



ACT
Government

Chief Minister, Treasury and
Economic Development

Freedom of Information Disclosure Log Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

Application Details	
Ref. No.	CMTEDDFOI 2024-353
Date of Application	4 November 2024
Date of Decision	13 January 2025
Processing time (in working days)	44
Fees	N/A
Decision on Access	Partial Release
Information Requested (summary)	Work Place Visit Report on August for Dickson College.
Publication Details	
Original application	<input checked="" type="checkbox"/> Published <input type="checkbox"/> N/A
Decision notice	<input checked="" type="checkbox"/> Published <input type="checkbox"/> N/A
Documents and schedule	<input checked="" type="checkbox"/> Published <input type="checkbox"/> N/A
Decision made by Ombudsman	N/A
Additional information identified by Ombudsman	N/A
Decision made by ACAT	N/A
Additional information identified by ACAT	N/A

From: [REDACTED]
To: [CMTEDD FOI](#)
Subject: CMTEDDFOI 2024-353 - Re: CMTEDDFOI 2024-231 - Additional Queary
Date: Monday, 4 November 2024 12:02:23 PM

Caution: This email originated from outside of the ACT Government. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hello

Under the FOI Act please provide the Work Place Visit Report dated 2 August 2022 on Dickson College.

[REDACTED]

Thank you

[REDACTED]



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2024-353

FREEDOM OF INFORMATION REQUEST – NOTICE OF DECISION

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 4 November 2024.

Specifically, you have sought access to the following information:

“Under the FOI Act please provide the Work Place Visit Report dated 2 August 2022 on Dickson College...”

Authority

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

Timeframes

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application within 30 days.

As this matter required third party consultation, the decision due date was extended by 15 working days, in accordance with section 40(2) of the Act.

Therefore, a decision is due by **14 January 2025**.

Decision on access

Searches of CMTEDD records have identified one documents within the scope of your request.

I have decided to grant **partial access** to this document.

Release of documents

The information being released to you is provided at **Attachment A**.

Statement of Reasons

In accordance with section 54(2) of the Act a statement of reasons outlining my decisions is below. In reaching my access decisions, I have taken the following into account:

- the Act
- the information that falls within the scope of your request.
- *Human Rights Act 2004*

As a decision maker, I am required to determine whether the information within scope is in the public interest to release. To make this decision, I am required to:

- assess whether the information would be contrary to public interest to disclose as per **Schedule 1** of the Act.
- perform the public interest test as set out in section 17 of the Act by balancing the factors favouring disclosure and factors favouring non-disclosure in **Schedule 2** of the Act.

There are no Schedule 1 factors identified for this information.

Public Interest Test

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interest lies. As part of this process, I must consider factors favouring disclosure and non-disclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when ‘used in a statute, the term [public interest] derives its content from “the subject matter and the scope and purpose” of the enactment in which it appears’. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Schedule 2: Factors to be considered when deciding the public interest.

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the ‘public interest’.

Factors favouring disclosure (Section 2.1)

- *Section 2.1(a)(iii) - inform the community of the government’s operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community.*
- *Section 2.1(a)(viii) - reveal the reason for a government decision and any background or contextual information that informed the decision.*

I have placed substantial weight on the above factors favouring disclosure. The release of this information can reasonably be expected to provide you contextual information relating to the procedures taken by WorkSafe ACT in relation to a request to assist in resolving issues on a workplace.

Factors favouring nondisclosure (Section 2.2)

- *Section 2.2(a)(ii) - prejudice the protection of an individual’s right to privacy or any other right under the Human Rights Act 2004.*

When considering this information against the factors favouring nondisclosure, I am satisfied that the protection of an individual’s right to privacy is a significant factor. The parties involved did not provide their consent to release their personal information. These individuals are entitled to expect that the personal information they have supplied as part of this process will be dealt with in a manner that protects their privacy.

Having applied the test outlined in section 17 of the Act and deciding that release of personal information contained in the documents is not in the public interest to release, I have chosen to redact this specific information in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met

and will provide you with access to the majority of the information held by CMTEDD within the scope of your request.

