

[REDACTED]  
Via email: [REDACTED]

Dear [REDACTED],

### **FREEDOM OF INFORMATION (FOI) REQUEST**

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the FOI Act), received by the Education Directorate (the Directorate) on 6 December 2022, in which you sought access to:

- 1. All documents associated with the proposed planning rezoning of the Fraser Primary School boundary including but not limited to assessments undertaken to justify this project, contemporaneous notes between EDU and other parties including EPSDD and third parties such as developers.*
- 2. Contracts between ACT Government and WSP Engineering including but not limited to draft contracts and variations.*
- 3. Community consultations including community feedback.*

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

The Directorate was required to provide a decision on your access application by 6 January 2023. As third party consultation was required, this extended the processing time by 15 working days. You also kindly agreed to extensions of processing time requested by the Directorate with the resultant due date being 24 March 2023. Thank you for accommodating the requested extensions. Your consideration is greatly appreciated.

#### **Decision on access**

Searches were completed and 165 records were identified that fall within the scope of your request.

I have included as Attachment A to this decision the schedule of relevant records. This provides a description of each record that falls within the scope of your request and the access decision for each of those records.

In summary, my decision is:

- Full access to 44 records;
- Partial access to 118 records with some information deleted; and
- Non-release of three records

The records released to you are provided as Attachment B to this letter.

My access decisions are detailed further in the following statement of reasons.

### **Material considered**

In reaching my access decision, I have taken the following into account:

- the FOI Act, particularly sections 16, 17, 50 and Schedule 2;
- the content of the records that fall within the scope of your request;
- the *Human Rights Act 2004*; and
- the views of third parties consulted.

### **Reasons for decision**

I have considered the records that are relevant to your request in accordance with the requirements of the FOI Act.

Section 6(a) of the FOI Act provides for a right of access to government information unless access would, on balance, be contrary to the public interest. Contrary to the public interest information is defined at section 16 of the FOI Act as information that is taken to be contrary to the public interest to disclose under Schedule 1; or the disclosure of which would, on balance, be contrary to the public interest under the test set out in section 17.

Section 50 of the FOI Act provides for records to be partially released with deletions applied where they contain contrary to the public interest information that can be removed, which enables the remainder of the record to be released. This provision has been applied where appropriate.

#### *Information, to which access is refused*

Section 43 of the Act sets out the circumstances in which access to information may be refused. This includes where government information is already available to the applicant because it is made publicly available by the Directorate (section 45(a)). This applies to two records that are within the scope of your request. Information is provided in the Schedule about where this information can be sourced.

#### *Information taken to be contrary to the public interest to disclose*

One of the records within the scope of your request contains information that is taken to be contrary to the public interest to disclose in accordance with Schedule 1, 1.6 of the Act, as the information is Cabinet information. The information concerned relates to a matter to be submitted to Cabinet for deliberation and the information is not purely factual.

*Information, the disclosure of which would, on balance, be contrary to the public interest*

The public interest test requires the identification of factors favouring disclosure and non-disclosure, the balancing of those factors, and a decision whether, on balance, disclosure of the information would be contrary to the public interest.

I have decided that the factors favouring disclosure, as listed at Schedule 2.1 of the FOI Act, are that disclosure of the information could reasonably be expected to:

- *promote open discussion of public affairs and enhance the government's accountability* (Schedule 2, 2.1(a)(i));
- *contribute to positive and informed debate on important issues or matters of public interest* (Schedule 2, 2.1(a)(ii));
- *inform the community of the government's operations, including the policies, guidelines and code of conduct followed by the government in its dealings with members of the community* (Schedule 2, 2.1(a)(iii));
- *reveal the reason for a government decision and any background or contextual information that informed the decision* (Schedule 2, 2.1(a)(viii)); and

I have decided that the applicable factors favouring non-disclosure, as listed at Schedule 2.2 of the FOI Act, are that disclosure of the information could reasonably be expected to:

- *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)(ii)); or
- *prejudice trade secrets, business affairs or research of an agency of person* (Schedule 2, 2.2(a)(xi)).

I have considered the factors favouring disclosure and the factor favouring non-disclosure.

I acknowledge the positive contribution of informed debate on matters of public interest and transparency of government processes and decisions.

I place significant weight on the right to privacy of individuals and their right to have their personal information protected. I have decided that their right to privacy in relation to their personal information has a higher standing of public interest not to disclose, than the public interest in disclosing this information. Accordingly, third party personal information, which is predominantly the names of people, mobile phone numbers, and signatures, has been deleted.

Some of the records contain information that, if disclosed, would be prejudicial to the business affairs of the company that it relates to. I have decided that these companies have a right to have their business information protected, particularly in relation to the specific prices for their services, and I give this factor significant weight. Accordingly, some information relating to the business affairs of persons or organisations has been deleted from the records being provided to you.

In addition, information that is outside of the scope of your request has been deleted.

### **Additional information**

For your information, while the FOI responses include draft documents under development as part of the Territory Plan Variation (TPV) package, the final version of the TPV package was submitted to Environment, Planning and Sustainable Development Directorate after your access application was received, and is therefore outside of the scope of your FOI request.



### **Charges**

There is no charge associated with this request because the information is considered to be of interest to members of the community.

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

Under section 28 of the Act, the Directorate maintains an online record of access applications called a disclosure log. Information about your request, my decision and the records released to you in response to your access application will be published in the Directorate's disclosure log between three and 10 working days after a decision on access has been provided to you. Your personal information will not be published.

You may view the Directorate's disclosure log at  
[https://www.education.act.gov.au/about-us/freedom\\_of\\_information/disclosure-log](https://www.education.act.gov.au/about-us/freedom_of_information/disclosure-log).

### **Ombudsman review**

My decision on your access request is a reviewable decision as identified in Schedule 3 of the FOI Act. You have the right to seek Ombudsman review of this outcome under section 73 of the FOI Act within 20 working days from the day that my decision is published in the Directorate's disclosure log, or a longer period allowed by the Ombudsman.

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

Email: [actfoi@ombudsman.gov.au](mailto:actfoi@ombudsman.gov.au)

### **ACT Civil and Administrative Tribunal (ACAT) review**

Under section 84 of the FOI 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, please contact the Directorate's FOI team on 02 6205 0720 or email [EducationFOI@act.gov.au](mailto:EducationFOI@act.gov.au).

Yours sincerely



Paula Murray  
Information Officer

24 March 2023