

File Ref:

Via email:

Dear

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 27 May 2020, in which you sought access to:

- 1. a copy of all the submissions made to the 2013 Review of Approval and Registration Processes.*
- 2. a copy of the confirmation from the ACT Minister of Education or its delegate of receipt of the Annual Statement of Assurance for Brindabella Christian College (BCC) in 2016, 2017, 2018 and 2019 from the Association of Independent Schools, and any correspondence related to this confirmation of receipt.*
- 3. If there is no evidence of confirmation of receipt by the Department to the AIS, I request the confirmation from Association of Independent Schools to the Department that it received and approved the Statements of Assurance from BCC in 2016, 2017, 2018 and 2019.*
- 4. I request the community comments about the application by BCC for the registration at additional education levels (year 5 & 6) at the Charnwood campus and the documentation about the reasons to the application's approval by the Department.*
- 5. a copy of the most recent application forms for the application of registration renewal for BCC for both the Lyneham and Charnwood campuses.*
- 6. a copy of BCC's submitted complaints policy, supplied to the Directorate as part of the most recent registration process.*
- 7. I seek the total number of complaints received by the ACT Government about BCC during 2019, and a summary of the type of request, and any actions taken by the Directorate in response to them.*
- 8. a copy of the most recent audit of student enrolments at BCC.*

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.

I refer also to my previous correspondence dated 17 July 2020 and 14 August 2020 which provided my decision in relation to the majority of documents relevant to your request.

The decision letter sent to you on 14 August 2020 advised that one document, which is relevant to point 8 of your request, had been withheld because the third party concerned has objected to my decision and sought review of my decision by the Ombudsman. Therefore, the decision about this document could not be provided until the Ombudsman's review was completed.

The Ombudsman's review was completed on 18 November 2020 which upheld my decision. However, the third party concerned was required to be provided with an opportunity to seek review of the Ombudsman's decision by the ACT Civil and Administrative Tribunal. This timeframe has now passed and my decision in relation to this remaining document can now be provided to you.

Thank you for your sustained patience and understanding as we have worked through the legislated process requirements.

Decision on access

I have decided to grant partial access to the document relevant to your request.

The document is provided as Attachment A to this letter.

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 documents that fall within the scope of your request; and
- the *Human Rights Act 2004*.

Reasons for decision

The document has had deletions applied in accordance with Section 50 of the Act, because it contains information that 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 Act.

In applying the public interest test in accordance with Section 17 of the Act, I have decided that, the factor favouring disclosure in the public interest as listed at Schedule 2.1 of the Act is that disclosure could reasonably be expected to contribute to positive and informed debate on important issues or matters of public interest (Schedule

2.1(a)(ii). It is my view that matters relating to children's education are of broad public interest, and I am aware that there have been a number of media stories and letters to the Minister about BCC which indicates to me that it is of community concern.

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, signatures, email addresses and the names of personnel in other organisations, as well as personal information of students or information that could enable students to be identified, have been deleted from the information being provided to you.

The document also contains BCC's business information and I have decided that it could be detrimental if this information were to be released. I have determined that the factor favouring non-disclosure outweighs the factor favouring disclosure in relation to this information.

You will note that the document indicates that there were some discrepancies at that time in BCC's student enrolment records. For your information, these matters were satisfactorily resolved.

Charges

Processing charges are waived for this request because the number of pages being released to you does not exceed 50, and the Act requires that the first 50 pages must be provided free of charge, and also in recognition of the protracted decision process that has occurred.

Online publishing – disclosure log

Under section 28 of the Act, the Directorate maintains an online record of access applications called a disclosure log. The Directorate is required to publish the information released in response to an access application on the disclosure log between three and ten days after the decision is released to the applicant. Whilst information released in response to your request will be made available via the disclosure log, your personal information will not be published.

For your information, the Directorate's disclosure log is available 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 released 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
Telephone: (02) 6276 3773

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
Website: <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

21 December 2020