

Our Reference: F21.001; File 900.01
2 February 2021

Mr Greg Kennewell
via email only to: foi+request-7022-4d9773a4@righttoknow.org.au

Dear Mr Kennewell,

Re: Freedom of Information Request – 650 Buffalo River Road

I refer to your request received by Council on 18 January 2021, where you sought access to documents under the *Freedom of Information Act 1982 [Vic]* (the FOI Act).

Specifically, you advised you were seeking access to:

"I would like to request previous development applications council has received in relation to the subject property (650 Buffalo River Road), the council determinations and responses."

Valid request

Section 17 of the FOI Act requires all of the following requirements to be met before a request can be considered valid:

(1) A person who wishes to obtain access to a document of an agency or an official document of a Minister shall make a request in writing to the agency or Minister as the case requires for access to the document.

(2) A request shall provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, as the case may be, to identify the document.

(2A) A request must be accompanied by a fee of 2 fee units.

(2B) An application fee may be waived or reduced, whether or not the fee has been paid, if the payment of the fee would cause hardship to the applicant.

Clarification of request

Section 13 of the Act sets out the right of access, which is a right to obtain access to a document of an agency other than an exempt document. That is, a request must be for documents and not just for information as such.

As it presently stands, some aspects of your request are unclear and need to be clarified.

I draw your attention to section 17(2) of the Act, which states that a request shall provide such information concerning the document as it is reasonably necessary to identify the document. In accordance with s17(4) of the Act, I invite you to consult with me to discuss how your request could be amended so that it is in a form that can be processed.

In order to assist you, I make the following specific comments in response to your request:

"I would like to request previous development applications council has received in relation to the subject property (650 Buffalo River Road), the council determinations and responses."

- a. Please confirm that the property you are seeking is 650 Buffalo River Road, Buffalo River 3737?
- b. Please clarify what you mean by 'development applications'? Do you mean one or all of the following examples: planning permits, building permits, environmental health permits, subdivisions? Are there any other types of permits / applications you are referring to?
- c. To help narrow the search for documents, could you please advise if there is a particular item or issue that you're searching for with regards to applications / determinations on this property?
- d. Please clarify what you mean by 'responses', and how these are different to 'determinations'?
- e. Please specify a timeframe for Council to search for documents – a date 'from' and a date 'to' would be very useful to assist in narrowing the search for documents – eg January 2018 – January 2021.

Assistance outside of the FOI Act

Section 16 of the FOI Act encourages agencies to publish or provide documents outside of the FOI Act where they can properly do so under relevant legislation. Council's Public Transparency Policy also encourages Council to make information available where possible under relevant legislation.

If the information you are seeking is relating to planning permits, it may be more appropriate for Council to assist you under the *Planning and Environment Act 1987*. Once we receive the clarification points above, we will advise you which Act we are best able to provide you the information under (or a combination of both).

Application Fee for FOI Act

Once we have received clarification of what you are seeking, if it is determined that some of the information is only available through the FOI Act, section 17(2A) of the FOI Act requires that an application fee of 2 fee units (**\$29.60**) accompanies a request for access to documents.

As this fee has not been paid, your FOI request cannot be processed until payment, or proof of hardship (such as a Centrelink concession card), is received.

We will advise you whether your clarified request falls within the FOI Act. Should this be the case, we will provide you with appropriate methods of making payment, including cheque or credit card.

The statutory decision period will commence on the date your FOI application becomes valid in accordance with section 17.

Prescribed fees under the Planning and Environment Act

Please note, that where it is determined that the information should be made available to you under the *Planning and Environment Act 1987*, that there may also be fees payable under that Act. We will advise you further once we have received clarification of your request.

Access charges for FOI Act

In addition to the FOI application fee, once a formal decision regarding access to the documents has been made, FOI access charges will also be payable prior to Council releasing documents to you. We will provide you with more details regarding access charges once we have determined which parts of your request fall under the FOI Act. Please note that for very broad FOI requests, there may be a large search time required to process these (charged at a statutory **\$22.20 / hour**).

Where FOI access charges are likely to be more than \$50, Council will provide you with a deposit notice. The statutory decision period restarts from the date that any deposit is received. Access charges must be paid prior to Council releasing documents under the FOI Act.

Consultation

The FOI Act requires Council to consult with third parties regarding disclosure of their information, in particular where documents identified as part of your request contain: documents affecting personal privacy – where any person may be identified; documents relating to trade secrets – which contain business information; and where documents contain material obtained in confidence.

Where Council is required to consult with third parties, the statutory decision period extends from 30 days to 45 days after a valid FOI request has been received (see section 17 on previous pages for validity requirements).

Please contact me at foi@alpineshire.vic.gov.au or by phone on 03 5755 0555 to clarify the terms of your request, or to discuss this matter further.

Yours sincerely,

*Original signed by
B Schultz*

Belinda Schultz
Governance Officer