

Decision and reasons of Senior Assistant Ombudsman

Application number:	AFOI-RR/24/10015
Applicant:	'DT'
Respondent:	Suburban Land Agency
Respondent reference:	24/046938
Date:	15 October 2025
Decision reference:	[2025] ACTOFOI 18
Catchwords:	Freedom of Information Act 2016 – information already available to the applicant – information subject to legal professional privilege – whether information is contrary to the public interest information – promote open discussion of public affairs and enhance the government's accountability – inform the community of the government's operations – prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004 – prejudice a deliberative process of government

Decision

1. The applicant applied for Ombudsman review of a decision by the Suburban Land Agency (SLA) on 9 July 2024 to refuse access to 6 documents about the Affordable Homes Purchase Scheme (AHPS) because the information is contrary to the public interest information.
2. For the purpose of s 82 of the *Freedom of Information Act 2016* (FOI Act), I am a delegate of the ACT Ombudsman.

3. I have decided to **set aside** the decision made by SLA under s 82(2)(c) of the FOI Act to refuse access to the information at issue.
4. I make a **substitute** decision to refuse to deal with part of the application because the information is already available to the applicant, refuse access to information that would be privileged from production or admission into evidence in a legal proceeding on the ground of legal professional privilege (LPP), refuse access to personal information, and grant access to the remainder of the information within scope as I consider the information is not contrary to the public interest information.

Background to Ombudsman review

5. On 3 May 2024, the applicant applied to SLA for access to:

... information about the SLA Affordable Homes Purchase Scheme (AHPS).

... documents including Board minutes, executive decisions and briefings, Board briefings, minutes of the SLA Audit and Risk Committee, relevant Ministerial briefings, emails and other electronic communication etc.

I am seeking records that show:

- 1) The decisions to develop the program and in particular consideration by the SLA executive and Board to not take on the risks of construction, and shift the construction risk away from SLA...
- 2) What was the Board told about how the program would work and how the Project Delivery Deeds and building contracts would be employed?
- 3) What consideration and enquiries did the Board, Board Chair, SLA Audit and Risk Committee, and SLA executives and managers give to informing successful AHPS applicants about the SLA Project Delivery Deed and the 48-month construction completion period for their homes?
- 4) Who was present at the relevant Board meetings? [Minutes]
- 5) What did the SLA executive and Board inform the Minister about with regard to the use of AHPS building contracts and the Deed and informing successful AHPS applicants before they signed building contracts?

6. On 9 July 2024, SLA identified 24 documents within the scope of the application and decided to:

- grant full access to 10 documents

- grant partial access to 5 documents, and
 - refuse access to 9 documents.
7. On 29 August 2024, the applicant applied for Ombudsman review of SLA's decision.
 8. On 5 September 2024, the Office of the ACT Ombudsman (the Office) sought information from SLA for the purpose of the review.
 9. On 16 September 2024, SLA provided information relevant to the review to the Office.
 10. On 11 April 2025, SLA confirmed that a third party consulted during the processing of the original access application had been notified of the Ombudsman review under s 76 of the FOI Act. The third party has not applied under s 77(2) of the FOI Act to participate in this Ombudsman review.
 11. On 1 July 2025, the Administrative Arrangements 2025 (No 1) commenced which abolished the Environment, Planning and Sustainable Development Directorate (EPSDD), of which SLA was part, and established the City and Environment Directorate (CED). SLA was transferred to the Chief Minister, Treasury and Economic Development Directorate (CMTEDD).¹
 12. On 19 September 2025, I provided the parties with my draft consideration setting out my preliminary views.
 13. On 29 September 2025, the applicant accepted the draft consideration.
 14. On 3 October 2025, SLA provided a response to the draft consideration. SLA accepted the rationale of my preliminary view to set aside the primary decision and release additional information. SLA submitted, however, they had identified information within the information at issue falling outside of the

¹ [Administrative Arrangements 2025 \(No 1\) | Notifiable instruments.](#)

scope of the application (information that is about affordable housing but is unrelated to the AHPS).

15. SLA also submitted that its employees had experienced occupational violence in relation to the AHPS, and the release of some employee names may place employees at risk.

