

Decision and reasons of Senior Assistant Ombudsman

Application number:	AFOI-RR/25/80022
Applicant:	'DR'
Respondent:	Education Directorate
Respondent reference:	FILE2025/3516
Date:	22 September 2025
Decision reference:	[2025] ACTOFOI 16
Catchwords:	Freedom of Information Act 2016 – deciding access – whether information is contrary to the public interest information – information is personal information of the person making the request – promote open discussion of public affairs and enhance the government's accountability – 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 the *Freedom of Information Act 2016* (**FOI Act**), I am a delegate of the ACT Ombudsman.
2. The applicant sought Ombudsman review of the decision to give access to one document in part made by the Education Directorate (**Education**).
3. For the reasons set out below, my decision is to **vary the decision** under s 82(2)(b) of the FOI Act giving more information as it is, on balance, not contrary to the public interest information.

Background to Ombudsman review

4. On 20 February 2025, the applicant applied to Education for:

SAS incident reports submitted by and relating to [me] from 2024.
5. On 1 April 2025, Education identified one document within the scope of the request and refused access to third party personal information within this document having given significant weight to the factor favouring nondisclosure under Schedule 2, 2.2(a)(ii) of the FOI Act.
6. On 2 April 2025, the applicant applied for Ombudsman review under s 73 of the FOI Act.
7. On 12 June 2025, in response to the notice of Ombudsman review issued under s 75 of the FOI Act, Education provided a marked up copy of the document to our Office.
8. On 30 July 2025, our Office proposed informal resolution to the applicant and provided a case officer assessment. Our Office did not receive a response from the applicant.
9. On 1 September 2025, I provided my preliminary view to the parties in a draft consideration.
10. On the same day, Education indicated it accepted the draft consideration, making no further submissions.
11. On 5 September 2025, the applicant provided their response to the draft consideration, including additional submissions in support of their view that the original decision is not correct.

Information at issue

12. The information at issue in this Ombudsman review is a copy of an incident report submitted by the applicant dated 11 April 2024 (incident report).

13. The key issue to be decided in this Ombudsman review is whether the incident report is, on balance, contrary to the public interest information.
14. In making my decision, I have had regard to:
- the applicant's review application of 2 April 2025
 - correspondence between the applicant and Education dated 20 February 2025 and 25 February 2025
 - Education's access decision of 1 April 2025
 - submissions of Education dated 12 June 2025, including an unredacted copy of the document
 - submissions of the applicant dated 5 September 2025
 - the ACT FOI Guidelines, made under s 66 of the FOI Act
 - the [FOI Act](#), particularly ss 7, 9, 16, 17, 35, 50, 72, and Schedule 2, and
 - the [Information Privacy Act 2014](#), and
 - the [Human Rights Act 2004](#).

Relevant law

15. 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.¹
16. 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.

¹ Section 35(1)(c) of the [Freedom of Information Act 2016 \(ACT\)](#).

17. 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.
18. Section 17(3) of the FOI Act provides that the to the applicant's identity, circumstances, and reason for seeking access to the information may be taken into account if the information requested is personal information; and the personal information is not about the applicant. I have considered the applicant's identity and reasons for seeking access to third party personal information. However, this factor is irrelevant to the consideration of the non-personal information, that being the description of administrative actions taken by the school.
19. 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.
20. 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.
21. Schedule 2 of the FOI Act sets out the public interest factors which must be considered, where relevant, when determining the public interest.

The submissions of the parties

22. In response to the applicant initially seeking information, Education said:

The incident report that you refer to is fundamentally a record relating to a student and was created for that purpose. If there is information in the report that relates to you ... we would be able to provide access to your personal information, but not to the student's personal information without consent of the parents.

We can process a request for copies of SAS reports submitted by you in 2024; however, unless they contain personal information about you, the only information that would be released is your name and the date.

23. The applicant responded:

I am happy for the student's information to be redacted...

24. In its decision notice, Education said:

The consideration of the right to privacy of individuals and their right to have their personal information protected activates provisions of the *Human Rights Act 2004* and the *Information Privacy Act 2014*. 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*'. Ombudsman review decisions addressing this matter have stated that this "can essentially be viewed as the right of an individual to preserve their personal sphere from interference by others". In addition, the Territory Privacy Principles contained in the *Information Privacy Act 2014*, set out the expectation that, in ordinary circumstances, individuals are required to give consent before their personal information, which includes information that could lead to them being identified, is disclosed.

