

Decision and reasons of Acting Senior Assistant Ombudsman

Application number:	AFOI-RR/23/10031
Applicant:	'DE'
Respondent:	Education Directorate
Respondent reference:	2023/1057
Date:	23 August 2024
Decision reference:	[2024] ACTOFOI 15
Catchwords:	<i>Freedom of Information Act 2016</i> – deciding access – whether information is contrary to the public interest information – relevant third parties – refuse to confirm or deny information is held by the respondent or deal with applications involving family violence – reveal the reasons for a government decision – information is personal information – information provided in confidence – prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act.

Decision

1. For the purpose of s 82 of *Freedom of Information Act 2016* (**FOI Act**), I am a delegate of the ACT Ombudsman.
2. The review applicant (**applicant**) applied for Ombudsman review of the Education Directorate's (**Education**) decision to give access to information about the applicant and their children.

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3. The applicant provided information to Education about family violence allegations and requested Education neither confirm nor deny information was held; and objected to the release of their personal information including joint personal information of the applicant and their children.
4. For the reasons set out below, I have decided to **vary** Education's decision under s 82(2)(b) of the FOI Act. The practical effect of this variation will be to refuse access to part of the personal information of the applicant determined, on balance, to be contrary to the public interest information.

Background to Ombudsman review

5. On 27 January 2023, Education received an application from a parent (**FOI applicant**) seeking access to all documents relating to their children, including:

"...all documents held by [school] and/or the ACT Education Directorate relating to my children. This should include...

- copies of all information...concerning the [enrolment] of [child], including communications between the Directorate and the [applicant], internal communications regarding the decision made, copies of the appeal submitted by the [applicant], any consideration given to that appeal, and any communications about whether the [FOI applicant] should be informed of that decision...
- a copy of the birth certificate provided to [school] at the time that [child] was enrolled...
- information relating to the enrolment of each child, including enrolment forms...and any other document pertaining to the children, family or school relevant to my children...
- relating to decisions made regarding session choice for [child] for both the 2022 and 2023 school years...and any other document pertaining to this decision...
- copies of any documents concerning a request by [applicant] to require [subject matter] education at [school], and any registration of the children to attend [subject matter] classes...
- copies of any other documents relating to the children, or to their family...held by the school or Education Directorate..."

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6. Education identified disclosure of some of the information requested may reasonably be expected to be of concern to the applicant. On 5 April 2023, Education consulted the applicant on the disclosure of information of concern to the applicant under s 38 of the FOI Act.
7. On 18 April 2023, the applicant made submissions the application should be decided by:
 - refusing to confirm or deny that the information is held on the ground the information is contrary to the public interest information, and doing so would, or could reasonably be expected to be an unreasonable limitation on a person's rights under the [Human Rights Act 2004](#) (**Human Rights Act**)¹
 - refusing to deal with the application on the ground the application is vexatious and involves an abuse of process, including an unreasonable request for personal information,² or
 - refusing access to all of the information as the information is contrary to the public interest information because it included—
 - information subject to legal professional privilege³
 - information that is protected information under the *Children and Young People Act 2008*, and information the disclosure of which is prohibited by a secrecy provision of a law⁴
 - sensitive information,⁵ and

¹ Section 35(1)(e)(ii)(B) of the [Freedom of Information Act 2016](#) (**FOI Act**).

² Section 43(1)(b) and(c) of the FOI Act.

³ Schedule 1, s 1.2 of the FOI Act.

⁴ Schedule 1, ss 1.3(2) and(6) of the FOI Act.

⁵ Schedule 1, s 1.4 of the FOI Act.

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- law enforcement and public safety information.⁶
8. The applicant also submitted several public interest factors favouring non-disclosure applied, stating 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 Act⁷
 - could reasonably be expected to prejudice security, law enforcement or public safety,⁸ and
 - would result in the disclosure of confidential information.⁹
9. The applicant further submitted the information:
- is personal information of a child and disclosure of the information is reasonably considered not to be in the best interests of the child¹⁰
 - would be privileged from production in a legal proceeding on the ground of legal professional privilege,¹¹ and
 - is information disclosure of which is prohibited by an Act of the Territory, a State or the Commonwealth.¹²
10. The applicant also submitted information identified by Education was outside the scope of the application.

