

[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 20 February 2024, in which you sought access to:

All records relating to the selection of 2024 school captain for Gordon Primary School, including policy and procedural information about the selection process.

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.

In accordance with section 40 of the FOI Act, the Directorate was required to provide a decision on your access application within 30 working days of receipt, being 5 April 2024.

Decision on access

Searches were completed for relevant records and three records were identified that fall within the scope of your request. These records comprise communications with parents/carers of students who were considered for the School Captain and Vice-Captain positions at the school. My decision is for partial access to these records with deletions applied.

[REDACTED]

Identifying information has been redacted from these records because they will be made publicly available. Further information is contained in the 'Online publishing – disclosure log' section of this letter.

For some parts of your request, no records were located, specifically,

- policy and procedural information about the selection process, i.e. the Directorate does not have policy or procedural information in relation to this matter, and
- records of the decision made. I am advised that the school's Executive Teachers discussed and agreed the selection following the leadership speeches delivered by the students. However, no records were made of these discussions.

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 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 16, 17, 35 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 Act.

Records considered under the FOI 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

None of the records 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 factor favouring disclosure, as listed at Schedule 2.1 of the FOI Act, is that disclosure of the information could reasonably be expected to

- 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))

- 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, as listed at Schedule 2.2 of the FOI Act, is 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(a)(ii)).

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

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. 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. Accordingly, third party personal information has been deleted.

Charges

Processing charges are not applicable for this request because the number of pages involved that are material to your request does not exceed the threshold of 50 pages specified at section 104(4) 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 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.

Review of decision

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 my decision is provided to you, 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

3 April 2024