

***Google Australia Pty Ltd and Wing Aviation Pty Ltd and Environment,
Planning and Sustainable Development Directorate [2019] ACTOFOI 14
(24 August 2019)***

Decision and reasons for decision of Senior Assistant Ombudsman, Louise Macleod

Application Number:	AFOI-RR/19/10011
Decision Reference:	[2019] ACTOFOI 14
Applicant:	Google Australia Pty Ltd and Wing Aviation Pty Ltd
Respondent:	Environment, Planning and Sustainable Development Directorate
Decision Date:	26 August 2019
Catchwords:	<i>Freedom of Information Act 2016 (ACT)</i> – third party review applicant – deciding access – whether disclosure of information is contrary to the public interest – security of the Commonwealth, Territory or a State – security, law enforcement or public safety information – trade secrets, business affairs or research of an agency or a person – flow of information to a regulatory agency – conservation of any place or object of natural, cultural or heritage value – reveal any information relating to Aboriginal or Torres Strait Islander traditional knowledge

Decision

1. I am a delegate of the ACT Ombudsman for the purposes of s 82 of the ACT *Freedom of Information Act* (FOI Act).
2. Under s 82(1)(b) of the FOI Act, I confirm the decision of the Environment, Planning and Sustainable Development Directorate (EPSDD) of 8 March 2019, with respect to the information at issue in this review.

Background and scope of Ombudsman review

3. On 17 September 2018, an applicant (FOI applicant) made an access application to Chief Minister, Treasury and Economic Development Directorate (CMTEDD) for information on:
 - the scope, timeframe and agreements of the drone trial between the ACT government for Project Wing conducted in Royalla, including the initial set up, community consultation and final report of the outcome. I would also like the number of deliveries, type of delivery, number of complaints from residents on noise.
 - the scope, timeframe and agreements of the drone trial between the ACT government for Project Wing conducted in Bonython. This includes initial set up, community consultations, timeframe of the trial, contact details of all the involved parties (Project Wing, CASA). I would also like the number of deliveries, type of delivery, number of complaints from residents on noise.
 - Project Wing trials and all consultations with the ACT government on current trials and any future trials.
4. On 25 September 2018, the access application, excluding the request for information on noise complaints which was able to be dealt with by CMTEDD, was transferred to EPSDD.
5. On 11 October 2018, the FOI applicant confirmed with EPSDD the interpretation of the scope of the request as follows:
 - the “scope” is understood to be the project scope of the Project Wing trials
 - the “agreements” of the drone trials is understood to be the agreements entered into between ACT Government and Project Wing.
 - the “set ups” of the drone trials is understood to be the site preparation for the trials.
 - ...information regarding any other (past, current and future) Project Wing trials in the ACT and associated consultation.
6. On 13 February 2019, the FOI applicant agreed to EPSDD’s request for additional time to decide the application to allow for third party consultation to occur, and a three-stage release of the information. The information at issue in this Ombudsman review is part of the third stage of release.

Third party consultation

7. On 13 February 2019, EPSDD undertook third party consultation with Google Australia Pty Ltd and Wing Aviation Pty Ltd (Wing) under s 38 of the FOI Act in relation to information identified as relevant to the access application concerning Wing.
8. Wing operates a commercial drone delivery service in the ACT on a trial basis, which commenced in 2017 under the name ‘Project Wing’. Project Wing delivers items such as medication,

takeaway food and other small goods by drone. Project Wing trialled its drone delivery service in the Tuggeranong area until February 2019, and is currently operating out of its operational headquarters in the Gungahlin area.

9. On 25 February 2019, Wing objected to disclosure of 21 documents on the basis that, on balance, disclosure would be contrary to the public interest under Schedule 2 of the FOI Act because disclosure would prejudice:
 - security, law enforcement or public safety (Schedule 2, s 2.2(a)(iii)),
 - the economy of the Territory (Schedule 2, s 2.2(a)(viii)),
 - the flow of information to the police or another law enforcement or regulatory agency (Schedule 2, s 2.2(a)(ix)),
 - trade secrets, business affairs or research of an agency or person (Schedule 2, s 2.2(a)(xi)), and
 - the conservation of any place or object of natural, cultural or heritage value, or reveal any information relating to Aboriginal or Torres Strait Islander traditional knowledge (Schedule 2, s 2.2(a)(xviii)).
10. Wing further submitted that the information contained sensitive information about individuals, contrary to the public interest under Schedule 1 of the FOI Act, and that some of the information fell outside the scope of the access application.

