

[REDACTED]

[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 5 July 2021, in which you sought access to documents related to Brindabella Christian Education Limited (BCEL) trading as Brindabella Christian College (BCC), specifically:

- (1) *Annual Financial Reports and Statements provided to the Education Directorate since 1 January 2019.*
- (2) *Any explanatory notes or additional correspondence between the Directorate and College (or its representatives) regarding (1).'*

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 2 August 2021.

I note in your application you made reference to the *Education Act 2004* (ACT), Section 80, and the *Education Act 2013* (Cth), asserting that 'all non-government schools are required to produce and publicly release financial statements and an annual report of their operations'. To be clear, s.80 of the Education Act 2004 states:

80 Availability of information about operation of non-government schools and their educational programs

- (1) *The principal of a non-government school must make available to parents of students at the school and to the staff and students of the school information about the school's educational programs and policies, and the operation of the school.*

- (2) *The principal of a non-government school must also consult parents of students at the school about the operation of the school, including its educational programs and policies.*

You may note that there is no reference to financial information in this section of the Act; further there is no reference within the Education Act 2004, to a non-government school being required to publicly release financial statements.

In addition, under s.60 of the *Australian Education Regulations 2013*, the Commonwealth requires schools to make publicly available an annual report. Annual reports include a school's income which is broken down by their funding sources but does not require the release of their financial statements.

Brindabella Christian College's annual report is publicly available on their website at <http://www.bcc.act.edu.au/lyneham/why-choose-bcc/who-we-are/bcc-publications>.

Decision on access

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

These are:

1. Deed of Grant - ACT Non-Government School Grants - 2015-2020 between BCEL and the Directorate, signed 25 September 2015
2. BCEL Financial Statement 2019
3. Deed of Grant - ACT Non-Government School Grants - 2020-2025 between BCEL and the Directorate, signed 16 September 2020

These documents 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. I have decided to refuse access.

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 17 and schedule 2;
- the content of the documents that fall within the scope of your request.

Reasons for decision

In accordance with Section 17 of the FOI Act, a public interest test has been applied to the documents within the scope of your request to determine if they contain information that is 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

As the education of children is a matter of broad public interest, I have decided that the factor favouring disclosure is that disclosure of the information could reasonably be expected to contribute to positive and informed debate on important issues or matters of public interest (Schedule 2.1(a)(ii)).

I have decided that the factors favouring non-disclosure as listed at Schedule 2.2 of the Act are that disclosure of the information could reasonably be expected to 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 non-disclosure.

I place significant weight on an organisation's right to have their business affairs, trade secrets, confidential information and commercial interests protected, particularly in situations where confidentiality is expressly addressed and agreed between the parties. Therefore, I have decided to not release either of the Deeds of Grant or BCEL's Financial Statement of 2019.

For your information, the terms of the confidentiality agreement with BCEL were addressed in a previous FOI decision that is available on the Directorate's disclosure log at https://www.education.act.gov.au/about-us/freedom_of_information/disclosure-log, refer to EDU_2020_017.

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 and my decision 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

29 July 2021