



FREEDOM OF INFORMATION (FOI) REQUEST

I refer to your application under the *Freedom of Information Act 2016* received by the ACT Education Directorate on 26 June 2023, in which you are seeking access to information. As the information you are seeking relates to the Children's Education and Care Assurance (CECA), which is governed by the *Education and Care Services National Law 2011*, your request has been processed under the Commonwealth *Freedom of Information Act 1982 (the Cth FOI Act)*, as modified by the *Education and Care Services National Regulations 2011*.

Your application referred to multiple decisions in relation to Block 18, Section 11, Mitchell, ACT, that were made by the CECA, in the period 13 July 2021 to 26 June 2023. The records you requested are:

1. *all correspondence (including emails) sent to or received from:*
 - a. *the Health Protection Service (HPS);*
 - b. *the Environment Planning Authority (EPA);*
 - c. *the ACT Planning and Land Authority (ACTPLA);**from officers of these relevant organisations;*
2. *all correspondence (including emails) sent to or received from the relevant Minister;*
3. *any reports prepared or commissioned by the CECA;*
4. *any memoranda;*
5. *any recommendations;*
6. *any proposals;*
7. *any records of inspections;*
8. *any minutes or other records of meetings;*
9. *any notes of attendees of any meeting, including any personal notes by attendees;*
10. *any diary entries of attendees of meetings;*

11. *any working papers prepared by, or on behalf of, the CECA; and*
12. *copies of any of the documents sought in paragraph 1 to 11 above where the original documents are no longer in the possession, custody, or control of the CECA.*

I am authorised under section 23 of the Cth FOI Act to make a decision on behalf of the Directorate in relation to your request.

You were notified that a decision on access to the documents would be provided to you within 30 calendar days of the receipt of your request, this being 26 July 2023. In line with the Cth FOI Act, on 25 July 2023, you were informed the Directorate was required to undertake a consultation process with third parties, which extended the decision due date to 25 August 2023. On 23 August 2023, you agreed to an extension of time to complete the processing of your request to 1 September 2023. Due to the processing of additional records, you were notified that we were unable to complete the processing of your request by 1 September, and the date you would receive them by was extended to 8 September 2023.

Decision on access

Searches were completed and 38 records were identified that fall within the scope of your request.

Included as Attachment A to this decision is the schedule of relevant documents. This provides a description of each document and its access decision.

In summary, my decision is to release:

- two records in full;
- 35 records in part; and
- one record is withheld.

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 decision, I have taken the following into account:

- your FOI request;
- the records within scope of your request;
- the Cth FOI Act, particularly sections 3, 11, 11B, 12(1)(b), 22, 27, 27A, 42, 47F and 47G;
- the *Privacy Act 1988* (Cth);
- the FOI Guidelines issued under section 93A of the Cth FOI Act by the Australian Information Commissioner; and
- the views of third parties consulted.

Reasons for decision

Some of the records contain information that is deemed to be exempt, or conditionally exempt and contrary to the public interest to release, under the Cth FOI Act. Where appropriate, the exempt or conditionally exempt information has been redacted, enabling the remainder of the record to be released.

Details of the exemption provision, together with my reasons for applying are set out below.

Exempt information

Some of the records contain information that is subject to legal professional privilege which is deemed exempt under section 42 of the Cth FOI Act. I am satisfied that the information is privileged because there is a legal adviser-client relationship, the communication between the parties was for the purpose of giving or receiving legal advice, the advice given was independent and confidential.

Conditionally exempt information

Redactions have been applied to information that is conditionally exempt and contrary to the public interest to release relating to records:

1. affecting personal privacy

Section 47F of the Cth FOI Act conditionally exempts (subject to a public interest test) records where disclosure would involve the unreasonable disclosure of personal information of a person. I have decided that this provision applies to all personal information affecting the privacy of individuals, and that it is not in the public interest to release the personal information of these individuals.

2. affecting business

Section 47G of the Cth FOI Act conditionally exempts (subject to a public interest test) records concerning the business, commercial or financial affairs of an organisation where the disclosure of the information could reasonably be expected to have an adverse effect on the organisation. I have decided that it is not in the public interest to release this information and therefore it has been redacted from the released records.

Your rights for review

My decision not to release all the information relevant to your request is subject to review under section 53A of the Cth FOI Act. It is also appealable if, in your opinion, you do not believe that all records relevant to your request in the possession of the Directorate have been located.

An information sheet outlining the review and appeal process provided for in the Cth FOI Act is attached to this letter.

Online publication

Section 11C of the Cth FOI Act requires that information made available to an applicant be published to members of the public generally on a website, subject to exceptions including for personal information and information relating to business affairs. The

publication must occur within ten working days after the day the applicant is given access to the records.

Please contact the Directorate's FOI team on 02 6205 0720 or email EducationFOI@act.gov.au if you require any further information regarding your request.

Yours sincerely



Paula Murray
Senior Director, Information Access

8 September 2023

Cth Freedom of Information Act 1982: Review and Appeal Processes

Internal review

Under s 53A of the Cth FOI Act you may request a review of a decision made under the *Freedom of Information Act 1982* (Cth). Requests for review must be made in writing to the Education Directorate. Requests can be sent by mail to:

The Director-General
C/- Information Access team,
Governance Branch
ACT Education Directorate
GPO Box 158
CANBERRA CITY ACT 2601

Or email: EducationFOI@act.gov.au

You have **30 days** from the date you were notified of the decision to request a review. This period may be extended by the Director-General.

National Education and Care Services FOI Commissioner

If you are not satisfied after the Directorate has conducted an internal review, you may seek an independent review of the decision by the Information Commissioner: s 54L Cth FOI Act. In this instance the relevant person is the National Education and Care Services FOI Commissioner (NECS FOI Commissioner). The NECS FOI Commissioner undertakes a review and can then either affirm, vary or substitute the decision, under s 55K of the Cth FOI Act.

Commonwealth Administrative Appeals Tribunal

The Administrative Appeals Tribunal (AAT) is an independent body which undertakes independent merits review of administrative decisions made under Commonwealth laws. The AAT can affirm or vary a decision made by the Directorate, or set aside the decision and substitute its own decision. Alternatively, the AAT can send the matter back to the Directorate for reconsideration in accordance with the Tribunal's recommendations.

You can find out further information on the AAT website:

<http://www.aat.gov.au/applying-for-a-review>

You can contact the AAT via telephone on 1800 228 333.

Or you can make an application online via:

<https://forms.aat.gov.au/landing.htm?formCode=app-for-review>

An appeal must be filed in the Tribunal within **28 days** after the internal review decision is made although you may seek an extension of time in certain circumstances.