

File Ref: [REDACTED]

[REDACTED]

Email [REDACTED]

Dear [REDACTED]

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 12 August 2019, in which you sought access to documents relating to the accidental removal of the Spook Tree from the grounds of Wanniasa Hills Primary School.

The documents you have specifically requested are:

Documents relating to the works that resulted in the removal of the Heritage-listed scarred tree listed on the Register as MSYB1 (Spook Tree) from Education Directorate land in Wanniasa, including:

- *documents related to the approval of the works;*
- *any heritage or environmental management plans for the works;*
- *contract documents;*
- *documents relating to the Directorate's supervision of the works; and*
- *documents related to the Directorate becoming aware of the removal of the tree and its response to that.*

I am an Information Officer appointed by the Director-General of the Education Directorate under section 18 of the Act to deal with access applications made under Part 5 of the Act.

The Directorate was required to provide a decision on your access application on 9 September 2019. An extension for this deadline was negotiated with your office and an agreed date for response was 27 September 2019. Thank you to agreeing to the additional time for a response.

Decision on access

Searches were completed for relevant documents and 37 documents were identified that fall within the scope of your request.

My decision is to provide access to the documents as follows:

- Full access to 25 documents; and
- Partial access to 12 documents with deletions applied.

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.

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 17 and 50, and schedules 1 and 2;
- the content of the documents that fall within the scope of your request; and
- the *Human Rights Act 2004*.

In making my decision in relation to all documents I have applied the public interest test that is set out in section 17 of the Act.

I have decided that the following factor 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 2.1(a)(i))

I have decided that the applicable factor favouring non-disclosure in the public interest, as listed at Schedule 2.2 of the Act, are that the information could reasonably:

- *prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004* (Schedule 2.2(a)(ii)).

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

I have placed significant weight on the positive contribution of open discussion of public affairs and enhancing government accountability. I consider the release of information held by the Directorate will help to give the public background and context about removal

of the Spook Tree. As such, the bulk of the material within the scope of this request is to be released with no deletions applied.

There are twelve documents with deletions applied to information relating to third parties or for which the release of this information could lead to the identification of individuals. I have concluded 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. However, I note that these redactions are minor in nature and do not substantially impact on the content of the material to be released.

Information that is outside the scope of the request has also had deletions applied.

Information that is publicly available

Some documents within the scope of this request were captured through a Freedom of Information (FOI) request on the removal of the Spook Tree responded to by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 4 September 2019. These documents are published online on CMTEDD's disclosure log at: https://www.cmtedd.act.gov.au/__data/assets/pdf_file/0012/1413003/2019-186.pdf As these documents are publicly available and readily accessible, they are not included in this FOI response, but they are identified on the FOI schedule as included in the CMTEDD FOI response.

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 the request, decision and documents released in response to an access application is required to be published in the Directorate's disclosure log between three and 10 working days after a decision on access has been provided to the applicant. Personal information of the applicant is not published in the disclosure log.

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.

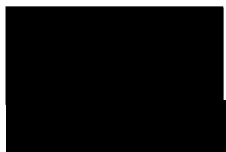
Further information may be obtained from the ACAT at:

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

A black rectangular redaction box covering the signature of the Information Officer.

Information Officer

27 September 2019