

***Jon Stanhope and Environment, Planning and Sustainable Development
Directorate [2021] ACTOFOI 2 (9 April 2021)***

**Decision and reasons for decision of ACT Ombudsman, Michael
Manthorpe PSM**

Application Number	AFOI-RR/20/10042
Decision Reference	[2021] ACTOFOI 2
Applicant	Jon Stanhope
Respondent	Environment, Planning and Sustainable Development Directorate
Decision Date	9 April 2021
Catchwords	<i>Freedom of Information Act 2016 (ACT)</i> – deciding access – whether disclosure of information is contrary to the public interest – Cabinet information – promote open discussion of public affairs and enhance government’s accountability – contribute to positive and informed debate on important issues and matters of public interest – reveal the reason for a government decision and any background or contextual information that informed the decision – an individual’s right to privacy – intergovernmental relations – trade secrets, business affairs or research – competitive commercial activities of an agency – economy of the Territory

Decision

1. Under **s 82(2)(b)** of the *Freedom of Information Act 2016 (ACT) (FOI Act)*, I **vary** the decision of the Environment, Planning and Sustainable Development Directorate (**EPSDD**) dated 27 July 2020.

Background of Ombudsman review

2. On 13 May 2020, Mr Stanhope applied to EPSDD for access to:

All documents... in the possession of the ACT Government, related to or concerning in any way the negotiation of and finalisation of the agreed land swap between the ACT and Commonwealth Governments, involving the Curtin Horse Paddocks and land at West Basin.

Included in the request is any and all documents concerning the valuation of the land included in the land swap and any and all documents emanating from or considered by the Procurement Board which are relevant to the land swap.

3. On 27 July 2020, EPSDD decided the access application. EPSDD identified 34 documents in scope and decided to give Mr Stanhope access to four documents in full, nine documents in part and refused access to 21 documents.
4. EPSDD relied on ss 17, 38, 43, 45, 50, 57, 58 and Schedule 1 and 2 of the FOI Act in making its decision.
5. On receiving EPSDD's decision, on 27 July 2020, Mr Stanhope applied for review by the Ombudsman under s 73 of the FOI Act.
6. I provided the parties with my preliminary views in a draft consideration on 23 December 2020. My preliminary view was that some of the information at issue was in the public interest to disclose, including information that EPSDD decided was contrary to the public interest under Schedule 1, s 1.6 as Cabinet information and could reasonably be expected to prejudice intergovernmental relations.
7. Mr Stanhope advised my Office on 20 January 2020 that he did not have any submissions to make in response to my draft consideration.
8. On 20 January 2020, EPSDD made additional submissions in respect of the information, in documents 2, 3, 4, 6, 8, 9, 10 and 11, stating:

This commercial information includes estimated revenue per residential dwelling and commercial m² based upon market advice, and discusses benchmarking with Kingston Foreshore, and would, if released, impact upon the CRA's competitiveness to achieve revenue from future land sales at the site. Disclosure of this information would have a substantial and adverse impact on land release and sales, therefore disadvantaging the economy of the Territory. The agency's bargaining power or ability to negotiate competitive commercial terms for the land sales would be diminished, and the loss of land revenue would, in turn, affect the CRA's future funding.

9. EPSDD did not make any additional submissions in response to my preliminary views on any other information at issue.

Information at issue

10. The information at issue in this review is information EPSDD decided is contrary to the public interest information.
11. The issue to be decided by me is whether the information at issue is indeed contrary to the public interest information.
12. In deciding this matter, I had regard to:
- Mr Stanhope's original access application
 - Mr Stanhope's application for Ombudsman review
 - EPSDD's decision
 - EPSDD's processing file relating to Mr Stanhope's application, including EPSDD's submissions and information provided through EPSDD by the Chief Minister, Treasury and Economic Development Directorate about the origins of some of the documents containing information at issue
 - the FOI Act, in particular Schedule 1, s 1.6 and Schedule 2
 - the Explanatory Statement of the [Freedom of Information Bill 2016](#) (ACT)
 - section 12 of the *Human Rights Act 2004* (ACT)¹
 - the ACT Government's *Cabinet Handbook*²
 - an unedited copy of the information at issue
 - relevant case law, including:
 - *Queensland Newspapers and Department of Justice and Attorney-General; Carmody (Third Party)*,³
 - *Alistair Coe and Chief Minister, Treasury and Economic Development Directorate (Coe No. 1)*,⁴
 - *Alistair Coe and Chief Minister, Treasury and Economic Development Directorate (Coe No. 2)*,⁵

