

[REDACTED]

Via 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 26 September 2022, in which you sought access to:

1. *In relation to the telephone call that was made by Robyn McEwin of Telopea Park Primary School from calling number 0261423367 to the applicant, at or around 2:41pm on 15/09/2022:*
  - a) *any documents concerning directions or instructions, or suggestions made to Robyn McEwin about what was to be said to me in that call; and*
  - b) *any documents created as a result of that call.*
  
2. *The numerical values or data records of any measurements of CO<sub>2</sub> concentration in the air in occupied classrooms at ACT public schools measured during 2022, specifically*
  - a) *any data that is held centrally or has been reported outside individual schools rather than being kept within a school, and*
  - b) *any data about Telopea Park School that is held at the school.*
  
3. *Any summaries or reports or emails relating to the data of item 2, in particular any documents presenting the data for decision-making, or documentation of decisions based on the data, and documents stating whether the air quality was deemed to be acceptable or not, the criteria used for such a determination, and the source of these criteria.*
  
4. *Any documents concerning whether or not it is permitted for a teacher or other person in any ACT public school, to use a CO<sub>2</sub> monitor to monitor the air quality in a classroom or other area where students or staff members are present, including but not limited to policy documents or form letters.*

5. *Any documents informing any policy in item 4, including the name and position of the person who originally made that determination, including complete list of any scientific or engineering or medical qualifications that this person holds.*
6. *A list of all journal articles, scientific papers or other evidence that was used in formulating policy concerning use of CO<sub>2</sub> monitors in schools.*
7. *The text of any and all rules that have been put in place that would prevent a teacher in an ACT government school from replying promptly and honestly to an email from a parent discussing the placement of a CO<sub>2</sub> monitor within a classroom of an ACT public school.*
8. *Any documents concerning the use of CO<sub>2</sub> measurements to decide whether it may be necessary to open more windows to increase ventilation or take other measures in the interest of the health of the occupants.*

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 25 October 2022. Thank you for agreeing to a 20-working day extension to the 22 November 2022, due to a variety of factors listed in the email exchange on 19 October 2022. A third party was also consulted during this timeframe in accordance with the requirements of the Act. The Directorate appreciates your patience and understanding in granting the extension of time to process your request.

### **Decision on access**

Searches were completed for relevant records and 26 records were identified that fall within the scope of your request.

In summary, my decision is:

- full access to seven records,
- partial access to nine records with deletions applied; and
- non-release of 10 records.

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 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 records that fall within the scope of your request;
- the *Human Rights Act 2004*; and
- the views of third party consulted.

### **Reasons for decision**

I have considered the records that are relevant to your request in accordance with the requirements of the Act. The key provisions that are relevant to my decision are:

- Section 6(a) specifies that one of the objects of the Act is to provide 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 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 35 specifies how an access application may be decided, which includes but is not limited to deciding to give access to the information, that the information is not held by the agency, refusing to give access to the information because it is contrary to the public interest information, or refusing to deal with the application.
- Section 43 sets out the grounds for an agency to refuse to deal with an access application.
- 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 deleted, enabling the remainder of the record to be released. This provision has been applied where appropriate.

### Information not held

I am aware that the Directorate's FOI team had discussed access to the data relevant to point 2 of your request with you in the early stages of processing. Information about the Directorate's ability to source the data was provided by the business area after those discussions had occurred. Unfortunately, the information you seek is not held by the Directorate in a format that can be provided to you. Rather, it is held in a third party system under contract with the Directorate. The Directorate's access to this system is via a licensed web-based platform with a user interface that enables the data to be interrogated and presented in a useable form. Directorate staff would be able to extract the data; however, it would not be in a comprehensible format without further information needing to be added. Whilst the Act's intent is to provide access to government information, this does not extend to the creation of new records.

The system provider can access the information for the Directorate; however, this is not included within the scope of the current contract and there would be additional costs associated with obtaining the information.

Further, there is no data held within the system relating to CO<sub>2</sub> readings at Telopea Park School because there are no fixed CO<sub>2</sub> sensors installed at the school and any data manually collected with portable CO<sub>2</sub> monitors in rooms without HVAC systems has not been collected centrally.

Therefore, in accordance with section 35(1)(b) of the Act, my decision is that the information relevant to point 2 is not held by the Directorate.

#### Access refused

##### *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 access application has not been provided because it is publicly available on the Directorate's website. It has been referenced in the Schedule and information provided about where it can be sourced on 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).

#### Contrary to the public interest information

##### *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 has been applied to the records to determine if they contain information that would, on balance, be contrary to the public interest to disclose.

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 factors favouring disclosure, as listed at Schedule 2.1 of the Act, are that disclosure of the 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)),
- *reveal the reason for a government decision and any background or contextual information that informed the decision* (Schedule 2, 2.2(a)(viii)); and
- *reveal environmental or health risks or measures relating to public health and safety.*

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)); and
- *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 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, most of the information is released.

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 personal information, which is predominantly names and signatures, has been deleted.

I have decided that other organisations are entitled to have information relating to their business affairs not disclosed because it would be prejudicial to their commercial interests. I have given this factor stronger weight than the public interest that would be served by disclosure of the information. This has been applied to the business information of a contracted service provider.

In addition, information that is outside of the scope of your request has been deleted from the records.

#### **Additional information**

When reviewing the records released it may be of assistance to be aware of the following:

- some records were drafts at a point in time and may have since been revised or not progressed;
- redactions have been applied to records relating to your interactions with school staff to protect your right to privacy when they are published on the disclosure log;
- policies may have been developed, refined or informed by research undertaken in the past and by staff members that are no longer with the Directorate. Consequently, the Directorate may not be able to identify all references/sources that were considered. This is relevant to point 6 of your request.

#### **Charges**

I have decided that processing charges are not applicable for your request because the records relate to public health in school settings, and this is a matter of interest to a broad section of the community.

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

Yours sincerely



Paula Murray  
Information Officer

22 November 2022