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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 6 July 2022, in which you sought access to:

All records held in relation to the Student Transfer Register and Census returns for the years 2021 and 2022 regarding Brindabella Christian College (BCC), including correspondence to and from BCC in relation to these matters, but excluding personal information of students.

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 Directorate was required to provide a decision on your access application by 3 August 2022. On 25 July 2022 we informed you that third party consultation was necessary, and the decision date was extended to 24 August 2022 in accordance with section 38 of the Act. As advised, the third party objected to release of the records and access was deferred to give the third party the opportunity to seek review of my access decision by the Ombudsman. These requirements of the Act have now been satisfied. Thank you for your patience as we worked through these matters.

Decision on access

Searches were completed for relevant records and 21 records were identified that fall within the scope of your request.

In summary, I have decided to grant access to the records as follows:

- partial release of 17 records with deletions applied; and
- non-release of four records.

I have included as Attachment A to this decision 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 are provided as Attachment B 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 record that falls 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 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 43 which sets out reasons for refusing to deal with an access application, either wholly or in part.

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, and the same principle applied to records containing information to which access is refused.

Information that is publicly available

Sections 43(1)(d) and 45(a) of the Act provide for an access application to be refused wholly or in part if the information is already available to the applicant by being made publicly available by the respondent (i.e. the Directorate) or by another agency or Minister. Records 7 and 14 refer to attachments and provide links to the Directorate's website where the information contained in the attachment is published. Therefore, this information is not released as part of this decision.

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

All records within the scope of your request have had the public interest test applied to determine if they contain 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 factor favouring disclosure, as listed at Schedule 2.1 of the Act, is that disclosure of the information could reasonably be expected to *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)).

In addition, I have considered the application of the factor listed at Schedule 2, 2.1(a)(ii) of the Act, which is that disclosure could reasonably be expected to *contribute to positive and informed debate on important issues or matters of public interest*. In my view, the education of children is an important matter of broad public interest to a large part of the community. Whilst this factor is not fully satisfied by the records within the scope of your request, as disclosure would not support 'positive or informed debate', the extent and degree of interest in children's education within the community warrants consideration as a factor favouring disclosure in its own right. As the Ombudsman's published Freedom of Information Guidelines: Considering the Public Interest (available at <https://www.ombudsman.act.gov.au/publications/foi-guidelines>), state at section 7.1 that the list of factors at Schedule 2, 2.1 is not exhaustive, I am permitted to take my assessment of the extent of public interest into account as a factor favouring disclosure and I give this moderate weight.

I have decided that the applicable factor 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)). I give significant weight to the importance of the right to privacy of individuals.

I have also noted that two of the records contained passwords for access to the system for uploading of census returns. I have decided that there would be no public interest served by the disclosure of this confidential information and that disclosure would potentially compromise the integrity of the Directorate's systems and processes for these important functions.

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, information is released where appropriate.

Information that could enable individuals to be identified such as, employee personal details 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.

In addition, I note that the scope of your request provides for personal information of students to be excluded. Such information has been deemed as outside of scope and is noted on the schedule. In some instances, this has been applied to whole records; however, these records are still listed on the schedule so that they are accounted for. In addition, data relating to 10 or fewer individuals or cases, and in some cases to related data that could enable other data to be worked out, has been deleted on the basis that it is personal information and is outside of the scope of your request.

Additional information

Whilst records 8, 9, 14 and 15 have not been released because they entirely contain personal information of students and are therefore outside the scope of your request, it may be of assistance to you to be aware that they contained 70, 852, 69 and 896 entries respectively.

Charges

Processing charges are not applicable for this request because the number of pages released do not materially exceed the threshold of 50 pages.

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.

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

26 September 2022