

[Redacted]

Via email: [Redacted]

Dear [Redacted]

FREEDOM OF INFORMATION (FOI) REQUEST

I refer to your application under the *Freedom of Information Act 2016* (the Act) received by the Education Directorate (the Directorate) on 1 September 2023, in which you sought access to:

Documents relating to school infrastructure projects that did not receive funding under the 2023-24 Public School Infrastructure Renewal Program budget allocation including:

- 1. Original applications*
- 2. Any Directorate documents, correspondence or notes relating to the assessment of the applications.*
- 3. Any related correspondence with the Minister or Minister's Office*

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 14 November 2023. As advised, your request required consultation with third parties which extended the due date by 15 working days. In addition, you kindly agreed to extensions of processing time requested by the Directorate to 23 November 2023. Your consideration of the Directorate's requests is greatly appreciated.

Decision on access

Searches were completed for relevant records and 43 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 the records.

In summary, I have decided to grant:

- full access to four records; and
- partial access to 39 records with redactions applied.

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 Act, particularly sections 16, 17, 35 and 50, and schedules 1 and 2;
- the content of the records that fall within the scope of your request;
- the views of third parties consulted;
- the *Human Rights Act 2004*; and
- the *Information Privacy Act 2014*.

Reasons for decision

I have considered the records that are relevant to your request in accordance with the requirements of the 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 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 applicable factors favouring disclosure as listed at Schedule 2.1 of the Act, are that the released information could be reasonably expected to:

- *promote open discussion of public affairs and enhance the 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, 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. 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.

In addition, I give greater weight to protecting the business affairs of companies dealing with the Directorate, where I have deemed that it could reasonably be expected for those companies to be negatively impacted by release of information about them. I have decided that the factor favouring non-disclosure has greater weight than the factors favouring disclosure. Therefore, the information has been redacted from the records.

Additional information

In your review of the records released, please be aware that some of the information relied upon by schools in their submissions was developed for other purposes, including

school Master Plan development, and was not specifically produced for the purpose of seeking PSIRP funding. In addition, some of the information may not be current, for example, a traffic study produced in 2018.

Charges

Processing charges are not applicable for this request in accordance with section [REDACTED] 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 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.

Review of decision

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 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

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
Allara House, 15 Constitution Ave
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

23 November 2023