

[REDACTED]

[REDACTED]

[REDACTED]

FREEDOM OF INFORMATION (FOI) REQUEST

I refer to your application under the *Freedom of Information Act 2016* (the Act) received by the Education Directorate (the Directorate) on 26 October 2021, in which you are seeking access, in part, to:

Correspondence between Charnwood-Dunlop School principal Robert Lans and Education Directorate officials regarding

- *mandatory reporting requirements or reportable conduct, created between 1 January 2019 and 26 October 2021*
- *construction of a deck in the school playground, created between 1 January 2021 and 26 October 2021*
- *the mandatory vaccination health direction, created between 1 October 2021 and 26 October 2021.*

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.

I note the first part of your request for *Ministerial briefs relating to a reportable conduct audit from June 2021*, was delivered to you on 23 November.

This letter addresses my decision about the second part of your access application, which is required to be provided by 14 December 2021, in line with section 41 of the Act.

Thank you for agreeing to a staged release for this FOI request.

Decision on access

Searches were completed for relevant records and 12 records are identified that fall within the scope of your request. For your information, we were unable to access the email records of Mr Lans for the processing of your request.

In summary, I have decided to grant access to the documents relevant to your request as follows:

- full access to three records; with
- partial access to nine records with deletions applied.

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.

The records released to you are provided at Attachment B.

Material considered

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

- the FOI Act, particularly section 16, 17, 50 and Schedule 2;
- the content of the records that fall within the scope of your request;
- the *Information Privacy Act 2014*; and
- the *Human Rights Act 2004*.

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

Reasons for decision

Records that are partially released have had deletions applied in accordance with Section 50 of the Act, because they contain information that would, on balance, be contrary to the public interest to disclose. This has been determined through application of the public interest test set out at Section 17 of the Act.

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.

I have decided that the applicable factors favouring disclosure, as listed at Schedule 2.1 of the Act, are that the released information could reasonably be expected to:

- promote open discussion of public affairs and enhance the government's accountability (Schedule 2, 2.1(a)(i));
- contribute to positive and informed debate on important issues or matters of public interest (Schedule 2, 2.1(a)(ii)); and
- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official (Schedule 2, 2.1(a)(v)).

I have decided that the applicable factors favouring non-disclosure, as listed at Schedule 2.2 of the FOI Act, are that disclosure of 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));
- could reasonably be expected to prejudice the management function of an agency or the conduct of industrial relations by an agency (Schedule 2.2(a)(xv));
- is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct and disclosure of the information could prejudice the fair treatment of an individual (Schedule 2.2(b)(v));

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

I place significant weight on the right to privacy of individuals and their right to have their personal information protected. I have decided that their right to privacy in relation to their personal information has a higher standing of public interest not to disclose, than the public interest in disclosing this information. Accordingly, information relating to third parties has been deleted from the information being provided to you.

Similarly, information that was gathered as part of a workplace preliminary assessment process has been withheld from release. Disclosure of this information may make parties reluctant to participate in any future assessments and potentially prejudice any future investigation processes. This determination upholds the high standard and expectations of the investigative processes.

Further, information that is outside of the scope of your request has been deleted from some documents, this is indicated in the schedule.

Charges

Processing charges are waived for this request because the Act requires that the first 50 pages must be provided free of charge, and the number of pages involved does not exceed this threshold.

Online publishing – disclosure log

Under section 28 of the Act, the Directorate maintains an online record of access applications called a disclosure log. The Directorate is required to publish the information released in response to an access application on the disclosure log between three and ten days after the decision is released to the applicant.

For your information, the Directorate's disclosure log is available 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 released to you, or a longer period allowed by the Ombudsman. Whilst information released in response to your request will be made available via the disclosure log, your personal information will not be published.

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
Telephone: (02) 6276 3773

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
Website: <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

14 December 2021