Preliminary issue – information publicly available

16. In the course of this Ombudsman review, I have identified some of the information to which SLA refused access is publicly available information and was publicly available at the time the access application was made.
17. Section 43(1)(d) of the FOI Act provides allows agencies to refuse to deal with an access application in part if the government information is already available to the applicant. Section 45(a) of the FOI Act provides government information is already available to the applicant if the information is publicly available.
18. I consider SLA erred in refusing access to this information on the basis that it was against the public interest information. Agencies should take care to identify where information is publicly available and advise applicants how they can access this information.
19. In the course of this review, the applicant has been informed of where this information is available.²

² [ACT Housing Strategy](#) (pages 39–90 of Document 21) and [City Renewal Authority and Suburban Land Agency \(Housing Target\) Determination 2019 \(No 2\) | HTML view](#) (pages 91–94 of Document 21).

Preliminary issue – primary decision-maker

20. In their application for Ombudsman review, the applicant expressed their concern about the primary decision-maker, submitting:

... the FOI decision-maker is the person in charge of the SLA's Affordable Home Purchase Scheme. They are responsible for the poor outcome of the scheme where lower-income, first-home buyers were deceived by the SLA. This decision-maker was too close to this issue and should have excused themselves from the FOI process. This is a significant failing in this FOI process.

21. There is nothing before me to suggest that the decision-maker acted improperly.

Scope of Ombudsman review

22. In response to the draft consideration, SLA submitted that they had identified part of the information I intended to release fell outside of the scope of the access application, stating that in their view, some of the information:

... is unrelated to the scope of the request... Specifically, the FOI request was regarding the AHPS. The scope seeks access to:

... documents including Board minutes, executive decisions and briefings, Board briefings, minutes of the SLA Audit and Risk Committee, relevant Ministerial briefings, emails and other electronic communication including:

- 1) The decisions to develop the **program** and in particular consideration by the SLA executive and Board to not take on the risks of construction and shift the construction risk away from SLA (as above) – This is specific to the AHPS.
- 2) What was the Board told about how the **program** would work and how the Project Delivery Deeds and building contracts would be employed? – This is specific to the AHPS.
- 3) What consideration and enquiries did the Board, Board Chair, SLA Audit and Risk Committee, and SLA executives and managers give to informing successful **AHPS applicants** about the SLA Project Delivery Deed and the 48-month construction completion period for their homes? – This is specific to the AHPS.

A majority of the information in the documents is unrelated to the AHPS. The AHPS is one affordable housing program which is unrelated to the other identified affordable housing initiatives that are considered in the documents. For example, Shared equity, Build to Rent, sale of land to community housing providers, affordable rental schemes, an SLA Built Form program etc are completely separate

projects/programs to the AHPS. Consequently, the SLA view the information not related to the AHPS as not meeting the threshold of factors favouring disclosure in the public interest.

23. In their response to the draft consideration, SLA enclosed a copy of proposed redactions which I have carefully considered. In preparing the proposed redactions for my consideration, I note that SLA sought to release as much information as possible relevant to the AHPS.
24. Upon further review of the initial access application and the application for Ombudsman review, it is clear the applicant sought access to information about the AHPS rather than affordable housing in general, and the scope of the access application and therefore the scope of this Ombudsman review is limited to information about the AHPS.

Information at issue

25. In their application for Ombudsman review, the applicant requested access to 6 of the documents to which SLA refused access – documents 13 and 20-24.
26. Document 13 is a letter enclosing documents prepared by a legal practitioner in response to instructions received from SLA regarding the Request for Tender – Whitlam Affordable Housing ('RFT letter').
27. Documents 20-24 relate to meetings held by the SLA Board regarding affordable housing, including the AHPS and Whitlam Affordable Release in May 2020 and June 2020 ('Board documents'). These documents include information I agree is out of scope of the initial access application and this Ombudsman review. As a result, I am excluding the information I consider out of scope from the review.³

³ All items other than those relating to the AHPS are out of scope.

28. Document 21 includes information that is publicly available online, as noted above at [16-19]. As the applicant has been informed of where this information can be located, I am excluding this information from the review.⁴

29. The key issue to be decided in this Ombudsman review is whether the information at issue is contrary to the public interest information or not.