Charges

Processing charges are not applicable for this request because the number of pages released to you is below the charging threshold of 50.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a [disclosure log](#).

Your original access application and my decision will be published on the CMTEDD disclosure log. Your personal contact details will not be published.

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is provided to you, or a longer period allowed by the Ombudsman.

We recommend using this form [Applying for an Ombudsman Review](#) to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the 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
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact the Information Access Team by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely,



Katharine Stuart
Information Officer
Chief Minister, Treasury and Economic Development Directorate

13 January 2025

Initial Information

Inspection Number: 00129838
Lead inspector: Kurt Kuehl Inspector ID: P53987
Is there any accompanying inspectors: Yes

Owen Waring

Type of visit: Reactive
Date visit commenced: 02/08/2022
Legislation visit conducted under: WHS
Purpose of visit: Other

Entity information

Type of entity: Directorate
Name of individual or registered company: ACT Education Directorate
Trading as:
ACN:
ABN: 29148723251
Industry Group: Education
Address:

Contact Name: ACT Education Directorate
Contact Number:
Contact Email: katy.haire@act.gov.au

Details of visit

Address:
Notification of entry to (as required by s164): Manager
Were any potential breaches of the legislation identified? No

Inspector notes:

On 29 July 2022, WorkSafe ACT Inspector Kurt KUEHL was appointed by the regulator under s82 Work Health and Safety Act 2011 (WHS Act) [REDACTED]
[REDACTED] The request was received 27 July 2022 to assist with resolving issues relating to the consultation process undertaken by the PCBU in developing a 'Covid Safety Assurance Plan' (CSAP) for the worksite.

On 3 August 2022 at 0845h, WorkSafe ACT Inspectors Kurt KUEHL and Owen WARING attended Dickson College, 184 Phillip Avenue Dickson, to meet with parties to the issues in dispute.

In attendance were:
- Katie DUNN (Senior Director, People, Safety and Conduct, ACT Education Directorate)
- Craig EDWARDS (Principal, Dickson College)

- Kate McMAHON (Executive Group Manager, Service Design and Delivery, ACT Education Directorate)

During the meeting, information and documents were presented to Inspectors including:

- EDWARDS: the current round of consultation commenced at the staff meeting of week 1 term 3 (18 July 2022)
- EDWARDS: a meeting was held Monday 25 July 2022 between the Dickson College principal, deputy principals, HSR, and AEU delegates to discuss and review the Term 2 CSAP
- EDWARDS: consultation procedure, guidance, and CSAP risk assessment were circulated to all Dickson College staff on Wed 20 July 2022. An updated CSAP was circulated for staff consultation on 27 July 2022. Staff were advised to raise concerns through EDWARDS or their union by Wed 3 August 2022.
- EDWARDS: as of morning 3 August 2022, consultation for reviewed CSAP is ongoing. Staff survey being conducted by AEU sub-branch closes at 1030h 2 Aug 2022, sub-branch meeting scheduled for 1430h same day.
- Sch 2.2(a)(ii) Only 14 responded out of 40+ invited to survey. AEU looking to extend survey to enable more representative feedback.- DUNN/EDWARDS/McMAHON: site specific risk assessment had concluded that Dickson College was at no greater risk of covid transmission than other ACT Education-controlled sites.
- McMAHON: produced live dashboard tracking daily reported staff and student absences due to covid (including positive cases, contacts, family cases). Dickson College average daily cases (approx. 5-6) were stable and low relative to other sites. Evidence presented did not suggest elevated level of transmission in students or teachers was occurring at Dickson compared with other schools under the Directorate.
- DUNN/McMAHON: additional controls have been implemented on sites where cases have spiked. Dickson College CSAP has provision for additional controls if this occurs.
- DUNN/McMAHON: Dickson College complying with Directorate policy and guidelines
- EDWARDS: based on the risk assessment and current data, believes Dickson does not require controls beyond those currently implemented
- EDWARDS: provisions for individuals at greater risk (health conditions, age, etc.) or personal preferences are being accommodated through hybrid model meetings (in-person and virtual), supply and encouragement of masks)

At 1001h, Inspectors KUEHL and WARING departed the workplace.

