

**Notice under s24AB(2) of the Freedom of Information Act 1982**  
**(Commonwealth)**

In accordance with s24AB(2) of the **Freedom of Information Act 1982 (Commonwealth)**, I provide the following written notice:

- a. I intend to refuse access to all the documents covered by your request;
- b. I am satisfied that a practical refusal reason exists in relation to your request, as the work involved in processing your request would substantially and unreasonably divert the resources of ACARA from its other operations;
- c. The person whom you may consult with is Peter Matheson, Board Secretary;
- d. Peter Matheson can be contacted by email [peter.matheson@acara.edu.au](mailto:peter.matheson@acara.edu.au) or telephone: +612 8098 3116; and
- e. The consultation period during which you may consult with Peter Matheson is 14 days after the date that you receive this notice: s24AB(2)(e).

For further information relating to my decision, please refer to the attached letter.

Dated: 2 August 2013

Signed: \_\_\_\_\_



**Robert Randall, Chief Executive Officer**

## FOI INITIAL DECISION LETTER

2 August 2013

Our ref: F13/565-5

Red

[Anonymous request made through the right to know website]

**By email:** [foi+request-283-cad7d8de@righttoknow.org.au](mailto:foi+request-283-cad7d8de@righttoknow.org.au)

Dear Sir/Madam

### Your Freedom of Information Request

I refer to your email of **Friday, 5 July 2013** to the Australian Curriculum, Assessment and Reporting Authority (**ACARA**) seeking access to documents under the *Freedom of Information Act 1982* (Commonwealth) (**FOI Act**). I also refer to my acknowledgement letter to you dated 18 July 2013.

#### 1. Your request

I confirm your request, as it currently stands, is for:

"In the Ministerial Council for Education, Early Childhood, Development and Youth Affairs April 2012 Communiqué the following was reported:

'Ministers discussed concerns over practices such as excessive test preparation and the potential narrowing of the curriculum as a result of the publication of NAPLAN data on My School. Ministers requested that ACARA provide the Standing Council with an assessment of these matters.'

See more at: <http://newmatilda.com/2013/07/04/school-testers-deny-naplan-side-effects#sthash.ntTFLV9J.dpufUnder>

FOI

On the basis of this statement, under the provisions of the FOI Act I request copies of all documentation in ACARA's possession that provide information on action taken by ACARA or other bodies/persons in response to this directive, including the assessment provided to the Standing Council".

#### 2. Material taken into account

In making my initial decision, I have had regard to the following:

- The terms of your request;
- The documents to which you have sought access;
- Relevant provisions of the FOI Act;
- Advice from ACARA staff with responsibility for matters relating to the documents to which you sought access; and

- The Australian Information Commissioner's guidelines on FOI, version 1.3, March 2013, Part 3 (**Commissioner's Guidelines**) – <http://www.oaic.gov.au/freedom-of-information/applying-the-foi-act/foi-guidelines/part-3-processing-requests-for-access>

### 3. Practical refusal reason

I advise that I am satisfied that a practical refusal reason exists in relation to your request, as the work involved in processing your request would substantially and unreasonably divert the resources of ACARA from its other operations: s24AA(1)(a)(i) of the FOI Act.

#### 3.1 Development process in relation to SCSEEC Paper

I advise that ACARA presented SCSEEC with a paper dated May 2013 headed "Statement of unintended impacts as a result of uses of NAPLAN data" (**SCSEEC Paper**). This paper was the culmination of work which commenced after the April 2012 SCSEEC meeting. The SCSEEC Paper was developed over a period exceeding one (1) year and, in broad terms:

- was written by ACARA;
- went through a number of iterations and a broad internal consultation process;
- was presented in draft form to ACARA's Board on three (3) occasions, for comment and endorsement; and
- following endorsement by ACARA's Board, the SCSEEC Paper was sent to SCSEEC.

#### 3.2 Documents covered by your request

I note that your request is framed broadly, and covers "all documentation ... on action taken by ACARA or other bodies/persons in response to this directive". I advise that your request covers the entire lifecycle of the SCSEEC Paper, from request to delivery, and comprises the following categories of documents, extending over a period exceeding one (1) year:

- Emails and other written correspondence between staff in the Assessment business unit (**Assessment Staff**);
- Emails and other written correspondence between various staff and executives in the organisation;
- Possible emails and other correspondence between Assessment staff and staff employed at the Department of Education, Employment and Workplace Relations (Cth);
- Board papers, advising on the work undertaken to comply with this ministerial directive and requesting advice and comments;
- Drafts of these Board papers;
- Other documents prepared to inform ACARA's response;
- Possible relevant papers and minutes of the NAPLAN Testing Working Group, which meets monthly and provides advice and expertise to ACARA;
- Possible relevant papers and minutes of the National Assessment, Data, Analysis and Reporting Reference Group (formerly National Assessment Reference Group), which meets approximately every six (6) weeks and provides advice and expertise to ACARA's Executive;
- Drafts of the SCSEEC Paper;

- Board papers, attaching drafts of the SCSEEC Paper, presented to the Board for comment and endorsement;
- Drafts of these Board papers;
- Out of session comments provided by ACARA Board members regarding drafts of the SCSEEC Paper; and
- Final version of SCSEEC Paper presented to SCSEEC.