30. In making my decision, I have had regard to:

- the applicant's Ombudsman review application dated 29 August 2024
- the FOI access application dated 3 May 2024
- SLA's decision of 9 July 2024 and FOI processing file
- an unredacted copy of documents 13 and 20-24
- SLA's response to my draft consideration, provided 3 October 2025
- the FOI Act, particularly ss 7, 16, 17, 35, 42, 45, 72, Schedule 1 and Schedule 2
- the [Freedom of Information Guidelines](#) (FOI Guidelines) made under s 66 of the FOI Act
- the [Human Rights Act 2004 \(ACT\)](#) (Human Rights Act)
- the [Evidence Act 2011 \(ACT\)](#) (Evidence Act), and
- relevant case law including:
 - *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* [\[2002\] HCA 49](#) (7 November 2002)
 - *Esso Australia Resources v Commissioner of Taxation* [\[1999\] HCA 67](#) (21 December 1999)

⁴ The [ACT Housing Strategy](#) (pages 39-90 of Document 21) and [City Renewal Authority and Suburban Land Agency \(Housing Target\) Determination 2019 \(No 2\) | HTML view](#) (pages 91-94 of Document 21) are publicly available. Pages 1-38 and 95-113 of Document 21 remain in scope of this review.

- *Commissioner of Taxation v PricewaterhouseCoopers* [[2022](#)] [FCA 278](#)
- *Commissioner of Australian Federal Police v Propend Finance Pty Ltd* ([1997](#)) [188 CLR 501](#)
- *AWB Ltd v Cole* (No 5) ([2006](#)) [155 FCR 30](#)
- *AWB Ltd v Cole* [[2006](#)] [FCA 571](#)
- *Public Transport Association of Canberra Inc and Transport Canberra and City Services* [[2025](#)] [ACTOFOI 4](#) (4 April 2025)
- *Re JE Waterford and Department of Treasury (No 2)* [[1984](#)] [AATA 67](#) (14 March 1984)
- *'AE' and Health Directorate* [[2018](#)] [ACTOFOI 9](#) (27 November 2018)

Relevant law

31. Section 7 of the FOI Act gives every person an enforceable right of access to government information. This right is subject to other provisions of the FOI Act, including grounds on which access may be refused.⁵
32. Contrary to the public interest information is defined in s 16 of the FOI Act as:
- information—
- (a) that is taken to be contrary to the public interest to disclose under schedule 1; or
 - (b) the disclosure of which would, on balance, be contrary to the public interest under the test set out in section 17.
33. The public interest test set out in s 17 of the FOI Act involves a process of balancing public interest factors favouring disclosure against public interest factors favouring nondisclosure to decide whether, on balance, disclosure would be contrary to the public interest.
34. Section 35(1)(c) of the FOI Act provides an access application may be decided by refusing to give access to the information sought because the information being sought is contrary to the public interest information.

⁵ Section 35(1)(c) of the [Freedom of Information Act 2016 \(ACT\)](#) (FOI Act).

35. Section 50 of the FOI Act applies if an access application is made for government information in a record containing contrary to the public interest information and it is practicable to give access to a copy of the record from which contrary to the public interest information has been deleted.
36. Schedule 1 of the FOI Act sets out categories of information taken to be "contrary to the public interest information" for the purposes of the definition in s 16. Schedule 1, s 1.2 provides that information that would be privileged from production or admission into evidence in a legal proceeding on the ground of LPP is information disclosure of which is taken to be contrary to the public interest.
37. Schedule 2 of the FOI Act sets out the public interest factors which must be considered, where relevant, when determining the public interest.
38. Section 72 of the FOI Act provides that the person seeking to prevent disclosure of government information has the onus of establishing the information is "contrary to the public interest information".

The submissions of the parties

39. In the decision notice, SLA said:

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

... Documents 10, 12-13 were identified to contain legal advice between legal representatives and the SLA. 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.

