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FREEDOM OF INFORMATION (FOI) REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the FOI Act), received by the Education Directorate (the Directorate) on 16 February 2023, in which you are seeking access to:

All and any documents provided by Brindabella Christian College (BCC), Brindabella Christian Education Limited (BCEL) or their legal representatives, to the Education Directorate or its representatives, containing student number projections at the school since 1 January 2018.

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

The Directorate was required to provide a decision on your access application by 17 March 2023. As advised in the acknowledgement letter sent to you by email on 7 March 2023, consultation with a third party was required and, in accordance with the FOI Act, the due date was extended by 15 working days to 11 April 2023.

Decision on access

Searches were completed for relevant records and one record was identified that falls within the scope of your request.

In summary, my decision is to not release the record.

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 FOI Act, particularly sections 16, 17 and 50, and schedule 2;
- the content of the record that falls within the scope of your request; and
- the views of third parties consulted.

Reasons for decision

I have considered the record that is relevant to your request in accordance with the requirements of the FOI Act.

Section 6(a) of the FOI Act 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 removed, which enables the remainder of the record to be released.

Information taken to be contrary to the public interest to disclose

I have decided that the record does not contain information that is taken to be contrary to the public interest to disclose.

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

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.

I have decided that none of the factors favouring disclosure listed at Schedule 2.1 of the FOI Act are directly relevant; however, section 9 of the FOI Act specifies that it should be administered with a pro-disclosure bias and discretions under it should be exercised in favour of disclosure.

I have decided that the applicable factor favouring non-disclosure, as listed at Schedule 2.2 of the FOI Act, is that disclosure of the information would be *prejudicial to trade secrets, business affairs or research of an agency or person* (Schedule 2, 2.2(a)(xi)).

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

I give stronger weight to the factor favouring non-disclosure for the following reasons:

- The information is commercially sensitive to BCEL and could be prejudicial to their business affairs if released, as it is a core component of business planning for the future of their enterprise;
- It is not information that would ordinarily be in the public domain;
- There is no business relationship between BCEL and the Directorate in relation to this information, rather the Directorate has an administrative/regulatory role that requires the information to be provided; and
- It would likely result in public scrutiny for BCEL of an internal document that may have reputational consequences.

Consequently, my decision is to not release the information.

Charges

Processing charges are not applicable for this request because no information is released.

Online publishing – disclosure log

Under section 28 of the FOI Act, the Directorate maintains an online record of access applications called a disclosure log. Information about your request, my decision and record 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.

Ombudsman review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the FOI Act. You have the right to seek Ombudsman review of this outcome under section 73 of the FOI 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 FOI 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, please contact the Directorate's FOI team on 02 6205 0720 or email EducationFOI@act.gov.au.

Yours sincerely



Paula Murray
Information Officer
29 March 2023