

[REDACTED]

Email: [REDACTED]

Dear [REDACTED]

### **FREEDOM OF INFORMATION (FOI) REQUEST: BRINDABELLA CHRISTIAN COLLEGE**

I refer to your access application [REDACTED] received by the Education Directorate (the Directorate) on 8 May 2020, in which you are seeking access to:

*All documents related to, in any way, ACT Education Directorate's (the Directorate) regulatory action in relation to Brindabella Christian College (BCC) for the period 1 January 2019 to 8 May 2020. This includes, but not limited to, documents relating to the following:*

- 1. information relevant to the Directorate's decision to engage in regulatory action concerning BCC, including complaints of which the Directorate became aware in relation to its governance, its practices and procedures, bullying and other staffing matters at BCC (for example, from the media, members of the public or other government agencies);*
- 2. information about BCC that the Directorate has shared with other government or regulatory agencies, at the Federal, State or Territory level;*
- 3. information relevant to the decision made by the Registrar of ACT Non-Government Schools (the Registrar) to inquire into BCC or inquire into BCC's compliance with its conditions of registration, including:
  - a. complaints of which the Registrar became aware in relation to bullying and other staffing matters at BCC (for example, from the media, members of the public or other government agencies); or*
  - b. complaints or letters of feedback asking for information from parents of students or former students;**
- 4. internal correspondence within the Directorate about BCC, including email correspondence;*
- 5. information regarding any conflict of interest declared by employees of the Directorate related to them working on matters related to BCC. For example, this may*

*include a previous or ongoing personal relationship, or any prior work relationship, with any individuals currently or previously employed by BCC;*

*6. information provided to media outlets, such as the [REDACTED], by the Directorate in relation to any regulatory compliance matters and BCC; and*

*7. the issuing of compliance notices to BCC under the Education and Care Services National Law Act 2010.*

This letter provides the decision for documents relevant to point 7 of your request.

As investigations conducted by the ACT Regulatory Authority – Children’s Education and Care Assurance (CECA) are undertaken in accordance with the *Education and Care Services National Law (ACT) Act 2011*, documents in relation to point 7 of your request must be processed under the Commonwealth’s *Freedom of Information Act 1982* (the Cth FOI Act).

I am authorised under section 23 of the Cth FOI Act to make a decision on behalf of the Directorate in relation to your request.

The Directorate’s acknowledgement letter dated 18 May 2020 advised that endeavours would be made to provide the decision to you by 9 June 2020. Your office was contacted on 4 June 2020 and an extension to 21 July 2020 was kindly granted. The Directorate’s correspondence also identified that charges would be applied and your office advised on 16 June 2020 that this was accepted.

On 16 July 2020 the Directorate contacted your office and proposed a staged release with documents relating to matters under the National Law to be released on 21 July 2020 without charge, in consideration of your patience in relation to the delayed decision. Whilst a response has not been received to our email, we are proceeding on the basis that you will accept the release of these documents on 21 July 2020.

### **Access decision**

Searches were completed for relevant documents and 87 documents were identified that fall within the scope of your request.

Included as Attachment A to this decision is the schedule of relevant documents. This provides a description of each document and its access decision.

As indicated in the schedule, I have decided to grant access to the documents as follows:

- full access to 63 documents, and
- partial access to 24 documents, with redactions applied in accordance with the Cth FOI Act.

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

My decision is explained in the following statement of reasons.

### **Material considered**

In reaching my access decision, I have taken the following into account:

- the Cth FOI Act, particularly sections 45, 47C and 47F.

### **Reasons for decision**

Redactions have been applied to documents in accordance with the following provisions of the Cth FOI Act:

#### Section 45: Documents containing material obtained in confidence

This section of the Act states in part:

*(1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency or the Commonwealth), for breach of confidence.*

Section 45 of the Cth FOI Act provides that a document is exempt if its disclosure would constitute a breach of confidence, which includes consideration of whether the information has been provided in a manner which is inherently confidential and is known to only a limited class of parties. The information also needs to have been communicated and received based on a mutual understanding of confidence. I have decided that the records in relation to the complaint and statements received by CECA were provided with the expectation that they would be handled confidentially. I am therefore satisfied that documents containing material obtained in confidence are exempt under section 45 of the Cth FOI Act.

