



Via email: [Redacted]

Dear [Redacted],

FREEDOM OF INFORMATION (FOI) REQUEST

I refer to your application under the *Freedom of Information Act 2016* (the Act) received by the Education Directorate (the Directorate) on 12 July 2022, in which you sought access to:

a copy of the Ministerial Briefs with the titles outlined below.

REC22/27533	Minister's Weekly Brief - week ending 11 March 2022
REC22/19214	MIN Brief: ACT Government Response to Sexual Assault Prevention and Response Program Final Report
REC22/27468	Caveat brief: Privacy breach – Email containing a Human Rights Commission matter sent to teacher in error
REC22/28645	Caveat brief - Incident at Weetangera Primary School on 9 March 2022
REC22/13896	MIN Brief - Preschool Reform Agreement - ACT Implementation Plan 2022
REC21/67761	MIN Brief: Review of Education Participation (Enrolment and Attendance) Policy and changes to enrolment proof of residence requirements in 2023
REC22/33196	Minister's Weekly Brief - week ending 25 March 2022
REC22/29337	MIN brief: Margaret Hendry expansion & North Gungahlin High School
REC22/34828	MIN brief: Overview of 2023 School Enrolment Process
REC22/34696	Caveat brief: Serious Staff Assault at Calwell High School
REC22/35765	MIN brief: Education Directorate 2022-23 Budget Business Cases – Batch One

REC22/27222	Incident at Namadgi School on 22 February 2022
REC22/35396	MIN brief: Provision of Rapid Antigen Tests (RAT) to students and staff in education settings for Term 2
REC22/33004	MIN brief: Preferred site options for new college capacity in Gungahlin
REC22/69106	Caveat brief: Visit from WorkSafe at Calwell High School – Caveat 2
REC22/29175	MIN brief: Opening date for the new High School in East Gungahlin
REC22/37768	Caveat brief: Hazardous material works scheduled during the April school holiday period
REC22/40260	Minister's Weekly Brief - week ending 8 April 2022
REC22/40655	Caveat brief: WorkSafe visit and Notification for Calwell High School - update
REC22/42075	MIN brief: Safe and Successful Return to School in Term 2 – Calwell High School
REC22/40908	Caveat brief: Kingsford Smith School (KSS) (Redacted)
REC22/41050	Caveat brief: Lyneham High School video
REC22/40654	01 Executive Summary Brief
REC22/40308	01.01 Future of Education
REC22/40309	01.02 Strategic Planning and Reporting
REC22/36825	01.03 Class size management
REC22/36980	04.03 Teacher Shortage Taskforce
REC22/41465	04.04 Riskman Reporting
REC22/25590	02. Return to School – Term 1 2022
REC22/25591	03. Rapid Antigen Testing
REC22/25593	04. Mandatory Vaccinations
REC22/25594	05. Vaccination Rates
REC22/25597	06. Health advice and safety measures in schools
REC22/25598	07. Ventilation in Schools in response to COVID-19
REC22/25607	11. Campbell Primary School Modernisation Project Procurement
REC22/25608	12. School Maintenance and Infrastructure Upgrades
REC22/25613	13. Kenny High School Delay
REC22/25618	15. Consent Curriculum Changes
REC22/30603	18. School Capital Infrastructure Investment Budget Announcement
REC22/34969	03. Rapid Antigen Testing
REC22/34970	04. Mandatory Vaccinations
REC22/34971	05. Vaccination Rates
REC22/34972	06. Health advice and safety measures in schools

It is noted that your request excluded attachments to the briefs listed.

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

A decision on your access application was required to be provided by 9 August 2022, in line with section 40 of the Act. Thank you for agreeing to an extension of seven working days to 17 August. Your consideration is appreciated.

Decision on access

Searches were completed for relevant records and 43 records were identified that fall within the scope of your request.

In summary, I have decided to grant:

- full access to 30 records;
- partial access to five records with deletions applied; and
- non-release of eight records.

Included as Attachment A to this decision is the schedule of relevant records. This provides a description of each record that falls within the scope of your request and the access decision for each of those records. The records released to you are provided at Attachment B.

My access decision is detailed further in the following statement of reasons.

