

Decision and reasons of Senior Assistant Ombudsman

Application number:	AFOI-RR/25/80044
Applicant:	'DV'
Respondent:	Education Directorate
Respondent reference:	FILE2025/25514
Date:	28 October 2025
Decision reference:	[2025] ACTOFOI 20
Catchwords:	<i>Freedom of Information Act 2016</i> –deciding access – whether information is contrary to the public interest information – promote open discussion of public affairs and enhances the government’s accountability – contribute to positive and informed debate on important issues or matters of public interest – inform the community of the government’s operations including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community – prejudice the protection of an individual’s right to privacy or any other right under the Human Rights Act – reasonable steps to identify all government information within scope – information not held by respondent

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 applied for Ombudsman review of the decision by the Education Directorate (**Education**) to refuse access to the personal information of third parties because this information is on balance contrary to the public interest information. The applicant also submitted further documents within scope should have been identified.
3. For the reasons set out below, my decision is to **confirm** the Education's decision under s 82(2)(a) of the FOI Act to refuse access to the personal information of a third party because this information is on balance contrary to the public interest information. Additionally, I am satisfied Education took all reasonable steps to identify government information within scope of the request.

Background to Ombudsman review

4. On 9 May 2025, the applicant applied to Education for:

Documents held by the Directorate from 1 January 2023 to 31 December 2024 regarding the 1,000+ luxury apartment development in Lyneham (the Lyneham development), specifically:

1. All records, including reports, emails, and meeting minutes, assessing education demand for 500–1,000 students from the Lyneham development, including any related communications mentioning:
 - a. Brindabella Christian College, Lyneham High, or Lyneham Primary.
 - b. A "Super-school" or consolidation of Brindabella Christian College, Lyneham High, Lyneham Primary and the Lyneham Oval in any combination.
2. Correspondence involving Minister Berry or her office on school capacity or infrastructure planning for the new students created by the influx of families into the Lyneham development.
3. Records of consultations with EPSDD, TCCS, or CMTEDD on the Lyneham development's education impacts.
4. Briefings or submissions to Minister Berry on student placement or school planning in Lyneham for the Lyneham development as noted in local media: <https://www.canberratimes.com.au/story/8949250/massive-development-reshapes-canberras-northern-gateway/>

[Newlyne display at Yowani offers a new home experience like no other | Region Canberra](#)

[Canberra's inner-north to get 5,000 new residents if Yowani Country Club development application approved - ABC News](#)

Format: Electronic copies, searchable PDFs.

Exclusions: Exclude general enrolment policies.

5. On 1 July 2025, Education identified 5 documents within the scope of the request. One document was released in full, and 4 were released in part with deletion of third-party personal information having given significant weight to the factor favouring nondisclosure under Schedule 2, 2.2(a)(ii) of the FOI Act. Information that was outside of the scope of the request was also deleted from Records 3-5.
6. On 12 July 2025, the applicant applied for Ombudsman review under s 73 of the FOI Act.
7. On 15 July 2025, the Ombudsman issued a notice of review under s 75 of the FOI Act to Education.
8. On 4 August 2025, Education provided a schedule of documents, the information at issue, and the search minute sent to business areas.
9. On 15 October 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. To date, our Office has not received additional submissions from the applicant.

Information at issue

12. The information at issue in this Ombudsman review is 5 email chains and attachments containing correspondence between Minister Berry and members of the public, and Education's responses to formal consultations

regarding the draft Estate Development Plan for the Yowani Development (Lyneham Development).¹

13. A key issue to be decided in this Ombudsman review is whether the email chains, on balance, contain contrary to the public interest information.
14. Another issue of this Ombudsman review is whether reasonable steps were taken by Education to identify all information within the scope of the application. The applicant has contested that there should have been more documents identified within scope.
15. In making my decision, I have had regard to:
 - the applicant's review application of 12 July 2025
 - Education's decision of 1 July 2025
 - submissions of Education dated 4 August 2025
 - the ACT FOI guidelines, made under s 66 of the FOI Act
 - the [FOI Act](#), particularly ss 7, 9, 16, 17, 34, 35, 50, 72, and Schedule 2,
 - the [Information Privacy Act 2014](#), and
 - the [Human Rights Act 2004](#).

Relevant law

16. 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.²
17. Contrary to the public interest information is defined in s 16 of the FOI Act as:

information—

¹ Estate development plan available at City and Environment, [Development Application No. 202341415](#).

² Section 35(1)(c) of the [Freedom of Information Act 2016 \(ACT\)](#).

- (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.