Decision on access application

11. On 8 March 2019, EPSDD advised the FOI applicant that it had identified 24 documents as falling within the scope of the access application. EPSDD decided to give the FOI applicant access to two documents in full, and 12 documents in part. This included giving:
 - full access to a press release drafted by Wing, and
 - partial access to emails and other correspondence about the proposed use of sites in the Tuggeranong area, redacting sensitive information about individuals such as names and contact details, and other information that related to the trade secrets, business affairs or research of Wing.
12. On 16 April 2019, Wing sought Ombudsman review under s 73 of the FOI Act of EPSDD's decision as it relates to the release of one document in full – a press release,¹ and ten documents in part.

¹ Ref no. 8 on EPSDD's schedule of documents, published online on 20 March 2019 at https://www.environment.act.gov.au/_data/assets/pdf_file/0019/1332361/18_28137-Part-3-Schedule.pdf.

13. The ten documents released in part comprise:
- correspondence between Wing and the ACT Emergency Services Agency (ESA)² ('ESA correspondence')
 - an email relating to the public liability insurance held by Unmanned Systems Australia, a third party working with Wing³ ('insurance document')
 - emails relating to the contractual licence between Wing and the ACT⁴ ('contractual licence documents')
 - an email relating to the approval by the Civil Aviation Safety Authority (CASA) for Wing to operate in the Tuggeranong area⁵, and
 - correspondence from the ACT Heritage Council (ACT Heritage) to Wing, providing a preliminary Aboriginal heritage assessment of a proposed identified site in the Tuggeranong area⁶ ('heritage assessment').
14. On 13 August 2019, I provided my preliminary views about EPSDD's decision to the parties in my draft consideration.
15. The applicant and EPSDD did not provide any submissions in relation to my draft consideration.
16. The issues to be decided in this Ombudsman review are whether:
- all the information at issue is within the scope of the access application, and
 - giving the FOI applicant access to the information at issue would be contrary to the public interest, as Wing contends.
17. In making my decision, I have had regard to:
- Wing's application for Ombudsman review
 - EPSDD's decision
 - the FOI Act, in particular ss 7, 16, 17, 35, 50, 72 and Schedule 2
 - EPSDD's FOI processing file relating to the access application
 - an unedited copy of the information at issue
 - relevant case law, in particular *Northern Queensland Conservation Inc and Queensland Territory* [2016] QICmr 21, and *Stewart and SunWater Limited* [2012] QICmr 70

² Ref nos. 1, 2, 3 and 5 on EPSDD's schedule of documents.

³ Ref no. 6 on EPSDD's schedule of documents.

⁴ Ref nos. 9, 14 and 16 on EPSDD's schedule of documents.

⁵ Ref No. 15 on EPSDD's schedule of documents.

⁶ Ref No. 17 on EPSDD's schedule of documents.

Relevant law

18. Section 7 of the FOI Act provides every person with an enforceable right of access to government information.⁷ This right is subject to other provisions of the FOI Act, including grounds on which access may be refused.
19. Section 35(1)(c) of the FOI Act provides that 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.⁸
20. Contrary to the public interest information is defined in s 16 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.
21. The public interest test set out in s 17 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.
22. 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 the contrary to the public information has been deleted.
23. Section 72 of the FOI Act provides that the person seeking to prevent disclosure of the government information has the onus of establishing the information is contrary to the public interest information.
24. Schedule 2 of the FOI Act sets out the public interest factors that must be considered, where relevant, when determining the public interest.

The contentions of the parties

25. During the third party consultation, Wing argued the information at issue was, on balance, contrary to the public interest information because disclosure would:
 - not contribute to informed debate or inform the community of government decision making⁹ as the information at issue relates to past trials, obsolete and now superseded drone design, and geographical areas that are no longer being used

⁷ See s 7 of the FOI Act.

