

File Ref: [REDACTED]

[REDACTED]

E: [REDACTED]

Dear [REDACTED]

#### **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 13 September 2019 in which you sought access to:

*documents generated or received by the ACT Government in relation to the proposal to fence off the South West Evatt oval.*

*Specifically, I am seeking three things.*

- *Any documented consultation done with the local community.*
- *Any documented consultation done with staff and the school communities of St Monica's and Miles Franklin Primary Schools.*
- *Any document with stated reasoning as to why the proposal to fence off the oval is being considered.*

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.

The Directorate was required to provide a decision on your access application by 14 October 2019. As previously agreed with your office, the material is due to you by 15 November 2019. Thank you to agreeing to the additional time for a response.

#### **Decision on access**

Searches were completed for relevant documents and 95 documents were identified that fall within the scope of your request.

My decision is to grant access to the documents relevant to your request as follows:

- full release to five documents; and
- partial access to 90 documents with deletions applied.

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.

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

#### **Material considered**

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

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

#### **Reasons for decision**

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

I have decided to grant access, where possible, under section 50 of the Act, to copies of documents with information deleted that I consider is, on balance, contrary to the public interest to disclose.

I have decided that the factors 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));
- *contribute to positive and informed debate on important issues or matters of public interest* (Schedule 2.1 (a)(ii)); and
- *reveal the reason for a government decision and any background or contextual information that informed that decision* (Schedule 2.1(a)(viii)).

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

- *prejudice trade secrets, business affairs or research of an agency or person* (Schedule 2.2(a)(xi)); and

- *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)).*

I have considered the factors favouring disclosure and the factors favouring non-disclosure. I place some weight on the factors favouring disclosure such as the positive contribution of open discussion of important issues, public affairs and government accountability. I note that although this issue has been resolved, with the proposal for a school fence at Miles Franklin Primary School being withdrawn in its entirety, the documents within scope of this request give context and background information about the proposal to fence the Evatt South West Oval and the consultation undertaken. I place significant weight on factors that could impact on an individual's right to privacy and the information that could reasonably prejudice the business affairs of third parties.

There are 90 documents with deletions applied to information that I do not consider to be in the public interest to release.

Information relating to third parties or for which the release of this information could lead to the identification of individuals has been deleted. 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.

The names of businesses supplying services to the Directorate have been deleted. I have concluded that their right to privacy in relation to their business affairs has a higher standing of public interest not to disclose, than the public interest in disclosing this information. I note that these deletions are minor in nature and do not substantially alter the content of the material to be released.

Material that is outside of the scope of the request has also been deleted.

#### **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 documents 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).

#### **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](mailto: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](mailto:EDULegalLiaison@act.gov.au).

Yours sincerely



Emma Hotham  
Information Officer

15 November 2019