¹ *Human Rights Act 2004* (ACT).

² ACT Government [Cabinet Handbook](#).

³ [2016] QICmr 23.

⁴ [2019] ACTOFOI 3.

⁵ [2018] ACTOFOI 3.

- *Jon Stanhope and Chief Minister, Treasury and Economic Development Directorate*,⁶
- *Wanless Wastecorp Pty Ltd and Caboolture Shire Council; JJ Richards Pty Ltd (Third Party)*.⁷

Relevant law

13. The FOI Act gives every person an enforceable right of access to government information, subject to any provisions of the Act providing a basis on which access can be refused.⁸
14. 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

the disclosure of which would, on balance, be contrary to the public interest under the test set out in section 17
15. The public interest test provided for in s 17 sets out a process for balancing public interest factors favouring disclosure and nondisclosure respectively. This balancing test must be used to determine whether disclosure would be contrary to the public interest.
16. The FOI Act permits refusal of access to information where the information sought is contrary to the public interest information.⁹
17. Where a record contains some information that is contrary to the public interest, but information that it is in the public interest to disclose too, the contrary to the public interest information should be deleted, where practicable.¹⁰
18. The onus of establishing information should not be disclosed rests with the party seeking to prevent disclosure.¹¹
19. Schedule 1 of the FOI Act sets out categories of information taken to be contrary to the public interest to disclose.
20. Schedule 2 of the FOI Act sets out public interest factors to be balanced when conducting the s 17 test to determine the public interest.

⁶ [2020] ACTOFOI 24.

⁷ (2002, L0004, 30 June 2003).

⁸ Section 7 of the FOI Act.

⁹ Section 35(1)(c) of the FOI Act.

¹⁰ Section 50 of the FOI Act.

¹¹ Section 72 of the FOI Act.

The contentions of the parties

21. In its decision notice, EPSDD said:

The release of [some of] this information may serve to further open discussion, government accountability, informed debate and reveal the reason for a government decision and any contextual or background information. However, on balance, release of this information would be detrimental intergovernmental relations (sic) between the ACT and the Commonwealth. On balance, and the information available to me, I am satisfied that the disclosure of this information is not in the public interest.

22. Mr Stanhope's application for Ombudsman review did not particularise the review.

23. These submissions are discussed in more detail below.

Considerations

24. I examined the information at issue.

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

25. Schedule 1 lists categories of information which are taken to be contrary to the public interest to disclose. In this matter, EPSDD found that some of the information Mr Stanhope sought is taken to be contrary to the public interest.

26. When I reviewed the information at issue, I checked that none of the exceptions outlined in Schedule 1 are applicable. That is to say, the information at issue does not identify corruption, an offence, or misuse of power in a law enforcement investigation. Accordingly, Schedule 1 *can* apply to the information at issue.

27. The initial question in this matter is whether some of the information in documents 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 18, 19, 20, 23, 24 and 25 is subject to Schedule 1, s 1.6 of the FOI Act which categorises Cabinet information as information that is taken to be contrary to the public interest to disclose.

Cabinet information

28. Schedule 1, s 1.6 states:

Information-

- (a) that has been submitted, or that a minister proposes to submit, to Cabinet for its consideration and that was brought into existence for that purpose; or
- (b) that is an official record of Cabinet; or
- (c) that is a copy of, or part of, or contains an extract from, information mentioned in paragraph (a) or (b); or
- (d) the disclosure of which would reveal any deliberation of Cabinet (other than through the official publication of a Cabinet decision)

is taken to be contrary to the public interest to disclose.

