



Dear 

FOI – School funding

I refer to your request received by the Directorate on 23 June 2017 in which you are seeking access under the ACT *Freedom of Information Act 1989* (the FOI Act) to:

Correspondence containing any reference to the Federal Government's 2017 changes to school funding from 30 April to 21 June 2017 between any of the Chief Minister, Deputy Chief Minister, Education Directorate or the Commonwealth

My decision

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

The Directorate identified 228 documents relevant to your request.

I have decided that 26 of the documents require consultation in full or in part with the Commonwealth or a third party in accordance with Sections 26 and 27 of the FOI Act. I will make a decision about whether to release those documents once I have received their views. I will write to you separately about my decision in respect of those documents.

In order not to further delay the response to your request, I am releasing my decision in relation to the 199 documents that do not require consultation with the Commonwealth or a third party.

A schedule setting out the relevant documents and my decision in relation to their release is at Attachment A. The documents that I have decided to release are at Attachment B.

You will note from the schedule that I have decided:

- Five of the documents are released in full
- 38 of the documents have been partially released under provisions within section 34 'documents affecting relations with Commonwealth and States, section 36 'internal working documents' and section 41 'documents affecting personal privacy', of the FOI Act.
- 156 of the documents are exempt in accordance with section 11 'documents that are publicly accessible', section 34 'documents affecting relations with Commonwealth and States, section 35 'Executive documents', section 36 'internal working documents' and section 45 'documents containing material obtained in confidence' of the FOI Act.

Details of the exemption provisions I have applied under the FOI Act, together with my reasons for applying them, are set out below.

Section 34 – documents affecting relations with Commonwealth and States

Section 34 states:

- (1) *Subject to subsection (2), a document is an exempt document if disclosure of the document under this Act—*
 - (a) *would, or could reasonably be expected to, cause damage to relations between the Territory and the Commonwealth or the Territory and a State; or*
 - (b) *would divulge information or matter communicated in confidence by or on behalf of the Commonwealth, a State or an authority of the Commonwealth or of a State to the Territory, to a Territory authority or to a person receiving the communication on behalf of the Territory or of a Territory authority.*
- (2) *This section does not apply to a document in respect of matter in a document the disclosure of which under this Act would, on balance, be in the public interest.*

I have exempted or partially released with redactions a number of documents to you with redactions made under s 34 to material that I believe could reasonably be expected to damage relations between the Territory and the Commonwealth and the Territory and a State, were it to be released.

Section 35 Executive documents

Section 35 states:

- (1) *A document is an exempt document if it is—*
 - (a) *a document that has been submitted to the Executive for its consideration or is proposed by a Minister to be so submitted, being a document that was brought into existence for the purpose of submission for consideration by the Executive; or*

- (b) *an official record of the Executive; or*
- (c) *a document that is a copy of, or of a part of, or contains an extract from, a document referred to in paragraph (a) or (b); or*
- (d) *a document the disclosure of which would involve the disclosure of any deliberation or decision of the Executive, other than a document by which a decision of the Executive was officially published.*

I have exempted a number of documents under this provision of the FOI Act as they are documents brought into existence for the purpose of consideration by the Executive i.e. Cabinet.

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 exempted or partially released with redactions numerous documents under this section – removing information that would disclose opinion and advice prepared for a deliberative process. Some of these documents contain information relating to advice, opinion and recommendation made for a deliberative process and I am of the view that it would be contrary to the public interest to disclose the information in these documents.

Section 41 – Documents affecting personal privacy

Section 41 states:

- (1) *A document is an exempt document if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).*
- (2) *Subject to subsection (3), subsection (1) does not apply to a request by a person for access to a document only because of the inclusion in the document of matter relating to that person.*

I have decided to partially release numerous documents under s 41 of the FOI Act ‘documents affecting personal privacy’. I have redacted information of a personal nature or that could enable the identity of an individual to be readily ascertained. I have formed the

view that to release this information would be an unreasonable disclosure of personal information.

Section 45 – Documents relating to breaches of confidentiality

Section 45 (1) states

- (1) *A document is exempt if its disclosure under this Act would constitute a breach of confidence.*

I have decided that some documents are exempt 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.

Documents not considered

Two of the documents identified are available on public websites and, in accordance with section 11 of the Act, they have not been considered as part of your FOI request. For your information, one of the documents was authored by Lyndsay Connors regarding school funding and the other was from the 'Save our Schools' website.

Your rights for review

An information sheet is attached to this letter which sets out your rights for review of this decision.

ACT Government Online FOI Publication

As part of the ACT Government's commitment to open government, all written documents made available to an applicant in response to an FOI request are made available for online access by the public, subject to exceptions for personal information, information relating to business affairs, and copyright material. In this case the documents will be released publicly.

Yours sincerely



Sean Woysey
Director
Early Childhood Policy and Regulation

/ December 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 mail to:

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

Or email: EDULegalLiaison@act.gov.au

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) 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). 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.