... Five documents contain information that if disclosed would be expected to prejudice the deliberative process of Government under Schedule 2, 2.2(a)(xvi) of the Act. These deliberations reveal internal discussions of the Board concerning a deliberative process, and release would prejudice the ability of the agency to objectively consider all options put to the Board for consideration for future decisions by limiting the extent and quality of opinions and advice for future policy decisions. It is in the public interest to the government to have robust discussions if

[the] resulting framework is a more effective framework for supporting the community. Disclosure of this information would be against this principle. The purpose of communications to the Board is to provide advice and opinions for best possible courses of action in response to considerations for the Affordable Housing Purchase Scheme, this advice and opinion do not form the final view. I find the information contained within these documents could therefore reasonable (sic) be expected to prejudice the ACT Governments deliberative process and have given this nondisclosure factor considerable weight.

40. In the Ombudsman review application, the applicant said:

I made FOI request 24/046938 to uncover the SLA Executives' and SLA Board's consideration and decisions in relation to the development of the AHPS and their consideration of building risks and decision to transfer the risk to first-home buyers and to not inform them of the SLA/builder contract (Deed) details. I wish to understand whether SLA and the Board had taken the required due care in developing the program. I wish to obtain the record of their decisions and reasons for their decisions.

... The SLA FOI decision refused access to five SLA Board documents (20, 21,22,23 &24) – claiming 'these deliberations reveal internal discussions of the Board concerning a deliberative process'. According to SLA, the release of these documents 'could therefore reasonably be expected to prejudice the ACT Governments deliberative process'. This was given considerable weight.

I rebut these claims...

... the SLA Board made a decision to not take on the building risks and to shift those risks to scheme participants. We should be allowed to see whether the Board took due care when considering and making that decision.

... the decision to use a secret contract (the Deed) and to give the builder four years to build and at the same time to tell scheme participants in writing that their homes would be built in two years was careless and deceptive. Either SLA Executive or SLA Board should have taken more care, especially as the scheme targeted first-home buyers. The use of two differing build completion deadlines coupled with SLA's refusal to release the Deed and SLA's minimization of the content of the Deed and the deception involved, however inadvertent, borders upon corruption.

The Board documents were refused on the grounds that they 'prejudice the deliberative process of government'. However, the SLA Board should not be immune from examination and scrutiny. The Board is part of the decision-making process of an ACT Government Territory Authority [*Financial Management Guidelines 2020 (no 2)*]. The SLA Board is tasked 'to oversee the operations of, and exercise of functions by the agency (SLA) ... ensuring as far as practicable, that the agency operates in a proper, effective and efficient way' [*City Renewal Authority and Suburban Land Agency ACT 2017, s46*]. The whole purpose of my FOI request is to see if the Board performed its duties with due care and in a proper and effective way. The public interest in ensuring probity and care by Territory Authority Boards

should be the over-riding consideration – favouring release of documents under FOI.

I seek access to the refused documents in the FOI Request Schedule: Documents 13, 20,21,22,23 and 24.

41. In their submission in response to the draft consideration, SLA said:

... the SLA takes all reasonable steps to prevent instances of unacceptable behaviour (including physical and occupational violence) from the public towards SLA employees. SLA has experienced occupational violence in relation to the AHPS. Accordingly, publishing officer names may give rise to physical or occupational violence. Given the FOI request did not request names of officers and to support the SLA in meeting its responsibilities under the *Work Health and Safety Act 2011* and *Work Health and Safety Regulation 2011*, employee names have been redacted [in the copy of proposed redactions provided by the SLA].

42. These submissions are discussed in more detail below.

Consideration

43. SLA refused access to document 13 on the ground of LPP under Schedule 1, s 1.2 of the FOI Act.

44. SLA also decided to refuse access to documents 20–24 because disclosure of this information would, on balance, be contrary to the public interest.

45. My preliminary view on each of these categories of documents is set out below.

Legal professional privilege

46. Information that would be privileged from production or admission into evidence in a legal proceeding on the ground of LPP is taken to be contrary to the public interest to disclose under the FOI Act (except in certain

circumstances related to corruption and law enforcement that do not apply here).⁶

