



Freedom of information request: 18/09730 - Direct Sale Fyshwick Block 11 Section 8

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 5 April 2018, in which you sought access to documents relating to the Direct Sale of Fyshwick Block 11 Section 8.

Specifically, you are seeking:

"1. The minutes of any meetings of the Land Requests Advisory Committee (LRAC) where the Direct Land Sale was discussed with any attached documents referred to in those meetings.

2. The minutes of the Direct Sale Panel meeting of 10th February 2016 and a copy of the Assessment they reviewed of the eligibility criteria and any other material they relied on for their recommendations.

3. A copy of the recommendations of the Panel meeting on 10/2/2016.

4. For each of the three valuations sought by the Direct Sale team

- i. copies of the background information provided to the estate agent or valuer specific to the site in question*
- ii. the valuation placed on the block by each valuer with their reasons*
- iii. if in email form any attachments to i) and ii)"*

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

The Act requires a response be given to the applicant within 20 working days of receiving the application, which is 4 May 2018. Section 40 (2) provides that a response timeframe is extended by 15 working days if third party consultation is required. As a result of third party consultation, this deadline was extended by 15 working days to **24 May 2018**.

Decision on access

Searches were completed for relevant documents and eight documents were identified to contain information that falls within the scope of your request.

I have included as **Attachment A** to this decision the schedule of relevant documents which provides a description of each document and the access decision for each of those documents.

I have decided to grant access to the information within the scope of your application in full for five documents. I have decided to refuse access to three documents as I consider them to be 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 Act, particularly sections 17, 38, and Schedules 1 and 2;
- the content of the documents that fall within the scope of your request;
- the views of third parties to whom disclosure of information may be reasonably expected to be of concern; and
- your views on the public interest in disclosing the government information applied for (as per section 37 of the Act).

Contrary to the public interest information under 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 (see section 17, 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.

In relation to the documents identified as falling within the scope of your request (scheduled with the status of 'not for release'), section 17 applies as follows.

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 acknowledge that, in your application, you have claimed that it is in the public interest to release the information you are seeking according to Schedule 2.1 of the Act, specifically sections (a),(i),(ii),(iii),(iv),(viii) and (ix).

I have considered your views and determined that the public interest factors set out by the Act under Schedule 2.1 (a),(ii),(iv) and (ix) are not factors favouring disclosure. Please be advised that the relevant third parties are external to government.

I consider that the business affairs and trade secrets information being considered for release is not relevant to the following:

- Schedule 2.1 (a)(iii) inform the community of the government's operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community –
 - I do not consider that this factor would be satisfied by the disclosure of the relevant third parties' specific business methodology and trade secrets.
- Schedule 2.1 (a)(iv) ensure effective oversight of expenditure of public funds –
 - I have not considered the release of the identified business affairs information of the relevant third parties to have any bearing on the effective oversight of the expenditure of public funds.
- Schedule 2.1(a)(ix) reveal that the information was incorrect, out-of-date, misleading, gratuitous, unfairly subjective or irrelevant –
 - I do not believe the information is incorrect, out of date, misleading, gratuitous, unfairly subjective or irrelevant.

I have considered information that is already in the public domain and that which must be made public through the consultation process. It is my view that the public consultation process provides for open discussion, government accountability, informed debate and the provision of contextual or background information.

In accordance with section 38 of the Act, I sought the views of relevant third parties on whether government information identified within the scope of your request contained contrary to the public interest information. A third party has contested release of the information as it relates to trade secrets and business affairs, a factor favouring nondisclosure in the public interest under schedule 2.2(a)(xi).

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.

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 with a clear expectation of maintained confidence.

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 and no later than 10 days after date of decision. Your personal contact details will not be published.

You may view the EPSDD 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.

If you wish to request a review of my decision, you may apply for an Ombudsman review by completing the form at:

http://www.ombudsman.act.gov.au/_data/assets/pdf_file/0026/79190/40A-Reviews-Factsheet-and-Application-Form-final-A1569634.pdf

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
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 (02) 6207 1923 and ask for the FOI team, or email to EPSDFOI@act.gov.au.

Yours sincerely



Bruce Fitzgerald
Information Officer
Environment, Planning and Sustainable Development Directorate

24 May 2018