⁶ Schedule 1, ss 1.14(1)(b) and (d) of the FOI Act.

⁷ Schedule 2, s 2.2(a)(ii) of the FOI Act.

⁸ Schedule 2, s 2.2(a)(iii) of the FOI Act.

⁹ The list of factors favouring non-disclosure is not an exhaustive list (Schedule 2, [Explanatory Statement, Freedom of Information Bill 2016](#)).

¹⁰ Schedule 2, s 2.2(b)(i) of the FOI Act.

¹¹ Schedule 2, s 2.2(b)(ii) of the FOI Act.

¹² Schedule 2, s 2.2(b)(iv) of the FOI Act.

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11. On 2 June 2023, Education wrote to the applicant and advised it had decided the application was not vexatious or an abuse of process. Education gave the applicant an opportunity to provide evidence about how revealing or disclosing information could result in family violence, harassment, or intimidation of a person.
12. On 11 June 2023, the applicant provided evidence in support of their submissions but agreed to the release of some of their personal information.
13. On 13 July 2023, Education decided the application by granting access in part to the information of concern to the applicant.
14. On 31 July 2023, the applicant applied for Ombudsman review of Education's decision to give access to this information.
15. On 1 July 2024, the Senior Assistant Ombudsman provided his view to the parties in a draft consideration.
16. On 21 July 2024, the applicant provided submissions in response to the draft consideration in support of their position part of the application seeking 'correspondence from the child's [parent]' involves an abuse of process.
17. Education did not provide any submissions in response to the draft consideration.

Preliminary issue

Refuse to confirm or deny information is held by the respondent, or deal with applications, involving family violence

18. During consultation, the applicant told Education the application should not be dealt with as the FOI applicant was a perpetrator of family violence. The applicant gave information to Education in support of their submission, including a copy of a statutory declaration and other evidence.

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19. In submissions to the Ombudsman the applicant raised their concern that Education was unwilling to decide or accept the applicant was a victim of family violence.
20. The applicant told Education providing their personal information to the FOI applicant could result in harassment or intimidation by the FOI applicant. As an example, the applicant explained the FOI applicant would likely contact the applicant and use the information they have received against them including by leading to abusive and harassing communications.
21. The applicant explained release of the information will affect the applicant's ability to protect themselves and their children as giving more information about the actions of the applicant to an alleged perpetrator of family violence could worsen power imbalances and result in further family violence.
22. The applicant stated the application was made to cause annoyance to both the applicant and the school, because the FOI applicant did not agree with a decision made about enrolment of the children.
23. The applicant said the FOI applicant would know third party consultation would happen if they applied for the applicant's personal information; and this was done to intimidate and annoy the applicant.
24. The applicant later withdrew their submission the information sought was law enforcement or public safety information, as they were concerned about the inclusion of the assessment of this factor in the decision notice to the FOI applicant.
25. At the time the application was made, Education was aware both the applicant and the FOI applicant had equal shared parental responsibility for the children under a family law court order.

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26. Education decided the application was not an abuse of process because the FOI applicant had equal shared parental responsibility for the children and largely sought information about enrolment and school administration.
27. In the decision notice, Education explained they considered the applicant's evidence and determined these records were information the applicant has provided to others about family violence allegations.
28. Education said there was no corroborating information, for example a court order or advice from an independent party seeking a family violence order would be an appropriate course of action. Education acknowledged victims of family violence do not always pursue matters with courts or the police.
29. In the decision notice, Education explained it had balanced the public interest in a parent accessing information about their child and the protection of the other parent's privacy.

Evidence and family violence

30. The applicant has asked for clarification on whether the personal information of a victim of family violence is inherently contrary to the public interest information; and if so whether a family violence order is sufficient evidence.
31. The FOI Act does not contain express provisions relating to family violence. During the course of this review, the Ombudsman updated the FOI guidelines to include information about the consideration of family violence.¹³
32. It is possible personal information of a victim of family violence could be assessed as information taken to be contrary to the public interest under Schedule 1 of the FOI Act.

