

[REDACTED]

Via: [REDACTED]

Dear [REDACTED]

**FREEDOM OF INFORMATION (FOI) REQUEST : YARRALUMLA PRIMARY SCHOOL  
ASBESTOS AND LEAD PAINT**

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 23 July 2020, in which you sought access to:

- (i) *any document relating to the management and remediation of lead paint on Yarralumla Primary School (YPS) premises since 2014, including any review of painted surfaces in the school conducted in 2019 and 2020*
- (ii) *any document relating to the management and remediation of asbestos on YPS premises since 2014*
- (iii) *all correspondence between the Directorate and the YPS Principal/and or staff relating to the management and remediation of lead paint and/or asbestos on YPS premises since 2014*
- (iv) *the hazardous materials survey and management plan for YPS as at May 2019*
- (v) *the current YPS hazardous materials survey and management plan*

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 10 September 2020, this date included additional time to conduct third party consultation. On 5 September, a revised due date, due to the voluminous and complex nature of this application, was agreed to 1 October. On 28 September, a proposal for staged release of the information was subsequently agreed, with releases for stage one due 6 October, and stage two due 16 October.

This decision relates to stage 2. Thank you for flexibly agreeing to this staged release of information. Your consideration is greatly appreciated.

For your information, documents relevant to points (iv) and (v) of your request were included in the Stage 1 decision. The hazardous materials survey and management plans comprise a collection of documents that are issued and revised over periods of time. They are held at the school's administration office and are available to view on request. The lead paint and asbestos components of the hazardous materials survey and management plans as at May 2019, were updated in April 2019 and were provided as documents 19 (Binder 2) and 21 (Binder 3). The lead paint management plan was updated in November 2019 and was provided as document 55 (Binder 6). As at July 2020, the current versions were the November 2019 lead paint report and the April 2019 asbestos plan, noting that all test results and clearance certificates issued after those reports also form part of the overall system.

#### **Decision on access**

Searches were completed for relevant documents and 52 documents were identified that fall within the scope of your request.

I have included as Attachment A to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

In summary, my decision is:

- full release nine documents;
- partial release 34 documents; and
- non-release nine documents.

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

- is taken to be contrary to the public interest to disclose in accordance with section 16 and Schedule 1 of the Act; or
- 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 documents 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 documents 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 documents are as follows:

#### Information that is taken to be contrary to the public interest

Some of the document wholly or partially contain information that is taken to be contrary to the public interest to disclose in accordance with Schedule 1 of the Act; in particular, information that was provided, or was produced for the purpose of being provided, to Cabinet (Schedule 1.6). Accordingly, this information is not being released to you.

#### 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 documents, as I have decided that they have a right to have their business information protected, particularly names of their employees, and this outweighs any public interest that would arise from release of this information.

#### Information that is outside of scope

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

#### **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 agreements 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 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 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

16 October 2020