

File Ref: [REDACTED]

[REDACTED]

Via email: [REDACTED]

[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 8 August 2022, in which you sought access to records relating to:

'The subject line of all final ministerial briefs from 10 May 2022 to 10 June 2022 generated for or directed to any ACT Government Minister.'

This request includes, wherever possible, the date of the brief, the internal reference, position of authority it was written by, and which Minister it was addressed to.

This request includes briefs prepared for Question Time, but not for Estimates or Annual Reports.'

In the letter sent to you by the Directorate's FOI team on 12 August 2022, it was noted that your previous request sought the subject lines of all final ministerial briefs from 11 April 2022 to 10 May 2022. Consequently, this request has been processed for the period 11 May to 10 June 2022.

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 5 September 2022.

Decision on access

Searches were completed for relevant records and one record was identified that falls within the scope of your request. This record is an excerpt from a records management system which has been converted to PDF. However, metadata about the signatory and their position is not recorded in the system and therefore this information is not included. For your information, the briefs will have been reviewed at the Executive Group Manager level or above prior to submission to the Minister.

I have decided to provide partial access to the record with deletions applied.

The record released is provided as Attachment A 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 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; and
- the *Human Rights Act 2004*.

Reasons for decision

I have considered the records that are relevant to your request in accordance with the requirements of the FOI Act, particularly section 6(a) which 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 FOI 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 FOI 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 taken to be contrary to the public interest to disclose

The record contains information that is taken to be contrary to the public interest to disclose. The information concerned was prepared for deliberation by Cabinet in accordance with Schedule 1, 1.6 and is not released. I am satisfied that the information concerned is not purely factual, disclosure would involve the disclosure of a deliberation by Cabinet and the outcome of Cabinet's deliberation has not been published; thus, the exclusions at Schedule 1, 1.6(2) do not apply

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

The record has had the public interest test applied to determine if it contains information that would 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); and
- *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)).

I have decided that the applicable factors favouring non-disclosure in the public interest, as listed at Schedule 2.2 of the Act, is 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 intergovernmental relations* (Schedule 2, 2.2(a)(x)); or
- *prejudice a deliberative process of government* (Schedule 2, 2.2(a)(xvi)).

I have considered the factors favouring disclosure and the factor 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.

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

Some information referring to matters under consideration by the Education Ministers Meeting (EMM) has been deleted because I have decided that its release would be prejudicial to intergovernmental relations and deliberative processes of government, and that these factors outweigh the factors favouring disclosure with respect to this content. The information concerned was communicated to participant States and Territories with the express expectation of confidentiality. Release of this information would likely result in participants being less likely to share such information in the future and increased restrictions within the group, which would be to the detriment of the ACT and all participants. Relationships with counterparts organisations are of strategic importance to

the ACT and the collaboration and information sharing that occurs supports the education of students nationally. Further, matters arising from EMM require options for policy positions to be considered. These are important issues and it would be prejudicial to the deliberative processes of government if this information were to be released.

Charges

There is no charge associated with this request, in line with section [REDACTED] of 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 the 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.

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

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.

Yours sincerely



Paula Murray
Information Officer

5 September 2022