47. LPP operates as an immunity to resist the disclosure of information which would reveal communications between a client and their lawyer made for the dominant purpose of giving or obtaining legal advice or the provision of services for legal proceedings.⁷
48. LPP extends to information which has been copied and provided to a legal advisor for the dominant purpose of obtaining legal advice; and information prepared by the client or the legal advisor from which the nature of the advice sought or given might be inferred.⁸
49. Evidence must not be presented if, on objection by a client, the court finds that presenting the evidence would result in the disclosure of a confidential communication made between the client and a lawyer; or between 2 or more lawyers acting for the client; or the contents of a confidential communication prepared by the client, lawyer or someone else for the dominant purpose of the lawyer, providing legal advice to the client.⁹
50. The Evidence Act provides a 'client' includes an entity that engages a lawyer to provide legal services.¹⁰

⁶ See s 16 and Schedule 1, s 1.20 of the FOI Act. There is an exception in Schedule 1 for information that "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". However, I am satisfied the exception does not apply here.

⁷ *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* [2002] HCA 49 (7 November 2002) at [9] – [11]. See also *Esso Australia Resources v Commissioner of Taxation* [1999] HCA 67 (21 December 1999) (*Esso*) at [61].

⁸ *Commissioner of Taxation v PricewaterhouseCoopers* [2022] FCA 278, [141]–[142] citing *Commissioner of Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501; *Esso*; *AWB Ltd v Cole (No 5)* (2006) 155 FCR 30; *AWB Ltd v Cole* [2006] FCA 571.

⁹ *Evidence Act 2011 (ACT)*, s 118.

¹⁰ *Ibid* s 117(1)(a).

51. The following elements are also relevant to determine whether a 'lawyer-client relationship' exists and if information is subject to LPP:¹¹

- an independent professional legal practitioner and client relationship must exist where the lawyer is acting in their professional capacity
- the communication between a client and their legal advisor must have been made for the dominant purpose of giving or receiving legal advice
- the communication must have been confidential, and
- LPP has not been waived by the client.

52. I have considered whether each of these elements of LPP is satisfied in relation to document 13, being a letter from SLA's legal advisors addressed to SLA. The letter refers to documents prepared for the request for tender for Whitlam Affordable Housing.

53. I consider an independent legal practitioner and client relationship exists, as the legal advisors were engaged by SLA in their professional capacity about a particular matter.

54. I consider the communication was created for the dominant purpose of providing legal advice, the information was provided on a confidential basis, and I do not consider LPP has been waived, either expressly or impliedly by SLA.

55. I agree that LPP applies to document 13 and is therefore contrary to the public interest information.

¹¹ *Waterford v Commonwealth* [1987] HCA 25; (1987) 163 CLR 54 (24 June 1987).

Public interest test

56. I now consider whether the remaining information – that is, documents 20–25 – is otherwise contrary to the public interest to disclose.

57. To determine whether disclosure is contrary to the public interest, the FOI Act prescribes the following five steps:

- identify any factor favouring disclosure that applies in relation to the information (a relevant factor favouring disclosure), including any factor mentioned in schedule 2, section 2.1
- identify any factor favouring nondisclosure that applies in relation to the information (a relevant factor favouring nondisclosure), including any factor mentioned in schedule 2, section 2.2
- balance any relevant factor or factors favouring disclosure against any relevant factor or factors favouring nondisclosure
- decide whether, on balance, disclosure of the information would be contrary to the public interest
- unless, on balance, disclosure of the information would be contrary to the public interest, allow access to the information.

Factors favouring disclosure

58. SLA identified 2 factors favouring disclosure of the information at issue.

59. In their application for Ombudsman review, the applicant did not explicitly identify additional factors favouring disclosure. I consider, however, that the submissions of the applicant indicate a concern about the administration of the AHPS and I will consider an additional factor favouring disclosure.

Promote open discussion of public affairs and enhance the government's accountability—Schedule 2, s 2.1(a)(i)

60. SLA identified that disclosure could reasonably be expected to promote open discussion of public affairs and enhance the government's accountability.
61. I consider urban planning and development, including planning for affordable housing, may have considerable implications for members of the ACT community and is a matter of interest for the ACT community.
62. I accept disclosure of the information at issue is in the public interest because it would enhance the government's accountability and provide insight into the decisions made by the government, and matters considered when developing affordable housing in the ACT.
63. I afford this factor moderate weight.

