

[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 FOI Act), received by the Education Directorate (the Directorate) on 14 December 2023, in which you are seeking access to:

Copies of all alleged safety reports regarding your family from 2022

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

The Directorate was required to provide a decision on your access application by 5 February 2024.

Decision on access

Searches were completed for relevant records and 12 records were identified that fall within the scope of your request.

In accordance with section 35(1)(c) of the FOI Act, my decision is to not release the records because they contain contrary to the public interest information.

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

Reasons for decision

I have considered the records that are relevant to your request in accordance with the requirements of the FOI Act.

Section 6(a) of the FOI 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 FOI 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 FOI 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.

Information taken to be contrary to the public interest to disclose

I have decided that the records do not contain information that is taken to be contrary to the public interest to disclose.

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 applicable factor favouring disclosure, as listed at Schedule 2.1 of the FOI Act, is that *the information is personal information of you or your family* (Schedule 2, 2.1(b)(i)).

I have decided that the applicable factor favouring non-disclosure, as listed at Schedule 2.2 of the FOI Act, is that disclosure of the information would be *prejudicial to 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 factor favouring disclosure and the factor favouring non-disclosure.

I give significantly more weight to the factor favouring non-disclosure for the following reasons:

- The records requested are workplace health and safety reports submitted by Directorate employees. Whilst the records refer to you or your family, fundamentally they are personal records of the employees, and you are not entitled to access their personal information. This position is informed by considerations of the requirements of the *Human Rights Act 2004* and the *Information Privacy Act 2014*. Section 12(a) of the Human Rights Act provides that everyone has the right '*not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily*'. Ombudsman review decisions addressing this matter have stated that this "can essentially be viewed as the right of an individual to preserve their personal sphere from interference by others". In addition, the Territory Privacy Principles contained in the *Information Privacy Act 2014*, set out the expectation that, in ordinary circumstances,

individuals are required to give consent before their personal information, which includes information that could lead to them being identified, is disclosed.

- The information contained in the records was submitted on a confidential basis. This is clearly stated in the reporting system.

Consequently, as my decision is that the records you have requested entirely contain contrary to the public interest information, access is refused.

Charges

Processing charges are not applicable for this request because no information is released.

Online publishing – disclosure log

Under section 28 of the FOI Act, the Directorate maintains an online record of access applications called a disclosure log. Information about your request and my decision about your access application will be published in the Directorate’s disclosure log between three and 10 working days after the decision has been provided to you. Your personal information will not be published.

Ombudsman review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the FOI Act. You have the right to seek Ombudsman review of this outcome under section 73 of the FOI 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 FOI 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

30 January 2024