



ACT
Government

Territory and Municipal Services

Dear

Freedom of Information Request – Tree Assessment on Northbourne Avenue

I refer to your application made under the *Freedom of Information Act 1989* (the FOI Act) received on 18 February 2015, in which you sought access to all documents relating to the assessment, health or removal of trees on Northbourne Avenue since 1 January 2014.

Decision

I am an officer authorised under section 22 of the FOI Act to make a decision in relation to your request. As you are aware, your request was delayed as I have been consulting with third parties about the release of documents which included comments from those parties.

Fifty three documents have been located within the scope of your request as summarised in the schedule at Attachment A.

I have decided to release documents 15-16, 26-32, 36-38, 40, 42, 50 and 52 with the removal of some out of scope material from document 42. The out of scope material relates to trees on another street.

I have decided to partially release documents 1-14, 33-34, 39, 41, 43-44, 46, 51 and 53 to you pursuant to section 41(1) of the Act, which provides:

41 Documents affecting personal privacy

- (1) A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

The exempt material contains personal information of third parties including both individuals involved in tree related incidents or details of third party consultants, being their names and contact details. I have also removed some out of scope material from document 39 relating to the administrative processes within the Tree Protection section.

I have decided to exempt documents 17-25 in full pursuant to section 46(c) of the FOI Act, which provides:

46 Document disclosure of which would be contempt of Legislative Assembly or a court

A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the Crown—

...

- (c) infringe the privileges of the Legislative Assembly, of the Commonwealth Parliament, of the Parliament of a State or of a House of such a Parliament or of the Legislative Assembly of the Northern Territory or of Norfolk Island.

I have decided that releasing the information contained in this document could infringe the privileges of the Legislative Assembly, and in particular the privilege of a member's freedom of speech.

As documents 35 and 47 contain material that has been produced for consideration by the Executive, I have exempted the documents from release pursuant to section 35(1)(d) of the FOI Act, which provides:

35 Executive documents

- (1) A document is an exempt document if it is—

...

- (d) a document the disclosure of which would involve the disclosure of any deliberation or decision of the Executive, other than a document by which a decision of the Executive was officially published.

I have also decided to exempt in full documents 35, 45 and 47-49 from release pursuant to section 36(1) of the Act, which provides:

36 Internal working documents

- (1) Subject to this section, a document is an exempt document if its disclosure under this Act—
 - (a) would disclose matter in the nature of, or relating to, opinion, advice or recommendation obtained prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency or Minister or of the Territory; and
 - (b) would be contrary to the public interest.

These documents contain speculative deliberations between individual officers about the Capital Metro project.

Section 36(1)(b) of the Act requires me to consider the public interest when applying the exemptions in section 36. In conducting the required public interest test, I have taken the following factors into account when considering whether it is in the public interest to disclose the material:

- The general public interest in government-held information being accessible, particularly as expressed in the Act's object of extending as far as possible the right of the Australian community and, in particular, the citizens of the Territory, to access to information in the possession of the Territory; and
- The public interest in citizens being informed of the processes of government.

I have taken the following factors into account when considering whether it is against the public interest to disclose this material:

- The release of tentative, speculative and partially-considered opinions may mislead the public and encourage ill-informed speculation; and
- The speculative opinions expressed in the documents do not reflect the opinion of the government.

I have decided that documents 35 and 47 are both speculative and include matters that are yet to be considered by the Executive. Document 45, includes deliberations that have taken place about the processing of requested talking points and in part includes an officer's personal opinion about the alignment of the light rail which does not reflect the opinion of the government. Document 48 and 49 contains officers' opinion on what should be put into the letter to the Editor, which 49 being in the form of a draft, may not reflect a true account of the final letter to the Editor.

I have therefore decided, on balance, that it is not in the public's best interest to release these documents and I have exempted them from release.

Fees and charges

Freedom of information requests attract fees and charges for time spent searching and retrieving documents, decision-making time and photocopying. In relation to your request, no fee is payable as the time spent processing your request, and the number of documents released were within the fee-free threshold.

Right of review

If you are dissatisfied with my decision, you have the right to seek an internal review. If you wish to seek an internal review you should write to:

The Director-General
Territory and Municipal Services Directorate
C/- Freedom of Information Officer
GPO Box 158
CANBERRA ACT 2601

You have 28 days from the date of the decision letter to seek a review of the outcome or such other period as the Director-General permits.

ACT Civil and Administrative Tribunal

If you are still dissatisfied after the directorate has conducted an internal review, you can seek an independent review of the decision by the ACT Civil and Administrative Tribunal. You have 28 days from the date of the internal review decision to seek a review from the Tribunal.

The Tribunal is an independent body. It can agree with, change or reject the original decision, substitute its own decision or send the matter back to the decision maker for reconsideration in accordance with Tribunal recommendations. To apply to the Tribunal for a review you can obtain an application form at www.acat.act.gov.au. The postal address of the Tribunal is:

ACT Civil and Administrative Tribunal
GPO Box 370
CANBERRA ACT 2601

Ombudsman

You also have the right to contact the Ombudsman regarding the processing of your request. You may contact the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Further information

If you have any questions in relation to your request please contact the Directorate's FOI Coordinator on 6205 5408 or tamsfoi@act.gov.au.

Yours sincerely



Phillip Perram
Executive Director
Parks and Territory Services

27 April 2015