



I refer to your request under the ACT *Freedom of Information Act 1989* (the FOI Act) received by the Directorate on 14 February 2017 seeking access to documents identified as provided by Mercer Consulting. Your request advised that you are specifically seeking:

*Documents, reports, information provided by Mercer concerning the provision of professional services for [the] school assistant classification review on 22/9/16.*

### **My decision**

I am authorised under section 22 of the FOI Act to make a decision in respect of your request.

A schedule setting out the relevant documents located and my decisions in relation to their release is at [Attachment A](#), and the released documents are at [Attachment B](#).

You will note from the schedule that I have decided to fully release 43 documents, partially release five documents under sections 36, 40 and 43 and to exempt 14 documents in their entirety under sections 36 and 45 of the FOI Act. One document was removed as it was a duplicate of another document. One document also included three attachments with duplicates of other documents and these have also been removed. Details of the exemption provisions, together with my reasons for applying them, are set out below.

### Section 36 – Internal working Documents

Section 36 states:

- (1) *Subject to this section, a document is an exempt document if its disclosure under this Act—*
  - (a) *would disclose 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 an agency or Minister or of the Territory; and*
  - (b) *would be contrary to the public interest.*

I have decided to partially release two documents and exempt 13 documents under this section of the FOI Act as the documents relate to the deliberations of officers and I consider that its disclosure would be contrary to the public interest. I am satisfied that the information that relates to internal working documents is exempt under s 36 of the FOI Act.

### Section 40 – Documents concerning certain operations of agencies

Section 40 states, in part:

- (1) *Subject to subsection (2), a document is an exempt document if its disclosure under this Act would, or could reasonably be expected to—*
  - (d) *have a substantial adverse effect on the proper and efficient conduct of the operations of an agency;*
- (2) *This section does not apply to a document the disclosure of matter in which under this Act would, on balance, be in the public interest.*

I have decided to partially release one document under this section of the FOI Act as it relates to the internal operations of the Directorate and I am of the view that it is not in the public interest to disclose it. I am satisfied that the information that relates to certain operations of the Directorate is exempt under s 40 of the FOI Act.

### Section 43 – Documents relating to business affairs

Section 43 states:

- (1) *A document is an exempt document if its disclosure under this Act would disclose—*
  - (a) *trade secrets; or*
  - (b) *any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or*
  - (c) *information (other than trade secrets or information to which paragraph (b) applies) concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, being information—*
    - (i) *the disclosure of which would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or*
    - (ii) *the disclosure of which under this Act could reasonably be expected to prejudice the future supply of information to the Territory or an agency for the purpose of the administration of a law or the administration of matters administered by an agency.*

Additionally, section 27 of the FOI Act, 'procedure on request in respect of document relating to business affairs' provides that a business may reasonably wish to contend that documents they have authored are exempt under the provisions in section 43, which relate to business affairs. Section 43 exempts documents from release if disclosing the documents could disclose information that would unreasonably affect a person in respect of their business affairs, or the business itself.

As advised in an email to you on 18 April 2017, the Directorate undertook consultations with a third party to provide them with a reasonable opportunity to make a submission in support of a contention that documents they have provided information for or authored (which are held by the Directorate) are exempt documents.

While not determinative in reaching my decision, I have taken into consideration the views of a third party in making a decision in relation to your FOI request.

I have decided to partially exempt three documents under this section of the FOI Act as the documents relate to a sensitive commercial nature which is not publicly known. The disclosure of this information could result in an adverse affect on the lawful business interests, commercial or financial affairs of the organisation concerned. I am satisfied that the information that relates to commercial affairs of the organisation concerned is exempt under s 43 of the FOI Act.

Section 45 – Documents relating to breaches of confidentiality

*Section 45 (1) exempts a document if its disclosure under this Act would constitute a breach of confidence.*

I have decided to exempt one document under this section of the FOI Act as it was provided to the Directorate with an expectation of mutual confidence; and its disclosure would breach that confidence. I am satisfied that the information obtained in confidence is exempt under s 45 of the FOI Act.

**Your rights for review**

My decision not to release all the information relevant to your request is subject to review under section 59 of the 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 FOI Act is attached to this letter.

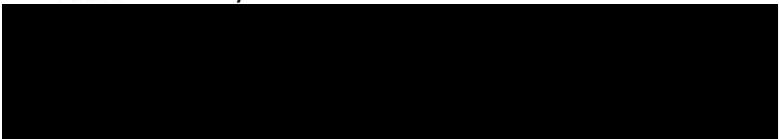
**Online publication**

Please be aware that under the ACT Government's Online FOI Publication policy, information released to you under this Freedom of Information request may be released on the internet.

Personal information or business affairs information will not be made available under this policy. A copy of the policy, with details about what information may be published on the internet, is available at:

[http://www.cmd.act.gov.au/open\\_government/report/freedom\\_of\\_information\\_online](http://www.cmd.act.gov.au/open_government/report/freedom_of_information_online).

Yours sincerely



Mark Whybrow  
Director  
Strategic Finance

27 June 2017

# ***Freedom of Information Act 1989***

## **Review and Appeal Processes**

### **Internal review**

You may request a review of a decision made under the *Freedom of Information Act 1989* (ACT). Requests for review must be made in writing to the Education Directorate. Requests can be sent by fax (02 6205 9453) or by mail to:

The Director-General  
C/- FOI Officer, Governance and Community Liaison Branch  
ACT Education Directorate  
PO Box 158  
CANBERRA CITY ACT 2601

You have **28 days** from the date you were notified of the decision to request a review. This period may be extended by the Director-General.

### **ACT Civil and Administrative Tribunal**

If you are not satisfied after the Directorate has conducted an internal review, you may seek an independent review of the decision by the ACT Civil and Administrative Tribunal. The Tribunal is an independent body which can affirm, change or reject the decision made by the Directorate and either substitute its own decision or send the matter back to the Directorate for reconsideration in accordance with the Tribunal's recommendations.

The Tribunal can be contacted by fax (02 6205 4855), email ([tribunal@act.gov.au](mailto:tribunal@act.gov.au)) or by mail to:

ACT Civil and Administrative Tribunal  
DX5691  
GPO Box 370  
CANBERRA CITY ACT 2601

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.

An application for a review may be made by writing to the Tribunal, or by completing the *Application for Review of a Decision* form (available on the Tribunal's website at [www.acat.act.gov.au](http://www.acat.act.gov.au)). There is a fee for lodging an appeal with the Tribunal. This fee may be remitted under certain circumstances.

### **ACT Ombudsman**

You also have the right to complain to the ACT Ombudsman about the processing of your request. If you wish to lodge a complaint you should write to:

ACT Ombudsman  
GPO Box 442  
CANBERRA CITY ACT 2601

The ACT Ombudsman cannot override a decision made by the Directorate.