



Via email: [Redacted]

Dear [Redacted]

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 29 September 2022, in which you sought access to:

a copy of the Ministerial Briefs with the titles outlined below.

REC22/137542	CAVEAT BRIEF_Incident at Gold Creek School 19 May 2022
REC22/66873	BERRY QON 9 ARH_HANSON_AG report on Teaching quality
REC22/89024	BERRY RESPONSE-ARH - QON No 10 HANSON_Workplace H&S
REC22/89837	BRIEF Meeting Brief ACARA board chair & CEO
REC22/106127	BERRY QToN - 5 April 2022 - Hanson - Assaults - Calwell High School
REC22/120718	EMM OOS Email Form - ACECQA Board Appointments - NSW and Victoria
REC22/120976	EMM OOS_Finalisation of the National Architecture Reforms
REC22/145973	BERRY signed QTON -LAWDER Alleged assault at school
REC22/127349	QTN Response - 4 May 2022 - HANSON - Number of serious incidents
REC22/93345	BERRY QTON LAWDER frequency of police involvement at schools
REC22/93442	Berry QTON_CAIN - Number of Teachers that have left the system in the last 2 year
REC22/93558	BERRY QTON CAIN Support staff
REC22/100761	Berry Response QON 776 - Castley - School Psychologists (2)
REC22/100688	Berry Response QON_788 Kikkert - Mental Illness Education ACT (MIEACT)
REC22/86157	CAVEAT BRIEF_Mould Hughes PS
REC22/130502	MWB 12MAY2022
REC22/131942	Caveat Brief - Privacy Breach - Florey Primary School
REC22/120608	BRIEF Mid year update of 2022 Report on Government Services
REC22/137520	CAVEAT BRIEF Erindale College

REC22/138762	BRIEF_ ACAT decision relating to non-government school enrolment contracts 2022
REC22/78682	CAVEAT BRIEF_ Ngunnawal Primary School
REC22/78634	CAVEAT BRIEF_ Calwell improvement notice 17 May 2022
REC22/78579	Caveat Brief Calwell Improvement Notices 4146, 4148
REC22/78509	CAVEAT BRIEF_ Kingsford Smith School Worksafe Notice 4166
REC22/88948	CAVEAT BRIEF_ Calwell Response Term 2 Week 4 First three days of onsite learning 18 May 2022
REC22/82164	CAVEAT BRIEF_ Complaint REDACTED
REC22/81835	CAVEAT BRIEF_ WorkSafe Notice 4242
REC22/131003	CAVEAT BRIEF_ Worksafe at Calwell High School Term 2 Week 5 Thursday
REC22/130749	CAVEAT BRIEF_ Caveat Brief WorkSafe Update 7 June
REC22/106153	Educator charged with acts of indecency at REDACTED
REC22/137531	CAVEAT BRIEF_ Mould at Palmerston PS
REC22/130423	MWB_ 3 June 2022
REC22/130465	MWB_ 10 June 2022
REC22/138770	CAVEAT BRIEF_ ACT Witness Disability Royal Commission Public Hearing 24
REC22/130376	CAVEAT BRIEF_ Worksafe Notice 3618

It is noted that your request excluded attachments to the briefs listed.

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 28 October 2022. On 24 October 2022, the Directorate sent a request for extension to 11 November 2022 to your office. A follow up email was sent on 26 October 2022; however, a response was not received. In accordance with section 41(3)(b) of the Act, the requested extension is deemed to have been granted because the Directorate's request was not refused within seven working days.

Decision on access

Searches were completed for relevant records and the 35 records requested were identified.

In summary, I have decided to grant:

- full access to one record;
- partial access to 22 records with deletions applied; and
- non-release of 12 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.

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;
- the *Human Rights Act 2004*; and
- the *Children and Young People Act 2008*.

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

Three of the records contain information that is taken to be contrary to the public interest to disclose under Schedule 1 of the Act.

Information that is prohibited by law from being disclosed has been deleted from one record in accordance with Schedule 1, 1.3 of the Act. The information concerned is protected under the *Children and Young People Act 2008*.

Another record contains information that has been prepared for deliberation by Cabinet. As the information is not purely factual and the outcome of Cabinet's deliberation has not been published, the exclusions at Schedule 1, 1.6(2) do not apply. Consequently, the information concerned is taken to be contrary to the public interest to disclose in accordance with (Schedule 1, 1.6(1)(d)) and has been deleted from the record.

The third record contains information that could reasonably be expected to prejudice the investigation of a contravention or possible contravention of the law in a particular case. Therefore, the information is deemed contrary to the public interest to disclose in accordance with Schedule 1, 1.14 of the Act as it relates to law enforcement information.

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

The public interest test set out at section 17 of the Act is used to decide whether disclosure of information would, on balance, be contrary to the public interest. The 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 applicable factors favouring disclosure, as listed at Schedule 2.1 of the Act, are that the released 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)); or
- *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 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)); or
- *prejudice intergovernmental relations* (Schedule 2, 2.2(a)(x)).

I have considered the factors favouring disclosure and the factors 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, most of the information is fully released.

Personal information of Directorate employees, such as their mobile phone numbers, or third parties, or information that could enable individuals to be identified has been deleted. I have concluded that disclosure of this information would be prejudicial to the right to privacy of these individuals, and that this has a higher standing of public interest not to disclose, than the public interest in disclosing this information.

Relationships with the Directorate's counterparts in States and the Northern Territory are of strategic importance to the ACT and the collaboration and information sharing that occurs supports the education of students nationally. Consequently, I have determined that releasing information that could be detrimental to those intergovernmental relationships is not in the public interest as the importance of those relationships exceeds the public interest that would be satisfied.

I have also noted that one 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 systems and processes concerned.

Records that are outside of the scope of your request

I have decided to not release 12 of the records requested because they are not briefs that were submitted to the Minister and therefore are outside of the scope of your request. The records concerned are the Minister's responses to Questions on Notice and Questions Taken on Notice which are publicly available, and administrative documents. These were erroneously identified in the corresponding access application that sought the subject lines of briefs to the Minister from the period 11 May to 10 June 2022, from which your requested list of briefs was derived. The records have been checked and there is not a brief to the Minister associated with them.

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

11 November 2022