25. In their application for Ombudsman review, the applicant said:

I need a record of the mismanagement of my requests for help with this student and obviously understand why [their] name would be redacted. I don't see any reason for any other information to be redacted as this is factual information about what occurred. It does not reflect any information about this particular student without [their] name included.

26. In their submissions, Education said:

...the incident report [the applicant] requested was created for the purpose of documenting information about a student. Whilst it contains some information about the actions taken by [the applicant] and other staff, it is fundamentally a record relating to the student. Therefore, it is regarded as primarily containing the student's personal information. This is consistent with how we handle requests for Safety Portal (formerly known as Riskman) reports submitted by employees, i.e. even if they mention individual students, they are WHS reports by employees and are therefore personal information records relating to those employees. They do not get released to parents/carers of students named.

Further, [the applicant] was advised that she is entitled to information about herself but not to information about others. In this case, delineation of personal information is not black and white, as there is information that relates to her, the student and both, with the latter being largely contextual about what was happening at the time.

27. In response to my draft consideration, the applicant submitted:

... I would like to clarify what I am seeking from this FOI request. I have no desire to name the student involved in this particular situation and am requesting the information as part of a [n external process]. This is the only report that I submitted that detailed the lack of support from execs and I don't feel that it identifies this student since the behaviour was so common. The release of this report with the student's name redacted would still show the inaction on the part of the school which led to my inability to continue as a teacher in any school up to and including the present. It is difficult to show proof that the school was negligent in their care of both the students and the staff so this document is the only written proof that I can provide as part of [the external process]. Please consider releasing the report with only the name of the student redacted since they would be unidentifiable because of the commonplace nature of this situation within the whole [student] cohort...

28. I have considered these submissions below.

Consideration

Public interest test

29. 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, and

- unless, on balance, disclosure of the information would be contrary to the public interest, allow access to the information.

Factors favouring disclosure

30. In its original decision, Education identified one favour favouring disclosure applied to the incident report. In reviewing the information at issue, I have identified an additional factor favouring disclosure.

Information is personal information of the person making the request—

Schedule 2, s 2.1(b)(i)

31. A factor favouring disclosure in the public interest is that the information sought is the personal information of the person making the request.²

32. In the FOI Act, personal information:³

- a) means information or an opinion (including Information forming part of a database), whether true or not, about an individual whose identity is apparent, or can be reasonably be ascertained, from the information or opinion; but
- b) for an individual who is or has been an officer of an agency or staff member of a Minister, does not include information about –
 - i. the individual's position or functions as an officer or staff member; or
 - ii. things done by the individual in exercising function as an officer or staff member.

33. I consider part of the incident report contains the personal information of the applicant, as the report was made by the applicant and includes information about actions taken by the applicant in the course of their employment. It is clear the report contains some personal information of the applicant.

² FOI Act, Schedule 2, s 2.1(b)(i).

³ FOI Act, Dictionary, meaning of 'personal information'.

34. I note the applicant was provided with their own information as the only information that was not released was regarding a third party.
35. Therefore, I afford this factor minimal weight in my decision. I note the report was authored by the applicant. However, the report also contains the personal information of others, including that of the individual subject of the incident report.

Promote open discussion of public affairs and enhances the government's accountability – Schedule 2, s 2.1(a)(i)

36. An additional factor favouring disclosure is that disclosure could reasonably be expected to promote open discussion of public affairs and enhance the government's accountability.
37. Release of the identified information could promote open discussion of the operation of the public school and may enhance government accountability regarding the administrative actions taken by the school.
38. I consider it is reasonable to expect disclosure of the administrative actions taken by the school could promote the public's understanding and knowledge of this public school's procedures and allow for discussion of the school's disciplinary practices.
39. I am of the view that the high-level description of the administrative actions taken would not infringe on the privacy the affected third party as they would not be identifiable.
40. I attribute moderate weight to this factor.

Factors favouring nondisclosure

41. In its original decision, Education identified one factor favouring nondisclosure as relevant.

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

42. A factor favouring nondisclosure in the public interest is Schedule 2, s 2.2 (a)(ii) of the FOI Act where disclosure of 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* (**Human Rights Act**).

43. In considering whether the disclosure of this 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', relevant matters include any detriment disclosure may cause, the nature of the information, and the circumstances in which the information was collected.

44. 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.

45. Having reviewed the incident report, the name, class number, records of attendance and actions taken by the school involving a third party is included in the document. I consider this information to be personal information of an individual who is not the applicant.

