

File Ref: [REDACTED]

[REDACTED]

Email: [REDACTED]

Dear [REDACTED]

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 September 2019, in which you sought:

Documents related to the building ownership of the Chapman Primary School for Outside of School Hours Care from 31 October 2016 to date. These documents may include: correspondence, Ministerial briefs, internal documents, meeting notes, assessments or analysis of the issue, advice received, directions to or from ACT Government officials, contingency plans and stakeholder consultation.

Administrative documents may be excluded, such as an automatic reply acknowledging receipt of an email or room bookings. Duplicate documents are also excluded.

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

The Directorate was required to provide a decision on your access application by 17 October 2019.

Decision on access

Searches were completed for relevant documents and 30 documents were identified that fall within the scope of your request.

My decision is to provide access to the documents as follows:

- Partial access to 11 documents with deletions applied; and

- Not release 19 documents.

I have included as Attachment A to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

The documents released to you are provided as Attachment B to this letter.

For documents where access is refused or partially provided, I have decided that, in accordance with Schedule 1 of the FOI Act, they contain information that I consider to be contrary to the public interest to disclose, or would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act. Access is partially provided to some of these documents under section 50 of the Act.

My access decisions are detailed further in the following statement of reasons.

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Material considered

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

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

Reasons for decision

I have decided to not release one document in accordance with Schedule 1, 1.6 of the Act because it contains information that has been submitted to Cabinet for its consideration and was brought into existence for that purpose. Therefore, it is taken to be contrary to the public interest to disclose this document. It should be noted this document also contained a significant amount of out of scope material for this request.

I have decided not to release 18 documents as in my view the disclosure of information that relates to the Directorate's requests for legal advice to the ACT Government Solicitor (ACTGS) and responses from the ACTGS is considered legal professional knowledge.

Accordingly, I am satisfied that the legal professional knowledge in these documents is exempt under Schedule 1, 1.2 of the FOI Act.

In making my decision in relation to all documents I have applied the public interest test that is set out in section 17 of the Act.

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

- *promote open discussion of public affairs and enhance government's accountability (Schedule 2.1(a)(i)).*

I have decided that the applicable factor favouring non-disclosure in the public interest, as listed at Schedule 2.2 of the Act, are that the information could reasonably:

- *prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004 (Schedule 2.2(a)(ii)); and*
- *prejudice an agency's ability to obtain confidential information ((Schedule 2.2 (a)(xii)).*

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

I have considered the positive contribution of open discussion of public affairs and enhancing government accountability. I consider the release of information held by the Directorate will help to give the public background to the work that is being undertaken to try and resolve this issue, noting that due to material pertaining to legal advice, there are some restriction in what can be provided.

There are a number documents with deletions applied to information relating to third parties, or for which the release of this information could lead to the identification of individuals. I have concluded that the individual's right to privacy has a higher standing of public interest not to disclose, than the public interest in disclosing this information.

Information that is outside the scope of the request has also had deletions applied.

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 the request, decision and documents released in response to an access application is required to be published in the Directorate's disclosure log between three and 10 working days after a decision on access has been provided to the applicant. Personal information of the applicant is not published in the disclosure log.

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.

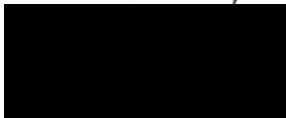
Further information may be obtained from the ACAT at:

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 Coordinator on 02 6205 0720 or email EDULegalLiaison@act.gov.au.

Yours sincerely



Emma Hotham
Information Officer

16 October 2019