⁸ See s 35(1)(c) of the FOI Act.

⁹ Schedule 2, ss 2.1(a)(ii) and (iii) of the FOI Act.

- not contribute to innovation and the facilitation of research¹⁰ as the release of proprietary information could risk the perception that the ACT is friendly to innovation
 - prejudice the economy of the Territory¹¹ by prejudicing the success of Project Wing
 - prejudice the flow of information to the police or another law enforcement or regulatory agency¹² by deterring Wing and other future investors from disclosing their commercial activities to regulatory agencies as there is a risk of proprietary information being released
 - prejudice trade secrets, research and business affairs¹³ as all documents contain information relating to the business affairs of Wing
 - prejudice the conservation of any place or object of natural, cultural or heritage value, or reveal any information relating to Aboriginal or Torres Strait Islander traditional knowledge¹⁴ as the information at issue contains information about cultural places of significance that may be under assessment for status as restricted information under the ACT *Heritage Act 2004* (Heritage Act).
26. Wing also submitted that some of the information at issue is outside the scope of the FOI applicant's access application¹⁵ because it does not relate to the scope, timeframe and agreements in relation to drone trials.
27. EPSDD's decision noted Wing's objections to the release of 21 documents, determining that release of ten of those documents would be contrary to the public interest. EPSDD said, however, in relation to the remaining documents that it had:
- determined that full release of one document (Item 8) and partial release of ten documents (Items 1, 2, 3, 5, 6, 9, 14, 15, 16, and 17)... is in the public interest and generally consistent with your consultation response. Therefore, I must provide public access to the information that has been assessed for release.
28. In its application for Ombudsman review, Wing reiterated its objections provided during the third party consultation, and contends the information at issue is contrary to the public interest information, for the reasons set out above at paragraph 25 of this Ombudsman review.

¹⁰ Schedule 2, s 2.1.(a)(xvi) of the FOI Act.

¹¹ Schedule 2, s 2.2(a)(viii) of the FOI Act.

¹² Schedule 2, s 2.2(a)(ix) of the FOI Act.

¹³ Schedule 2, s 2.2(a)(xi) of the FOI Act.

¹⁴ Schedule 2, s 2.2(a)(xviii) of the FOI Act.

¹⁵ See s 34(3) of the FOI Act.

Considerations

29. I have examined an unredacted copy of the information at issue, and it comprises the documents set out above at paragraph 12.

Whether all of the information at issue is within the scope of the access application

30. Wing contends the information at issue is outside the scope of the access application, submitting that:

- ESA correspondence does not relate to 'current' or 'proposed future' trials, and
- the insurance document does not relate to the 'scope, timeframe and agreements' of drone trials, in addition to containing internal business affairs information.

31. I have reviewed the access application and the correspondence between EPSDD and the FOI applicant clarifying the scope of the access application. It is clear to me the FOI applicant applied for access to information on:

- the project scope of the Project Wing drone trials
- the agreements entered into between the ACT Government and Wing
- the site preparation for the trials in Royalla and Bonython, and
- any other (past, current and future) Project Wing trials in the ACT and associated consultation.

32. The ESA correspondence identifies the Guises Creek Rural Fire Brigade (located in Royalla) as a site for the trial. From my examination, it is apparent the ESA correspondence relates to, at the time of that correspondence, future drone trials in Royalla, and it is clear that Wing was consulting with ESA in the context of planning for future drone trials.

33. The insurance document is an email referencing an attached certificate of currency for public liability insurance held by Unmanned Systems Australia, a third party working with Wing. I note access has been refused to the certificate of currency. I am of the view EPSDD required this information from Wing, and it is apparent the insurance document relates to the agreements entered into between the ACT Government and Wing.

34. To accept Wing's argument that the ESA correspondence and the insurance document are outside the scope of the FOI applicant's access application would result in an unduly narrow and, in my view, incorrect characterisation of the information.

35. Therefore, I consider the ESA correspondence and the insurance document to be within the scope of the applicant's access application. I will now consider whether the information at issue is contrary to the public interest information.

