



ACT
Government

City and Environment

OFFICIAL

Our ref: CED FOI 26-139/151



Freedom of Information – Notice of Decision

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the FOI Act), transferred to the City and Environment Directorate (CED) on 11 May 2026 from Minister Berry's Office. You have also sent the same application directly to CED on 21 May 2026. In accordance with section 43(2) of the FOI Act, CED are processing your two applications (FOI 26-139 and 26-151) as one application. It is my understanding you are seeking access to the following information:

"I seek access to documents relating to the ACT Government's knowledge, advice, and internal position regarding the future of the Big Splash water park prior to and immediately following public statements made by Yvette Berry on 19 February 2026 at the "Save Big Splash Community Meeting" at the Labor Club, Belconnen.

This request specifically targets documents that informed, contradicted, or contextualised those public statements.

Date range: 1 January 2026 to the date of this application

Documents Requested

Please provide **all documents (including drafts and attachments)** held by Minister Berry, her office, or relevant directorates, including but not limited to:

1. Ministerial Briefings and Advice

All briefs, emails, reports, file notes, and advice provided to the Minister concerning:

- The operational viability of Big Splash
- Likelihood of reopening as a water park
- Compliance with Crown lease conditions
- Enforcement options, including lease termination
- Any consideration of demolition, partial retention, or redevelopment

2. Communications

All communications **to, from, or copying** Minister Berry or her office that include the terms:

"Big Splash", "Macquarie water park", "Block 1 Section 53", "waterslides", "demolition", "lease breach", or "redevelopment"

This includes:

- Emails
- SMS and messaging platforms (including WhatsApp, Signal, Teams, etc.)

- *Internal messaging systems*
- *Attachments and embedded documents*

3. Pre-19 February Knowledge

Any document created by her or her office, or documents she has been supplied with, from before 19 February 2026 that:

- *Assesses or forecasts that Big Splash would not reopen in its existing form*
- *Identifies demolition or redevelopment as a likely or preferred outcome*
- *Raises concerns about viability, safety, compliance, or financial sustainability*

4. Speech, Media and Messaging Material

All drafts and final versions of:

- *Talking points*
- *Speech notes*
- *Q&A briefs*
- *Media lines*

Prepared for or used by Minister Berry in relation to:

- *The 19 February 2026 community meeting*
- *Public commentary on the future of Big Splash*

5. External and Inter-Agency Communications

All correspondence between the Minister or her office and:

- *Access Canberra*
- *The Territory Planning Authority*
- *The leaseholder or their representatives*
- *Other Ministers or their offices*

Relating to:

- *Lease enforcement or non-compliance*
- *Regulatory decisions*
- *Demolition or redevelopment pathways*

I thank you for providing the following statement on the public interest in your application. Your views have been considered in reaching my decision on your application:

“This request is made to assess whether public statements made to the Canberra community were consistent with the information and advice available to Government at the time.”

Timeframes

In accordance with section 40 of the FOI Act, CED is required to provide a decision on your application within 30 working days. Under section 41 of the FOI Act, you agreed an additional amount of time of 15 working days to decide your application and a third-party consultation has occurred which then added an additional 15 working days to the request. Therefore, a decision is due on or by **17 August 2026**.

Authority

I am an Information Officer appointed by the Director-General of the City and Environment Directorate under section 18 of the FOI Act to deal with access applications made under Part 5 of the FOI Act.

Decision on access

A search for records held by CED has been completed and 29 records within the scope of your application have been identified. The records are listed in the schedule at **Attachment A**.

I have decided to:

- grant **full** access to nine records.
- grant **partial** access to 19 records.
- **refuse** access to one record as I consider the disclosure of the information to be contrary to the public interest.

The reasons for my decision are detailed in the *Statement of reasons* section below. The records being released to you are provided at **Attachment B**.

Statement of reasons

The FOI Act has a pro-disclosure bias, which requires information to be disclosed unless doing so would be contrary to the public interest. As an Information Officer, I am responsible for determining whether disclosure of the information within the scope of your application would be contrary to the public interest.

My assessment begins with Schedule 1 of the FOI Act, which outlines categories of information that are taken to be contrary to the public interest to disclose. If the information does not fall within any of these categories, I must then apply the public interest test under section 17 of the FOI Act. This test involves weighing the factors favouring disclosure against those favouring nondisclosure, as set out in Schedule 2.

In reaching my access decisions, I have taken the following into account:

- the FOI Act
- the information that falls within the scope of your application
- your views regarding the public interest
- the views of the third parties consulted
- the *Human Rights Act 2004*
- the ACT Ombudsman FOI Guidelines.

I confirm that I have not considered any of the factors listed in section 17(2) of the FOI Act, which outlines a list of considerations that must not be taken into account when applying the public interest test.

