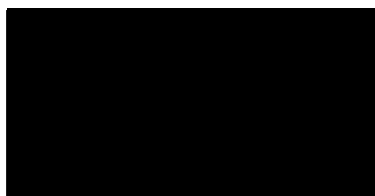




ACT
Government

Education and Training

File Ref: 2015/03763



Dear 

I refer to your application under section 14 of the *Freedom of Information Act 1989* (the Act) requesting access to certain documents of the Education and Training Directorate (the Directorate), received by the Directorate on 8 April 2015.

Your request

You request access to:

all information and accompanying documents prepared for and/or by the ACT Government and Education and Training Directorate staff regarding the planning, construction and placement of a "cage like structure" in an ACT primary school during March 2015, as revealed by the Minister for Education and Training on Thursday April 2 2015.

My decision

I am an officer authorised under section 22 of the Act to make a decision on behalf of the Directorate in relation to your application.

A schedule setting out the Directorate's documents falling within the scope of the documents to which you request access and my decision regarding the release of the documents is at Attachment A. References in this decision letter to a document number is a reference to the number of that document in the schedule. Copies of the documents or parts of documents to which I have decided to grant access appear at Attachment B.

I have decided to grant access to the whole of document 13, parts of documents 7, 8, 9 and 15, and to refuse access to documents 1 to 6, 10 to 12, 14, and 16 to 19 on the grounds that they are exempt documents under one or more of sections 36, 37, 41, 42 and 43 of the Act.

Information in documents 9, 10 and 15 that is outside the scope of your request has also been withheld.

Details of these 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.*

Documents 2 to 6, 11, 12 and 14 set out the preliminary considerations of Directorate officers or consultations with other staff. This information was recorded for the purpose of seeking further advice.

The documents include emails and draft attachments about proposed actions for comment.

The information in documents 2 to 6, 11, 12 and 14 forms part of the deliberative processes of the Directorate and the effect of public release would be to discourage officers from recording preliminary thoughts in writing or from consulting with others, and this could compromise the effectiveness of the Directorate's decision-making and process of efficient administration. I therefore believe, in this case, that the disclosure of documents 2 to 6, 11, 12 and 14 would be contrary to the public interest.

Accordingly, I am satisfied that documents 2 to 6, 11, 12 and 14 are exempt documents, in full or in part, under section 36 of the Act.

Section 37 – Documents affecting enforcement of the law

Section 37 states:

- (1) *A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to—*

- (a) *prejudice the conduct of an investigation of a breach, or possible breach, of the law, or a failure, or possible failure, to comply with a law relating to taxation or prejudice the enforcement or proper administration of the law in a particular instance; or*
 - (b) *disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement or administration of the law; or*
 - (c) *endanger the life or physical safety of any person.*
- (2) *A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to—*
- (a) *prejudice the fair trial of a person or the impartial adjudication of a particular case; or*
 - (b) *disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or could reasonably be expected to, prejudice the effectiveness of those methods or procedures; or*
 - (c) *prejudice the maintenance or enforcement of lawful methods for the protection of public safety.*
- (3) *In subsections (1) and (2):*

law means a law in force in Australia.

Documents 1 to 7, 9 to 12, 14, 15, and 17 to 19 contain information relating to an investigation about the construction of a withdrawal space. I believe that the release of the information contained in these documents would, or could be reasonably expected to, prejudice the investigation of this matter. The investigation has not been finalised and to release these documents could prejudice a fair hearing for those involved and the investigation itself.

Accordingly, I am satisfied that documents 1 to 7, 9 to 12, 14, 15, and 17 to 19 are exempt documents, in full or in part, under section 37 of the Act.

Section 41 – Documents affecting personal privacy

Section 41 of the Act relates to documents affecting personal privacy. Section 41(1) states:

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).

Documents 1 to 4, 7 to 10, and 15 to 19 contain personal information about a number of individuals, namely information about individuals whose identities are apparent, or can reasonably be ascertained, from the information.

Section 41 has been applied where the identification of Directorate staff members may reasonably lead to the identification of individuals associated with this incident.

In my view the disclosure of this personal information would be unreasonable as it could identify individuals.

Accordingly, I am satisfied that documents 1 to 4, 7 to 10, and 15 to 19 are exempt documents, in full or in part, under section 41 of the Act.

Section 42 – Documents subject to legal professional privilege

Section 42 provides that:

- (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.*

Document 9 contains details of communication between officers of the Directorate and the ACT Government Solicitor for the purpose of seeking legal advice, which would consequently be privileged from production in legal proceedings on the ground of legal professional privilege.

Accordingly, I am satisfied that, in so far as it contains information subject to legal professional privilege, document 9 is an exempt document in part under section 42 of the 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.*

Document 1 contains 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.

I believe the disclosure of Document 1 would, or could reasonably be expected to unreasonably affect an individual adversely in respect of his or her lawful business or professional affairs as it would disclose information about the individual's business, including the quotation for service.

Accordingly, I am satisfied that document 1 is an exempt document in full under section 43 of the Act.

Information outside the scope of your request

Information in documents 9, 10 and 15 has been withheld because it is outside the scope of your request in that it does not relate to your request for *all information and accompanying documents prepared for and/or by the ACT Government and Education and Training Directorate staff regarding the planning, construction and placement of a "cage like structure" in an ACT primary school during March 2015, as revealed by the Minister for Education and Training on Thursday April 2 2015.*

The deleted information relates to:

- a review of the Directorate's policies and procedures
- an audit of schools in relation to other similar structures
- actions taken to assist the school concerned to deal with matters arising from this incident.

Your rights for review

If you are dissatisfied with my decision you may apply in writing to the Director-General of the Directorate requesting a review of my decision in accordance with section 59 of the Act (internal review).

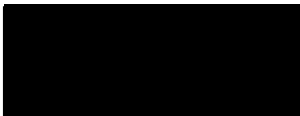
If you make an application for internal review of my decision, another officer of the Directorate will review my decision.

You must apply for internal review of this decision within 28 days after you are notified of it. If you require more time to apply for review, you may ask the Director-General for more time. 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.

Depending on the decision made on internal review, you may be entitled to make an application to the ACT Civil and Administrative Tribunal (ACAT) under section 60 of the Act for it to review the internal review decision.

Information outlining the internal review and ACAT review processes provided for in the Act is attached to this letter.

Yours sincerely



Jane Cuzner
Director
Governance and Assurance

2 July 2015

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 and Training Directorate. Requests can be sent by fax (02 6205 9453) or by mail to:

The Director-General
C/- Governance and Assurance Branch
ACT Education and Training 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) 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.