




Via email: 

Dear 

FREEDOM OF INFORMATION (FOI) REQUEST

I refer to your application under the *Freedom of Information Act 2016* (the Act) received by the Education Directorate (the Directorate) on 7 April 2022, in which you sought access to:

Copies of all records held by the ACT Government in relation to the incidents leading up to, and subsequent management of, the prohibition notice issued by Worksafe ACT in relation Calwell High School (notice number N-0000003584) issued on 31 March 2022 and associated Worksafe notices relating specifically to the provision and maintenance of safe systems of work at the school.

This includes all records of incidents of assault, abuse or violence and reports relating to fire and safety systems at Calwell school leading up the Worksafe ACT inspection, correspondence between the Minister and the Directorate in relation to incidents leading up to the inspection, between the Minister, Directorate and the school relating to violence against staff and students, and correspondence between the school or directorate and parents.'

It is noted that:

- A partial transfer of your request was accepted by Chief Minister, Treasury and Economic Development Directorate's FOI team on 11 April 2022, and
- The period of interest for your request is for records from the start of Term 1 2022 to the date of receipt of your application, as confirmed by your office on 9 May 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 10 May 2022. With the agreement of your office obtained 4 May 2022, this deadline was extended to 8 June 2022, and further extended on 6 June 2022 to 24 June 2022, and on 22 June 2022 to 15 July 2022. Thank you for accommodating the Directorate's requests. Your consideration is appreciated.

Decision on access

Searches were completed for relevant records and 242 records were identified that fall within the scope of your request.

In summary, my decision is:

- full access to 71 records,
- partial access to 168 records with deletions applied
- non-release of 3 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.

An attachment to Record 141 has been withheld as the processing is not yet complete. However, rather than requesting a further extension, I have decided to release all other records to you. The remaining record will be released to you as soon as possible.

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 schedule 2;
- the content of the records that fall 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 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

One of the records contains information that is taken to be contrary to the public interest to disclose. The information concerned is covered by legal professional privilege in accordance with Schedule 1, 1.2 and is not released.

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

The public interest test has been applied to all other 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)), and
- *reveal the reason for a government decision and any background or contextual information that informed the decision* (Schedule 2, 2.2(a)(viii)).

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));
- *prejudice trade secrets, business affairs or research of an agency or person* (Schedule 2, 2.2(a)(xi));
- *prejudice an agency's ability to obtain confidential information* (Schedule 2, 2.2(a)(xii)); and
- *prejudice the management function of an agency or the conduct of industrial relations by an agency* (Schedule 2, 2.2(a)(xv)).

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 is personal information of individual or 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. It would be unreasonably intrusive, and in some cases distressing, for individuals to be identifiable through the release of information in relation to the challenging circumstances that are evident in these records. Further, it would be unreasonable to enable minors to be identified.

I have decided that other organisations are entitled to have particular information relating to their business affairs not disclosed because it would be prejudicial to them and they did not have a significant role in the issues being managed. I have given this stronger weight than the public interest that would be served by its disclosure.

Some of the records contain information provided on a confidential basis, particularly relating to employees, and I give this factor significantly more weight than the factors favouring disclosure. In my view, it is not in the best interests of the people involved or the Directorate's ability to manage complex issues as are evident in the records released if people were less likely to provide this type of information.

Similarly, information relating to the Directorate's management function and industrial relations is not released because the factors favouring non-disclosure outweigh the factors favouring disclosure. If this information were released it would be detrimental to the Directorate's ability to perform its functions.

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

15 July 2022