Inform the community of the government's operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community—Schedule 2, s 2.1(a)(iii)

64. SLA also identified that disclosure could reasonably be expected to inform the community of the government's operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community.
65. I agree this factor is relevant. Release of the information at issue could reasonably be expected to inform the community of, particularly, the policies and guidelines followed by government in its dealings with members of the community, for example in relation to members of the ACT community accessing affordable housing.
66. I attribute moderate weight to this factor.

Allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or public official—Schedule 2, s 2.1(a)(v)

67. In response to the applicant's concerns about the administration of the AHPS, a factor favouring disclosure is where disclosure of the information could reasonably be expected to allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or public official.

68. I disagree this factor is relevant.

69. The applicant is concerned that the Board did not perform its duties with due care and in a proper and effective way. I have carefully reviewed the information at issue and cannot identify possible deficiencies in the conduct or administration of an agency or public official. Rather, the information at issue relates to the development of the AHPS and the delivery of affordable housing in the ACT.

Factors favouring nondisclosure

70. In its original decision, SLA relied on one factor favouring nondisclosure of the information at issue. Following SLA's submissions in response to the draft consideration, I have identified an additional factor favouring nondisclosure of the information at issue.

Prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004—Schedule 2, s 2.2(a)(ii)

71. A factor favouring nondisclosure in the public interest is where disclosure could reasonably be expected to prejudice the protection of an individual's right to privacy under the Human Rights Act.

72. Everyone has the right to not have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily.¹²
73. The disclosure of information about government staff is not generally considered to prejudice the protection of an individual's rights to privacy where the information is wholly related to the individual's routine day-to-day work activities.¹³
74. SLA submitted it held concerns that the disclosure of staff names may lead to occupational violence against those staff members, citing previous instances of occupational violence towards SLA staff in relation to the AHPS. I consider that occupational violence would be an unlawful and arbitrary interference of a person's privacy.
75. I am of the view that disclosure of staff names in the context of this review could reasonably be expected to prejudice individuals' right to privacy. In relation to the staff names, I afford this factor significant weight.

Prejudice a deliberative process of government—Schedule 2, s 2.2(a)(xvi)

76. A factor favouring nondisclosure in the public interest is where disclosure could reasonably be expected to prejudice a deliberative process of government.
77. A deliberative process involves the weighing up or evaluation of arguments or considerations related to a process that is being undertaken within government to consider whether and how to make or implement a decision.¹⁴

¹² [Human Rights Act 2004 \(ACT\)](#), s 12.

¹³ 'AE' and Health Directorate [\[2018\] ACTOFOI 9](#) (27 November 2018).

¹⁴ [Public Transport Association of Canberra Inc and Transport Canberra and City Services \[2025\] ACTOFOI 4](#) (4 April 2025), citing *Re JE Waterford and Department of Treasury (No 2) [1984] AATA 67* (14 March 1984) at [58].

78. In the original decision, SLA observed it is in the public interest for the government to engage in robust discussions about developing effective frameworks to support the community and noted that the information prepared for the Board may not form the final view of government.
79. I consider the information at issue was prepared for the purpose of assisting the ACT Government to consider options for affordable housing.
80. For this factor to apply, however, it is not enough for the information to disclose a deliberative process of government; it must be reasonably expected to prejudice such a process – that is, some sort of harm to deliberations could occur if the information was disclosed.
81. Relevant considerations when considering whether prejudice could reasonably be expected to occur include:
- whether the information sought is already publicly known
 - the stage of the deliberations
 - whether a final decision has been reached, and
 - whether there are any ongoing negotiations occurring.
82. I am not satisfied disclosure could reasonably be expected to prejudice a deliberative process of government.
83. I consider information about the AHPS is already publicly known. Information on eligibility and how to apply is available online¹⁵ and media have reported on the AHPS.¹⁶

¹⁵ [Affordable Home Purchase Scheme](#).

¹⁶ See, for example, [There are significant construction delays to affordable housing scheme homes in Canberra – and participants want answers – ABC News](#) and [ACT Government releases new Affordable Home Purchase Buyer's Guide – Region Canberra](#).