Information that is taken to be contrary to the public interest to disclose under Schedule 1

36. There is no suggestion from either Wing or EPSDD that the information at issue contains contrary to the public interest information under Schedule 1. Therefore, for the information at issue to be contrary to the public interest information, disclosure of the information at issue must, on balance, be contrary to the public interest under the test set out in s 17 of the FOI Act.

Public interest test

37. To determine whether disclosure of information is, on balance, contrary to the public interest, s 17(1) prescribes the following five steps:
- a) 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;
 - b) 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;
 - c) balance any relevant factor or factors favouring disclosure against any relevant factor or factors favouring nondisclosure;
 - d) decide whether, on balance, disclosure of the information would be contrary to the public interest;
 - e) unless, on balance, disclosure would be contrary to the public interest, allow access to the information subject to this Act.
38. In addition, there is an initial step of ensuring that none of the irrelevant factors listed in s 17(2) are considered.

Irrelevant factors

39. I have noted the irrelevant factors listed in s 17(2) and I am satisfied that I have not considered any irrelevant factors in this case.

Factors favouring disclosure

40. It is not clear from EPSDD's decision what factors favouring disclosure were considered relevant in relation to the information at issue.
41. Wing contends that disclosure of the information at issue does *not* contribute to:
- informed debate on important issues or matters of public interest (Schedule 2, s 2.1(a)(ii))
 - informing the community of the government's operations (Schedule 2, s 2.1(a)(iii)), or
 - innovation and the facilitation of research (Schedule 2, s 2.1(a)(xvi)).
42. Wing contends the information at issue relates to past trials, using now obsolete and superseded drone designs, and a specific geographical area that is no longer used by Wing.

43. Wing addresses the heritage assessment in particular, submitting it does not represent an accurate depiction of the actual or potential heritage or archaeological impact of Wing's future drone delivery business because the assessment is specifically focused on the archaeological characteristics of Greenway. Therefore, according to Wing, the information is highly location-specific and would not inform debate on the company's current operations, nor would it inform the community of the government's current operations.
44. Wing also contends release of the information at issue risks deterring future innovation and investment in the ACT, arguing that by making proprietary information public it puts at risk the perception that the ACT is friendly to innovation.
45. Schedule 2.1 of the FOI Act contains a non-exhaustive list of public interest factors favouring disclosure. Of those factors, I consider the contribution to positive and informed debate on important issues or matters of public interest¹⁶ to be relevant to this review.
46. Additionally, the FOI Act has an express pro-disclosure bias which reflects the importance of public access to government information for the proper working of representative democracy.¹⁷
47. The information at issue relates to Project Wing's trial operation run out of Greenway, and the work undertaken by Wing and EPSDD prior to the trial commencing.
48. I note Wing contends disclosure of the information at issue does *not* contribute to:
 - informed debate on important issues or matters of public interest (Schedule 2, s 2.1(a)(ii))
 - informing the community of the government's operations (Schedule 2, s 2.1(a)(iii)), or
 - innovation and the facilitation of research (Schedule 2, s 2.1(a)(xvi)).
49. I disagree with Wing that information relating to its past trials would not contribute to either informed debate on the use of drones in the ACT, or informing the community of the government's operations in relation to drones.
50. Wing has recently been granted approval by the Civil Aviation Safety Authority to operate in Gungahlin until 31 January 2020, as well as approval to increase the number of flights Wing can undertake each day.¹⁸ Given the continued presence of Wing in the ACT, I am of the view disclosing information about Wing's earlier trials could well be relevant to public debate about how drones are used in the ACT as it provides the community with information on how a drone business, such as Wing, can operate.

¹⁶ Schedule 2, s 2.1(a)(ii) of the FOI Act

¹⁷ See s 17 of the FOI Act

¹⁸ See <https://www.canberratimes.com.au/story/6305222/delivery-drones-to-expand-to-more-parts-of-gungahlin/>

51. I also disagree with Wing that releasing the information at issue risks deterring future innovation and investment in the ACT. The recent expansion of Wing's services, discussed above at paragraph 50, indicates Wing has confidence in their continued investment in the ACT.
52. I am satisfied disclosure of the information at issue could reasonably be expected to assist with the proper working of representative democracy by increasing scrutiny, discussion, comment and review of the ACT Government's dealings with Wing.
53. For the reasons outlined above, I afford the factor of contribution to positive and informed debate on important issues or matters of public interest significant weight in favour of disclosure.

