

[REDACTED]

Via email: [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 24 May 2023, in which you sought access to government information relating to Gungahlin College and enrolment projections.

The scope of your request was settled on 1 June 2023 as being for:

- *Correspondence to or from Education Directorate executives and final ministerial briefs regarding the capacity of Gungahlin College, created from 1 October 2022 to 24 May 2023, including:*
 - *details of plans to install relocatable learning units (also known as demountable classrooms or modular learning units),*
 - *plans to use Gungahlin library spaces (Libraries ACT - Gungahlin) as classrooms for the college, and*
 - *plans to use CIT Gungahlin classrooms for the college*
- *Records showing how enrolment capacity is currently calculated at the college.*
- *Documents detailing the number of students enrolled in evening classes at Gungahlin College as of 24 May 2023*
- *Enrolment projections for the next five years for all ACT public schools.*

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 28 July 2023 due to the requirement to undertake third party consultation. You kindly agreed to two extensions of processing time to 25 August and 30 August 2023 respectively. Your consideration of these requests is appreciated.

Decision on access

Searches were completed for relevant records and 188 records were identified that fall within the scope of your request.

For some parts of your request, specifically relating to the number of students enrolled in evening classes, no records were held by the Directorate, as there are currently no evening classes being held at Gungahlin College.

Record 188, which relates to enrolment projections for all ACT public schools, is technically outside of the scope of your request because it is dated after your application was received. However, the difference is only a matter of a few days and it would be more relevant to provide you with the most current information.

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.

In summary, my decision is:

- Full access to 66 records; and
- Partial access to 122 records with some information deleted.

The records 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 (if records are redacted or access refused)

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

- the FOI 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 views of third parties consulted;
- the *Information Privacy Act 2014*;
- the *Human Rights Act 2004*; and
- the FOI Guidelines issued under section 66 of the Act by the Ombudsman.

Reasons for decision

I have considered the records 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

One of the records within the scope of your request contains information that is taken to be contrary to the public interest to disclose in accordance with Schedule 1, 1.6 of the Act, as the information is Cabinet information. The information concerned relates to a matter to be submitted to Cabinet for deliberation and the information is not purely factual. Therefore, it is taken to be contrary to the public interest to disclose and has been deleted from the records provided to you.

Information, the disclosure of which would, on balance, be contrary to the public interest

The public interest 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 factors favouring disclosure, as listed at Schedule 2.1 of the FOI Act, are that disclosure of the 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));
- *inform the community of the government's operations, including the policies, guidelines and code 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, as listed at Schedule 2.2 of the FOI Act, are 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));
- *prejudice security, law enforcement or public safety* (Schedule 2, 2.2(a)(iii));
- *prejudice trade secrets, business affairs or research of an agency or person* (Schedule 2, 2.2(a)(xi)); or
- *prejudice an agency's ability to obtain confidential information* (Schedule 2, 2.2(a)(xii)).

I have considered the factors favouring disclosure and the factors favouring non-disclosure. In doing so, I acknowledge the positive contribution that informed debate on

matters of public interest and transparency of government processes and decisions makes to representative democracy.

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. Accordingly, third party personal information, which is predominantly names, email addresses, mobile phone numbers and signatures, has been deleted.

I have also decided to delete information relating to aspects of physical security and systems at Gungahlin College, 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 significantly stronger weight than the public interest that would be enhanced by its disclosure.

Some of the records contain information that, if disclosed, would be prejudicial to the business affairs of the company that it relates to. I have decided that these companies have a right to have their business information protected and I give this factor moderate weight. This decision has been informed by third party consultation with a number of organisations. Accordingly, some information relating to the business affairs of persons or organisations has been deleted from the records provided to you.

Information communicated to a third party on a confidential basis with no expectation that it would be disclosed in its entirety to another party (i.e. the Directorate) has been deleted from the records. I have decided that it would be prejudicial to the individuals and organisations involved for this information to be disclosed and that the factor favouring non-disclosure has stronger weight than the public interest that may be served by its disclosure.

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

Additional information

Charges

Processing charges are not applicable for this request because the education of children is a matter of interest to a large part of the community, particularly as it attracts significant expenditure in the ACT Government's budget.

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
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.

Yours sincerely



Paula Murray
Information Officer

1 September 2023