29. EPSDD refused access to documents 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 18, 19, 20, 23, 24 and 25 on the basis that they constituted contrary to the public interest information under Schedule 1, s 1.6. EPSDD did not identify which sub-section it relied on in making this finding.
30. The ACT Government's Cabinet handbook says:

Cabinet documents are strictly confidential and are the property of the ACT. Confidentiality is protected in the following ways...

- a. Cabinet documents (including drafts) should contain the Dissemination Limiting Marker (Sensitive: Cabinet) ...

31. Documents 4, 14 and 19 include a Dissemination Limiting Marker (DLM). I consider a DLM to be indicative and not determinative. The presence of the DLM cannot be relied upon on its own but does support the view the document was created for Cabinet, while the absence of the DLM does not disqualify Schedule 1, s 1.6 from applying. Document 18 possesses the DLM but EPSDD did not decide or submit that any of the information it contains is contrary to the public interest under Schedule 1, s 1.6.
32. However, to rebut the presence or absence of a DLM I require satisfactory evidence. In this case, my preliminary view was that documents 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 23 and 25 lacked the DLM altogether or contained the DLM but did not appear to be Cabinet information. The documents appear to comprise emails between ACT Government officials and third parties engaged by the government regarding the land swap. My preliminary view was that these documents are not contrary to the public interest under Schedule 1, s 1.6. EPSDD did not make any submissions on this point when responding to my draft consideration. Accordingly, I do not consider that these documents are taken to be contrary to the public interest under Schedule 1, s 1.6.

33. In my preliminary view, I observed that despite document 4 containing the DLM I was not satisfied that it is a document to which Schedule 1, s 1.6 applies. I invited EPSDD to provide additional information to support their original decision with respect to document 4. In EPSDD's response to my draft consideration, it was submitted that the information in document 4 could be contrary to the public interest to disclose on the basis of Schedule 2 factors. Accordingly, I considered the information in document 4 when balancing factors under Schedule 2, but it is not taken to be contrary to the public interest under Schedule 1, s 1.6.
34. Documents 14, 16, 18, 19 and 20 are emails between ACT Government officials which were intended to collect information and facilitate discussion about and preparation of Cabinet submissions. For this reason, I am satisfied the Cabinet information that EPSDD refused access to in these documents is taken to be contrary to the public interest under Schedule 1, s 1.6.

Public interest test

35. To determine whether disclosure is contrary to the public interest, the FOI Act prescribes the following five steps:¹²
- 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 2.1
 - 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

Irrelevant factors

36. I do not consider any irrelevant factors I am prohibited from considering arise in this review.¹³

Factors favouring disclosure

¹² Section 17(1) of the FOI Act.

¹³ Section 17(2) of the FOI Act.

37. Schedule 2, s 2.1 of the FOI Act contains a list of public interest factors favouring disclosure.

38. The parties agree that three factors are relevant, Schedule 2, s 2.1(a)(i), 2.1(a)(ii) and 2.1(a)(viii).

Promote open discussion of public affairs and enhance the government's accountability

39. A reasonable expectation that information could promote open discussion of public affairs and enhance government accountability favours disclosure under the FOI Act.¹⁴

40. EPSDD found that disclosure of the information at issue could reasonably be expected to promote this public interest factor. I agree with this finding, noting that the land swap is a matter that is the subject of discussion in the ACT, for example in the media and raises government accountability as a relevant consideration.¹⁵ I expect the information at issue could promote this public interest factor to a considerable degree.

Contribute to positive and informed debate on important issues and matters of public interest

41. A reasonable expectation that information could contribute to positive and informed debate on important issues and matters of public interest favours disclosure under the FOI Act.¹⁶

42. EPSDD found that disclosure of the information at issue could reasonably be expected to promote this public interest factor. I agree with this finding, as I find that the matter is one of public interest, given coverage in the media and that the information at issue could help inform people who wish to take a position on the issue. I expect the information at issue could promote this public interest factor to a considerable degree.

