

File Ref: [REDACTED]

[REDACTED]

Via email: [REDACTED]

[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 in possession of the ACT Government in relation to hazardous materials in ACT Government schools, specifically*

- *Media statements/responses (including drafts) since 1 January 2020*
- *All records produced by and/or for the "expert team" referred to by the Education Minister in the article in the Canberra Times on 18 September 2020, including but not limited to reports, risk assessments, action plans, minutes, charter/terms of reference.'*

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 9 April 2021, this date included additional time to conduct a third party consultation process.

### Decision on access

Searches were completed for relevant records and 80 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 of 4 records
- partial release of 75 records, and
- non-release of 1 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 publicly available, and access is refused in accordance with sections 43(1)(d) and 45(a) of the Act; or
- is outside of the scope of your request.

The records released to you 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 Schedule 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 not to 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 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](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 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 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, 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, 2.2(a)(ii))
- prejudice trade secrets, business affairs or research of an agency or person (Schedule 2, 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, the names of third parties, their contact details and personal information about them has been deleted from the information being provided to you.

Similarly, I place significant weight on information relating to the business affairs of persons or organisations and I have decided that they have a right to have their business information protected, particularly where this may disclose their methodologies. Further, release of business information may make some companies less inclined to undertake business with the Directorate if their information was made public. Accordingly, information relating to the business affairs of persons or organisations has been deleted from the records being provided to you.

### **Charges**

Fees are not charged for this request in accordance with section 107(2)(e) of the Act.

### **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](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 team on 02 6205 0720 or email [EducationFOI@act.gov.au](mailto:EducationFOI@act.gov.au).

Yours sincerely



Paula Murray  
Information Officer

9 April 2021