



**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 8 February 2019.

Your request is for documents from the period 1 January 2017 to 8 February 2019, specifically:

1. *Information regarding any complaints, investigations and outcomes regarding incidents of a child protection nature (i.e. would trigger mandatory reporting obligations or involves misconduct including but not limited to abuse, as defined in the Directorate's Child Protection and Reporting Child Abuse and Neglect Policy, or mistreatment), against an employee where the alleged victim has been identified as a student with disability; and*
2. *Information of any incidents of restraint and seclusion of students with disability.*

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 8 March 2019.

**Decision on access**

Searches were completed for relevant documents that are within the scope of your request and one document has been identified that relates to point 1 of your request.

I have decided to grant partial access to the document with deletions applied because it contains information that I consider to be contrary to the public interest to disclose, or

would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act. Access is partially provided to this document under section 50 of the Act.

My access decisions are detailed further in the following statement of reasons.

The document released is provided as Attachment B to this decision.

#### **Material considered**

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

- the FOI Act, particularly sections 17 and 50, and schedules 1 and 2;
- the content of the document that falls within the scope of your request; and
- the *Human Rights Act 2004*.

#### **Reasons for decision**

In making my decision I have applied the public interest test that is set out in section 17 of the Act.

I have decided that the factors favouring disclosure, as listed at Schedule 2.1 of the Act, are that disclosure of the information could reasonably be expected to contribute to positive and informed debate on important issues or matters of public interest (2.1(a)(ii)).

I have decided that the applicable factors favouring non-disclosure, as listed at Schedule 2.2 of the 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)); or
- the information 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.

The document contains information relating to third parties and that could enable them to be identified. I have concluded that the individual's right to privacy has a higher standing of public interest not to disclose, than the public interest in disclosing this information. Therefore, the personal information of the third party has been deleted.

In addition, the investigation of one of the matters is currently in progress. I have decided that the release of any information about this could compromise the process and the information has been deleted accordingly.

**Additional information**

Information relevant to point 2 of your request for the timeframe you have identified is not held by the Directorate in a searchable form. However, I can advise that in the period 1 September 2018 to 8 February 2019 there were 73 incidents of restraint or seclusion involving students with a disability. Of these, 45 incidents involved restraint, 11 incidents involved seclusion, and 17 incidents involved both restraint and seclusion. The incidents related to 29 children. All of these incidents have been, or will be, reported to the Senior Practitioner.

**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, my decision and documents released to you 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](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](mailto: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](mailto:EDULegalLiaison@act.gov.au).

Yours sincerely



Paula Murray  
Information Officer

8 March 2019