Material considered

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

- the Act, particularly sections 16, 17 and 50, and schedules 1 and 2;
- the content of the records that fall within the scope of your request; and
- the *Human Rights Act 2004*.

Reasons for decision

I have considered the records that are relevant to your request in accordance with the requirements of the Act.

Information that is publicly available

In accordance with sections 43(1)(d) and 45(a) of the Act, information within the scope of your request that has been addressed in a previous FOI access application has not been provided because it is publicly available on the Directorate's website. It has been referenced in the Schedule and information provided about where it can be sourced on the Directorate's Disclosure Log.

Contrary to the public interest information

Records that are not released or are partially released contain '*contrary to the public interest information*' in accordance with definition at section 16 of the Act. Where

possible, deletions have been applied in accordance with section 50 of the Act, enabling the remainder of the record to be released.

Information taken to be contrary to the public interest to disclose

A number of the records contain information that is taken to be contrary to the public interest to disclose under Schedule 1 of the Act. This applies to information covered by legal professional privilege (Schedule 1, 1.2) and information prepared for deliberation by Cabinet (Schedule 1, 1.6). As the information is not purely factual and the outcome of Cabinet's deliberation has not been published, the exclusions at Schedule 1, 1.6(2) do not apply.

Information, the disclosure of which would, on balance, be contrary to the public interest

The public interest test set out at section 17 of the Act is used to decide whether disclosure of information would, on balance, be contrary to the public interest. The test requires the identification of factors favouring disclosure and non-disclosure, the balancing of those factors, and a decision whether, on balance, disclosure of the information would be contrary to the public interest.

I have decided that the applicable factors favouring disclosure, as listed at Schedule 2.1 of the Act, are that the released information could reasonably be expected to:

- *promote open discussion of public affairs and enhance government's accountability* (Schedule 2, 2.1(a)(i));
- *contribute to positive and informed debate on important issues or matters of public interest* (Schedule 2, 2.1(a)(ii));
- *inform the community of the government's operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community* (Schedule 2, 2.1(a)(iii)); and
- *reveal the reason for a government decision and any background or contextual information that informed the decision* (Schedule 2, 2.1(a)(viii)).

I have decided that the applicable factor favouring non-disclosure in the public interest, as listed at Schedule 2.2 of the Act, is that the information could reasonably be expected to *prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004* (Schedule 2, 2.2(a)(ii)). In addition, I have decided that another factor favouring non-disclosure that is applicable to these records relates to information that was provided to the Directorate with the expectation of being treated in-confidence due to its sensitive nature. Whilst this is not a factor listed at Schedule 2, 2.2 of the Act, the ACT Ombudsman's guidance in relation to the Act and deciding the public interest notes that the lists of factors favouring disclosure and non-disclosure are non-exhaustive.

I have considered the factors favouring disclosure and the factors favouring non-disclosure.

I have placed significant weight on the positive contribution of open discussion of public affairs, contributing to informed debate on important issues and the factors that underpin transparency of government processes. As such, most of the information is fully released.

Information relating to third parties or that could enable individuals to be identified has been deleted as I have concluded that disclosure would be prejudicial to an individual's right to privacy and that this has a higher standing of public interest not to disclose, than the public interest in disclosing the information.

Similarly, the release of information that was communicated to the Directorate and the Minister with the clear expectation of being treated on an in-confidence basis is not in the public interest to disclose. The factors favouring disclosure are significantly outweighed in relation to this content.

Charges

There is no charge associated with this request, in line with section [REDACTED] of the Act.

Online publishing – disclosure log

Under section 28 of the Act, the Directorate maintains an online record of access applications called a disclosure log. Information about your request, my decision and the records released to you in response to your access application will be published in the Directorate's disclosure log between three and 10 working days after a decision on access has been provided to you. Your personal information will not be published.

You may view the Directorate's disclosure log at
https://www.education.act.gov.au/about-us/freedom_of_information/disclosure-log.

Ombudsman review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in the Directorate's disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) review

Under section 84 of the 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
Level 4, 1 Moore St
GPO Box 370
Canberra City ACT 2601

Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

If you have any queries concerning the Directorate's processing of your request, or would like further information, please contact the Directorate's FOI team on 02 6205 0720 or email EducationFOI@act.gov.au.

Yours sincerely



Paula Murray
Information Officer

17 August 2022