84. I also consider significant time has passed since the information at issue was created in 2019 and 2020. The AHPS has been approved and is operating, with land with affordable housing requirements sold to developers in the ACT and eligible persons already purchased or able to apply to participate in the AHPS.
85. There is no information before me explaining that deliberations or negotiations are still underway, nor any information explaining how release of the information even with a final decision having been reached, could reasonably be expected to prejudice a deliberative process of government.
86. I afford this factor minor weight.

Balancing the factors

87. Having identified public interest factors favouring disclosure and factors favouring nondisclosure, I now must consider the public interest balancing test set out in s 17 of the FOI Act.
88. In this matter, I considered 3 factors favouring disclosure. I attribute moderate weight to 2 factors, and I find that the remaining factor is not relevant.
89. I identified 2 factors favouring nondisclosure, and I attribute significant weight to one factor in relation to staff names, and attribute minor weight to one factor.
90. Balancing public interest factors is not simply a case of quantifying the number of relevant factors for disclosure and nondisclosure, with the higher quantity being considered in the public interest. The decision-maker's task is to consider the relative importance and weight of each factor identified. The weight given to a factor will depend on the effect that disclosing the information has on the public interest.

91. The FOI Act has a pro-disclosure bias,¹⁷ and as a result, the public interest test should not be approached on the basis that there are empty scales in equilibrium, waiting for arguments to be put on each side. Rather, the scales are 'laden in favour of disclosure'.¹⁸

Conclusion

92. In relation to Document 13, my decision is that this document is subject to LPP and is not public interest information.

93. In relation to the information at issue in Documents 20–24, decision is, on balance, the public interest factors favouring disclosure outweigh the public interest factors favouring nondisclosure.

Decision

94. For the reasons set out above in this Ombudsman decision, I set aside and substitute SLA's decision under s 82(2)(c) of the FOI Act.

95. Access to Document 13 is refused.

96. Access to staff names is refused.

97. Access is granted to the remainder of the information within the scope of this Ombudsman review in Documents 20–24, as set out in the attached schedule and in the marked-up version provided to SLA.

Katrina Dwyer

Senior Assistant Ombudsman

15 October 2025

¹⁷ Section 17 of the [FOI Act](#).

¹⁸ [Explanatory Statement, Freedom of Information Bill 2016](#).

Doc. no.	Description	Record Date	SLA Decision	Reason for Decision	Ombudsman Decision
13.	24.06.2020 Whitlam Affordable Housing RFT - CU letter to Suburban Land Agency (A46513567)	24/06/2020	Refused access	Schedule 1.2 (LPP information)	Confirm - refuse access
20.	Board Meeting (No. 44) Item 4.1 - Strategic Issues Affordable Housing (A46523179)	29/05/2020	Refused access	Schedule 2, s 2.2(a)(xvi) (prejudice deliberative process of government)	Set aside and substitute - some information not within scope - refuse access to name of staff member - access to remaining information within scope
21.	Combined AH workshop - Pack 1 Required Reading (A46522574)	3/05/2020	Refused access	Schedule 2, s 2.2(a)(xvi) (prejudice deliberative process of government)	Set aside and substitute - refuse to deal with pages 39-90 and 91-94 (information already available) - some information not within scope

Doc. no.	Description	Record Date	SLA Decision	Reason for Decision	Ombudsman Decision
					<ul style="list-style-type: none"> - refuse access to names of staff members - access to remaining information within scope
22.	Combined AH workshop - Pack 2 Other Reading (A46522584)	26/06/2018	Refused access	Schedule 2, s 2.2(a)(xvi) (prejudice deliberative process of government)	Set aside and substitute <ul style="list-style-type: none"> - some information not within scope - refuse access to names of staff members - access to remaining information within scope

Doc. no.	Description	Record Date	SLA Decision	Reason for Decision	Ombudsman Decision
23.	SLA Board - 29 May 2020_Chair signed (A46524039)	29/05/2020	Refused access	Schedule 2, s 2.2(a)(xvi) (prejudice deliberative process of government)	Set aside and substitute - some information not within scope - refuse access to name of staff member - access to remaining information within scope
24.	Sales Approval_Whitlam Affordable release_June 2020 (A25794909)	25/06/2020	Refused access	Schedule 2, s 2.2(a)(xvi) (prejudice deliberative process of government)	Set aside and substitute - refuse access to names of staff members - access to remaining information