Factors favouring nondisclosure

Economy of the Territory

54. Wing submits that the success of Project Wing in the ACT will add to the economy of the Territory directly and indirectly, and that disclosing the information at issue:
 - ...carries a real risk that Wing will be prejudiced... In turn, there may be prejudice to the economy of the Territory – both in absolute monetary terms, but also regarding the diversity of the economy and the potential loss of Wing's influence in growing the technology sector.
55. Additionally, Wing submitted:
 - Wing, as well as other innovative start-up companies will be reluctant to share information with the ACT Government in future if there is a risk that sensitive commercial and business information will be released... this will place the economy of the Territory at risk by deterring future investors.
56. Schedule 2, s 2.2(a)(viii) relevantly provides that if, on balance, disclosure of information could reasonably be expected to prejudice the economy of the Territory, then it is a factor favouring nondisclosure.
57. The FOI Act does not define 'economy', however, I consider it clear that Schedule 2, s 2.2(a)(viii) was intended to recognise that certain information should be kept confidential in order to carry out the Territory's economic policy.
58. This could include circumstances in which disclosure may prevent the Territory from obtaining commercial and investment advice in the future without the concern of broader disclosure.¹⁹
59. In considering the Territory's economic policy, it is relevant to consider the guidance on economic indicators for the ACT, provided by ACT Treasury.²⁰ They include economic growth, the labour market and the housing market.

¹⁹ *Northern Queensland Conservation Inc and Queensland Territory* [2016] QICmr 21 at [59], [61]

²⁰ See <https://apps.treasury.act.gov.au/snapshot>

60. I accept the information at issue was provided by Wing to EPSDD voluntarily. I do not agree, however, that disclosing the information at issue could reasonably be expected to prevent future commercial and investment advice flowing to the ACT Government from Wing or other investors.
61. I addressed this contention above at paragraph 51. The recent expansion of Wing's services, indicates a confidence in their continued investment in the ACT. Disclosure of the information at issue would demonstrate a government that is interested and engaged in investment and innovation in the ACT.
62. In addition, providing advice of this nature would be of benefit to Wing as part of doing business with the ACT Government.
63. Additionally, from the information before me, Wing has not sufficiently explained its purported influence on the growth of the Territory's technology sector and, more relevantly, how disclosing the information at issue could impact the ACT Government's ability to carry out its economic policy.
64. I am not satisfied that Wing has discharged its onus under s 72 of the FOI Act to sufficiently explain how disclosure of the information could reasonably be expected to prejudice the economy of the Territory. Accordingly, I am not satisfied that Schedule 2, s 2.2(a)(viii) is a relevant factor favouring nondisclosure in this case.

Flow of information to a regulatory agency

65. Wing contends disclosure of the information at issue, particularly the ESA documents and the contractual licence documents, has the potential to prejudice the flow of information to regulatory agencies.
66. The ESA documents comprise correspondence between Wing and the ESA, referring to Wing's Remote Pilot Operator Certificate. The ESA documents also refer to the contractual licence documents, in particular provisions of the contractual licence between Wing and the ACT, and information provided under the contractual licence.
67. Wing submits that:
 - By disclosing this information, both Wing and future investors in the Territory may be deterred from disclosing their commercial activities to regulatory agencies such as those identified in the Documents if there is a risk that their proprietary information will be released to the public.
68. It is apparent the organisations identified (EPSDD and the ESA) are regulatory agencies for the purposes of the FOI Act. I do not accept, however, that investors would be uncooperative in providing information to regulators in future, particularly where mandatory compliance frameworks and penalties apply.

69. I note that consultation with the ESA, regarding the use of Guises Creek Rural Fire Brigade as a the base for a trial, was, and could continue to be, in Wing's best interests, and failure to do so would likely be to the detriment of Wing and its viability in the ACT.
70. For the reasons outlined above, I do not accept that disclosure of the information at issue could reasonably be expected to prejudice the flow of information to a regulator in future, therefore I do not consider that Schedule 2, s 2.2(a)(ix) is a relevant factor favouring nondisclosure in this case.