### **3.3 Identifying, locating and collating the documents in scope**

I note that it would be a significant job for people within the Assessment and Board Secretariat teams to identify, locate and collate all the documents covered by your request, and summarised by category in heading [3.2]. I further note that if time was spent locating these documents, ACARA's current work-plan would be jeopardised, in that delay is likely to occur to the following Assessment work programs, each of which has tight timelines:

- Continued research for the development of NAPLAN Online;
- Development of planning around the NAP program; and
- Release of various NAP reports, including the 2013 NAPLAN Summary Report and the 2012 NAP Science Literacy Public Report.

### **3.4 Deciding whether to grant, refuse or defer access**

In relation to the minutes or meeting notes of:

- The NAPLAN Testing Working Group; and
- The National Assessment, Data, Analysis and Reporting Reference Group (formerly National Assessment Reference Group),

each set of minutes or meeting notes (extending over a period of one (1) year) would need to be read (to see if it contains material relevant to your request). If so, those minutes or meeting notes would need to be re-read to determine whether they can be released in full or whether parts need to be redacted because they are covered by one or more of the conditional exemptions in the FOI Act.

A similar process would apply to all emails and other documents set out in heading [3.2].

Relevant conditional exemptions in the FOI Act are:

- a. Conditional exemption under section 47B(a) (damage to Commonwealth/State relations); and
- b. Conditional exemption under section 47C (deliberative process).

If ACARA staff believes that section 47B may apply (Commonwealth/State relations) to part of a document, and that document contains information provided by a State, ACARA staff would then be obliged to consult with the relevant State and provide the State with an opportunity to make submissions concerning the document: section 26A(2) of the FOI Act.

ACARA staff would be involved in reviewing the submission from the State and making a recommendation in relation to the document. Where a decision is made to release a document (without all the redactions requested by the State), ACARA is obliged to give written notice to the State and the Applicant: s26A(3) of the FOI Act. ACARA is required to

withhold access to the document until after all the opportunities of the State for review or appeal have run out: s26A(4) of the FOI Act.

I note that a significant additional work load would be imposed on members of staff in the Board Secretariat team to undertake the tasks listed under heading [3.4]. There are only two people in ACARA that can undertake these tasks. Peter Verey is a legal officer in the Board Secretariat team, whose role includes FOI, Privacy and Intellectual Property. Peter Matheson is Board Secretary, whose role involves managing staff with responsibility for Board papers, Audit and Risk committee papers, procurement, parliamentary inquiries, and providing strategic advice to the Chief Executive Officer. The amount of work involved in assessing each document would jeopardise ACARA's operations, including attending to other FOI requests and an FOI appeal which is currently with the Administrative Appeals Tribunal.

### **3.5 Preparation of the decision and documents**

Where a decision is made to exempt part or all of a document, a decision letter must be written which provides reasons for this decision. This is a time consuming process, and includes the following steps:

- reading again each document;
- identifying the parts that need exemption;
- reading the FOI Commissioner's guidelines;
- drafting the decision; and
- preparing edited copies of the documents for release.

Again, for the reasons noted under heading [3.4], the work of the Board Secretariat team would be seriously impacted by undertaking this request in its current form.

### **3.6 Notifying you of my final decision**

I note that this step, of itself, would not involve substantial work. However, it is a separate step that I am required to have regard to under the Commissioner's Guidelines. The decision letter has already been discussed under heading [3.5], so the only additional step is to email or courier the letter and documents to you. Depending on the size of the documents, I might not be able to arrange for them to be emailed. In this case, time would be spent requesting a mailing address from you and verifying that your identity matches the person with the email address sent from the Right to Know website.

## **4. Request consultation process**

I advise that the FOI Act sets out a process in cases where a practical refusal reason exists. The purpose of this process is to allow you the opportunity to revise your request. ACARA is required to provide assistance to you in revising your request.

In accordance with s24AB(2) of the FOI Act, I provide written notice of my decision, by way of separate document.

## 5. Timeframe for providing you with our decision

Normally, the statutory timeframe for processing a request is 30 days after the day on which the request is received. I note that the 30 day limit expires on 5 August 2013.

As we are now in a request consultation process, the period in which my staff assists you in revising your request is disregarded for the purposes of the 30 day period. Once your revised request is agreed, my staff will need to negotiate additional time with you to provide you with my final decision letter.

## 6. Contact

If you require clarification of any of the matters discussed in this letter, or have any queries throughout the process, please contact Peter Matheson, Board Secretary, by email [peter.matheson@acara.edu.au](mailto:peter.matheson@acara.edu.au) or phone 02 8098 3116.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'R. Randall', written in a cursive style.

Robert Randall  
**Chief Executive Officer**