



ACT
Government

Environment and
Sustainable Development

REF : 13/12459

Dear [REDACTED]

Freedom of Information Request – Lake Tuggeranong and Wetlands

I refer to your application under section 14 of the *Freedom of Information Act 1989* (the Act), received by the Environment and Sustainable Development Directorate (ESDD) on 28 November 2013, in which you requested the following documents:

“All documents and information held by the Environment and Sustainable Development Directorate relating to Lake Tuggeranong water management including the water quality in the lake and the plans for the development of Tuggeranong wetlands. Would you also be able to include documents relating to the scope and costings of the wetlands developments as well as details of potential funding.”

I am an officer authorised to make a decision in respect of a request for information, under section 22 of the Act.

Consultation

Heather Johnston, the FOI Officer, wrote to you on 14 January 2014 to inform you that the Directorate was consulting with a third party in relation to some of the documents identified as being relevant to your request.

The consultation process extended the timeframe for ESDD to respond to you by 30 days to 14 February 2014.

In response to the consultation under section 27, ESDD received advice from the third party that they have objected to the disclosure of some parts of documents that relate to their organisation.

Schedule detailing decisions

Please refer to the attached schedules that list decisions regarding access to all documents which have been identified as relevant to your request. The terms used on the schedules are either ‘Release’, ‘Partial release’ or ‘Exempt’. Where an exemption is made, a reference will be made on the schedule to the relevant section or combinations of sections of legislation that apply to the decision.

Decision

The Directorate has identified 98 documents in its possession that meet the scope of your request, as identified in the schedule attached to this letter.

Under the Act, documents may be partially exempt/exempt or provided to applicants with deletions and I have decided to exempt some documents under sections 35 (Executive documents), 36 (Internal working documents), 41 (Documents relating to personal privacy) and 43 (Documents relating to business affairs).

Access to documents not to apply to certain documents

Section 11 of the Act provides:

1. *person is not entitled to obtain access under this part to—*
 - a. *a document that is open to public access, as part of a public register or otherwise, in accordance with another enactment, where that access is subject to a fee or other charge; or*
 - b. *a document that is available for purchase by the public in accordance with arrangements made by an agency; or*
 - c. *library material maintained for reference purposes.*

Where a document is publically available it has been noted in the schedule, and a reference to website included in the schedule.

Executive documents

Section 35 of the Act provides:

1. *A document is an exempt document if it is—*
 - a. *a document that has been submitted to the Executive for its consideration or is proposed by a Minister to be so submitted, being a document that was brought into existence for the purpose of submission for consideration by the Executive; or*
 - b. *an official record of the Executive; or*
 - c. *a document that is a copy of, or of a part of, or contains an extract from, a document referred to in paragraph (a) or (b); or*
 - 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 exempted from release under section 35(1)(a)&(d) of the Act documents that have been submitted to Cabinet for the consideration of its members. In addition, documents that refer to information that is contained in the Cabinet submissions are exempted under section 35(1)(d) of the Act. These documents include draft submissions, background papers, emails and briefs together with comments from officers of ESDD and other agencies that constituted part of the process of drafting the submissions.

Internal working documents

Section 36 of the Act provides:

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.*

Section 36 allows the exemption of internal working documents when disclosure under the FOI Act would not be in the public interest.

I consider these documents are internal working documents which are in draft format and include opinion and the deliberative processes of this agency.

Personal Privacy

Section 41 of the Act provides:

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).*

A number of documents contain the personal information relating to community members and I believe that to release the information contained in these documents to you would constitute an unwarranted invasion of privacy on the people concerned.

Business affairs

Section 43 of the Act provides:

1. *a document is an exempt document if its disclosure under this Act would disclose—*

(a) trade secrets; or

(b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or

(c) information (other than trade secrets or information to which paragraph (b) applies) concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, being information—

(i) the disclosure of which would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or

(ii) the disclosure of which under this Act could reasonably be expected to prejudice the future supply of information to the Territory or an agency for the purpose of the administration of a law or the administration of matters administered by an agency.

Some documents contain the financial information and contract documents of an organisation and it would not be appropriate to release this information.

Review rights

My decision is appealable under the Act. This means that if you are dissatisfied with this outcome you have a right to seek a review under section 59 of the Act. This right of review extends to a review of the adequacy of the search for documents undertaken by ESDD. If you wish to seek a review you should write to:

The Director-General
Environment and Sustainable Development Directorate
GPO Box 1908
CANBERRA ACT 2601

Email: ESDDFOI@act.gov.au

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

Under section 54 of the Act, if you are concerned about the processing of your request or related administrative matters, you may complain to the Ombudsman, who may conduct an independent investigation into your complaint. There is no fee for this, and the contact details are as follows:

The Ombudsman
GPO Box 442
CANBERRA ACT 2601

Email: ombudsman@ombudsman.gov.au

Online FOI Publication Policy


Please be aware that under the ACT Government's "*Online FOI Publication Policy*" (the Policy), information released to you under this Freedom of Information Application may be released on the internet.

Personal information or business affairs information will not be made available under the policy. If you think the content of your request would contain such information, please inform our contact officer immediately.

A copy of the policy, with details about what information may be published on the internet, is available online at: http://www.cmd.act.gov.au/open_government/report/freedom_of_information_online

If you have any queries in relation to this matter, please contact Ruth Fiona on 02 6207 5587 or email to ESDDFOI@act.gov.au.

Yours sincerely



Jim Corrigan
Executive Director
Planning Delivery

19 March 2014