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AUSTRALIA
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Peter Berlyn
By email: foi+request-8844-85984953@righttoknow.org.au

Date: 16 June 2022
Our Ref: 40-2122SC
Enquiries: 03 5320 5659
Email: sarahcuthbert@ballarat.vic.gov.au

Dear Peter,

**Notice of decision – request for documents under the
Freedom of Information Act 1982 (Vic)**

This letter contains my decision on behalf of City of Ballarat in relation to your request for documents under the *Freedom of Information Act 1982 (Vic)* (**FOI Act**).

In making my decision, I have considered the object of the FOI Act, which is to create a general right of access to information, limited only by exceptions and exemptions necessary to protect essential public interests, privacy, and business affairs.

My decision and reasons are provided below. A schedule outlining the documents and my decision is also attached to this letter.

Background

I am an officer authorised under section 26 of the FOI Act to make decisions in relation to FOI requests.

On 2 May 2022 you made a request. On 16 May 2022 we advised your request was not valid under section 17(2) of the FOI Act because the terms of your request were not clear enough to enable us to reasonably identify documents relevant to your request.

After you clarified your request, we considered it to be valid under section 17 of the FOI Act. Your request sought access to:

To respond to your Point One, I seek copies of all (if any) formal communications to the roughly 350 affected properties in the defined geographic area that informed, invited contribution, offered an objection process relating to the two zoning changes from May 2010 where I have documentary evidence that it was Residential One through a change to Residential Medium Density and finally to the present zoning of Residential Growth. The window appears to be about five years.

As to you Point Two, , I took the description from the actual Instrument of Delegation and asked my question in an attempt to capture details of ALL relevant documents. I knew about all or most of what you have identified but there is nothing to evidence that what I know about is finitely definitive. My expectation is that you will list all that are relevant, indicate which of them are available on the website and supply any that are relevant but not otherwise disclosed.

On 3 May 2022 you paid the application fee of \$30.10.

Documents relevant to your request

I found that:

The FOI Act does not apply to the documents you requested in Point 2 because they are currently publicly available.

As previously advised in the clarification letter sent to you on 16 May 2022, the below documents that relate to Point 2 are currently available on Council's website. I have attached the links below for your convenience.

[Council Meeting agenda – 24 November 2021 \(pg. 402\)](#)

[Council Meeting minutes – 24 November 2021 \(pg. 22\)](#)

[Governance Rules](#)

[Committee Policy](#)

[Planning Delegated Committee Terms of Reference](#)

[Policy for Council Consideration of Planning Applications](#)

I have liaised with the Coordinator Risk and Compliance who has advised that there are no further documents relevant to point 2.

Documents relevant to Point 1 of your request do not exist, and therefore were not located. This is because the amendment was prepared by the Minister for Planning, who is the planning authority for this amendment.

Consequently, Council did not send any notification to affected properties.

For further information, you may wish to view the Amendment summary which is available on line here - <https://planning-schemes.app.planning.vic.gov.au/Ballarat/amendments/C177>.

Access charges

The Freedom of Information (Access Charges) Regulations 2014 and section 22 of the FOI Act outline that an agency may impose charges for providing access to a document and sets out how to calculate those charges.

We calculated these charges on the following basis:

Type of charge	How the charge was calculated		
	No. of hours	Cost per hour	Sub-total
Searching for documents	2	\$22.20	\$44.40
Total access charges	\$44.40		

In this instance, I decided to waive the access charges and you do not need to pay anything.

Your review rights

If you are not satisfied with my decision you have the right to apply for a review of my decision by the Information Commissioner under section 49A(1)(a) of the FOI Act.

A review application must be in writing, identify the decision to be reviewed and the agency who made it.

An application must be made to the Information Commissioner within 28 days from the day you receive this letter.

OFFICIAL

The Office of the Victorian Information Commissioner's (**OVIC**) website has a review form you may download, which contains more information about the review process and what you can expect. OVIC's contact details are:

Post: PO Box 24274
Melbourne VIC 3001
Email: enquiries@ovic.vic.gov.au
Phone: 1300 00 6842 (1300 00 OVIC)
Website: www.ovic.vic.gov.au

Your complaint rights

Under section 61A of the FOI Act you have the right to make a complaint to the Information Commissioner if a document you requested under the FOI Act does not exist or could not be located.

A complaint must be in writing, set out the nature of the complaint, and identify the agency, principal officer or Minister concerned.

A complaint must be made to the Information Commissioner within 60 days after the action or conduct complained of occurred.

OVIC's website has a complaint form you may download, which contains more information about the complaint process and what you can expect from it.

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Questions about this decision

If you have any questions about this decision, please contact me on 5320 5659 or by email at sarahcuthbert@ballarat.vic.gov.au and quote 40-2122SC.

Yours sincerely,



Sarah Cuthbert
Statutory Compliance Officer