Reveal the reason for a government decision and any background or contextual information that informed the decision

43. A reasonable expectation that information could reveal the reason for a government decision and any background or contextual information that informed the decision favours disclosure under the FOI Act.¹⁷

44. The information at issue relates to the ACT Government's decision to swap land with the Commonwealth and could reasonably be expected to help inform the public about the information the ACT considered before making the decision. I expect the information at issue could promote this public interest factor to a considerable degree.

¹⁴ Schedule 2, s 2.1(a)(i) of the FOI Act.

¹⁵ See, for example, reporting in the [Canberra Times](#) and on the [CityNews](#) website.

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

¹⁷ Schedule 2, s 2.1(a)(viii) of the FOI Act.

Pro-disclosure bias

45. I found that three factors favouring disclosure are applicable in respect of Mr Stanhope's access application. Additionally, the FOI Act has an express pro-disclosure bias which reflects the importance of access to government information for the proper working of representative democracy.¹⁸ This is promoted in the objects of the FOI Act.¹⁹
46. For these reasons, my preliminary view is the information at issue could reasonably be expected to promote the objects of the FOI Act and two public interest factors.

Factors favouring nondisclosure

47. Schedule 2, s 2.2 of the FOI Act lists public interest factors which favour nondisclosure of information. EPSDD's submissions are that five factors are relevant in this review, Schedule 2, ss 2.2(a)ii), 2.2(a)(viii), 2.2(a)(x), 2.2(a)(xi), 2.2(a)(xiii).

An individual's right to privacy

48. A reasonable expectation that disclosure could prejudice an individual's right to privacy under the Human Rights Act favours nondisclosure under the FOI Act.²⁰
49. EPSDD's original decision found that some personal information in documents 2, 9, 10, 11, 12, 13, 16, 18, 19, 25, 31, 32, 33 and 34 is information that could reasonably be expected to prejudice an individual's right to privacy to an extent that it outweighed any factor favouring disclosure.
50. An individual's right to privacy under the Human Rights Act means that:
- Everyone has the right—
- (a) Not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily...²¹
51. The National Capital Authority (NCA), a Commonwealth government entity, was consulted about some of these documents. In response, the NCA requested that EPSDD redact the names, emails and phone numbers of NCA employees. EPSDD's decision was in accordance with the NCA's request.

¹⁸ Section 17 of the FOI Act.

¹⁹ Section 6(b) of the FOI Act.

²⁰ Schedule 2, s 2.2(a)(ii) of the FOI Act.

²¹ Section 12 of the Human Rights Act.

52. However, I do not think it is reasonable to expect that disclosing the names of public servants, or their official email addresses and phone numbers, or job titles could prejudice an individual's right to privacy under the Human Rights Act in the present circumstances. In this review, I did not receive any evidence about what effect not disclosing might constitute prejudice to a person's right to privacy. I do not perceive a sound basis for finding that Schedule 2, s 2.2(a)(ii) is applicable.
53. There is one exception to this, which is mobile telephone numbers of individuals. I expect that disclosing a person's mobile number risks prejudicing their right to privacy and home (because a mobile number may enable a person to have their privacy interfered with while they are at home). The likelihood of interference may be low, but it is not 'absurd, irrational or ridiculous' and therefore meets the relevant threshold for me to reasonably form an expectation of prejudice.

