



Via email: [REDACTED]

Dear [REDACTED]

FREEDOM OF INFORMATION (FOI) REQUEST

I refer to your application received by the Education Directorate (the Directorate) on 13 July 2021 in which you sought access to information under the *Freedom of Information Act 1982 (Cth)* (the Cth FOI Act). Your application refers to multiple decisions in relation to Block 18, Section 11, Mitchell, ACT, made by Children's Education and Care Assurance (CECA). Your request seeks records in the possession, custody or control of CECA, in relation to CECA's decisions from the period 1 August 2010 to 13 July 2021, specifically:

1. *all correspondence (including emails) sent to or received from:*
 - a. *the Health Protection Service (HPS);*
 - b. *the Environment Planning Authority (EPA);*
 - c. *the ACT Planning and Land Authority (ACTPLA);**from officers of these relevant organisations;*
2. *all correspondence (including emails) sent to or received from the relevant Minister;*
3. *any reports prepared or commissioned by the CECA;*
4. *any memoranda;*
5. *any recommendations;*
6. *any proposals;*
7. *any records of inspections;*
8. *any minutes or other records of meetings;*
9. *any notes of attendees of any meeting, including any personal notes by attendees;*
10. *any diary entries of attendees of meetings;*
11. *any working papers prepared by, or on behalf of, the CECA; and*
12. *copies of any of the documents sought in paragraph 1 to 11 above where the original documents are no longer in the possession, custody, or control of the CECA.*

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 was required to provide you with a decision on access to documents within the terms of your request, within 30 calendar days of receipt. However, on 16 August you were informed that consultation with relevant third parties was required; therefore, the due date was extended by 30 calendar days to 11 September. As this date is a Saturday, the decision is due on 13 September 2021.

Decision on access

In making my decision, I have had regard to the following:

- your FOI application;
- the documents within scope of the request;
- the Act, in particular sections 3, 11A, 11B, 22, 27, 27A, 42, 47F and 47G;
- the *Privacy Act 1988* (Cth);
- the FOI Guidelines issued under section 93A of the Act by the Australian Information Commissioner, and
- the views of third parties consulted.

The Directorate has identified 49 documents relevant to your request. In summary, my access decision in relation to the documents within the scope of your request is:

- full release six records,
- partial access to 37 records, with redactions applied in accordance with section 22 of the Cth FOI Act; and
- non-release six records.

Records that are not released or are partially released contain information that is:

- exempt in accordance with section 42 'documents subject to legal professional privilege' of the Cth FOI Act,
- conditionally exempt and contrary to the public interest to release under section 47F 'documents affecting personal privacy' of the Cth FOI Act,
- conditionally exempt and contrary to the public interest to release under section 47G 'documents affecting business affairs' of the Cth FOI Act, or
- outside of the scope of your request.

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

Details of the exemption provision, together with my reasons for applying it are set out below.

Section 42: Exempt - due to legal professional privilege

Section 42 of the Cth FOI Act states in part:

- (1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege*

This section of the Cth FOI Act protects the confidential communications between an independent legal adviser and client by exempting them from release. Some of the documents contain legal advice that is covered by this provision. Therefore, it is not released.

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 documents the disclosure of which would result in the unreasonable disclosure of personal information about any individual person. I have decided that all personal information affecting the privacy of individuals, including the signatures, email addresses, phone numbers and position titles of individuals are 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.

Section 47G: Public interest conditional exemptions documents affecting business

This section of the Cth FOI Act states in part:

- (1) A document is conditionally exempt if its disclosure under this Act would disclose information 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, in a case in which the disclosure of the information:*
- (a) 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;*

Section 47G of the Cth FOI Act protects business concerns, specifically the commercial or financial affairs of an organisation, by exempting documents the disclosure of which

would result in the unreasonable disclosure of information of this nature. I have decided that there is no public interest served by disclosing the names of external organisations, such as consultants and contracted service providers. This position is informed by the views of third parties consulted. Therefore, this information is exempt under section 47G of the Cth FOI Act and has been redacted.

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 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. The publication must occur within ten working days after the day the applicant is given access to the documents.

Please contact the Directorate's FOI team on 02 6205 0720 or by email to EducationFOI@act.gov.au if you require any further information regarding the processing of your request.

Yours sincerely



Paula Murray
Director, Information Access

13 September 2021

Cth Freedom of Information Act 1982: Review and Appeal Processes

Internal review

Under s53A 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 Information Access Team
Governance and Community Liaison Branch
ACT Education Directorate
GPO Box 158
CANBERRA CITY ACT 2601

Or email: EducationFOI@act.gov.au

You have **30 days** from the date you were notified of the decision to request a review.

An internal review would be carried out by another decision maker within 30 days of receipt of your request.

National Education and Care Services FOI Commissioner

You may seek an independent review of the decision by the Information Commissioner under s54L of the Cth FOI Act if you are not satisfied after the Directorate has conducted an internal review, or instead of an internal review. The Information Commissioner in this instance is the National Education and Care Services FOI Commissioner (NECS FOI Commissioner). The NECS FOI Commissioner would undertake the review and either affirm, vary or substitute the decision in accordance with s55K 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.