46. I am of the view that the third party would be reasonably identifiable from the information contained in the incident report, even if their name was redacted.

47. Personal information extends beyond a person's name and the information contained in the report would reveal enough about the student that could reasonably identify them to others (i.e. class number would imply age, records of attendance with dates revealing the individual's movement etc).

48. 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.⁴
49. 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 6.3 applies.
50. I do not consider the individuals to whom the personal information relates have consented to the disclosure of this information to the applicant. The third party in this case is a minor who does not have capacity to consent to the release of their personal information. The guardians of the third party were not consulted, and I am of the view that would not have been reasonable to do so in the circumstances (i.e. consultation is not required where there is no prospect of the information being released).
51. TPP 6.2 provides an agency may use or disclose non-sensitive personal information for a secondary purpose if the use or disclose is related to the primary purpose; required or authorised by law; or a permitted general situation exists.
52. The personal information in the incident report was obtained by Education for the primary purpose of managing schools, students, and employees in their jurisdiction – in this particular instance, receiving a record of an incident that occurred in the applicant's workplace involving a student.

⁴ Section 11 of the [Information Privacy Act 2014](#) (IP Act).

53. I consider the disclosure of the report for a secondary purpose unrelated to reporting the incident (disclosure in response to an access application) would not be reasonably expected. Disclosure of the incident report in these circumstances is not related to the primary purpose of the collection.
54. Having reviewed the contents of the incident report, I do not consider the relevant third party would expect Education to disclose their personal information for a purpose unrelated to reporting the incident or action taken in response (e.g. performance of work health and safety obligations).
55. Additionally, disclosure of the information would be considered a release to the world at large, with no basis under the FOI Act requiring the applicant not to disclose the information received to any other person. This consideration has notable weight given the vulnerability of the third party and the nature of the personal Information contained in the incident report.
56. I consider disclosure of this personal information for a secondary purpose that is not related to the primary purpose of collection could amount to a breach of the TPPs and interfere with the protection of their right to privacy.
57. In my decision, I afford significant weight to this factor.
58. However, there is information contained in the incident report that details the actions taken by the school's administration. These actions are high level and, when all personal information of the third party is deleted, would not breach the privacy of third parties.
59. I do not consider this factor applies to this information (non-personal information).

Balancing the factors

60. Having identified public interest factors favouring disclosure and factors favouring nondisclosure, I now must consider the public interest balancing test set out in s 17 of the FOI Act.
61. In this matter, I have identified 2 public interest factors favouring disclosure and I attribute limited weight to one factor and moderate weight to the second factor.
62. In relation to the personal information of a third party, I have identified one public interest factor favouring nondisclosure and I attribute significant weight to this factor. The identity of the applicant and their reason for seeking the personal information of the third party was considered, and I am of the view that the factor favouring nondisclosure outweighs this consideration.
63. There is some additional information contained in the incident report that describes high level administrative actions that would not reasonably identify the affected third party. I find this factor does not apply to the residual information in the incident report.
64. Balancing public interest factors is not simply a case of quantifying the number of relevant factors for disclosure and nondisclosure, 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.
65. The FOI Act has a pro-disclosure bias,⁵ and as a result, the public interest test should not be approached on the basis that there are empty scales in

⁵ Section 17 of the [FOI Act](#).

equilibrium, waiting for arguments to be put on each side. Rather, the scales are 'laden in favour of disclosure'.⁶

66. I have considered the applicant's reason for seeking access and have determined that it has limited impact on the public interest test. The incident report was released to the applicant in part, and the applicant would not be precluded from engaging with the external process by virtue of not having a complete incident report.

Conclusion

67. My view is, on balance, that disclosure of the personal information of a third party would be contrary to the public interest as it would constitute an interference with the third party's right to privacy. This factor outweighs the applicant's right to access their own information, given the applicant has already been provided access to their personal information. The reasons for the applicant seeking access to the information have been considered and I have determined it does not factor into the public interest test.

68. In relation to the information purely describing administrative actions taken by the school (non-personal information) I find this information is not contrary to the public interest to release.

Decision

69. For the reasons set out above in this decision, I **vary** Education's decision under s 82(2)(b) of the FOI Act to give partial access to the incident report.

70. The effect of my decision will be to release the document in part only redacting information that could reasonably be expected to prejudice the third party's right to privacy.

Katrina Dwyer

Senior Assistant Ombudsman

22 September 2025

⁶ [Explanatory Statement, Freedom of Information Bill 2016.](#)