



via email: [REDACTED]

Dear [REDACTED]

Freedom of information request: Sexual harassment complaints

I refer to your application made under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Education Directorate (the Directorate) on 24 January 2018, in which you sought access to documents relating to sexual harassment complaints.

Specifically, you are seeking documents relating to sexual harassment complaints made against any employee of the Education Directorate in the period 1 January 2014 to 11 January 2018.

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.

On 1 February 2018 you agreed to an extension of 10 working days for the processing of your request. Therefore, the decision regarding your request was due on 8 March 2018.

Decision on access

Searches were completed for relevant documents and 14 documents were identified that fall within the scope of your request.

I have included as Attachment A to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

Documents identified as relevant to your request contain information that I consider to be information that would, on balance, be contrary to the public interest to disclose under section 17 of the Act.

I have decided to grant access, under section 50 of the Act, to the documents with deletions applied to information that I consider would be contrary to the public interest to disclose.

The documents released to you are provided as Attachment B to this letter.

Material considered

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

- the FOI Act, particularly sections 17 and 50, and schedule 2;
- the content of the documents that fall within the scope of your request; and
- the *Human Rights Act 2004*.

Reasons for decision

My reasons for deciding not to grant access to parts of the documents are because all of the documents contain information that I consider, on balance, to be contrary to the public interest to disclose under section 17 of the Act.

The documents contain information relating to instances and investigations of sexual harassment, including information about people involved in the incidents, witness statements, and information about the time and place that alleged incidents occurred.

In making my decision I have decided that the factors favouring disclosure, as listed at Schedule 2.1 (a) of the Act, are that the information would:

- (vi) reveal or substantiate that an agency or public official has engaged in misconduct or negligent, improper, or unlawful conduct or has acted maliciously;
- (viii) reveal the reason for a government decision and any background or contextual information that informed the decision; and
- (xii) contribute to the administration of justice generally, including procedural fairness.

I have decided that the applicable factors favouring non-disclosure, as listed at Schedule 2.2 (a) of the Act, are that the information would:

- (ii) prejudice the protection of an individual's right to privacy or any other right under the *Human Rights Act 2004*

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

Schedule 2.2(a)(ii) engages section 12 of the *Human Rights Act 2004*, in relation to privacy.

I have concluded that for these matters the individuals' right to privacy — whether they were involved in a matter, or were a witness — has a higher standing of public interest not to disclose than the public interest in disclosing identities. This includes disclosing

information and details that might lead to identifying a person who is a subject of sexual harassment, a witness or a person found to have engaged in sexual harassment.

In making my decision, I gave consideration to undertaking third party consultation about the possible disclosure of information that would identify individuals. I formed a view however, that the release of such information would need to be objectively proportionate in terms of a limit on section 12 of the *Human Rights Act 2004* before the third party consultation provisions would be used. I decided that the limitation on the right for this purpose would not be proportionate.

In these cases, I have formed the view that the public interest is satisfied in the knowledge that allegations of sexual harassment by Directorate employees were properly investigated and appropriate actions taken to address conduct that was substantiated.

Charges

Processing charges are not applicable for this request because I have decided that the number of pages involved that are material to your request (i.e. excluding information about processes and employee obligations that are repeated in a number of the documents) does not significantly exceed the threshold of 50 pages.

Online publishing – disclosure log

In accordance with 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 documents released to you in response to your access application will be published in the Directorate's disclosure log between three and 10 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
Via email: ombudsman@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 our FOI Coordinator on 02 6205 0720 or email EDULegalLiaison@act.gov.au.

Yours sincerely



Sean Moysey

Director Early Childhood Policy and Regulation

7 March 2018