




Via email: 

Dear 

### **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 3 November 2021, in which you sought access to:

*'any final briefs prepared for any ACT Minister(s) or ACT Government witnesses during 2021–2022 Budget Estimates Hearings.'*

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.

You had agreed to a staged release of the decision and records and stages 1 and 2 were released on 7 and 14 December 2021.

In the decision letter for stage 2, the Directorate advised that one record had been withheld because third party consultation was required, which was not identified until late in the processing. Unfortunately, it has taken an unusual amount of time for the Directorate to resolve this situation, including two periods of lengthy consultation with a third party, and I sincerely apologise for the delay. This matter was most recently discussed with your office on 8 September 2022.

This letter addresses the remaining record for your request.

#### **Decision on access**

I have decided to grant partial access to the record with redactions applied. The record released is provided at [Attachment A](#).

My 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 and 50, and schedule 2;
- the content of the record that falls within the scope of your request; and
- the *Human Rights Act 2004* [if applicable]

## **Reasons for decision**

I have considered the record in accordance with the requirements of the 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 Act enables records to be partially released with deletions applied where they contain contrary to the public interest information that can be deleted, and thus the remainder of the record can be released. This provision has been applied where appropriate.

### Publicly available information

Section 43(1)(d) of the Act provides for access to government information to be refused if it is already available to the applicant, and section 45(a) sets out that government information is already available to the applicant if it is made publicly available by the Directorate or by any other agency or Minister. As some of the information contained in the record expands upon and updates information that was released as part of a previous FOI request, I have decided to delete this information from the record. The deleted information is available on the Directorate's disclosure log at [https://www.education.act.gov.au/\\_data/assets/pdf\\_file/0007/1746331/EDU\\_2021\\_006\\_Records.pdf](https://www.education.act.gov.au/_data/assets/pdf_file/0007/1746331/EDU_2021_006_Records.pdf), specifically at pages 159-161.

### Information taken to be contrary to the public interest to disclose

The record does not 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 has been applied to the record 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));
- *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, 2.1(a)(viii)).

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 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 factor favouring non-disclosure.

I am mindful of 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 such, the information is released where appropriate.

Information relating to the business affairs of a third party organisation has been redacted as I have decided it would be prejudicial to that organisation if it were released. I am satisfied that the organisation would suffer a detriment if the information was made public and that their business information should be protected in this instance.

### **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 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](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](mailto: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](mailto:EducationFOI@act.gov.au).

Yours sincerely



Paula Murray  
Information Officer  
22 November 2022