

[REDACTED]

Via 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 FOI Act), received by the Education Directorate (the Directorate) on 10 November 2023

[REDACTED]
[REDACTED] in which you sought access to:

1. [REDACTED]
2. [REDACTED]
3. *Details of the ACT Education Directorate's school enrolment appeals process, including:*
 - a) *the role of the appeal panels (terms of reference or similar documents)*
 - b) *who is on the appeals panel*
 - c) *how are the people on the appeals panel selected*
 - d) *what are their qualifications*
 - e) *what policy guidance is available / provided to the panel*
 - f) *what is the definition of the criteria "individual circumstances, based on student wellbeing"*
 - g) *what factors are considered by the panel*
 - h) *how are decisions documented*
 - i) *how many applications for appeal have been lodged in 2023*
 - j) *how many have been decided in 2023*
 - k) *how many appeal applications have been successful in 2023*
 - l) *how many appeal applications have been successful under the criteria "individual circumstances, based on student wellbeing" in 2023*
 - m) *how many appeal applications for category A schools have been successful under the criteria "individual circumstances, based on student wellbeing" in 2023*

n) *how much time the panel is scheduled for at each sitting, and how many applications are assessed at each sitting*

o) [Redacted]

p) [Redacted]

q) [Redacted]

r) [Redacted]

s) [Redacted]

t) [Redacted]

u) [Redacted]

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.

In accordance with section 40 of the FOI Act, the Directorate was required to provide a decision on your access application within 30 working days of receipt, being 22 December 2023.

Decision on access

Searches were completed for relevant records and 118 records were identified that fall within the scope of your request.

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.

In summary, I have decided to grant:

- Full access to 93 records; and
- Partial access to 25 records with redactions applied.

Some of the information contained within these records meets the definitions of 'personal health information' and a 'health record' specified the *Health Records (Privacy and Access) Act 1997* (Health Records Act). The Health Records Act is based on the principle that consumers have a right to access records held by government agencies which contain information about their health. Rather than requiring you to submit a separate request for access to these records under the Health Records Act, I have decided to make a determination regarding access to both types of information as part of the consideration of your FOI request.

It should be noted that the FOI Act provides a right of access to government information held by an agency, which means that the information is contained in a record held by the agency, or it is contained in a record that the agency is entitled to access. Records are not created in response to FOI requests. This is relevant because, for some parts of your request, the information you are seeking is not held by the Directorate. If some points of your request are not covered in the records released to you, it is because no records are held by the Directorate for these particular points. In other cases, information has been released that addresses a particular point from your request and enables an answer to be worked out, whilst not specifically providing the answer, for example, Records 39 and 97 provide information that addresses point 3(m).

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

My access decision is 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 and 50, and schedules 1 and 2;
- the content of the records that fall within the scope of your request;
- the *Information Privacy Act 2014*;
- the *Health Records (Privacy and Access) Act 1997*; and
- the *Human Rights Act 2004*.

Reasons for decision

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

Records considered under the FOI Act

Section 6(a) of the Act provides for a right of access to government information unless access would, on balance, be contrary to the public interest. Contrary to the public interest information is defined at section 16 of the Act as information that is taken to be contrary to the public interest to disclose under Schedule 1; or the disclosure of which would, on balance, be contrary to the public interest under the test set out in section 17.

Section 50 of the Act provides for records to be partially released with deletions applied where they contain contrary to the public interest information that can be removed, which enables the remainder of the record to be released. This provision has been applied where appropriate.

Information taken to be contrary to the public interest to disclose

None of the records within the scope of your request contain 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

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 factor favouring disclosure, as listed at Schedule 2.1 of the FOI Act, is that the information is the personal information of your children (Schedule 2, 2.1(b)(ii)).

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

I have considered the factor favouring disclosure and the factor 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. This position is informed by considerations of the requirements of the *Human Rights Act 2004* and the *Information Privacy Act 2014*. Section 12(a) of the Human Rights Act provides that everyone has the right 'not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily'. Ombudsman review decisions addressing this matter have stated that this "can essentially be viewed as the right of an individual to preserve their personal sphere from interference by others". In addition, the Territory Privacy Principles contained in the *Information Privacy Act 2014*, set out the expectation that, in ordinary circumstances, individuals are required to give consent before their personal information, which includes information that could lead to them being identified, is disclosed. Accordingly, third party personal information has been deleted.

Information that is outside the scope of your request has also been redacted.

Records considered under the Health Records Act

Records that are identified as health records have had redactions applied to information that is the personal information of third parties and the redactions have been undertaken in accordance with Territory Privacy Principle 6 (TPP6) of the *Information Privacy Act 2014*. TPP6 governs the use or disclosure of personal information and requires that an individual must consent to their information being used or disclosed.

In addition, information contained in a health record that does not relate to your children has been redacted in accordance with section 14(b) of the Health Records Act.

Charges

As your request is for your children's personal information, processing charges do not apply.

Online publishing – disclosure log

Under section 28 of the Act, the Directorate maintains an online record of access applications called a disclosure log. As your request sought your children's personal information, section 28(6) of the Act provides that your access application will not be published in the Directorate's disclosure log.

Review of decision

FOI Act - Ombudsman review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the FOI Act. You have the right to seek Ombudsman review of this outcome under section 73 of the FOI Act within 20 working days from the day my decision is provided to you, 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

FOI Act - ACT Civil and Administrative Tribunal (ACAT) review

Under section 84 of the FOI 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
Allara House, 15 Constitution Ave
GPO Box 370
Canberra City ACT 2601

Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

Health Records Act

The ACT Human Rights Commission handles complaints about access to and integrity of health records in the ACT under the Health Records Act. Further information is available on the Commission's website at <https://hrc.act.gov.au/health/>

If you have any queries concerning the Directorate's processing of your request, please contact the Directorate's FOI team on 02 6205 0720 or email EducationFOI@act.gov.au.

Yours sincerely



Paula Murray
Information Officer

22 December 2023