

[REDACTED]

E: [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 19 November 2019. Your request is for:

- 1. All formal and informal correspondence and communications that mentions any form of bullying within the 2019 Year 5 and Year 6 cohort that have been sent or received by Theodore Primary School staff or staff of the ACT Education Directorate, including any briefing provided to senior executive level staff about the issues at Theodore Primary School.*
- 2. The number of complaints made by parents at Theodore Primary School during 2018 and 2019 and the school's/directorate's response to each complaint through the 2018 and 2019 school years, including actions taken to prevent recidivism.*

It is noted that your request for documents relating to bullying sought information incorporating references to force, coercion, threats, abuse, aggression, domination, harm, injury, exclusion and intimidation. It is further noted that your request was for documents including emails, messenger communications, text messages, jabber, formal and informal correspondence sent to or from an act.gov.au email address or provided in hardcopy.

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 Act.

The Directorate was required to provide a decision on your access application by 17 December 2019. On 13 December 2019 you agreed to an extension to 24 December 2019. Thank you for agreeing to the requested extension. Your consideration is appreciated.

### **Decision on access**

My access decision about documents relevant to your request is summarised as follows:

- Full release of two documents;
- Partial release of 33 documents with deletions applied, and
- Non-release numerous documents.

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

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

My decision is explained 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 17 and 50, and Schedules 1 and 2;
- the *Human Rights Act 2004*;
- the content of the documents that fall within the scope of your request; and
- information that is publicly available.

### **Reasons for decision**

My reasons for deciding not to grant access to whole or part documents are because they contain information that:

- I consider, on balance, to be contrary to the public interest to disclose under the test set out in section 17 of the Act, or
- is publicly available; or
- is outside of the scope of your request.

I have decided to grant access, where possible, under section 50 of the Act, to copies of documents with information deleted that I consider to be contrary to the public interest to disclose.

### **Information that is considered, on balance, to be contrary to the public interest**

In applying the public interest test I have decided that the factors favouring disclosure, as listed at Schedule 2.1 of the Act, are that the information:

- would promote open discussion of public affairs and enhance the government's accountability (Schedule 2.1(a)(i));
- would contribute to positive and informed debate on important issues or matters of public interest (Schedule 2.1(a)(ii)); or
- is personal information of the person making the request (Schedule 2.1(b)(i)).

I have decided that the applicable factor favouring non-disclosure, as listed at Schedule 2.2 of the Act is 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(a)(ii)).

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

A number of the documents contain personal information of third parties, and in some cases they relate to a small number of complaints or incidents, and a small number of children or families. I have concluded that the release of any information about these incidents or complaints could enable the individuals to be identified, and that the right to privacy of those individuals has a higher standing of public interest not to disclose than the public interest in disclosing this information. Therefore, these documents are either

- not released, and it would be inappropriate for any information about them to be provided to you; or
- the third party information has been deleted and the remainder of the documents is being released to you.

#### Information that is publicly available

A number of documents that are relevant to your request are not released because they are publicly available. They were considered and released in response to two other FOI requests processed by the Directorate relating to Theodore Primary School and therefore are regarded as available to you for the purposes of section 45(a) of the Act. They can be found on 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) - see Reference numbers EDU\_2019\_007 – Stage 2 decision and documents, and EDU\_2019\_010.

#### **Additional information**

Please be aware that there is some repetition in the documents being released that relate to complaints received by the Directorate concerning Theodore Primary School. The complaints are referred to in the documents and progress reports about the management of those complaints is provided in later documents. This is particularly the case in the Caveat Briefs. These references are not to additional or new complaints, but rather are updates on previously reported complaints.

#### **Charges**

I have decided to not apply processing charges to your request.

#### **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 documents released to you in response to your access application is required to be published in the Directorate's disclosure log between three and 10 working days after a

decision on access has been provided to you. Personal information about you and documents that relate to your complaint to the Minister will not be published in the disclosure log.

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 the decision is provided to you.

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

24 December 2019