



ACT
Government

Education and Training

File Ref: 2015/03764

Mr Ben Fairless
Righttoknow.org.au

Dear Mr Fairless

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 3 April 2015.

Your request

You request access to a copy of the initial report made to the Directorate, plus all internal documents created to date (3 April 2015) in relation to this incident.

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 in full to Documents 32 and 35, partial access to Documents 20 to 22, 37 to 39 and 42, and to refuse access to all other documents on the grounds they are exempt documents under one or more of sections 36, 37, 41, and 42 of the Act.

Information in several documents 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.*

The documents exempted under this section of the Act 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.

Information in Documents 1 to 7, 9 to 12, 14, 15, 17 to 19, 26 to 28, 30, 31, 33, 34, 36, 38, 40, 46 and 47 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 these documents would be contrary to the public interest.

Accordingly, I am satisfied that Documents 1 to 7, 9 to 12, 14, 15, 17 to 19, 26 to 28, 30, 31, 33, 34, 36, 38, 40, 46 and 47 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 4, 6, 7, 10, 14, 15, 19, 22, 26, 28 to 31, 37 to 40, 42 and 44 to 46 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 4, 6, 7, 10, 14, 15, 19, 22, 26, 28 to 31, 37 to 40, 42 and 44 to 46 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 16, 18, 20, 21, 22, 28 to 31, 37 to 39, and 44 to 47 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 16, 18, 20, 21, 22, 28 to 31, 37 to 39, and 44 to 47 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.

Documents 23 to 25, 41 and 43 contain 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 they contain information subject to legal professional privilege, Documents 23 to 25, 41 and 43 are exempt under section 42 of the Act.

Information outside the scope of your request

Information in Documents 14, 22 and 38 has been withheld because it is outside the scope of your request in that it does not relate to your request for *all internal documents created to date in relation to this incident*.

Online publication

Please be aware that under the ACT Government's Online FOI Publication policy, information released to you under this Freedom of Information request may be released on the internet.

Personal information or business affairs information will not be made available under this policy.

A copy of the policy, with details about what information may be published on the internet, is available at:

http://www.cmd.act.gov.au/open_government/report/freedom_of_information_online

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 Cuzher
Director
Governance and Assurance
July 2015