Trade secrets, business affairs or research of an agency or person

71. Wing contends that release of the information at issue, particularly the press release and insurance document, would prejudice its trade secrets, business affairs or research.
72. The press release is a four page document drafted by Wing, providing an overview of Project Wing, and more detailed information on a trial of the drone delivery system in the Tuggeranong and Queanbeyan areas. The press release identifies Guises Creek Rural Fire Brigade as the base for the trial, and includes information on possible partnerships with the ESA. The press release is marked 'For press reference. Please do not reprint in full'.
73. EPSDD has decided to release the press release in its entirety. Wing objects to this decision, submitting:
- The decision to publish a press release is an internal and highly sensitive commercial and reputational decision for Wing. It relates solely to Wing's business affairs and trade secrets... Public disclosure would be a blatant contravention of the relationship of trust and information sharing which has been established between Wing and the Territory...
74. Wing appears to have provided the press release to EPSDD for information prior to release. The press release itself is not publicly available. The information contained within the press release is, however, already publicly available:
- information about Project Wing in general, including its history of drone delivery trials, and information about the drones used,²¹ and
 - a detailed summary of the drone delivery trial to be conducted in Royalla, including the location of the base used by Wing, Guises Creek Rural Fire Brigade.²²
75. In addition, Project Wing's trials in Royalla, and later Bonython, are public knowledge and have been widely reported on by the media.²³

²¹ See, for example, <https://wing.com/australia/canberra/> and <https://blog.x.company/testing-in-the-australian-skies-5a71db1ed6fe>

²² Information was shared by a member of the Guises Creek Rural Fire Brigade on the Guises Creek Rural Fire Brigade Facebook page on 24 January 2018, see <https://www.facebook.com/pages/Guises-Creek-RFS-Brigade/168524163193470>

²³ See, for example, <https://www.canberratimes.com.au/story/6027787/google-sister-company-teams-up-with-act-rural-fire-service-for-drone-tests/> and <https://www.abc.net.au/news/2019-03-09/google-drones-group-of-angry-residents-in-australia-fight-back/10885254>

76. Having regard to the information that is already publicly available, I do not consider the press release contains information that is contrary to the public interest or that access should be refused.
77. The insurance document is an email from Wing to EPSDD, referring to an attached certificate of currency for the public liability insurance. I note that disclosure of the attached certificate of currency has been refused on the grounds of possible prejudice to Wing's trade secrets, business affairs and research.
78. Wing submits the insurance document should also be refused on these grounds, arguing that insurance is a commercial and business affairs matter for Wing.
79. I am of the view that Wing was required to provide this information to EPSDD as it relates to the agreements entered into between the ACT Government and Wing. I do not consider the insurance document contains information that is contrary to the public interest or that access should be refused. The insurance document contains no information that could reasonably be expected to prejudice Wing's trade secrets, business affairs and research. It demonstrates Wing has complied with its obligations, and it is in the public interest for the ACT community to be aware Wing has taken steps to carry insurance in the event of an incident.
80. Schedule 2, s 2.2(a)(xi) relevantly provides that if, on balance, disclosure of information could reasonably be expected to prejudice the trade secrets, business affairs or research of a person, then it is a factor favouring nondisclosure.
81. This factor was considered in *Stewart and SunWater Limited* [2012] QICmr 70, which looked at the detail required for information to be classified as that which could prejudice business affairs.
82. In determining whether, on balance, disclosure of information could reasonably be expected to prejudice the trade secrets, business affairs or research of a person, there is a requirement:
...that the particular prejudice or adverse effect... could reasonably be expected to flow from disclosure. This phrase requires an expectation that is reasonably based... it is not enough to simply assert that disclosure will result in some kind of adverse consequence.²⁴
83. Wing's submissions broadly assert that disclosure of the information at issue will prejudice the trade secrets and business affairs of Wings. Wing have, however, made no submissions in relation to why or how prejudice could reasonably be expected to flow from disclosure of the information at issue.
84. I am not satisfied that Wing has discharged its onus under s 72 of the FOI Act to sufficiently explain how disclosure of the press release and the insurance document could reasonably be expected to prejudice its trade secrets or business affairs. Accordingly, I am not satisfied that Schedule 2, s 2.2(a)(xi) is a relevant factor in this case.