¹³ See [Freedom of Information \(Volume 4 - Considering the public interest\) Guidelines 2023 \[8.2\]](#).

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33. Information about family violence allegations, victims and perpetrators could be contrary to the public interest information where:
- disclosure would be contempt of court¹⁴ or
 - disclosure would or could reasonably be expected to result in a person being subject to a serious act of harassment or intimidation.¹⁵
34. For example, a family violence order may include conditions the court considers necessary having regard to the safety of the affected person and children, including prohibiting a person from attempting to locate the protected person.¹⁶
35. Respondents may also determine, on balance, information is contrary to the public interest after conducting the public interest test set out in s 17 of the FOI Act. Relevant factors favouring nondisclosure in the public interest may include where disclosure could be reasonably expected to prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act;¹⁷ or where release could prejudice the flow of information to the police or another law enforcement or regulatory agency.¹⁸
36. I note the applicant has subsequently provided the Ombudsman with evidence of an interim family violence order involving the applicant and the FOI applicant. I note the order does not prevent communication between the FOI applicant and the applicant.
37. Importantly, a lack of a family violence order does not mean the information officer cannot take evidence of family violence allegations into account when assessing an application.

¹⁴ Schedule 1, s 1.1 of the FOI Act.

¹⁵ Schedule 1, s 1.14 of the FOI Act.

¹⁶ Section 38 of the *Family Violence Act (2016)*.

¹⁷ Schedule 2, s 2.2(a)(ii) of the FOI Act.

¹⁸ Schedule 2, s 2.2(a)(ix) of the FOI Act.

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38. For the purpose of deciding whether to refuse to deal with an application, refuse to confirm or deny information is held, or give access to information an information officer does not need to prove or conclude someone is a victim of family violence.
39. In making an administrative decision, an information officer must consider relevant available evidence. Information officers must give reasons for their decision, including findings on any material questions of fact referring to the evidence or other material on which the findings were based.¹⁹
40. As discussed in the Office of the Australian Information Commissioner (OAIC) Freedom of Information Guidelines:²⁰

The obligation rests on a decision maker to be reasonably satisfied that a finding of fact can or cannot be made on the available evidence. Unless legislation states otherwise, there is no onus or burden on a party to prove that a fact does or does not exist. In discharging the obligation to be reasonably satisfied, the decision maker may have to draw inferences from the available evidence or information known to the decision maker. The evidence should be logically capable of supporting the decision maker's findings of fact.

41. In the original decision, Education determined part of the information was not contrary to the public interest information. Education was also not satisfied confirming information was held by the school could reasonably be expected to endanger the applicant, be an unreasonable limitation on the applicant's human rights or prejudice an ongoing criminal investigation.
42. It is not in dispute the FOI applicant knows where the children attend school and has equal shared parental responsibility for the children under a court order. I note the applicant ultimately agreed to the release of their personal contact details included within enrolment forms for the children.

¹⁹ Division 5.5 of the FOI Act.

²⁰ [OAIC, Freedom of Information Guidelines, Part 3 \[3.24\]](#).

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43. The applicant also acknowledged some of the information in the scope of the request is known to the FOI applicant because it had previously been made available to them.
44. In these circumstances, it is not apparent how confirming or denying information is held by Education, or dealing with the application, could result in harm or an unreasonable limitation of a person's rights.
45. It is not probable for the FOI applicant to use the fact enrolment information or correspondence between the school and either of the children's parent exists or is held by the school 'against' the applicant to cause detriment. I agree with the decision made by Education to confirm information was held.
46. In response to the draft consideration, the applicant submitted a request from an ex-spouse seeking personal information of their former partner is inherently an unreasonable request for personal information; particularly in circumstances where the information being sought is the personal information of a victim of family violence, and the person who made the application is the perpetrator of family violence.
47. The applicant also submitted this part of the application is an unreasonable request for personal information because the information is not well known or otherwise publicly accessible, the applicant expressly opposes disclosure, the information was provided to the school with an expectation the information (including the fact the information exists) would be kept confidential, and disclosure would harm the public interest in protecting victims of family violence.

