



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 8 December 2021, in which you sought access to:

All documents and records held by the ACT Government including Ministers, Government Members of the Legislative Assembly and or its Directorates, in relation to any correspondence, submissions, papers or financial forecasts in relation to the \$99 million 'upgrade program' for the ACT.

Your application referred to page 39 of Hansard for the hearings of the Education and Community Inclusion Committee Inquiry into the ACT Budget held on 19 October 2021, and further advised that you are seeking:

Any material, correspondence or internal documents relating to both the allocation of that \$99 million, in particular the four-year forecast, but also relating to the decision-making process for that allocation and the basis on how those decisions were made.

On 23 December 2021, the scope of your request was discussed with you by telephone and you agreed to revise it to:

Final Ministerial Briefs, including business cases, and related records for the \$99M schools upgrade program referred to in Estimates Hearings on 19 October 2021, particularly referencing the four-year forecast, decision making process and basis for decisions.

Thank you for working with us to clarify your request.

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 Education Directorate was required to provide a decision on your access application by 10 January 2022.

Decision on access

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

I have included as Attachment A to this decision 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 are provided as Attachment B to this letter.

In short, I have decided to grant partial access to the records with deletions applied because they contain information that I consider is taken to be contrary to the public interest to disclose under Schedule 1 of the Act; or would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act. Access to the records is partially provided under section 50 of the Act.

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 FOI 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

One of the records (Record 2) contains information that was submitted to Cabinet for its consideration, and the information was brought into existence for the purpose of Cabinet deliberation. Schedule 1, 1.6(1)(a) specifies that this type of information is taken to be contrary to the public interest to disclose. As the information is not purely factual and the outcome of Cabinet's deliberation has been published via the 2021-22 Budget Papers, the exclusions at Schedule 1, 1.6(2) do not apply. Consequently, the information referred to is not disclosed.

For the information contained in Record 1 and the remainder of Record 2 (i.e excluding information covered by Schedule 1, 1.6), 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, 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));*
- *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 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)).*

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

I place 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, particularly as they relate to expenditure of public monies. As such, most of the information is fully released.

Personal information of individuals has been deleted as 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.

In addition, information that is outside the scope of your request has been deleted from the records.

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.

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

10 January 2022