Schedule 1 – Information taken to be contrary to the public interest

- *Section 1.6 - Cabinet Information.*
- *Section 1.2 - Information subject to legal professional privilege.*

Record 27 contains information that would be privileged from production or admission into evidence in a legal proceeding on the ground of legal professional privilege. Disclosure of the information is taken to be contrary to the public interest under Schedule 1, section 1.2 of the FOI Act. I have decided to redact this information.

Record 29 is entirely composed of information that is considered to be contrary to the public interest under Schedule 1, section 1.6 of the FOI Act as it is Cabinet information. This record falls within Schedule 1, section 1.6 of the Act as it is information which has been

commissioned by Cabinet to guide it in its decision making and to assist it in its deliberations. Its disclosure is therefore taken to be contrary to the public interest.

The purpose of Schedule 1, section 1.6 is to maintain the confidentiality of the cabinet process and to uphold the principle of collective ministerial responsibility. This exemption was discussed in *The Commonwealth v Northern Land Council* [1993] HCA 24; (1993) 176 CLR 604 (21 April 1993). Paragraph 6 of the decision states that:

"... it has never been doubted that it is in the public interest that the deliberations of Cabinet should remain confidential in order that the members of Cabinet may exchange differing views and at the same time maintain the principle of collective responsibility for any decision which may be made."

Schedule 2 – Public interest test

Factors favouring disclosure (Schedule 2.1)

- *Section 2.1(a)(i) - promote open discussion of public affairs and enhance the government's accountability.*
- *Section 2.1(a)(ii) - contribute to positive and informed debate on important issues or matters of public interest.*

There has been much media and public attention on the future of Big Splash Water Park, and I consider that the release of government information concerning the water park and its future would promote open discussion and enhance government's accountability. The release of this information would also assist in informing debate on the matter, as demonstrated in the media and the Assembly. I apply significant weight to these factors favouring disclosure.

Factors favouring nondisclosure (Schedule 2.2)

- *Section 2.2(a)(ii) - prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004.*
- *Section 2.2(a)(xi) - prejudice trade secrets, business affairs or research of an agency or person.*

Having reviewed the information, I consider that the protection of an individual's right to privacy is a significant factor. Some of the records contain personal information, including complaints made by members of the public and mobile phone numbers of ACT Public Service employees.

Release of information concerning individuals working within the ACT Public Service is generally not considered to prejudice the protection of an individual's right to privacy. However, where mobile phone numbers may be used for home and work purposes, this information has been.

Personal information of individuals where consent has not been provided, such as personal contact information and personal opinions has also been redacted as it could reasonably be expected to prejudice an individual's right to privacy under the *Human Rights Act 2004*.

I have also considered the impact of disclosing information relating to business affairs. In *Re Mangan and The Treasury* [2005] AATA 898, the term "business affairs" was interpreted as meaning *"the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs"*.

Schedule 2, section 2.2(a)(xi) of the FOI Act provides that prejudice to the trade secrets, business affairs or research of an agency or a person is a factor favouring nondisclosure.

Record 26 contains information provided by a third-party commercial entity regarding its business operations and commercial arrangements. I am satisfied that disclosure of this information could reasonably be expected to prejudice the business affairs of that entity by revealing commercially sensitive information that may provide a competitive advantage to other companies operating in the same market. Accordingly, I consider that disclosing the relevant information in Record 26 would be contrary to the public interest under Schedule 2, section 2.2(a)(xi) of the FOI Act.

Balancing the factors

In balancing the factors favouring disclosure against those favouring nondisclosure, I have carefully considered the public interest in promoting transparency, accountability and informed public debate. I acknowledge that disclosure of certain information would advance these interests, particularly where it relates to the government's operations and the context surrounding government decisions.

However, I must also consider the strong public interest in protecting personal privacy and safeguarding the legitimate business affairs of third parties. In several instances, the likelihood and degree of prejudice that could result from disclosure is significant.

On balance, I find that in the circumstances of this matter, the factors against disclosure carry greater weight than the factors favouring disclosure for the relevant information. As such, I have decided to withhold the information where the public interest against disclosure outweighs the public interest in favour of release.

Charges

Processing charges are not applicable for this application because the fee has been waived in accordance with section 107 of the FOI Act.

Online publishing – Disclosure Log

Under section 28 of the FOI Act, CED maintains a disclosure log, which is a public record of access applications and decisions. Your original access application and my decision will be published on the CED disclosure log. Your personal contact details will not be published.

ACT Ombudsman Review

My decision on your access application is a reviewable decision as identified in Schedule 3 of the FOI Act. You have the right to seek ACT Ombudsman review of this outcome under section 73 of the FOI Act within 20 working days from the day that my decision is provided to you, or a longer period allowed by the ACT Ombudsman. If you wish to request a review of my decision, you may write to the ACT Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601
Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the FOI Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
<https://www.acat.act.gov.au/>

Please contact the CED Information Access team if you have any queries in relation to your application via 6207 2987 or CEDFOI@act.gov.au.

Yours sincerely

(signed electronically)

Craig Weller
Information Officer
City and Environment Directorate
14 August 2026