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48. I do not consider the part of the application seeking information about the enrolment of the FOI applicant's children involves harassment or intimidation. It is reasonable to expect a person with equal shared parental responsibility may seek information about the education of their children, including enrolment decisions. I also do not consider this part of the application involves an unreasonable request for personal information, particularly when the personal information sought is the joint personal information of the applicant and their children.

49. I have considered whether the part of the application seeking 'correspondence with the children's [parent]' is an unreasonable request for personal information about the applicant. The explanatory statement for the Freedom of Information Bill 2016 provides:²¹

Notwithstanding that the motivations of an applicant may be able to be considered in the determination of whether the application is an abuse of process it remains an objective standard that operates in the context of a scheme designed to facilitate public access to government information where no person has a greater right or ability to access government information than anyone else.

50. The applicant has submitted there is no circumstance in which a request for any personal information of a victim of family violence by the perpetrator of family violence would be a 'reasonable' request for personal information of a person. I am aware the FOI applicant is subject to an interim family violence order involving the applicant (being the protected person).²²

51. I accept such a request in the circumstances described above could be an unreasonable request for personal information. However, I do not agree a request for 'any' personal information of a victim of family violence is inherently an unreasonable request.

²¹ [Explanatory Statement, Freedom of Information Bill 2016 \(ACT\)](#).

²² [Family Violence Act 2016 \(ACT\)](#) s 22.

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52. The nature of the personal information being sought, the contents and the circumstances of the request must also be considered to determine if the request is 'unreasonable'.
53. The nature of the personal information sought is communication between one of the parents holding equal shared parental responsibility for the children and the school the children attend. It is apparent from the content of the FOI application that the communications between the applicant and the school were sought because the applicant is the other parent of the children and for this reason was involved in the enrolment of the children.
54. I note in this matter, the applicant agreed to release some of their personal information to the FOI applicant (contact details and address within enrolment forms), including information which had previously been provided to the FOI applicant (i.e. FOI applicant was aware of the fact the applicant enrolled the children at the school).
55. I accept it is possible the scope of the application could capture communications to or from the applicant concerning matters unrelated to enrolment or administrative matters involving the children. While the FOI applicant may not be aware these communications exist, I am not persuaded this would mean this part of the application is an unreasonable request for personal information.
56. Importantly, whether a request is unreasonable will be a unique assessment for each FOI application and the circumstances of the parties involved. There may be applications involving family violence issues and requests for information about children where an FOI applicant and a third-party share responsibility for their children, where it will not be appropriate for the respondent to deal with, nor to confirm information is held.

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57. I have taken into consideration the circumstances of the application, the interim family violence order, the submissions of the applicant and the nature of the personal information sought.

58. I am satisfied in these circumstances where the applicant has agreed to the release of some information, some of the information has previously been provided to the FOI applicant and the information sought is correspondence involving the other parent of the children who has equal shared parental responsibility with the FOI applicant, that this part of the application ('correspondence with the [applicant]') is not an unreasonable request for personal information of the applicant.

59. I agree with the decision made by Education to deal with the whole application.

Information at issue

60. Education identified 11 documents of concern to the applicant. Education decided to give access in full to documents 3, 4, 5 and 32; and access in part to documents 18, 28, 35, 36, 46, 51 and 55.

61. The applicant does not object to the release of:

- documents 3, 4 and 5
- part of document 18, and
- attachments to documents 35, 51 and 55.

62. The information at issue in this Ombudsman review is the information within documents 18, 28, 32, 35, 36, 46, 51 and 55 (**school records**).

63. The key issue to be decided in this Ombudsman review is whether the school records are 'contrary to the public interest information' for the purposes of the FOI Act.

