



ACT

Government

Education and Training

File Ref: 2015/09070



Dear 

I refer to your application under section 14 of the *Freedom of Information Act 1989* (the Act), received by the Directorate on 1 September 2015, in which you requested access to the following documents:

- *Photographs and/or copies of photographs of the withdrawal space (cage) that was built at [named school].*
- *Tender document and/or Invoice and/or receipt for construction of [named school] withdrawal space.*
- *Communications between (former?) principal of [named school] and /or an Executive Teacher and/or Teacher at [named school] with members of the Education Directorate Head Office that occurred before the 27th March 2015 concerning the construction of the withdrawal space at [named school].*
- *Correspondence from [principal] and/or an Executive Teacher and/or a Teacher to parents of (the [student] the withdrawal space was constructed for) written before 27th March 2015.*
- *Handwritten notes and/or correspondence and/or emails from [principal] and/or Executive Teacher to staff at [named school] written before the 27th March 2015 explaining the existence of the withdrawal space and/ or the reasons for its construction.*

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.

I note that in your request you advised you were not seeking duplicate copies of documents or documents that have already been publicly released or media releases, media articles or media statements.

I also note that you asked if the section 37 (documents affecting the enforcement of the law) were to be applied you sought information about which law was affected. I have not sought to apply this exemption to the documents you have requested.

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 2, parts of document 1 and , to refuse access to documents 3, 4 and 5 on the grounds that they are exempt documents under one or more of sections 36, 41 and 43 of the Act.

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.*

Document 5 consists of emails and an attachment about a proposal for comment which are deliberative in nature. 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 processes of efficient administration. I therefore believe, in this case, that the disclosure of document 5 would be contrary to the public interest.

Accordingly, I am satisfied that document 5 is an exempt document, in full, under section 36 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, 3, 4 and 5 contain personal information about a number of individuals, namely information about individuals whose identities are apparent, or can reasonably be ascertained, from the information.

In your request you asked whose privacy would be affected and why their name could not be redacted. In my view the disclosure of the documents, with redactions, could potentially identify individuals and this would constitute unreasonable disclosure of personal information. Further, in my view, it would be unreasonable to advise you whose privacy would be affected.

Accordingly, I am satisfied that documents 1, 3, 4 and 5 are exempt documents, in full or in part, under section 41 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 3 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 3 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. In particular, it is my view that the information contained in Document 3, if released, may have a unreasonable adverse affect on the business or professional affairs of the individual concerned in accordance with section 43(1)(c)(ii).

Accordingly, I am satisfied that document 3 is an exempt document, in full, under section 43 of the Act.

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

28 October 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.