#### Section 47C: Public interest conditional exemptions – deliberative processes

This section of the Cth FOI Act states:

*(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:*  
*(a) an agency; or*  
*(b) a Minister; or*  
*(c) the Government of the Commonwealth.*

Section 47C of the Cth FOI Act protects the deliberative processes of a government agency by exempting internal working documents where these are deemed contrary to the public interest to disclose. I have decided that an incomplete draft of an internal document is not in the public interest to disclose and have exempted it under section 47C of the Act.

## Section 47F: Public interest conditional exemptions - documents affecting personal privacy

This section of the Cth FOI Act states in part:

*(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*

Section 47F of the Cth FOI Act protects personal privacy by exempting information the disclosure of which would result in the unreasonable disclosure of personal information about any individual person, including a deceased person. I have formed the view that all personal information affecting the privacy of individuals is exempt from disclosure. I am satisfied that it is not in the public interest to release the personal information of these individuals. Therefore, this information is exempt under section 47F of the Cth FOI Act and has been redacted from all documents.

### **Charges**

Processing charges are not being applied to this request as stated above.

### **Your rights for review**

My decision not to release all the information relevant to your request is subject to review under section 53A of the Cth FOI Act. It is also appealable if, in your opinion, you do not believe that all the documents relevant to your request in the possession of the Directorate have been located.

An information sheet outlining the review and appeal process provided for in the Cth FOI Act is attached to this letter.

### **Online FOI Publication**

Section 11C of the Cth FOI Act requires that information made available to an applicant be published to members of the public generally on a website, subject to exceptions including for personal information and information relating to business affairs, if it would be unreasonable to publish the information. The publication must occur within ten working days after the day the applicant is given access to the documents.

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](mailto:EducationFOI@act.gov.au).

Yours sincerely



Paula Murray  
Director, Information Access  
21 July 2020

## ***Cth Freedom of Information Act 1982: Review and Appeal Processes***

### **Internal review**

Under s 53A of the Cth FOI Act you may request a review of a decision made under the *Freedom of Information Act 1982* (Cth). Requests for review must be made in writing to the Education Directorate. Requests can be sent by mail to:

The Director-General  
C/- Information Access Team  
Governance and Community Liaison Branch  
ACT Education Directorate  
PO Box 158  
CANBERRA CITY ACT 2601

Or email: [EducationFOI@act.gov.au](mailto:EducationFOI@act.gov.au)

You have **30 days** from the date you were notified of the decision to request a review. This period may be extended by the Director-General.

### **National Education and Care Services FOI Commissioner**

If you are not satisfied after the Directorate has conducted an internal review, you may seek an independent review of the decision by the Information Commissioner: s 54L Cth FOI Act. In this instance the relevant person is the National Education and Care Services FOI Commissioner (NECS FOI Commissioner). The NECS FOI Commissioner undertakes a review and can then either affirm, vary or substitute the decision, under s 55K of the Cth FOI Act.

### **Commonwealth Administrative Appeals Tribunal**

The Administrative Appeals Tribunal (AAT) is an independent body which undertakes independent merits review of administrative decisions made under Commonwealth laws. The AAT can affirm or vary a decision made by the Directorate, or set aside the decision and substitute its own decision. Alternatively, the AAT can send the matter back to the Directorate for reconsideration in accordance with the Tribunal's recommendations.

You can find out further information on the AAT website: <http://www.aat.gov.au/applying-for-a-review>

You can contact the AAT via telephone on 1800 228 333.

Or you can make an application online via: <https://forms.aat.gov.au/landing.htm?formCode=app-for-review>

An appeal must be filed in the Tribunal within **28 days** after the internal review decision is made although you may seek an extension of time in certain circumstances.