²⁴ *Stewart and SunWater Limited* [2012] QICmr 70 at [83]

Conservation of any place or object of natural, cultural or heritage value, or reveal any information relating to Aboriginal or Torres Strait Islander traditional knowledge

85. Wing submits that disclosure of the heritage assessment in full will prejudice the conservation of any place or object of natural, cultural or heritage value, or reveal any information relating to Aboriginal or Torres Strait Islander traditional knowledge.
86. The heritage assessment is a letter of advice from the ACT Heritage Council to Wing, providing a preliminary Aboriginal heritage assessment of a site in Greenway. EPSDD have redacted parts of the heritage assessment, on the grounds that releasing the redacted information would prejudice:
- the protection of an individual's right to privacy (Schedule 2, s 2.2(a)(ii)), and
 - trade secrets, business affairs and research of an agency or person (Schedule 2, s 2.2(a)(xi)).
87. Wing contend:
- The Heritage Report... contains information about cultural places of significance... It is possible that the nature and location of the Aboriginal place referred to in the Heritage Report has been or is currently being assessed for status as restricted information.
- ...it still refers to particular groups and councils who were consulted... This has the potential to give some indication to the public of where this site is located...
- ... the Territory adopts a cautious and conservative policy approach to these places... the Ombudsman should adopt the same cautious approach with respect to protecting the Heritage Report from public disclosure, so as not to prejudice any place or object of cultural value.
88. The *Heritage Act 2004* (Heritage Act) protects all Aboriginal places and objects located in the ACT whether or not they are registered.²⁵ Aboriginal places or objects may be placed on the Heritage Register if they meet any of the criteria for heritage significance in the ACT.²⁶
89. Particular information about the location or nature of an Aboriginal place or object may be declared restricted information under s 54 of the Heritage Act. The Heritage Council may declare particular information about the location or nature of an Aboriginal place or object to be restricted information. Restricted information is not to be published without approval.²⁷
90. If a place or object is registered, and the registration details include restricted information, the Heritage Council must include a statement in the Heritage Register that restricted information is not be disclosed.²⁸
91. I agree with Wing that the Territory adopts a cautious and conservative approach to the protection of Aboriginal places and objects. I do not, however, accept Wing's contention that

²⁵ See Part 8 of the Heritage Act.

²⁶ See Part 6 of the Heritage Act.

²⁷ See s 55 of the Heritage Act.

²⁸ See ss 22(2) and 56 of the Heritage Act.

release of the heritage assessment could reasonably be expected to prejudice the conservation of a place or object of cultural value.

92. I have conducted searches of the ACT Heritage Register.²⁹ Block 16 Section 46 Greenway has been registered³⁰, but that registration relates only to the Pine Island Homestead and surrounds. The site has not been registered as an Aboriginal place, and consequently, there are no registration details to have been declared restricted.
93. In my view, it is significant that EPSDD, in deciding to release the heritage assessment, did not consider the information could possibly prejudice the conservation of any Aboriginal place or object.
94. Given the emphasis on the protection of Aboriginal places and objects in the ACT, I consider Schedule 2, s 2.2(1)(a)(xviii) to be a relevant factor favouring nondisclosure in this case. For the reasons outlined above, however, I do not afford this factor significant weight.
95. Wing has not discharged its onus under s 72 of the FOI Act to establish that the heritage assessment is contrary to the public interest to disclose.

Balancing the factors

96. I am satisfied that, on balance, the public interest factors favouring disclosure outweigh the public interest factors favouring nondisclosure for all of the information sought.

Conclusion

97. I confirm EPSDD's decision to grant access under s 35(1)(a) of the FOI Act.

Louise MacLeod
Senior Assistant Ombudsman
24 August 2019

²⁹ https://www.environment.act.gov.au/heritage/heritage_register

³⁰ <https://www.legislation.act.gov.au/View/ni/2015-666/current/PDF/2015-666.PDF>