Intergovernmental relations

54. A reasonable expectation that disclosure could prejudice intergovernmental relations favours nondisclosure under the FOI Act.²²
55. EPSDD found this factor applied to information in documents 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 23, 24, 25, 26, 29 and 30. EPSDD described the information as that which had been 'provided in confidence and subject to ongoing negotiations and deliberations between the ACT and the Commonwealth.'
56. I considered this public interest factor in *Coe No. 1*, *Coe No. 2* and *Jon Stanhope and Chief Minister, Treasury and Economic Development Directorate*.
57. *Coe No. 1* concerned ongoing negotiations between the ACT and the Commonwealth regarding a different land deal. In that case, I accepted the argument that disclosing confidential communications between the ACT Chief Minister and the Commonwealth's Minister for Finance and between senior officials in the ministers' respective departments, could reasonably be expected to prejudice the intergovernmental relationship.²³
58. I cited the Queensland Information Commissioner's comments in *Queensland Newspapers and Department of Justice and Attorney-General; Carmody (Third Party)* in which it was observed that the purpose of the intergovernmental relations factor is to:

²² Schedule 2, s 2.2(a)(x) of the FOI Act.

²³ [2019] ACTOFOI 3 at [33].

[G]ive weight to the public interest in protecting confidential communications between... government[s] where disclosure could reasonably be expected to prejudice the relations between those governments.

59. In *Coe No. 2*, I said that I require something stronger than hesitancy on the part of an agency to find that disclosure could reasonably be expected to really cause prejudice. In that case, I disagreed with the high level of weighting given to this factor in the original decision, which resulted in access being refused to information. A better example of prejudice may be disclosure producing a loss of intergovernmental trust or cooperation between agency officers.²⁴
60. EPSDD consulted with a third party, the National Capital Authority (NCA), which is a Commonwealth entity. The NCA did not raise any objections to disclosure based on prejudice to intergovernmental relations. EPSDD's decision notice stated that disclosure could reasonably be expected to be 'detrimental to intergovernmental relations between the ACT and Commonwealth'. EPSDD neither specified what evidence this was based on nor how the relationship might suffer prejudice.
61. I examined the information at issue and contextual information about the documents produced by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD). The information at issue is of an *intragovernmental* nature, that is, it is correspondence between ACT Government officials. While some of the correspondence is marked with a dissemination limiting marker saying *Sensitive*, I consider much of it is not.
62. Some of the information at issue relates to a particular arrangement that is a sensitive part of the ACT government's negotiations with the Commonwealth. This information is contained in documents 4, 5, 6, 10, 13, 24, 25 and 29. It is also in document 14, but my preliminary view is that this is contrary to the public interest under Schedule 1, s 1.6. For clarity, the particular information I refer to is the indented paragraph in document 5, then all other places in the aforementioned documents where that same information appears.
63. In *Jon Stanhope and Chief Minister, Treasury and Economic Development Directorate*²⁵, I considered this particular information to be contrary to the public interest information. My decision in that matter was that the information could reasonably be expected to prejudice intergovernmental relations to a significant degree. This was based in part on an objection raised by a third party who was consulted about the matter in that review. While that third

²⁴ [2018] ACTOFOI 3 at [31].

²⁵ *Jon Stanhope and Chief Minister, Treasury and Economic Development Directorate* [2020] ACTOFOI 24 at [73].

party was not consulted in this case, I decided to apply consistent reasoning about the applicability of the intergovernmental relations factor to the particular information in this matter.

64. I will explain the precise weight to be given to the relevant factors in the section of this notice, 'Balancing the factors'.
65. I recognise the correspondence relates to negotiations between the ACT and Commonwealth about the land swap. However, I do not consider that it is sufficiently sensitive to both parties to support EPSDD's assertion that expecting significant prejudice would be reasonable.
66. Other than the exception I have noted above, I do not accept, having regard to the lack of evidence in this case, that disclosure of the information at issue could reasonably be expected to prejudice the relationship between the ACT and Commonwealth.

