

[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 FOI Act), received by the Education Directorate (the Directorate) on 16 October 2023 following transfer from the Justice and Community Safety Directorate, in which you sought access to:

1. *All correspondence in related to Brindabella Christian College or Brindabella Christian Education Limited in any form between the ACT Registrar Non-Government Schools Mr Sean Moysey and ReformBCC, [Redacted] or [Redacted] [Redacted] The Canberra Times and the RiotACT.*
2. *All correspondence in related to Brindabella Christian College or Brindabella Christian Education Limited in any form between the Minister for Education Ms Yvette Berry and ReformBCC, [Redacted] or [Redacted], The Canberra Times and the RiotACT.*
3. *All correspondence in related to Brindabella Christian College or Brindabella Christian Education Limited in any form between Joshua Ceramidas, Senior Adviser, Minister for Education Ms Yvette Berry's Chief of Staff and ReformBCC, [Redacted] or [Redacted] The Canberra Times and the RiotACT.*
4. *All correspondence in related to Brindabella Christian College or Brindabella Christian Education Limited in any form between the FOI sections of the ACT Government and ReformBCC, [Redacted] or [Redacted], The Canberra Times and the RiotACT.*

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.

In accordance with section 40 of the FOI Act, the Directorate was required to provide a decision on your access application within 30 working days of receipt, being 27 November

2023. On 27 October 2023, a letter was sent to you via email inviting you to reconsider the scope of your request, informing you that the Directorate would be processing points 2 and 3 of your request on behalf of the Minister for Education and Youth Affairs' Office, and suspending the processing of your application whilst awaiting your response to the scope issues. Your response was received on 30 November 2023, advising that you wished to proceed with the scope as stated above. Consequently, processing was suspended for 24 working days, resulting in a decision date of 9 January 2024. On 8 January 2024 you were advised by email that the due date would be extended to 31 January 2024 due to the requirement to undertake consultation with third parties. You kindly agreed to a further extension of 14 days on 23 January 2024 at the request of one of the third parties as key personnel had been or were on holidays at the time. On 15 February 2024 you were advised that objections received from a third party were not agreed and that they had until 15 March 2024 to seek Ombudsman review of my decision. As the third party has not sought review by the Ombudsman, this matter can now be finalised.

I acknowledge that this process became very protracted as we worked through the requirements of the Act. Your patience and cooperation are appreciated.

Decision on access

As advised in my letter to you dated 27 October 2023, records relating to FOI requests that may have been made by the organisations or the individual identified in your request are not released because:

1. An object of the Act as specified at section 6(a) is to provide a right of access to government information unless access would, on balance, be contrary to the public interest.
2. Section 7 provides that, subject to the Act, every person has an enforceable right to obtain access under the Act to government information.
3. Section 17(2)(f) of the Act states that an applicant's identity, circumstances or reason for seeking access to information must not be taken into account when deciding whether disclosure of information would, on balance, be contrary to the public interest.
4. Section 28 of the Act sets out the information that is required to be published on the disclosure log about FOI requests, and applicant identity is not included.
5. Undertakings are given to applicants in the acknowledgement and decision letters sent to them that their identity will not be disclosed in information published on the disclosure log about their request. This is because applicant identity is considered personal or business information.

Consequently, any information held by the Minister's Office or Directorate covered by the above is deemed contrary to the public interest to disclose in accordance with section 35(1)(c) of the Act. Therefore, records of this nature are excluded from this decision and no information is provided in this letter or attachments about any such records that may be held.

In relation to other aspects of your request, searches were completed for relevant records and nine records were identified that fall within the scope.

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.

In summary, I have decided to grant:

- Partial access to three records with redactions applied; and
- Non-release of six records.

The record released to you is 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 FOI 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 *Information Privacy Act 2014*;
- the *Human Rights Act 2004*;
- the views of third parties consulted; and
- the FOI Guidelines issued under section 66 of the FOI Act by the Ombudsman.

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 within the scope of your request 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 factors favouring disclosure, as listed at Schedule 2.1 of the FOI Act, are that disclosure of the information could reasonably be expected to:

- promote open discussion of public affairs and enhance the government's accountability (Schedule 2, 2.1(a)(i))
- 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 FOI 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 intergovernmental relations (Schedule 2, 2.2(a)(x))
- 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.

Some of the records are correspondence with government entities raising concerns and lodging complaints. The records do not indicate that the matters raised have been closed by those entities and therefore they should be considered to still be live. Release of information about the complaints could jeopardise the consideration of the issues raised by those entities and be damaging to intergovernmental relations between the Directorate and the entities. Further, as the entities concerned are government organisations, they will have procedural fairness principles embedded in their investigation processes, such that the views of relevant parties would be sought if

appropriate. Consequently, I give the factors favouring non-disclosure significantly more weight than the factors favouring disclosure in relation to intergovernmental relations and the business affairs of the parties and entities involved.

Charges

Processing charges are not applicable for this request because the number of pages released does not exceed the threshold of 50 specified in 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.

Review of decision

Ombudsman review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the FOI Act. You have the right to seek Ombudsman review of this outcome under section 73 of the FOI 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 FOI 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, please contact the Directorate's FOI team on 02 6205 0720 or email EducationFOI@act.gov.au.

Yours sincerely



Paula Murray
Information Officer

22 March 2024