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64. In making my decision, I have had regard to:

- the FOI applicant's access application
- the applicant's review application and submissions
- the respondent's decision of 13 July 2023
- the respondent's FOI processing file relating to the access application, including consultation with the applicant
- the FOI Act, in particular ss 16, 17, 35, and Schedule 2
- the Human Rights Act
- the Family Violence Act
- the Information Privacy Act
- the OAIC Freedom of Information Guidelines, and
- the Freedom of Information Guidelines made under s 66 of the FOI Act.

Relevant law

65. Section 7 of the FOI Act gives every person an enforceable right of access to government information. This right is subject to other provisions of the FOI Act, including grounds on which access may be refused.²³

66. Contrary to the public interest information is defined in s 16 of the FOI Act as information—

- (a) that is taken to be contrary to the public interest to disclose under schedule 1; or
- (b) the disclosure of which would, on balance, be contrary to the public interest under the test set out in section 17.

²³ Section 35(1)(c) of the FOI Act.

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67. The public interest test set out in s 17 of the FOI Act involves a process of balancing public interest factors favouring disclosure against public interest factors favouring nondisclosure to decide whether, on balance, disclosure would be contrary to the public interest.
68. A respondent may take into account the identity, circumstances and reason of the person seeking the information if the personal information requested is personal information which is not their own.²⁴
69. Section 35(1)(c) of the FOI Act provides an access application may be decided by refusing to give access to the information sought because the information being sought is contrary to the public interest information.
70. Section 50 of the FOI Act applies if an access application is made for government information in a record containing contrary to the public interest information and it is practicable to give access to a copy of the record from which contrary to the public interest information has been deleted.
71. Schedule 2 of the FOI Act sets out the public interest factors which must be considered, where relevant, when determining the public interest.
72. Respondents can refuse to deal with applications if the application involves an abuse of process, including harassment or intimidation of a person and an unreasonable request for personal information about a person.²⁵
73. Respondents can decide an application by refusing to confirm or deny that the information is held by the respondent under s 35(1)(e) of the FOI Act if:
- the information is contrary to the public interest information, and
 - doing so would, or could reasonably be expected to –
 - endanger the life or physical safety of a person; or

²⁴ Section 17(3) of the FOI Act.

²⁵ Section 17(3) of the FOI Act.

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- be an unreasonable limitation on a person's rights under the Human Rights Act; or
- significantly prejudice an ongoing criminal investigation.

74. A person seeking to prevent disclosure of government information has the onus of establishing that the information is contrary to the public interest information.²⁶

The submissions of the parties

75. In the decision notice to the FOI applicant, Education said:

"...I place significant weight on the right to privacy of individuals and their right to have their personal information protected. I have decided that their right to privacy in relation to their personal information has a higher standing of public interest not to disclose, than the public interest in disclosing this information. Accordingly, third party personal information, which is predominantly the names of other people, mobile phone numbers, and signatures, has been deleted.

Some of the records contain information that was provided to the Directorate on a confidential basis. Whilst this is not a factor favouring non-disclosure specified at Schedule 2, 2.2 of the Act, the listing of factors provided in the Act is not exhaustive and it is relevant consideration in these circumstances. I give the importance of upholding confidentiality significantly more weight than the factors favouring disclosure. In my view it would be unreasonably intrusive, to release this information against the expressed wishes of the author..."

76. In their Ombudsman review application, the applicant said:

"...it is conclusively, inherently, and unacceptably prejudicial to a third party to provide private correspondence of that third party...where the [person who made the applicant] has or is perpetrating family violence..."

Where my personal information is intertwined with the personal information of a second person (such as one of my children), and a third person is entitled to access the personal information of the second person but not of me... my right to privacy trumps the third person's right to access the personal information of the second person...."

77. These submissions are discussed in more detail below.

Consideration

²⁶ Section 72 of the FOI Act.

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78. I have carefully reviewed a copy of the school records.

