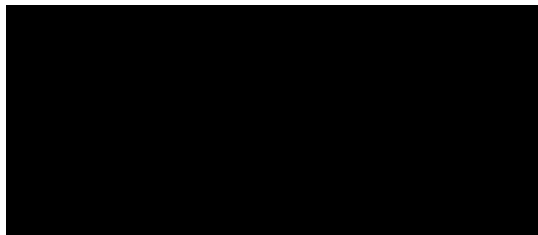




**ACT**  
Government

Environment, Planning and  
Sustainable Development

Phone: 6207 1923  
Reference: 18/11686



Dear 

**Freedom of information request: 18/11686 - Soil, fill and earthworks Section 12 Block 7 THROSBY**

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 30 April 2018, in which you sought access to documents relating to the earthworks on block 7 section 12 Throsby.

Specifically, you are seeking:

*“all documents recording, referable to, referring to, or relating to any and all inspections, assessments and classifications of the soil, fill and/or earth works on Block 7, Section 12 Throsby, Australian Capital Territory.*

*This includes and is not limited to:*

- a. Geotechnical reports.*
- b. Reports.*
- c. Site plans.*
- d. Invoices.*
- e. File notes.*
- f. Letters of instruction.*
- g. Photographs.*
- h. Correspondence between the Suburban Land Agency and/or the Land Development Agency; and*
  - a. Douglas Partners; and*
  - b. Calibre Consulting.*
- i. Correspondence between Douglas Partners and:*
  - a. Calibre Consulting; and*
  - b. Any other third party.*
- j. Correspondence between Calibre Consulting and any other third party.”*

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 is required to make a decision on your access application by 23 July 2018. We appreciate your patience during processing of your request.

### **Decision on access**

Searches were completed for relevant documents and 21 documents were identified that fall within the scope of your request.

I have included as **Attachment A** to this decision the schedule of relevant 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.

Seven documents are publicly available and are therefore not provided with this decision, however web links are provided on the schedule attached.

I have decided to grant access in full to five documents relevant to your request. I have decided to release partially, or refuse access to nine documents as I consider them to be:

- Already available to the applicant; or
- Information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

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 38, 43 (1) (d) and schedules 1 and 2;
- the content of the documents that fall within the scope of your request; and
- Information already available to you in the public domain.

### **Exemptions claimed**

My reasons for deciding not to grant access to the identified documents and components of these documents are as follows:

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 disclosure would be contrary to the public interest (see section 17, the Act).

My reasons for deciding not to grant access to the identified documents and components of these documents are as follows:

#### **Contrary to the public interest information under Schedule 2 of the Act**

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 favouring nondisclosure and the balance of those factors when considered cumulatively.

#### Personal Information

I have considered the release of personal information and my view in this instance is that the identification of third parties would not serve to further open discussion, government accountability, informed debate and the provision of contextual or background information.

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*. This is a factor favouring nondisclosure under Schedule 2.2 (a)(ii) of the Act.

In balancing public interest considerations I am satisfied that, on the information available, disclosure of the identified personal information of members of the public may constitute a breach of privacy and is therefore contrary to the public interest.

### Business affairs

I have considered the release of information that contains business affairs or trade secrets and whether the disclosure of that information would serve to:

- further open discussion of public affairs and enhance government accountability - Schedule 2.1 (a)(i);
- contribute to informed debate - Schedule 2.1 (a)(ii);
- reveal the reason for a government decision and any contextual or background information Schedule 2.1 (a)(viii).

I am not satisfied that disclosure of the third party information could reasonably be expected to further advance the public interest (considered above) as it is limited to specific aspects of businesses' affairs. The documents contain trade secrets and business methodologies, and may reasonably be expected to cause detriment to a third party if released; this is a factor favouring nondisclosure in the public interest under schedule 2.2(a)(xi).

In balancing these matters, and on the information available, I have determined that the disclosure of business affairs or trade secrets information would be an unreasonable disclosure and may constitute a breach of confidence. Some of the information identified to relate to business affairs has been provided to the Government with a clear expectation of maintained confidence.

### **Information already available**

Some information identified as relevant is already available publicly through various webpages. I am satisfied that this government information is already available to you and I have refused this portion of the application in accordance with section 43 (1) (d) of the Act.

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

Under section 28 of the Act, EPSDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the EPSDD disclosure log no sooner than three days after date of decision. Your personal contact details will not be published.

You may view the EPSDD's disclosure log at

<https://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 Directorate's processing of your request, or would like further information, please contact EPSDD Customer Service on 62071923 and ask for the FOI team, or email to [EPSDFOI@act.gov.au](mailto:EPSDFOI@act.gov.au)

Yours sincerely



Anthony Bailey

Information Officer  
Suburban Land Agency

23 July 2018