KUEHL reports no observed breach of s47 WHS Act - Duty to consult workers:

47 Duty to consult workers

- (1) The person conducting a business or undertaking must, so far as is reasonably practicable, consult, in accordance with this division and the regulation, with workers who carry out work for the business or undertaking who are, or are likely to be, directly affected by a matter relating to work health or safety.
- (2) If the person conducting the business or undertaking and the workers have agreed to procedures for consultation, the consultation must be in accordance with those procedures.
- (3) The agreed procedures must not be inconsistent with section 48.

48 Nature of consultation

- (1) Consultation under this division requires—

- (a) that relevant information about the matter is shared with workers; and
 - (b) that workers be given a reasonable opportunity—
 - (i) to express their views and to raise work health or safety issues in relation to the matter; and
 - (ii) to contribute to the decision making process relating to the matter; and
 - (c) that the views of workers are taken into account by the person conducting the business or undertaking; and
 - (d) that the workers consulted are advised of the outcome of the consultation in a timely manner.
- (2) If the workers are represented by a health and safety representative, the consultation must involve that representative.

A Staff Consultation Procedure for Term 3 2022 was prepared by the ACT Education Directorate COVID Management Team. The procedure was circulated 20 July 2022.

The consultation (to 3 August 2022), as observed by KUEHL, is consistent with this procedure. While it is not clear if workers have agreed to this procedure for consultation, the procedure is not inconsistent with s48 WHS Act and in either circumstance s47(2) WHS Act has not been breached.

- Relevant information has been shared with workers, through meetings and emails
- Workers have been given reasonable opportunity to express their views and raise related issues, and to contribute to the decision-making process, through invite to address EDWARDS directly or through their union
- Consultation is ongoing and the CSAP is still subject to review prior to the Term 3 2022 publication.

██████████, in the s82 Request, noted the belief that the consultation has not considered his view. Discussion with meeting attendees indicated that ██████████ has been considered, assessed, and determined unnecessary. There is no direct, documented evidence that the views of workers are being, or not being, considered by the PCBU - opportunity for improvement 1.

- Consultation is ongoing for the current revision, so workers have not yet been advised of the outcome of the consultation. Based on provided evidence of previous communication, KUEHL notes no reason to believe the workers will not be advised of the outcome in this instance.
- The health and safety representative (McDONELL) was involved in the consultation through the meeting held Monday 25 July 2022, union sub-branch involvement, and staff-wide circulations.

OFI 1: ██████████ perceives that consultation has been inadequate and hold opinion that further precautions are necessary is not being considered. DUNN, EDWARDS, and McMAHON expressed view that ██████████ ██████████ have been adequately considered but were deemed not necessary based on their risk assessment process. From documents produced and continued dispute, KUEHL notes an opportunity for improvement in the communication between executive team and HSR for Dickson College. Parties must make reasonable efforts to achieve a timely, final and effective resolution of the issue, per s82(2) WHS Act. The PCBU should engage with workers who are concerned about the process to ensure their concerns are alleviated.

Contemporaneous notebooks A10128 pages 53-55 (KUEHL); A10194 pages 18-19 (WARING)

Disclaimer: The issues identified during this inspection are only indicative of compliance with the Work Health and Safety Act 2011, the Work Health and Safety Regulations 2011, the Dangerous Substances Act 2004 and the Workers Compensation Act 1951 on the date of the inspection. If compliance is identified during this inspection, it does not remove the obligation of any person to comply with any further requirement of the above mentioned Acts and Regulations.

Previous action

Previous notice/s issued (either written or verbal)? No

Contacts

Lead inspector email address: kurt.kuehl@worksafe.act.gov.au

Recipient/s of this form

Email: katy.haire@act.edu.au

Email 2:

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