



Email: 

Dear 

FOI: Noud Report— Internal review of decision regarding exemption of documents

I refer to your application of 19 February 2018 to the Education Directorate for an internal review under section 59(1) of the ACT *Freedom of Information Act 1989* (the FOI Act) of the decision to exempt documents under section 42 of the FOI Act regarding a report prepared by Mr Russell Noud dealing with Phillips Cleaning Service.

Decision

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

I have decided that the document you are seeking is exempt under section 42 of the Act, *Documents subject to legal professional privilege*.

Section 42 of the Act 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.

In your application you submit that the document in question is not amenable to section 42 of the FOI Act because Mr Noud is not a solicitor and the document “was generated at the request of and provided directly to Minister Rattenbury”.

I have read the content of the document you have requested and considered legal advice provided to the ACT Government on the nature of the document and on the issue of legal professional privilege.

I am satisfied that the document you seek is exempt because the content of the document attracts legal professional privilege. The standing of the author of the document is not the only consideration when considering if the content of a document may attract legal privilege. A consideration is whether the content of the document communicates material which is legally privileged.

I am also satisfied that the release of the document, or partial release of the document, would engage a real prospect that legal professional privilege would be waived.

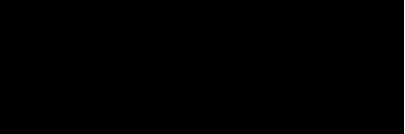
Your rights for review

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 not be released publicly.

Yours sincerely



Sean Moysey
Director
Early Childhood Policy and Regulation

5 March 2018

Freedom of Information Act 1989

Appeal Processes Following Internal Review

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.

