

Mr Craig Dunlop
NewsCorpAustralia
2 Holt St
SURRY HILLS NSW 2010

Via email: craig.dunlop@news.com.au

Dear Mr Dunlop,

FREEDOM OF INFORMATION (FOI) REQUEST

I refer to your application under s30 of the *Freedom of Information Act 2016* (the FOI Act), received by the ACT Teacher Quality Institute (TQI) on 29 November 2021.

I am an Information Officer appointed by the Director-General of the ACT Education Directorate under section 18 of the FOI Act to deal with access applications made under Part 5 of the FOI Act. In accordance with section 21 of the FOI Act, the principal officer of TQI has requested that I deal with this access application.

Your request is for records from the period 17 February 2019 to 29 November 2021, specifically:

- 1. The document or documents which detail the reasons why any registered teacher has been issued with a formal warning, had conditions placed on their registration or been de-registered as a result of their conduct.*
- 2. Any information disclosed under s.70A (1) (a) and (b) of the ACT Teacher Quality Institute Act 2010 (TQI Act) to the Institute, whether or not the teacher's registration was suspended, cancelled or had conditions placed upon it.*
- 3. Any information disclosed to the institute under s.70B of the TQI Act.*

It is noted that you requested:

- All documents held by the TQI which, which detail, precisely, the conduct of the teacher, any findings of fact of any investigation, any disciplinary action taken, any excuse made by the teachers for their conduct, and anything said by the teachers in an attempt to mitigate any disciplinary action.
- The terms of the request are to be interpreted broadly.

Your application also stated that you do not require copies of the record provided in response to your previous request (our reference FILE2021/877) but noted that updates may have subsequently been made to that record. As that record is a working summary of records being released to you in response to the broader scope of this request, its consideration would be a duplication of effort.

Following the Ombudsman's decision of 21 December 2021 to extend the processing time and to provide the decision for your application in stages, this letter is for Stage 2 (2020 records) and is due to be provided by 22 February 2022.

Decision on access

Searches were completed for relevant records and 199 records relating to 29 cases were identified that fall within the scope of your request. As advised in the letter for Stage 1 of your request, the number of cases and records within the scope of your request is greater than the number considered in your previous request for the following reasons:

1. Your current request is for documents from the period 17 February 2019 to 29 November 2021, whereas your previous request was for a shorter period of 1 July 2019 to 2 February 2021, a difference of around 14 months.
2. Some notifications to TQI under s70B of the TQI Act related to allegations that were either not substantiated, or they were substantiated and the action taken by the employer was considered appropriate by TQI. Therefore, TQI had no reason to *'issue a formal warning, place conditions on the teacher's registration or de-register the teacher as a result of their conduct'* and records relevant to those circumstances were not within the scope of your previous request.
3. Your request for *'all documents held by TQI, which detail precisely, the conduct of the teacher...'* is broader and more detailed than your previous request. Consequently, this captures information disclosed to TQI under s70C of the TQI Act, which increases the number of records significantly.
4. Consideration of point 3 of your request now includes instances where allegations were made and notified under s70B of the TQI Act, but no action was taken. Given the request is for *'all documents'* and a broad interpretation of the scope, all documents obtained by TQI under s70B (whether action was taken or not by TQI) have been considered.

In summary, I have decided to grant access to the records as follows:

- Partial release of 124 records with deletions applied; and
- Non-release of 75 records.

The records released are organised in pdfs titled Case 1, Case 2, etc for ease of review. Each case has a schedule of relevant records which provides a description of each record

and the access decision for each of the records. As a number of cases carry over from one year to the next due to the timing of information being provided to TQI, or the time it takes to resolve a case, as we process the other two stages for your decision, we will cross-reference in each decision the cases across the three years.

My access decisions are detailed further in the following statement of reasons.

Material considered

In reaching my access decision, I have taken the following into account:

- the FOI Act, particularly sections 16, 17 and 50, and schedules 1 and 2;
- the content of the records that fall within the scope of your request;
- the *Human Rights Act 2004*;
- Ombudsman decision ACTOFOI 16 (26 November 2021); and
- the Ombudsman's Guidelines – Considering the Public Interest.

Reasons for decision

I have considered the records that are relevant to your application in accordance with the requirements of the FOI Act. The records contain information that I consider to be contrary to the public interest to disclose in accordance with the definition at s16 of the Act and the public interest test set out at s17 of the FOI Act. Where possible, I have decided to grant access, under s50 of the FOI Act, to copies of records with information deleted that I have decided is contrary to the public interest to disclose. This enables the remainder of the record to be released.

As noted in the decision letter for Stage 1, the nature of the records within the scope of your request is different to your previous request; therefore, my decisions and reasons are also different.

Information that is contrary to the public interest to disclose

For one case, some information is not released because its disclosure is contrary to the public interest in accordance with Schedule 1 of the Act, due to it relating to law enforcement or public safety (Schedule 1, 1.14). In this matter, disclosure of the information could reasonably be expected to prejudice the investigation of a contravention or possible contravention of the law (Schedule 1, 1.14(1)(a)).

Information that is taken to be contrary to the public interest to disclose

The public interest test has been applied in accordance with Section 17 of the FOI Act, which requires the identification of factors favouring disclosure and non-disclosure, the balancing of those factors, and a decision whether, on balance, disclosure of the information would be contrary to the public interest.

The factors favouring disclosure and non-disclosure, and the reasons for my decisions, are the same as in Stage 1 and are detailed in the decision letter for that stage. Rather than repeating the same information in this letter, please refer to the Stage 1 decision letter.

Charges

I have waived fees associated with your access application as a sign of good faith because this is your second request for information relevant to this topic.

Online publishing – disclosure log

Under section 28 of the Act, the Directorate maintains an online record of access applications called a disclosure log. Information about your request, my decision and records released to you in response to your access application will be published in the Directorate's disclosure log between three and 10 working days after a decision on access has been provided to you. Your personal information will not be published.

You may view the Directorate's disclosure log at

https://www.education.act.gov.au/about_us/freedom_of_information/disclosure-log.

Ombudsman review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in the Directorate's disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision.

Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
Level 4, 1 Moore St
GPO Box 370
Canberra City ACT 2601

Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

If you have any queries concerning the processing of your request, or would like further information, please contact the Education Directorate's FOI team on 02 6205 0720 or email EducationFOI@act.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paula Murray', with a stylized flourish at the end.

Paula Murray
Information Officer

22 February 2022