

[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 Act), received by the Education Directorate (the Directorate) on 2 February 2021, in which you sought access to:

Records relating to hazardous materials management in ACT public schools, specifically:

- 1. The current list, as at 2 February 2021, of approx. 70 schools which have been determined to have lead paint, asbestos or other hazardous materials*
- 2. Copies of briefs or briefing materials provided to the Education Minister since 2 February 2020 about hazardous materials or known or potential contaminations at schools.*

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 Directorate was required to provide a decision on your access application by 2 March 2021. On 24 February 2021 you agreed to an extension of ten working days to 17 March 2021. Thank you for your consideration and flexibility regarding your application's due date.

Decision on access

Searches were completed for relevant records and 36 records were identified that fall within the scope of your request.

I have included as [Attachment A](#) to this decision 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, my decision is:

- full release 11 records;
- partial release 24 records; and
- non-release of one record.

Records that are not released or are partially released contain information that I consider:

- would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act; or
- is outside of the scope of your request.

Where possible, access has been granted to information on a partial release basis with deletions applied under section 50 of the Act.

The records released to you for this section are provided at Attachment B.

My access decisions are 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 *Human Rights Act 2004*; and
- the views of third parties.

Reasons for decision

My reasons for deciding to not grant access to whole or part records are as follows:

Information that is publicly available

In accordance with sections 43(1)(d) and 45(a) of the Act:

- information relevant to point 1 of your request is not provided because it is publicly available on the Directorate's website – see <https://www.education.act.gov.au/our-priorities/managing-hazardous-materials-in-act-public-schools/list-of-schools-with-lead-paint-or-asbestos>.
- information within the scope of your request that has been addressed in a previous FOI application has not been provided because it is publicly available on the Directorate's website. For your ease of discovery, it has been referenced in the Schedule and information provided about where it can be sourced from the Directorate's Disclosure Log – see https://www.education.act.gov.au/about-us/freedom_of_information/disclosure-log.

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

Section 17 of the Act requires a public interest test to be applied to determine if information would, on balance, be contrary to the public interest to disclose.

In applying the public interest test, I have decided that the applicable factors favouring disclosure, as listed at Schedule 2.1 of the FOI Act, are that disclosure could reasonably be expected to:

- promote open discussion of public affairs and enhance the government's accountability (Schedule 2.1(a)(i))
- contribute to positive and informed debate on important issues or matters of public interest (Schedule 2.1(a)(ii))
- reveal the reason for a government decision and any background or contextual information that informed the decision (Schedule 2.1(a)(viii))
- reveal environmental or health risks or measures relating to public health and safety (Schedule 2.1(a)(xi))

I have decided that the applicable factors favouring non-disclosure 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))
- prejudice trade secrets, business affairs or research of an agency or person (Schedule 2.2(a)(xi))

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, third party names, contact details and information has been deleted from the information being provided to you.

Similarly, information relating to business affairs of persons or organisations has been deleted from the records, as I have decided that they have a right to have their business information protected, and this outweighs any public interest that would arise from release of this information.

In regard to Record 18, the attachment (pages 3 and 4) has been withheld while we wait for the conclusion of a third-party consultation process. My decision in about this record will be released to you at our earliest opportunity.

Information that is outside of scope

Some of the records contained information that was outside of the scope of your request, such as unrelated topics, and this has been deleted from the records being provided.

Charges

I have decided to not impose fees in relation to your request because the subject matter is in the public interest and also in consideration of your agreement to extend the processing time and enable a staged release of the information.

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 the 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

17 March 2021