

File Ref: [REDACTED]

[REDACTED]

Email: [REDACTED]

Dear [REDACTED]

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 22 November 2018, in which you sought access to documents relating to:

- *Copies of all reports or briefings to the Education Directorate's WHS committee about cases of bullying and harassment, including allegations of bullying and harassment, involving Directorate employees, in the period 30 October 2016 to 22 November 2018; and*
- *Copies of all reports or briefings to the Education Directorate's executive (Director-General, Deputy Directors-General and Executive Director) individually or collectively about cases of bullying and harassment, including allegations of bullying and harassment, involving Directorate employees, in the period 30 October 2016 to 22 November 2018.*

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 20 December 2018.

Decision on access

Searches were completed for relevant documents and 10 documents relating to seven cases were identified that fall within the scope of your request.

My access decision is summarised as follows:

- no documents are available that satisfy part 1 of your request;
- partial access is provided to eight documents that relate to five cases with deletions applied; and
- documents relating to two cases are not released.

This decision is detailed further in the following statement of reasons.

I have included as Attachment A to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

The documents released to you are provided as Attachment B to this letter.

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 *Human Rights Act 2004*; and
- the content of the documents that fall within the scope of your request.

Reasons for decision

My reasons for deciding not to grant access to parts of the identified documents are because they contain information that I consider, on balance, to be contrary to the public interest to disclose under the test set out in section 17 of the Act, or they contain information that is outside of the scope of your request. I have decided to grant access, under section 50 of the Act, to copies of documents with information deleted that I consider would be contrary to the public interest to disclose.

In applying the public interest test I have decided that the factors favouring disclosure, as listed at Schedule 2.1 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; and
- (viii) reveal the reason for a government decision and any background or contextual information that informed the decision.

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

- (ii) prejudice the protection of an individual's right to privacy or any other right under the *Human Rights Act 2004*;
- (iv) impede the administration of justice generally, including procedural fairness;
- (xii) prejudice an agency's ability to obtain confidential information; and
- (xv) prejudice the management function of an agency or the conduct of industrial relations of an agency.

In addition, a further factor favouring non-disclosure is identified at Schedule 2.2(b)(v) which is that the information is about unsubstantiated allegations of misconduct of unlawful, negligent or improper conduct and disclosure of the information could prejudice the fair treatment of an individual.

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 the documents contain information relating to third parties or could enable individuals to be identified. In these cases, I have decided that the individual's right to privacy has a higher standing of public interest not to disclose, than the public interest in disclosing this information. In addition, I have decided that some of the documents contain information that was provided on a confidential basis, and the release of some information would hinder the Directorate's ability to conduct investigations of such matters in the future. Therefore, this information has been deleted from the documents released to you.

Whilst in some cases the documents relate to unsubstantiated allegations of bullying and harassment, and this is a factor identified in the Act that would favour non-disclosure, I have decided that the pro-disclosure intent of the FOI Act is an important and guiding consideration. I have weighed this against the rights of individuals to privacy, expectations of confidentiality and the potential impact on the Directorate's ability to conduct investigations and I have decided that both aspects are satisfied through the deletions that have been applied.

My reasons for deciding to not release documents relating to two cases are because these matters are currently being investigated and the release of any documents may prejudice the processes and outcomes of these investigations. I have made this decision whilst being cognisant of the FOI Act's intent and the factors favouring disclosure and the factors favouring non-disclosure as outlined above.

Additional information

The documents being released to you in accordance with the scope of your request will not enable you to determine the number of cases in which bullying/harassment was found to have occurred. For your information, one of the five cases had such a finding. In the other four cases it was determined that bullying/harassment had not occurred.

Charges

Processing charges are not applicable for this request because the number of pages involved that are material to your request does not 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 documents 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.

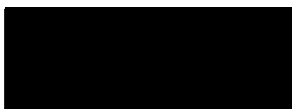
Further information may be obtained from the ACAT at:

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

Yours sincerely



Paula Murray
Information Officer

20 December 2018

