



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 28 February 2022, in which you sought access to:

'a copy of any correspondence (including but not limited to emails, email attachments, letters etc.) to and from Minister Yvette Berry's office relating to Campbell Primary School Modernisation Project Procurement from 1st of January 2021 till 31st of December 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.

The Education Directorate was required to provide a decision on your access application by 29 March 2022.

Decision on access

Searches were completed for relevant records and 10 records were identified that fall within the scope of your request.

In summary, I have decided to grant partial access to all 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.

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 schedule 2;
- the content of the records that fall within the scope of your request; 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 Act.

Records that are partially released under the Act have had deletions applied in accordance with Section 50 of the Act. Deletions have been applied to information that is taken to be contrary to the public interest to disclose, or would, on balance, be contrary to the public interest to disclose in accordance with the public interest test set out in Section 17 of the FOI Act. Section 50 provides for information that is contrary to the public interest to be deleted from the records, enabling the remainder of the record to be released.

Information taken to be contrary to the public interest to disclose

Three records contain information that is contrary to the public interest to disclose as follows:

- Records 4, 5 and 10 – contain information subject to legal professional privilege in accordance with Schedule 1, 1.2
- Record 4 also contains information in the possession of the Auditor-General that was obtained or generated in relation to an audit under the Auditor-General Act 1996. Schedule 1, 1.5 specifies that this type of information is taken to be contrary to the public interest to disclose

The information covered by Schedule 1, 1.2 and 1.5 has been deleted from the records released.

Information that would, on balance, be contrary to the public interest to disclose

The public interest test has been applied in accordance with Section 17 of the FOI Act, which 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 factors favouring disclosure, as listed at Schedule 2.1 of the Act, are that disclosure of the information could reasonably be expected to:

- *promote open discussion of public affairs and enhance 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));
- *ensure effective oversight of expenditure of public funds* (Schedule 2, 2.1(a)(iv)); and
- *reveal the reason for a government decision and any background or contextual information that informed the decision* (Schedule 2, 2.1(a)(viii)).

I have decided that the applicable factors favouring non-disclosure in the public interest, as listed at Schedule 2.2 of the Act, are that 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));*
- *could reasonably be expected to prejudice the management function of an agency or the conduct of industrial relation by an agency (Schedule 2, 2.2(a)(xv)); or*
- *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, 2.2(b)(v)).*

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

I place significant weight on the positive contribution of open discussion of public affairs, contributing to informed debate on important issues and the factors that underpin transparency of government processes, particularly as they relate to expenditure of public monies. As such, most of the information is fully released.

Personal information of individuals has been deleted as 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.

Similarly, information about allegations against an employee where the processes have not yet been concluded could be prejudicial to the individual and the process being undertaken. Therefore, I have decided that these factors should be weighted more heavily than the factors favouring disclosure.

In addition, information that is either outside the scope of your request or is already publicly available on the Auditor-General's website has been deleted from the records.

Charges

Processing charges are not applicable for this request because the number of pages involved that are material to your request does not exceed the threshold of 50 pages.

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 records 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.

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 team on 02 6205 0720 or email EducationFOI@act.gov.au.

Yours sincerely



Paula Murray
Information Officer
29 March 2022