



ACT
Government

Suburban Land
Agency







Dear 

Decision on Freedom of Information Access Application 24/028029

I refer to your application made under section 30 of the *Freedom of Information Act 2016* (the Act) received by the Suburban Land Agency (SLA) on 18 March 2024, in which you sought access to documents relating to the Whitlam Affordable Home Purchase Scheme.

On 10 May 2024 you clarified the scope of your request. Specifically, you are seeking:

- *Tender between the SLA and ALN Construction in relation to the construction of dwellings in Whitlam under the Affordable Home Purchase Scheme. In particular, I am interested in requesting the tender (or however that document may be described) that covers the construction of a 3bedroom, one bathroom, one car, house on Section  Block  ---Whitlam (Street Address   WHITLAM ACT 2611).*
- *Correspondence including letters and emails between the SLA and ALN Construction in relation to tender regarding the construction of dwellings in Whitlam under the Affordable Home Purchase Scheme.*
- *May I have a FOI for the tender of builder selection and match process? And may I know is there any requirements in your documents to ask selected builder to follow the HIA or MBA?*
- *May I have the updated change for any materials and floor plan, as builder mentioned he has changed 4 times before the building approval.*
- *In your deed with builder, it mentioned that the builder can change the materials and the floor plan, then how could you control the quality? Is there any standard or quality check list to share with us?*

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, a decision on your access application must be made on or by 7 June 2024.

Searches Conducted

Comprehensive searches were conducted and 63 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 26 documents
- grant **partial** access to 23 documents, and
- **refuse** access to 14 documents.

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 third parties consulted
- information publicly available.

Public Interest Considerations

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

Information Contrary to the Public Interest – 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.

Schedule 1, 1.2 Legal Professional Privilege

Documents 50 through 60 contain correspondence between the SLA and their legal representation, this information would be privileged from production or admission into evidence in a legal proceeding on the ground of legal professional privilege. This information is taken to be contrary to the public interest under Schedule 1, 1.2 of the Act and access to this information is refused.

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)(iii) – inform community of government operations and its dealings with community members
- Schedule 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.
- Schedule 2, 2.2(a)(xi) – prejudice trade secrets, business affairs or research of an agency or person.
- Schedule 2, 2.2(a)(xiii) – prejudice the competitive commercial activities of an agency.

Personal Information

Documents relevant to your application contain personal information of individuals. 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.

Business Affairs

Documents relevant to your application contain business information of the successful tenderer and other tender applicant submissions. Disclosure of this information would be expected to disadvantage these applicants in future tender processes and provide an advantage to competitors.

Documents also include business information relating to the successful tenderer’s financial information and business activities or organisation.

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

business affairs of these companies. On balance, and the information available to me, I am satisfied that the disclosure of this personal information is not in the public interest.

Commercial Activities of an Agency

Documents relevant to your application contain information that if disclosed could prejudice the competitive commercial activities of an agency. Schedule 2, 2.2(a)(xiii) reflects 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*, 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 by affecting potential future land sales or commercial negotiations.

Charges

In accordance with section 107(2) of the Act any charges applicable are waived.

Online Publication

Under section 28 of the Act, on behalf of the SLA, Environment Planning and Sustainable Development Directorate (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 Agency's processing of your request, or would like further information, please email EPSDFOI@act.gov.au or call (02) 6207 1923 and ask for the Information Governance team.

Yours sincerely



Nicholas Holt
Information Officer
Executive Director, Thriving Communities Group
Suburban Land Agency
7 June 2024