Competitive commercial activities of an agency

67. A reasonable expectation that disclosure could prejudice the competitive commercial activities of an agency favours nondisclosure under the FOI Act.²⁶
68. Information has a commercial value if:
 - it is valuable for the purposes of carrying on the commercial activity in which that agency or other person is engaged (i.e. because it is important or essential to the profitability or viability of a continuing business operation, or a pending 'one-off' commercial transaction); or
 - a genuine arms-length buyer is prepared to pay to obtain that information from that agency or person, such that the market value of the information would be destroyed or diminished if it could be obtained from a government agency which has possession of it.²⁷
69. EPSDD responded to my draft consideration by submitting that information in documents 2, 3, 4, 6, 8, 9, 10 and 11 could reasonably be expected to adversely affect future land sales conducted by the Suburban Land Agency.
70. EPSDD also contends that the fact that the valuation information is from 2019 does not mean that it does not retain its commercial value because it provides benchmarks for future valuations.

²⁶ Schedule 2, s 2.2(a)(xiii) of the FOI Act.

²⁷ *Wanless Wastecorp Pty Ltd and Caboolture Shire Council; JJ Richards Pty Ltd (Third Party)* (2002, L0004, 30 June 2003) at [45]-[46].

71. I accept that the information of dollar-value amounts, is information which is essential to the profitability of the Suburban Land Agency's sales.
72. In my view, it is reasonable to expect that the profitability of sales could be prejudiced by disclosure of the information at issue and decided to afford this factor considerable weight.

Economy of the Territory

73. A reasonable expectation that disclosure could prejudice the economy of the Australian Capital Territory favours nondisclosure under the FOI Act.²⁸
74. When responding to my preliminary view, EPSDD raised this factor as an applicable factor in relation to documents it initially refused access to on the basis that it was Cabinet information and information prejudicial to intergovernmental relations.
75. EPSDD's submissions did not distinguish between this factor and the factor relating to the competitive commercial activities of an agency. On this factor, EPSDD contends that disclosure of the size of the West Basin area could be expected to prejudice the ACT's economy more generally and not just the competitive commercial interests of EPSDD. EPSDD did not refer me to any authority on this point and I am not satisfied that EPSDD discharged the onus under s 72 in respect of this factor.

Balancing the factors

76. As s 17 requires, I identified the relevant public interest factors favouring disclosure and nondisclosure. The next step s 17 requires is the balancing of these factors according to the test it sets out.
77. In this review, I found that the information at issue could reasonably be expected to promote three public interest factors to a significant degree.
78. On the other hand, five factors favour nondisclosure, including intergovernmental relations, individual privacy, business affairs, the Territory economy and the competitive commercial activities of EPSDD.
79. Balancing public interest factors is not simply a matter of quantifying the number of relevant factors weighing on disclosure and nondisclosure, with the higher quantity prevailing. Section 17 requires me to weigh the relative importance of each factor. The weight I give to a factor

²⁸ Schedule 2, s 2.2(a)(viii) of the FOI Act.

depends on the effect that disclosing the information could reasonably be expected to have on the public interest.

80. The FOI Act has a bias favouring disclosure. This means that I do not approach the balancing of factors as though there are empty scales in equilibrium, waiting for arguments to be placed on each side. Rather, the scales are ‘laden in favour of disclosure’.²⁹

Redactions made on the basis of prejudice to intergovernmental relations

81. My decision is that the information at issue could not reasonably be expected to prejudice intergovernmental relations, except in one respect. The information in the indented paragraph of document 5 and all other places where that information appears (documents 4, 13, 14, 24, 24 and 29) is contrary to the public interest to disclose because it is sensitive information relating to ongoing negotiation of a commercial arrangement between the ACT and Commonwealth. Otherwise all of the information that was redacted on the basis of expected prejudice to intergovernmental relations should be disclosed.

Redactions made on the basis of an individual’s right to privacy

82. I find all staff names should be disclosed. It is not reasonable to expect that disclosing them could prejudice an individual’s right to privacy under the Human Rights Act in the absence of any specific evidence. There is therefore nothing to weigh against disclosure of this information, nor the contact details of public officials. Indeed, public access to names of persons participating in public decision-making promotes the factors favouring disclosure to a considerable degree.
83. On the other hand, I expect that disclosing a person’s mobile telephone number could enable interference with that person’s privacy. I do not think that disclosing a private mobile telephone number promotes any public interest factor favouring disclosure. Accordingly, I decided that individuals’ private mobile telephone numbers are contrary to the public interest information.

