



File Ref: [REDACTED]

[REDACTED]

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 7 June 2018, in which you sought access to documents relating to a reportable conduct matter being investigated by the Ombudsman.

Specifically, you are seeking:

1. *Any correspondence between Education Directorate officials and the ACT Ombudsman regarding an investigation into the Directorate's handling of a Reportable Conduct matter, referred to on page three of the ACT Ombudsman's quarterly update dated 9 May 2018;*
2. *Any correspondence between the Directorate and the Education Minister's office regarding the investigation referred to above; and*
3. *Any documents in possession of the Education Directorate (including those generated by the ACT Ombudsman) which contains findings in relation to the investigation referred to above, including any draft or final reports.*

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 is required to provide a decision on your access application by 6 July 2018.

Decision - Request point 1 - Refusal of access

Section 43(1)(e) of the Act provides for access to documents to be refused if the government information requested is of a kind that is taken to be contrary to the public interest to disclose under schedule 1. Schedule 1, 1.12(b) specifies that information in the possession of the ombudsman that has been obtained or generated in relation to an

investigation undertaken by the ombudsman is to be taken to be contrary to the public interest to disclose. As your request is specifically for correspondence between Directorate officials and the ACT Ombudsman about an investigation, access to any documents relevant to your request that are held by the Directorate would be refused.

Section 46 of the Act requires me to advise you of my intention to refuse access to documents prior to access to those documents being refused. The intent of section 46 of the Act is to provide you with an opportunity to consider amending your request. A consultation period of 10 working days applies, commencing from the day after you are advised in writing.

Unfortunately, due to the time it has taken to undertake the searches within the Directorate for documents relevant to the other parts of your request, if I now wrote to you to advise of my intention to refuse access to the documents requested, the consultation period would end after the date that I am required to advise you of a decision in relation to your request. In order to satisfy the consultation period requirements, your agreement to additional time to process your request would need to be sought. If you did submit an amended request during the consultation period, section 46(3) of the Act specifies that the original request would be taken to have been made at the time that the amended request was given. Consequently, the processing timeframe for the amended request would be 20 working days from the date that the amended request was received. Alternatively, the processing of your request could be completed and you may then decide to submit a new request. The outcome of this approach would be identical and would not be detrimental to you. If you would like clarification regarding this, I would be happy for to contact our FOI Coordinator directly on 02 6205 0720.

I have considered the advantages and disadvantages of these alternatives and decided that completing the processing of your request and providing you with a decision is the most appropriate approach. Therefore, in accordance with section 35(1)(d) of the Act, I am advising you that my decision with respect to point 1 of your request is that access to the documents is refused for the reasons outlined above.

If you decide to submit a new request for access to documents that is related to the subject of your original request, we will endeavour to process it as quickly as possible. However, please be aware that schedule 2.2(a)(xiv) of the Act specifies that one of the factors favouring non-disclosure in the public interest is that disclosure of the information could reasonably be expected to prejudice the conduct of considerations, investigations, audits or reviews by the ombudsman, auditor-general or human rights commission.

Decision - Request points 2 and 3 – No documents found

The search of Directorate records has failed to identify any documentation relevant to points 2 and 3 of your request. The search was conducted using the information you provided.

For your information, with respect to point 3, at the time of your request, the Ombudsman's investigation that you refer to had not been finalised and therefore there were no findings.

I am satisfied that appropriate searches were completed and that no documents relevant to your request are held by the Directorate.

Charges

Processing charges are not applicable for this request because no documents are being provided to you.

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 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.

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 Coordinator on 02 6205 0720 or email EDULegalLiaison@act.gov.au.

Yours sincerely

A solid black rectangular box redacting the signature of Margaret Stewart.

Margaret Stewart
Information Officer

5 July 2018