

[REDACTED]

via email: [REDACTED]

Dear [REDACTED]

Freedom of information request

I refer to your application made under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Education Directorate (the Directorate) on 6 July 2018, in which you sought access to documents relating to disciplinary action taken against principals and teachers.

Specifically, you are seeking:

- *Formal documentation related to cases of disciplinary action having been taken against principals or teachers in ACT schools between 1 January 2015 and 6 July 2018 (the date of your request), including investigation notices, investigation reports, proposed disciplinary action letters, final disciplinary action letters, or similar;*
- *Any correspondence within or from the Education Directorate relating to cases where disciplinary action has been taken against principals or teachers between 1 January 2015 and 6 July 2018; and*
- *Any information or data on the number of teachers or principals who have been investigated for any form of alleged misconduct between 1 January 2015 and 6 July 2018, and the number of cases that resulted in disciplinary action being taken.*

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.

On 6 August 2018 you agreed to an extension of 20 working days for the processing of your request, and on 31 August you agreed to a staged release of the decision and documents with the first stage being released on 5 September 2018 and all remaining

documents being provided to you on 7 September 2018. On 5 September 2018 you were advised via email that, due to sudden and unexpected staff absences, we would be unable to release documents to you in staged manner and that our intention was to provide them to you in full on 7 September 2018. Thank you for agreeing to these extensions and your consideration and patience throughout the processing of your request.

Decision on access

Searches were completed for relevant documents and 13 cases, were identified that fall within the scope of your request.

For ease of processing your request, and to assist you in reviewing the documents, I have kept the documents for each case together; rather than creating a combined list of the documents from all cases in chronological order. Therefore, each case has a separate schedule which provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

All the documents identified as relevant to your request contain information that I consider to be information that would, on balance, be contrary to the public interest to disclose under section 17 of the Act. In addition, some of the documents contain information that I consider is taken to be contrary to the public interest to disclose under Schedule 1 of the Act. I have decided to grant access, under section 50 of the Act, to the documents with deletions applied. The reasons for my decision are outlined below.

The documents released to you are provided with the schedule for each case. Cases 1 to 13 correspond to Attachments A to M to this letter.

Reference documents

Many of the documents that are relevant to your request include copies of other publicly available reference documents as attachments, such as sections from the Enterprise Agreement and the *Public Sector Management Act 1994*. These are listed on the schedules for each case. Government agencies are not obliged to provide copies of publicly available documents in responses to FOI requests. However, I have decided to provide a list of these reference documents within this letter and, as a courtesy, I have included their web addresses to enable you to source them. The reference documents are:

- Enterprise Agreement
https://www.education.act.gov.au/__data/assets/pdf_file/0003/307596/Teaching-Staff-Enterprise-Agreement-2014-2018.pdf
- *Public Sector Management Act 1994*
<https://www.legislation.act.gov.au/a/1994-37/>
- *Teacher Quality Institute Act 2010*
<https://www.legislation.act.gov.au/a/1994-37/>

- Teacher Quality Institute Code of Conduct
https://www.tqi.act.edu.au/__data/assets/pdf_file/0010/824572/Code-of-professional-practice-squiz-site.pdf
- Teachers' Code of Professional Practice
https://www.education.act.gov.au/__data/assets/pdf_file/0007/17692/TeachersCode_ofProfessionalPractice.pdf

Material considered

In reaching my access decision, I have taken the following into account:

- the FOI Act, particularly sections 17 and 50, and schedule 2;
- the content of the documents that fall within the scope of your request; and
- the *Human Rights Act 2004*.

Reasons for decision

My reasons for deciding not to grant access to parts of the documents are because they contain information that I consider is taken to be contrary to the public interest to disclose under schedule 1, or would, on balance, be contrary to the public interest to disclose under section 17 of the Act.

Some of the documents contain information that I consider is taken to be contrary to the public interest to disclose in accordance with schedule 1 of the Act. These documents contain information that is subject to legal professional privilege and are identified on the schedules.

All of the documents contain information relating to instances and investigations of conduct by principals and teachers that resulted in disciplinary action being taken. Therefore, they may refer to people involved in the incidents, may be witness statements, may identify the time and place that alleged incidents occurred, or may enable individuals to be identified because of the dates and times when actions were taken.

In making my decision I have decided that the factors favouring disclosure, as listed at Schedule 2.1 (a) of the Act, are that the information would:

- (vi) reveal or substantiate that an agency or public official has engaged in misconduct or negligent, improper, or unlawful conduct or has acted maliciously;
- (viii) reveal the reason for a government decision and any background or contextual information that informed the decision; and
- (xii) contribute to the administration of justice generally, including procedural fairness.

I have decided that the applicable factors favouring non-disclosure, as listed at Schedule 2.2 (a) of the Act, are that the information would:

- (ii) prejudice the protection of an individual's right to privacy or any other right under the *Human Rights Act 2004*

I have considered the factors favouring disclosure and the factors favouring non-disclosure.

Schedule 2.2(a)(ii) engages section 12 of the *Human Rights Act 2004*, in relation to privacy.

I have concluded that for these matters the individuals' right to privacy — whether they were involved in a matter, or were a witness — has a higher standing of public interest not to disclose than the public interest in disclosing identities.

In making my decision, I considered undertaking third party consultation about the possible disclosure of information that would identify individuals. I decided that the complexities involved in undertaking such consultation due to the need to protect the privacy of others, would make this unwieldy and unlikely to result in a different outcome from the way the documents are being released to you.

I have formed the view that the public interest is satisfied in the knowledge that there were instances in which disciplinary action was taken against principals and teachers, and that these were investigated, and actions were taken to address conduct that was substantiated.

Charges

I have decided that charges will not be imposed for this request in recognition of the time taken to complete the processing and your continued patience.

Online publishing – disclosure log

In accordance with 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 documents released to you in response to your access application will be published in the Directorate's disclosure log between three and 10 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
Via email: ombudsman@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) review

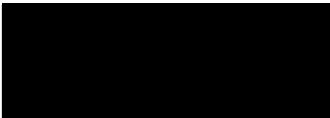
Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision.

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 our FOI Coordinator on 02 6205 0720 or email EDULegalLiaison@act.gov.au.

Yours sincerely



Tracy Stewart
Information Officer

7 September 2018