Document 12 – business affairs

84. The information in document 12 could reasonably be expected to promote all three public interest factors favouring disclosure to a considerable degree. Accordingly, I afford considerable weight to each of these factors.

²⁹ Explanatory Statement, [Freedom of Information Bill 2016](#) (ACT) 13.

85. However, I expect that disclosure of document 12 could prejudice the business affairs of Knight Frank. I afford this factor considerable weight except in relation to section 5.4 of the document, which is a summary of the advice contained in the document. I distinguish section 5.4 as in the public interest to disclose because it reflects the conclusions drawn by Knight Frank and put to the government to inform policy rather than the business intelligence or methodology of Knight Frank. All sections other than 5.4 are, on balance, contrary to the public interest to disclose because there is a reason to expect a real risk of severe prejudice to Knight Frank's business affairs.
86. This is consistent with the view I set out in my draft consideration. In responding to my draft consideration, EPSDD did not submit that disclosure of dollar-value information in section 5.4 of document 12 could reasonably be expected to prejudice the competitive commercial activities of EPSDD or the economy of the Territory. Thus, while I have agreed that dollar-value amounts may be contrary to the public interest in some other documents in this review, I do not consider EPSDD has discharged the onus imposed by s 72 with respect to dollar-value amounts that appear in section 5.4 of the report.

Competitive commercial activities of EPSDD

87. EPSDD's response to my draft consideration submitted that information in documents 2, 3, 4, 6, 8, 9, 10 and 11 is contrary to the public interest information because it could reasonably be expected to considerably prejudice the agency's competitive commercial activities of EPSDD considerably.
88. There is a compelling public interest in transparency about the management of public monies. The ability of the public to discuss and debate and hold the government accountable for its management of public monies is of fundamental importance for the proper working of representative democracy. All three pro-disclosure factors apply to this information to a degree that warrants considerable weighting.
89. I accept that disclosure of information which is dollar-value amounts in documents 2, 3, 6, 8, 9, 10 and 11 could reasonably be expected to prejudice the competitive commercial activities of EPSDD. I decided to afford this factor considerable weight. In this instance, my decision is that the prevailing weight favours nondisclosure and that this information, in documents 2, 3, 6, 8, 9, 10 and 11 which is the dollar-value amounts, should be redacted from those documents. The

applicant should be given access to the remainder of those documents so that only the dollar-value amounts are redacted.

90. However, document 4 does not contain any dollar-value amounts so I do not accept that EPSDD discharged the onus under s 72 of showing that it contains contrary to the public interest information that could reasonably be expected to prejudice the competitive commercial activities of EPSDD.

Conclusion

91. My decision under s **82(2)(b)** of the FOI Act is to **vary** EPSDD's decision to refuse access to the information at issue under s **35(1)(c)** of the FOI Act.
92. I consider that EPSDD decided correctly not to disclose:
- information in documents 14, 16, 19 and 20 which comprise information that is taken to be contrary to the public interest under Schedule 1, s 1.6(1)(a)
 - the information I have identified (the indented paragraph in document 5), where it appears in documents 4, 5, 6, 10, 13, 24, 25 and 29 on the basis of prejudice to intergovernmental relations,
 - dollar-value amounts in documents 2, 3, 4, 6, 8, 9, 10 and 11.
 - document 12 (Knight Frank's valuation report), except for section 5.4
 - any mobile telephone number of any person
 - redactions made where information is out of scope, including information the NCA indicated was out of scope when consulted about Mr Stanhope's application.
93. Accordingly, subject to the exceptions I decided on above, my decision is that Mr Stanhope should be given access to all other information at issue.

Michael Manthorpe PSM
ACT Ombudsman
9 April 2021