in the public interest redacted.

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, 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 parties consulted
- [NI2023-751](#) *Freedom of Information (Volume 4 – Considering the Public Interest) Guidelines 2023*.
- information publicly available.

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

Those circumstances include where the information is publicly available (section 45(a)) or usually available for purchase (section 45(g)). Information relating to these documents has been included as part of the schedule of documents (**Attachment A**).

Public Interest Considerations

My reasons for deciding not to grant access to one document and components of 68 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.

Information within documents 24, 66, 68, 79, 80, 85 and 101 contain information taken to be contrary to the public interest under schedule 1, 1.14 of the Act.

Section 1.14 provides that the disclosure of information is taken to be contrary to the public interest if it would, or could reasonably be expected to, affect law enforcement or public safety. Schedule 1, 1.14(1)(c) applies where the disclosure of information would, or could reasonably be expected to, endanger a person's life or physical safety. Section 1.14(1)(d) applies where disclosure of the information would, or could reasonably be expected to, result in a person being subject to a serious act of harassment or intimidation.

The disclosure of names of some third parties and kangaroo management locations is taken to be contrary to the public interest under schedule 1, 1.14(1)(c) and (d). Due to the nature of work conducted by EPSDD staff and third parties, release of this information could reasonably be expected to result in serious harassment or intimidation from members of the public who feel strongly regarding animal welfare. The extended history of protest activity and some harassment associated with the kangaroo management program is sufficient to consider that this is a legitimate concern.

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.

Collectively, these factors demonstrate that the release of the requested information may assist in public understanding of government decisions and provide insights as to the context for them, promoting transparency and accountability.

There is undeniable public interest in the population control programs for Eastern Grey Kangaroo (EGK) management and the future of these programs in the ACT.

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.
- Schedule 2, 2.2(a)(x) – prejudice intergovernmental relations
- Schedule 2, 2.2(a)(xi) – prejudice the trade secrets, business affairs or research of an agency or person.

Personal Information

Documents relevant to your application contain:

- personal and contact information of Professor Legge
- names of members of the public consulted during the review process, and
- personal information relating to ACT Government officers (including signatures and mobile contact numbers).

I have considered the benefit of open government and transparency in government processes and whether the release of the personal information within these documents would advance the public interest and it is my view that, in this instance, the release of this personal information would not serve to further open discussion, government accountability and informed debate.

I am satisfied that the disclosure of this personal information could reasonably be expected to prejudice the protection of an individual’s right to privacy under the *Human Rights Act 2004*. I have given this factor favouring nondisclosure significant weight.

Intergovernmental relations

Documents 24, 66, 68, 79, 80, 85 and 101 contain information communicated in confidence by Commonwealth Government agencies to assist in the review. Due to the nature of the information and circumstances in which the information was provided, I have determined that disclosure of the information would reasonably cause damage to the relationship between ACT Government and these agencies, possibly causing the agencies to be hesitant to provide information of this nature to the ACT Government in future.

I have given regard to the pro-disclosure bias of the Act, and the factors favouring disclosure which I have given substantial weight. However, in regards to this information I have given significant weight to the adverse consequences of disclosure and schedule 2, 2.2(a)(x) favouring nondisclosure.

Research of an agency or person

I have decided to refuse access to document 36, this information relates to research prepared by a third party in relation to a grant program. The research was provided to Professor Legge for use with permission from the third party. This research has not yet been published and I consider disclosure of this information could possibly be utilised by others prior to its finalisation or publication to the detriment of the third party.

I have considered the disclosure of research in accordance with Schedule 2, 2.2(a)(xi) and whether the disclosure would advance the public interest. In reaching my decision I have weighed the public interest considerations and the information available.

On balance I have decided that there is a high potential of harm in disclosing the third party's research at this time.

Charges

In accordance with section 107(2)(d) 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

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 Information Governance team via EPSDFOI@act.gov.au.

Yours sincerely



Geoffrey Rutledge
Information Officer

Deputy Director-General, Environment, Water and Emissions Reduction
Environment, Planning and Sustainable Development Directorate

19 August 2024