

File Ref: [REDACTED]



**FREEDOM OF INFORMATION (FOI) REQUEST : YARRALUMLA PRIMARY SCHOOL
ASBESTOS AND LEAD PAINT**

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 23 July 2020, in which you sought access to:

- (i) *any document relating to the management and remediation of lead paint on Yarralumla Primary School (YPS) premises since 2014, including any review of painted surfaces in the school conducted in 2019 and 2020*
- (ii) *any document relating to the management and remediation of asbestos on YPS premises since 2014*
- (iii) *all correspondence between the Directorate and the YPS Principal/and or staff relating to the management and remediation of lead paint and/or asbestos on YPS premises since 2014*
- (iv) *the hazardous materials survey and management plan for YPS as at May 2019*
- (v) *the current YPS hazardous materials survey and management plan*

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 September 2020, this date included additional time to conduct third party consultation. On 5 September a revised due date, due to the voluminous and complex nature of this application, was agreed to 1 October. On the 28 September a proposal for staged release of the information was subsequently agreed, with releases for stage one due 6 October, and stage two due 16 October.

This decision relates to stage one and is in reference to the Infrastructure and Capital Works (ICW) business unit documents. These documents incorporate the external third party consultation process. Thank you for flexibly agreeing to this staged release of information. Your consideration is greatly appreciated.

Decision on access

Searches were completed for relevant documents and 104 documents were identified that fall within the scope of your request. These documents have been organized into two sections.

The first part is in relation to the main third party's documents *Robson Environmental P/L*. The second part is in relation to the documents or other third parties and documents provided by the ICW business unit.

To enable easy identification of the documents, each part has a separately provided schedule with associated binders, that are identified either numerically or alphabetized. Both schedules provide a description of each document that falls within the scope of your request and its access decision.

Part A

In relation to the *Robson Environmental* documents, in summary, my decision is to partially release all (60) documents, because they contain information that I consider to be information that:

- would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act; or
- is outside of the scope of your request.

The documents released to you for this section are identified as Binders 1 to 7.

My access decisions are 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 documents that fall within the scope of your request;
- the *Human Rights Act 2004*; and
- the views of third parties.

Reasons for decision

My reasons for deciding not to grant access to parts of these documents are as follows:

Information that would, on balance, be contrary to the public interest

Section 17 of the Act requires a public interest test to be applied to determine if information would, on balance, be contrary to the public interest to disclose. In applying the public interest test, I have decided that the applicable factors favouring disclosure, as listed at Schedule 2.1 of the FOI Act, are that disclosure could reasonably be expected to:

- promote open discussion of public affairs and enhance the government's accountability (Schedule 2.1(a)(i))
- contribute to positive and informed debate on important issues or matters of public interest (Schedule 2.1(a)(ii))
- reveal the reason for a government decision and any background or contextual information that informed the decision (Schedule 2.1(a)(viii))
- reveal environmental or health risks or measures relating to public health and safety (Schedule 2.1(a)(xi))

I have decided that the applicable factors favouring non-disclosure is that disclosure of 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(a)(ii))
- prejudice trade secrets, business affairs or research of an agency or person (Schedule 2.2(a)(xi))

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

I place significant weight on the right to privacy of individuals and their right to have their personal information protected. I have decided that their right to privacy in relation to their personal information has a higher standing of public interest not to disclose, than the public interest in disclosing this information. Accordingly, the names of third parties, and their contact details have been deleted from the information being provided to you.

Similarly, information relating to business affairs of persons or organisations has been deleted from the documents, as I have decided that they have a right to have their business information protected, particularly names of their employees and information that contains their intellectual property.

Part B

In relation to the ICW documents and the remaining third party documents, in summary, my decision is:

- Full release 12 documents
- Partial release 32 documents

Documents identified as relevant to your request that are partially released contain information that I consider to be information that:

- would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act; or
- is outside of the scope of your request.

The documents released to you are identified as Binders A to E.

My access decisions are 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 documents that fall within the scope of your request;
- the *Human Rights Act 2004*; and
- the views of third parties.

Reasons for decision

My reasons for deciding not to grant access to parts of those identified documents are as follows:

Information that would, on balance, be contrary to the public interest

Section 17 of the Act requires a public interest test to be applied to determine if information would, on balance, be contrary to the public interest to disclose. In applying the public interest test, I have decided that the applicable factors favouring disclosure, as listed at Schedule 2.1 of the FOI Act, are that disclosure could reasonably be expected to:

- promote open discussion of public affairs and enhance the government's accountability (Schedule 2.1(a)(i))
- contribute to positive and informed debate on important issues or matters of public interest (Schedule 2.1(a)(ii))
- reveal the reason for a government decision and any background or contextual information that informed the decision (Schedule 2.1(a)(viii))
- reveal environmental or health risks or measures relating to public health and safety (Schedule 2.1(a)(xi))

I have decided that the applicable factors favouring non-disclosure is that disclosure of 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(a)(ii))

- prejudice trade secrets, business affairs or research of an agency or person (Schedule 2.2(a)(xi))
- prejudice the commercial competitive activities of an agency (Schedule 2.2(a)(xiii))

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

As previously stated, I place significant weight on the right to privacy of individuals and their right to have their personal information protected. I have decided that their right to privacy in relation to their personal information has a higher standing of public interest not to disclose, than the public interest in disclosing this information. Accordingly, the names of third parties, and their contact details have been deleted from the information being provided to you.

Similarly, information relating to business affairs of persons or organisations has been deleted from the documents, as I have decided that they have a right to have their business information protected, particularly names of their employees and information that contains their intellectual property.

I have also decided that the disclosure of information about tender bids and cost estimates received by the Directorate would potentially be prejudicial to the Directorate's commercial interests as it would expose the scope of work, methodology and cost of work accepted by the Directorate for certain works. Further, it may make some companies less inclined to undertake business with the Directorate if their bids were made public.

Information that is outside of scope

Some of the documents contained information that was outside of the scope of your request, such as unrelated topics, and this has been deleted from the documents being provided to you.

Charges

I have decided to not impose fees in relation to your request because the subject matter is in the public interest and also in consideration of your agreements to extend the processing time and enable a staged release of the information.

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 the 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 Educationfoi@act.gov.au.

Yours sincerely



Paula Murray
Information Officer

6 October 2020