

[REDACTED]  
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 15 April 2022, in which you sought access to:

*Documents, such as emails, notes, transcripts, written communications, or meeting minutes containing information from or about the "Email Incident" that occurred on the 14<sup>th</sup> of August 2020 (referenced at <https://www.education.act.gov.au/about-us/all-news-and-news-alerts/news-items/august-2020/act-public-schools-email-incident>), created on or after the 14<sup>th</sup> of August 2020, including communication between the Education Directorate and involved third parties - excluding the actual student-generated emails from the incident itself.*

- Documents, such as emails, notes, transcripts, written communications, or meeting minutes containing information from or about the incident mentioned above which involved, were directed to, or originated from the Minister or her office.*
- Legal advice provided to the Directorate regarding the incident mentioned above.*

On 21 April in conjunction with our office the scope was reframed as being for:

*Records relating to the "email incident" that occurred on 14 August 2020 (referenced at <https://www.education.act.gov.au/about-us/all-news-and-news-alerts/news-items/august-2020/act-public-schools-email-incident>), created on or after that date, specifically:*

- 1. Final briefs provided to executive staff (Director-General, Deputy Director-General, Executive Group Managers and Executive Branch Managers)*
- 2. Final briefs to the Minister*
- 3. Communications to third parties, including but not limited to emails, notes and meeting minutes*

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 18 May 2022. On 16 May 2022 you agreed to an extension of processing time to 2 June 2022. On 26 May 2022 you were advised that third party consultation was required and, in accordance with the consultation provisions at section 38 of the Act, the decision for your request would be due 24 June 2022. This was further extended with your agreement to 1 July 2022. Thank you for your patience and consideration as the Directorate has worked through the processing of your request.

### **Decision on access**

Searches were completed for relevant records and 31 records were identified that fall within the scope of your request.

In summary, I have decided to grant:

- full access to eight records, and
- partial access to 23 records with deletions applied.

Included as Attachment A to this decision is 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. The records released to you are provided at Attachment B.

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 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 consulted.

### **Reasons for decision**

I have considered the records that are relevant to your request in accordance with the requirements of the Act.

### Contrary to the public interest information

Records that are partially released have had deletions applied in accordance with section 50 of the Act. Deletions have been applied to '*contrary to the public interest information*' in accordance with definition at section 16 of the Act. Section 50 provides for information that is contrary to the public interest to be deleted from the records, enabling the remainder of the record to be released.

*Information, the disclosure of which would, on balance, be contrary to the public interest*

The public interest test set out at section 17 of the Act is used to decide whether disclosure of information would, on balance, be contrary to the public interest. The 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 reasonably be expected to:

- *promote open discussion of public affairs and enhance 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));
- *inform the community of the government's operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community* (Schedule 2, 2.1(a)(iii)); 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 in the public interest, as listed at Schedule 2.2 of the Act, are that 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 security, law enforcement or public safety* (Schedule 2, 2.2(a)(iii)), and
- *prejudice the 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 acknowledge the positive contribution of open discussion of public affairs, contributing to informed debate on important issues and the factors that underpin transparency of government processes as being central tenets to the effectiveness of representative democracy. As such, much of the information is released.

Information relating to third parties or that could enable individuals to be identified has been deleted as I have concluded that disclosure would be prejudicial to an individual's right to privacy, and that this has a higher standing of public interest not to disclose, than the public interest in disclosing the information.

Similarly, information relating to the business affairs of other organisations has been deleted. These businesses are entitled to have their business affairs protected and the information concerned has been deemed to have a stronger weighting favouring non-disclosure than the public interest that would be served by its release.

I have also decided to delete information relating to aspects of ICT security and systems, as disclosure may identify vulnerabilities of these significant public assets, which could lead to increased incidents and disruption to school communities, including the delivery of education services. Non-disclosure of this information carries significantly stronger weight than the public interest that would be enhanced by its disclosure.

### **Charges**

Processing charges are not applicable for this request because I have decided that there may be broad public interest in relation to this matter.

### **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](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 Coordinator via email to [EducationFOI@act.gov.au](mailto:EducationFOI@act.gov.au) or by telephoning 02 6205 0720.

Yours sincerely



Paula Murray  
Information Officer

1 July 2022