

File Ref: [REDACTED]

[REDACTED]

Via email: [REDACTED]

[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.*

REC22/43427	Minister's Weekly Brief 12. Week ending 15 April
REC22/45596	Minister's Weekly Brief 13. Week ending 22 April
REC22/38587	Census of ACT schools, February 2022
REC22/45126	ACAT decision in <i>Wonderschool v the ACT Education Directorate</i> : legislative options to address the issues.
REC22/44042	Education Directorate 2022-23 Capital Works Program
REC22/46838	Rollover of Recurrent Funding from 2021-22 to 2022-23
REC22/47835	Calwell High School project plan
REC22/47916	Term 2 Week 1 - Tuesday 26 April Caveat Brief Calwell High School Worksafe Visit
REC22/48339	System-level reforms in response to recent WorkSafe notices
REC22/49424	Census of ACT Schools
REC22/45657	Calwell High School
REC22/48615	WorkSafe ACT and ACT Schools
REC22/48683	Managing Violence in ACT Schools
REC22/45589	Vaccinations
REC22/50027	School Funding – Commonwealth Schooling Resourcing Standards
REC22/48571	Workload Reduction Strategy
REC22/48570	Managing Workforce Shortages
REC22/45520	ECEC and OSHC supports

REC22/45519	Ventilation in Schools in response to COVID-19
REC22/45518	Campbell Primary School Modernisation Project Procurement
REC22/45517	Kenny High School Delay
REC22/50884	Term 2 Week 1 - Friday 29 April Caveat Brief Calwell High School Worksafe visit
REC22/51100	Term 2 Week 2 - Monday 2 May Caveat Brief Calwell High School Worksafe visit
REC22/44868	Disability Royal Commission Notice to Produce #2 – Education Directorate Submission
REC22/51803	Incident at Mount Stromlo High School
REC22/51829	Incident at Maribyrnong Primary School
REC22/51506	Mandatory Vaccination Mandate – “Redacted”
REC22/45590	Return to Remote Learning
REC22/52823	Tabling of Technical Amendments to Education and Care Services National Law with ACT Legislative Assembly
REC22/37528	2020 Brindabella Christian College Audited Financial Statements
REC22/52824	Missing Student – “Redacted” Primary School

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 12 August 2022, in line with section 40 of the Act. Thank you for agreeing to an extension to 31 August 2022. Your consideration is appreciated.

### **Decision on access**

Searches were completed for relevant records and 31 records were identified that fall within the scope of your request.

In summary, I have decided to grant:

- full access to 16 records;
- partial access to 10 records with deletions applied; and
- non-release of four records.

I have withheld one of the records due to the requirement to consult with a third party in accordance with section 38 of the Act. However, rather than deferring access to all records whilst this process is being undertaken, I am providing you with the decision for the records that do not require third party consultation. The decision for the withheld record will be provided as soon as possible.

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.

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) which references confidential legal advice provided to the Directorate. It also applies to information prepared for deliberation by Cabinet (Schedule 1, 1.6(1)(d)). 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)); or*
- *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 factors favouring non-disclosure in the public interest, as listed at Schedule 2.2 of the Act, are 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));*
- *prejudice security, law enforcement or public safety (Schedule 2, 2.2(a)(iii));*
- *prejudice intergovernmental relations (Schedule 2, 2.2(a)(x));*
- *prejudice trade secrets, business affairs or research of an agency or person (Schedule 2, 2.2(a)(xi));*
- *prejudice an agency's ability to obtain confidential information (Schedule 2, 2.2(a)(xii));*
- *prejudice the management function of an agency or the conduct of industrial relations by an agency (Schedule 2, 2.2(a)(xv)); or*
- *prejudice a deliberative process of government (Schedule 2, 2.2(a)(xvi)).*

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

I am very mindful of 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.

Personal information of Directorate employees, such as their mobile phone numbers, or third parties, or information that could enable individuals to be identified has been deleted, as I have concluded that disclosure would be prejudicial to their right to privacy, which has a higher standing of public interest not to disclose, than the public interest in disclosing the information.

I have also decided to delete information relating to security incidents at schools as disclosure may identify vulnerabilities of these significant public assets, which could lead to increased incidents and disruption to school communities, including the delivery of education services. Non-disclosure of this information carries stronger weight than the public interest that would be served by its disclosure.

Relationships with the Directorate's counterparts in States and the Northern Territory are of strategic importance to the ACT and the collaboration and information sharing that occurs supports the education of students nationally. Consequently, I have determined that releasing information that could be detrimental to those relationships is not in the

public interest as the importance of those relationships exceeds the public interest that would be satisfied.

Information relating to businesses and organisations that deal with the Directorate that I consider would be detrimental to them if released has also been redacted. The negative consequences that could arise for them are important considerations and I have decided that factors favouring disclosure have significantly more weight than the public interest that would be served by its disclosure.

It would not be in the Directorate's best interests for information that was shared with it on a confidential basis to be released as it would make other organisations less likely to provide these valuable information sources in the future. Therefore, the public interest favouring disclosure is outweighed by the need for confidential information to be treated as such.

Information that would be damaging to the Directorate's management function, particularly relating to the management of employees, has been deleted from records because I have determined that it would be detrimental to the Directorate's processes and potentially have perverse consequences. I consider it very important to the Directorate and employees concerned for processes to be robust, procedurally fair and without interference. This factor is given significantly more weight than the factors favouring disclosure for this type of information.

One of the briefs was submitted to the Minister for decision and this matter has not yet concluded. There are sensitivities and complexities associated with this issue. Therefore, I have decided it would be prejudicial to a deliberative process of government for this record to be released as the factor favouring non-disclosure outweighs those favouring disclosure.

### **Charges**

There is no charge associated with this request, in line with [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](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 team on 02 6205 0720 or email [EducationFOI@act.gov.au](mailto:EducationFOI@act.gov.au).

Yours sincerely



Paula Murray  
Information Officer

31 August 2022