Public interest test

79. To determine whether disclosure is contrary to the public interest, the FOI Act prescribes the following five steps:

- identify any factor favouring disclosure that applies in relation to the information (a relevant factor favouring disclosure), including any factor mentioned in schedule 2, section 2.1
- identify any factor favouring nondisclosure that applies in relation to the information (a relevant factor favouring nondisclosure), including any factor mentioned in schedule 2, section 2.2
- balance any relevant factor or factors favouring disclosure against any relevant factor or factors favouring nondisclosure
- decide whether, on balance, disclosure of the information would be contrary to the public interest
- unless, on balance, disclosure of the information would be contrary to the public interest, allow access to the information.

Factors favouring disclosure

80. Education identified 2 factors favouring disclosure of the information.

81. Given the specific context in which the access application was made I do not consider any other factors favouring disclosure apply.

Reveal the reasons for a government decision (Schedule 2, s 2.1(a)(viii))

82. Education identified disclosure of the school records could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision.
83. The application was expressed as a request for all information about the FOI Applicant's children held by a school or Education, including information about enrolment of each child and decisions made about class placement.
84. I consider disclosure of the school records would reveal information available to Education for the purpose of making decisions about enrolment, and how Education attempted to resolve issues raised about enrolment of the children.
85. I note the school records contain Education's communications about enrolment, but they do not detail Education's reasons or advice about these issues.
86. While it is in the public interest to release information which would reveal reasons for decisions made by Education, release of information about one family in these circumstances is unlikely to have any impact on other families who attend the school. I note the information did not refer to specific policy or guidelines which may apply to all children at the school.
87. In my view this factor applies to the school records, but I afford minor weight as I consider release would only reveal limited background information about enrolment decisions.

Information is personal information (Schedule 2, ss 2.1(b)(i) and (ii))

88. Education identified a factor favouring disclosure is the information is the personal information of the person making the request, and the personal information of their children.

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89. During third party consultation with the applicant, Education said:

[the FOI applicant]'s entitlement to access information relating to your children was established and the Directorate was advised that there are no court orders precluding [them] from seeking access to information relating to the children. In addition, the records within scope of the request indicate that both parents have equal shared parental responsibility for the children. Consequently, it was deemed to be in the children's best interests for information about them to be provided to their [parent], as [they are] ...equally responsible for them, except where the information would be contrary to the public interest to disclose.

90. As set out above, the FOI applicant and the applicant have shared parental responsibility for the children. There is no evidence before me that suggests release of the children's personal information to the FOI applicant would not reasonably be considered in the children's best interest.

91. The applicant has expressed they do not consent to the release of personal information of the children to the FOI applicant. I note the school records also contain joint personal information of the applicant and the children.

92. The information is historical in nature as the relevant school years are now over. I note the applicant has agreed to the release of the children's enrolment forms. I consider release would only reveal personal information of the children either known to, or that can reasonably be ascertained by, the FOI applicant.

93. I agree this factor applies to the school records. I attribute minor weight to this factor as disclosure would only reveal a limited amount of personal information of the children.

Factors favouring non-disclosure

94. Education identified 2 factors favouring non-disclosure, and I agree these factors are relevant in this review.

Information provided in confidence

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95. The applicant made submissions they had communicated with the school on a confidential basis. In the decision, Education said they did not agree with the applicant's submission the school records were subject to confidentiality or an obligation not to disclose the information.

96. I note this is not listed as a factor favouring non-disclosure at Schedule 2.2 of the FOI Act. However, the list at Schedule 2.2 is not exhaustive, and a decision maker is required to take into account all the relevant factors in the circumstances of the application.²⁷

97. However, Education did acknowledge it would be unreasonably intrusive to release the school records against the applicant's express wishes they are not to be provided to the FOI applicant.

98. There is a public interest in ensuring people do not feel inhibited from communicating with schools about potentially sensitive matters, and in some circumstances, may only do so if they believe the information will be protected.

99. I agree this factor applies to the school records. I attribute minor weight to this factor as the parties did not agree the information was confidential and therefore disclosure is unlikely to impact Education's ability to receive confidential information.

Prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act (Schedule 2, s 2.2(a)(ii))

100. A reasonable expectation disclosure could prejudice an individual's right to privacy under the Human Rights Act weighs against disclosure under the FOI Act.

²⁷ Schedule 2, [Explanatory Statement, Freedom of Information Bill 2016](#).

