




Via email: 

Dear 

## **FREEDOM OF INFORMATION (FOI) REQUEST**

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Education Directorate (the Directorate) on 18 December 2023, and an amended request received on 2 January 2024, in which you sought access to:

*Copies of all responses to a 'Your Say' survey about the design of a proposed boundary fence at Farrer Primary, conducted in Term 4 2023.*

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.

In accordance with section 40 of the FOI Act, the Directorate was required to provide a decision on your access application within 30 working days of receipt, being 14 February 2024.

### **Decision on access**

Searches were completed for relevant records and one record was identified that falls within the scope of your request. I have decided to grant partial access to this record with redactions applied. The record is provided as Attachment A to this letter.

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, 35 and 50, and schedules 1 and 2;
- the content of the records that fall within the scope of your request;
- the *Human Rights Act 2004*;
- the *Information Privacy Act 2014*; and
- the FOI Guidelines issued under section 66 of the FOI Act by the Ombudsman.

## Reasons for decision

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

Section 6(a) of the Act provides for a right of access to government information unless access would, on balance, be contrary to the public interest. Contrary to the public interest information is defined at section 16 of the Act as information 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.

Section 50 of the Act provides for records to be partially released with deletions applied where they contain contrary to the public interest information that can be removed, which enables the remainder of the record to be released. This provision has been applied where appropriate.

### Information taken to be contrary to the public interest to disclose

The record does not contain information that is taken to be contrary to the public interest to disclose.

### Information, the disclosure of which would, on balance, 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 the 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));*
- *ensure effective oversight of expenditure of public funds (Schedule 2, 2.1(a)(iv));*  
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, as listed at Schedule 2.2 of the FOI Act, is that disclosure of 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)).*'

I place significant weight on the right to privacy of individuals and their right to have their personal information protected. I have decided that their right to privacy in relation to their personal information has a higher standing of public interest not to disclose, than the public interest in disclosing this information. This position is informed by considerations of the requirements of the *Human Rights Act 2004* and the *Information Privacy Act 2014*. Section 12(a) of the Human Rights Act provides that everyone has the right '*not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily*'. Ombudsman review decisions addressing this matter have stated that this "can essentially be viewed as the right of an individual to preserve their personal sphere from interference by others". In addition, the Territory Privacy Principles contained in the *Information Privacy Act 2014*, set out the expectation that, in ordinary

circumstances, individuals are required to give consent before their personal information, which includes information that could lead to them being identified, is disclosed. Accordingly, third party personal information has been deleted.

### **Additional information**

Further information about the boundary fence at Farrer Primary School is available on the school's website at [https://www.farrerps.act.edu.au/boundary\\_fence\\_consultation](https://www.farrerps.act.edu.au/boundary_fence_consultation), including the 'What We Heard' report and design information. It should be noted that community feedback is one of the Directorate's considerations when making decisions about school infrastructure. Other factors include the legal obligation to keep all students, staff and visitors safe when on school grounds, and to minimise damage to property.

### **Charges**

Processing charges are not applicable for this request because the number of pages released is less than 50.

### **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 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](https://www.education.act.gov.au/about_us/freedom_of_information/disclosure-log).

### **Review of decision**

#### Ombudsman review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the FOI Act. You have the right to seek Ombudsman review of this outcome under section 73 of the FOI Act within 20 working days from the day my decision is provided to you, 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](mailto: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  
Allara House, 15 Constitution Ave  
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, please contact the Directorate's FOI team on 02 6205 0720 or email [EducationFOI@act.gov.au](mailto:EducationFOI@act.gov.au).

Yours sincerely



Paula Murray  
Information Officer

13 February 2024