



ACT
Government

Environment, Planning and
Sustainable Development

Phone: (02) 6207 1923
Reference: 22/149462

Dear [REDACTED]

Decision on Freedom of Information Access Application 22/149462

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 11 November 2022, in which you sought access to documents relating to “*the subject line of all final ministerial briefs from 11 July to 11 September 2022 generated for or directed to any ACT Government Minister.*”

This request includes, wherever possible, the date of the brief, the internal reference, position of authority it was written by, and which Minister it was addressed to.

This request includes briefs prepared for Question Time, but not for Estimates or Annual Reports”.

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 agreed by you, EPSDD must make a decision on your application on or by 16 December 2022.

Searches Conducted

Comprehensive searches were conducted of the Directorate’s records management system.

One document, providing a listing of Ministerial Briefs within the timeframe of your application, was generated from these search results.

Four existing documents were identified as containing information relevant to your application.

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 four documents relevant to your application.

I have decided to grant partial access to one document and, in accordance with section 50 of the Act, provide you with a copy of the document 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, 50, and Schedules 1 and 2
- the content of the documents that fall within the scope of your request
- the *Human Rights Act 2004*
- information publicly available.

Public Interest Considerations

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

Information Disclosure – Contrary to the Public Interest under Schedule 1 of the Act

Document 1 contains information which if disclosed would identify information that is proposed to be submitted to Cabinet for its consideration, this information in contrary to the public interest under Schedule 1, 1.6(a).

This information being withheld does not identify 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 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.

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)(xi) – prejudice the economy of the Territory
- Schedule 2, 2.2(a)(viii) – prejudice the economy of the Territory
- Schedule 2, 2.2(a)(xi) – prejudice trade secrets, business affairs or research of an agency or person
- Schedule 2, 2.2(a)(xii) – prejudice an agency’s ability to obtain confidential information
- Schedule 2, 2.2(a)(xiii) – prejudice the competitive commercial activities of an agency.

I have given regard to the public interest and that the release of the requested information may assist to promote transparency and accountability in government. I also considered the pro-disclosure bias of the Act, which reflects the importance of access to government information for the proper working of representative democracy.

I have refused access to names of members of the public where this information is included in the title of a brief. 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 protection of the individuals’ personal information outweighs the benefit which may be derived from releasing them. I consider that these individuals are entitled to expect that the personal information they have supplied to ACT Government will be dealt with in a manner that protects their privacy. I consider that if this information was disclosed, it 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 based on the information available to me, I am satisfied that the disclosure of this personal information is not in the public interest.

I have refused access to information in the titles of briefs that may disclose the business affairs of private companies and their dealings or proposed dealings with ACT Government.

One brief title contains information relating to a confidentiality agreement between Suburban Land Agency and a third party. The release of this information would reveal confidential details about a commercial matter which could diminish the Suburban Land Agency’s ability to negotiate competitive commercial terms.

Schedule 2, 2.2(a)(xiii) reflects that fact that when the ACT Government engages or competes with commercial service providers in carrying out particular functions, to operate effectively, it is necessary that certain information relating to its functions is not disclosed. The Suburban Land Agency, established under the *City Renewal Authority and Suburban Land Agency Act 2017* (the CRASLA Act), carry out a range of activities in a competitive commercial environment, including ‘to buy and sell land on behalf of the Territory’ - section 39(a) of the CRASLA Act. The disclosure of this information could reasonably be expected to prejudice the competitive commercial activities of the Suburban Land Agency, and in turn may prejudice the economy of the ACT Government.

Release of the information would also prejudice the business affairs of a third party by disclosing sensitive commercial activities of the third party, a factor in favour of non-disclosure under Schedule 2, 2.2(a)(xi) of the Act. It is my view that the information is also subject to an active ongoing deliberate process and contains information that was prepared or communicated relating to confidential commercial matters.

In review of the title, I found that the information at issue could reasonably be expected to promote public interest factors to a significant degree. On the other hand, four factors favour nondisclosure, including economy of the Territory, business affairs, confidential information, competitive commercial activities. As there is an express agreement of confidentiality currently in place and the details are only known to a limited group of people, I decided to afford the nondisclosure factor considerable weight.

On balance, I have decided that the detriment caused by the release of this information, which may constitute a breach of confidence, outweighs any anticipated benefit provided by its release. In this instance, my decision is that the prevailing weight favours nondisclosure and that this information should be redacted from the document. I have decided that the remainder of the document may be disclosed to you.

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
Level 4, 1 Moore St
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



Geoffrey Rutledge
Information Officer

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

14 December 2022