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101. Section 12 of the Human Rights Act provides:

Everyone has the right—

- (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
- (b) not to have his or her reputation unlawfully attacked.

102. Both Education and the applicant acknowledge some of the personal information of the applicant was known to the FOI applicant, including their mobile phone number and email address.

103. Education identified release of some of the personal information of the applicant would prejudice the protection of their privacy.

104. The *Information Privacy Act 2014* sets out how personal information is handled by public sector agencies and how the privacy of individuals is protected. An individual's privacy is 'interfered with' if an act or practice breaches a Territory Privacy Principle (**TPP**) in relation to personal information about the individual.²⁸

105. TPP 6 provides if an agency holds personal information about an individual that was collected for a particular purpose (primary purpose), the agency must not use or disclose the information for another purpose (secondary purpose) unless the individual consents or an exception in TPP 6.2 or TPP 6.3 applies.

106. An agency may use or disclose non-sensitive personal information for a secondary purpose if the use or disclosure is related to the primary purpose; required or authorised by law; or a permitted general situation exists.

²⁸ Section 11, [Information Privacy Act 2014 \(ACT\)](#).

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107. The applicant has objected to the release of their personal information to the FOI applicant. I accept the personal information of the applicant was provided to Education for a particular purpose.
108. When the applicant gave the information to Education the applicant expressed they did not want this information to be given to the FOI applicant.
109. It is reasonable to expect personal information given to Education for the purpose of enrolment of children may be disclosed to the other parent who has shared parental responsibility for purposes related to enrolment or school administration.
110. I do not consider release of information of an administrative nature in the school records involving enrolment of the children, which contains the joint personal information of the applicant and their children, would prejudice the protection of the applicant's privacy.
111. A person would not reasonably expect personal information they have given to Education for enrolment, but involving sensitive matters they have expressed should not be shared, to be given to that person for a different purpose. I consider release of this personal information of the applicant would interfere with the protection of their privacy.
112. I agree this factor applies to the personal information of the applicant within the school records excluding the information at [110]. I attribute significant weight to this factor as I consider disclosure could be an unlawfully interference with their privacy.

Balancing the factors

113. Having identified public interest factors favouring disclosure and factors favouring non-disclosure, I now must consider the public interest balancing test set out in s 17 of the FOI Act.

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114. In this matter, I identified 2 factors favouring disclosure of the school records and attributed minor weight to these factors as release would only promote the public interest to a limited extent.

115. I identified 2 factors favouring non-disclosure of the information of the school records and attributed minor weight to one factor. I attributed significant weight where I considered disclosure of the information would prejudice the protection of the applicant's right to privacy.

116. Balancing public interest factors is not simply a case of quantifying the number of relevant factors for disclosure and non-disclosure, with the higher quantity being considered in the public interest. The decision-maker's task is to consider the relative importance and weight of each factor identified. The weight given to a factor will depend on the effect that disclosing the information has on the public interest.

117. The FOI Act has a pro-disclosure bias,²⁹ and as a result, the public interest test should not be approached on the basis that there are empty scales in equilibrium, waiting for arguments to be put on each side. Rather, the scales are 'laden in favour of disclosure'.³⁰

118. On balance, the public interest factors favouring non-disclosure outweighs the public interest factors favouring disclosure of the personal information of the applicant contained in the school records excluding information referred to in [110].

119. I consider disclosure of part of the school records which contain information of an administrative nature is not reasonably expected to prejudice the protection of the applicant's privacy. On balance, the public interest factors

²⁹ Section 17, [FOI Act](#).

³⁰ [Explanatory Statement, Freedom of Information Bill 2016](#).

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favouring disclosure of this information outweighs the public interest factors favouring nondisclosure.

Conclusion

120. For the reasons set out above, I vary Education's decision under s 82(2)(b) of the FOI Act.

121. The effect of my decision will be to grant access in part to documents 18, 32, 35, 36, 46, 51 and 55; and refuse access to documents 28.

Georgia Ramsay

Acting Senior Assistant Ombudsman

23 August 2024

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