

[REDACTED]

Via email: [REDACTED]

Dear [REDACTED],

FREEDOM OF INFORMATION (FOI) REQUEST: XXXXXXXXXX

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 1 (2021 records) and is due to be provided by 1 February 2022.

Decision on access

Searches were completed for relevant records and 254 records relating to 42 cases were identified that fall within the scope 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 95 records with deletions applied; and
- Non-release of 160 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 the nature of the records within the scope of your request is different to your previous request, my decisions and reasons are also different.

Information that is contrary to the public interest to disclose

For some cases and records within the scope of your request, information is not released because its disclosure is contrary to the public interest in accordance with Schedule 1 of the Act, due to it being precluded by law (Schedule 1, 1.3) under Part 4-3 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*.

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.

I have decided that the factors favouring disclosure, as listed at Schedule 2.1 of the FOI Act, are that disclosure could reasonably be expected to:

- promote open discussion of public affairs and enhance the government's accountability (Schedule 2, 2.1(a)(i));
- contribute to positive and informed debate on important issues or matters of public interest (Schedule 2.1(a)(ii));
- inform the community of the government's operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with member of the community (Schedule 2, 2.1(a)(iii));
- allow or assist inquiry into possible deficiencies in the conduct or administration of an agency or official (Schedule 2, 2.1(a)(v); and
- reveal the reason for a government decision and any background or contextual information that informed the decision (Schedule 2, 2.1(a)(viii).

It is my view that the education of children, the conduct of people responsible for educating children, and the decisions and actions of employers and agencies overseeing these matters are issues of broad public interest.

I have decided that the applicable factors favouring non-disclosure as listed at Schedule 2.2 of the FOI Act, are that

- disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy or any other right under the *Human Rights Act 2004* (Schedule 2, 2.2(a)(ii));
- disclosure of the information could reasonably be expected to prejudice security, law enforcement or public safety (Schedule 2, 2.2(a)(iii); and
- the information is about unsubstantiated allegations of misconduct or unlawful, negligent or improper conduct and disclosure of the information could prejudice the fair treatment of an individual (Schedule 2.2(b)(v)).

In addition, despite TQI's role and statutory powers to obtain information from the employers of teachers across all sectors in the ACT (government and non-government), and the knowledge amongst stakeholders that the FOI Act applies to information held by TQI as it is a government agency, I have decided that information provided to TQI with the expectation of being treated confidentially, and information that would be prejudicial to the management function of those employers, particularly as they relate to performance and conduct management, are also factors favouring non-disclosure in the public interest. The FOI Act makes provision for these factors to be applied to information held by government agencies such as TQI about their internal practices relating to their employees, but not to external stakeholders dealing with the same issues. Whilst these are not factors listed at Schedule 2.2 of the FOI Act, the ACT Ombudsman's FOI Guidelines notes that the list is not exhaustive.

I have considered the factors favouring disclosure and the factors favouring non-disclosure.

Section 12(a) of the Human Rights Act provides that everyone has the right '*not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily*'. Thus, as described in Ombudsman decision ACTOFOI 16, this "can essentially be viewed as the right of an individual to preserve their personal sphere from interference by others". In this context, I have decided that information which identifies individuals or could lead to their identification is not to be disclosed as their right to privacy has significant weight and outweighs the factors favouring disclosure. This has been applied to the teacher's name, signatures, school name, names of superiors or colleagues, employment history, etc.

I am cognisant of the Ombudsman's view specified in ACTOFOI 16 that the conduct of teachers that gave rise to matters being reported to TQI, and how these were dealt with, is a matter of considerable public interest and government accountability. Consequently, consistent with the Ombudsman's decision, in the majority of cases within scope of this request, the teacher's actions or conduct are disclosed. However, in one case I have decided that the public interest is sufficiently served by disclosing the nature of the matter, without releasing the full detail of the incident into the public domain, as the records indicate that it did not involve behaviour towards students.

The released records confirm that the investigation processes for alleged misconduct have resulted in some individuals being disciplined, such as having their pay or conditions varied, their employment terminated, or their resignation accepted. For some of these individuals, any public release of information, even if they alone can recognise their case or circumstances, may be an additional and significant stress factor. Consequently, I am mindful that in some cases the release of information and potential for subsequent media commentary could create additional trauma for these individuals, including the risk of serious harm. Therefore, my decision is to not release records relating to cases where there is a reasonable expectation that this could occur, as the risk to public safety exceeds the factors favouring disclosure in the public interest.

In some cases, the records relate to unsubstantiated allegations by virtue of the stage they are at in the process, i.e. matters had been referred for investigation but the investigation was not complete as at 29 November 2021. I have decided it would be unreasonable to disclose these records without a procedurally fair process having been completed prior to information being released into the public domain. Given that the person who is the subject of the allegations is required to uphold confidentiality throughout the investigation, and that any breach by them of those requirements may result in disciplinary action, therefore the employer should be abiding by the same principles and similarly for TQI.

As stated above, it is my view that it is not in the public interest to disclose information that was provided to TQI with the expectation of being handled confidentially, and where it relates to performance and conduct investigations by employers. It would be incongruent for information that employers are compelled to provide to TQI, such as

investigation reports to not be treated confidentially in relation to information such as witness statements, particularly of students, who may be young children. Further, public release of such information may result in their staff being less inclined to participate in such processes, thereby affecting the quality or completeness of information provided to TQI, and by extension the ability of TQI to effectively perform its functions.

Finally, information that was outside of the scope of your application has been deleted. This information related to TQI's administrative processes and was not relevant to the matters identified in your application.

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



Paula Murray
Information Officer

1 February 2022