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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 5 August 2022, in which you sought access to:

Any documents, financial in nature, provided by Brindabella Christian Education Limited also known as Brindabella Christian College, to the Education Directorate since 1 January 2020.

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 26 September 2022, which was adjusted by one working day due to the public holiday observed on 22 September 2022.

Decision on access

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

In summary, I have decided to not grant access to the records.

Included as [Attachment A](#) to this decision is 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.

My 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, 43, 45 and schedule 2; and
- the content of the records that fall within the scope of your request.

Reasons for decision

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

Information that is publicly available

In accordance with sections 43(1)(d) and 45(a) of the Act, information within the scope of your request that has been addressed in a previous FOI access application has not been provided because it is publicly available on the Directorate's website via the Directorate's disclosure log at https://www.education.act.gov.au/about-us/freedom_of_information/disclosure-log, at EDU_2021_011. This applies to Record 1.

Contrary to the public interest information

Records that are not released contain '*contrary to the public interest information*' in accordance with the definition at section 16 of the Act.

Information taken to be contrary to the public interest to disclose

None of the records contained 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

In accordance with Section 17 of the Act, a public interest test has been applied to the records within the scope of your request to determine if they contain information that is contrary to the public interest to disclose. 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

In my view, the education of children is an important matter of broad public interest to a large part of the community. Whilst one of the factors favouring disclosure identified at Schedule 2, 2.1 of the Act is that *disclosure of the information could reasonably be expected to contribute to positive and informed debate on important issues or matters of public interest* (Schedule 2, 2.1(a)(ii)), this factor is not fully satisfied by the records within the scope of your request, as disclosure would not support 'positive or informed debate'. However, the extent and degree of interest in children's education within the community warrants consideration as a factor favouring disclosure in its own right. As the Ombudsman's published Freedom of Information Guidelines: Considering the Public Interest (available at <https://www.ombudsman.act.gov.au/publications/foi-guidelines>), state at section 7.1 that the list of factors at Schedule 2, 2.1 is not exhaustive, I am permitted to take my assessment of the extent of public interest into account as a factor favouring disclosure and I give this moderate weight.

I have decided that the factor favouring non-disclosure as listed at Schedule 2, 2.2 of the Act is that disclosure of the information could reasonably be expected to *prejudice trade secrets, business affairs or research of an agency or person* (Schedule 2.2(a)(xi)) because the information concerned addresses confidential funding matters. I place significant weight on an organisation's right to have their business affairs, trade secrets, confidential information and commercial interests protected, particularly in situations where confidentiality is expressly addressed and agreed between the parties. For your reference, the terms of the confidentiality agreement were also addressed in FOI decision

EDU_2021_011 available at https://www.education.act.gov.au/about-us/freedom_of_information/disclosure-log. Therefore, I have decided to not release Records 2 to 5.

I have considered the factors favouring disclosure and non-disclosure and concluded that the factor favouring non-disclosure outweighs the factor favouring disclosure. The agreement covering confidentiality of these issues was a significant and determining factor in my decision and how the factors have been weighted.

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 and my decision 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
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.

Yours sincerely



Paula Murray
Information Officer

26 September 2022