

Dear 

I refer to your request received by the Directorate on 16 October 2017 in which you are seeking access under the ACT *Freedom of Information Act 1989* (the FOI Act) documents held by the the Education Directorate (the Directorate) relating to:

1. *Any report or document incidental to such a report prepared by Russell Noud dealing with Phillips Cleaning Service*
2. *Any document pertaining to:*
  - a. *the practice of Phillips Cleaning Service of standing down workers during school holidays;*
  - b. *the terms under which the workers employed by Phillips were engaged;*
  - c. *the letters of appointment given to workers by PCS.*

In order to process your request as efficiently as possible, it has been processed in two stages corresponding to the different parts of your request. I apologise for the time taken to finalise the response to your request.

The decision and documents in relation to part 1 of your request were released to you on 2 February 2018. This letter relates to the second part of your request, i.e. pertaining to the terms and conditions of employment of Phillips Cleaning Service employees.

### **My decision**

I am an officer authorised under section 22 of the Act to make a decision in relation to your request.

The processing of your request has taken longer than expected due to the significant number and volume of documents which had to be compiled and reviewed to determine if the Directorate held the information that you are seeking. As you know, the Directorate was not the direct employer of the cleaners; our contractual relationship was with Phillips Cleaning

Service. The contract with the cleaning company did not require the provision of information at 2a-c. to us. However, the result of our search is that 48 documents were identified as being within the scope of your request.

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:

- Eight of the documents are to be released to you in full.
- 16 of the documents are to be partially released with redactions applied to information due to provisions within section 41 'documents affecting personal privacy', section 42 'documents subject to legal professional privilege', section 43 'documents relating to business affairs' or that is outside of the scope of your FOI request.
- 24 of the documents are exempt in accordance with section 36 'internal working documents' and section 42 'documents subject to legal professional privilege'.

Further information about the exemptions provisions that have been applied is provided 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 exempted five documents as they 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 five documents under section 41 of the FOI Act. 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 42 – Documents subject to legal professional privilege

Section 42 states:

- (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.*

Twenty two of the documents were fully or partially created for the purpose of obtaining or giving legal advice. I consider these documents to be subject to legal professional privilege and, as such, are exempt or partially exempt from disclosure under section 42 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.*

I have decided that one of the documents is partially exempt under s 43 of the FOI Act, as the document contains information that, if disclosed, could unreasonably affect the business or commercial affairs of an organisation. I am satisfied that the information that relates to business affairs of the organisation concerned is exempt under s 43 of the FOI Act.

Documents containing information that is outside the scope of the request

Some documents contain information that is outside of the scope of the FOI request. This information has been redacted and the documents are recorded in the schedule.

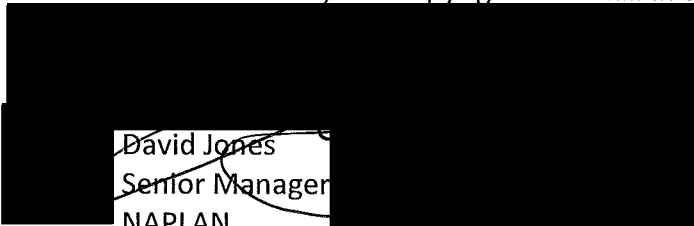
**Your rights for review**

My decision about the release of information in response 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.

**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.



David Jones  
Senior Manager  
NAPLAN

8 February 2018

## ***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 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.