18. 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.
19. Section 34 of the FOI Act requires that an agency or Minister deciding on an access application must take reasonable steps to identify all government information within the scope of the application.³
20. Respondents may, at any time, contact the applicant to clarify the scope of the application (a clarification request).⁴
21. 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.
22. 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.
23. Schedule 1 of the FOI Act sets out categories of information taken to be 'contrary to the public interest information' for the purposes of the definition in s 16.
24. Schedule 2 of the FOI Act sets out the public interest factors which must be considered, where relevant, when determining the public interest.

³ Section 34(1) of the FOI Act.

⁴ Section 34(2) of the FOI Act.

The submissions of the parties

25. In its decision notice, Education said:

These factors [favouring disclosure] are relevant because decisions relating to education in the ACT are important to a large part of the community, particularly enrolment pressures on schools in inner-north suburbs. Therefore, I give strong weight to the factors favouring disclosure...

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. Consequently, I have decided that the right to privacy of individuals in relation to their personal information as a factor favouring non-disclosure has significant weight...

Information in Records 1 and 2 refers to documents that were circulated by the then Environment, Planning and Sustainable Development Directorate (EPSDD - now City and Environment Directorate (CED)) for review and comment by a number of stakeholders. The documents were shared with the Education Directorate via a temporary link that is no longer available and copies of the documents were not retained.

As the scope of your request was satisfied given the information was not held by the Education Directorate and records of consultation with EPSDD and others (point 3 of your request) are included, transfer of your request to EPSDD was not warranted in this instance.

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

I challenge the limited release of five records (one full, four partial) as inadequate, given the development's significant public interest, evidenced by over 120 local media stories in the past 12 months (e.g., Canberra Times, 22 June 2023, <https://www.canberratimes.com.au/story/8607500/massive-development-reshapes-canberras-northern-gateway/>; Allhomes, 27 November 2024; Riotact, 6 November 2022; ABC News, 21 June 2023) and its impact on BCEL (deregistered 22 June 2025) and local schools (Region News, 8 July 2025, <https://region.com.au/news/steps-being-taken-to-liquidate-brindabella-christian-education-ltd/185518/>).

The Directorate's search, yielding only five records, fails s 44(2) obligations for reasonable searches (ACT Ombudsman Guidelines, para 3.5). The development's scale (800–1,200 dwellings, potentially 5,000 residents) and Minister Berry's involvement (FOI Record 5, 12 September 2024; Canberra Times, 26 April 2025) suggest additional documents exist, including correspondence with EPSDD, TCCS, or CMTEDD.

Over-redaction under s 50 limits public interest disclosure (s 17; Schedule 2.1(a)(i)–(iii)), especially given BCEL's 1,050 students ... (17–18 February 2025 timeline: Kitto's refusal, Berry's announcement, ATO wind-up, Canberra Times, 19 February 2025, <https://www.canberratimes.com.au/story/8997142/brindabella-christian-college-faces-ato-wind-up-application/>).

27. In its response to the Ombudsman's s 75 notice, Education said:

The applicant contends that Minister Berry has greater involvement in the Lyneham development than is indicated in the records released, including correspondence with EPSDD, TCCS or CMTEDD. If there are records of this nature, they are not in scope of the request as it was for 'Documents held by the Education Directorate...'. There may be other records held by Minister Berry but that is not what [they] requested.

The applicant also states the records released were over-redacted. As indicated in the schedule, redactions have applied to information that is the personal information of individuals and would be prejudicial to their right to privacy if disclosed. This has been applied to the names of employees of third party organisations and the personal information (including identifying information) of members of the public who wrote to Minister Berry.

It would have been impractical to undertake third party consultation with all of the parties involved and the names of the individuals are irrelevant, particularly as the organisation's name is disclosed. In addition, information that is outside the scope of the request was redacted. Most of the information contained in Records 3, 4 and 5 was about matters unrelated to the scope of the request.

In relation to the applicant's "requests":

- Undertaking a search based on broader terms and covering Minister Berry's office and other Directorates would require a new FOI request. As stated above, [their] request was specifically for records held by EDU, which is what was processed. Also of note, in the decision letter the applicant was advised that the scope of [their] request had been satisfied; however, further information which may be of interest would be held by the CED Directorate.
- Information relating to BCEL and education impacts was not redacted from the records in scope. The records did not contain information about BCEL.

- The schedule released indicates that Records 1 and 2 were sourced from the Schools Planning team, whilst Records 3, 4 and 5 were provided by the DLO.

Consideration

Issue 1: adequacy of searches

Were reasonable steps taken to identify government information?

28. Section 34 of the FOI Act required Education to 'take all reasonable steps to identify all government information within the scope of the application'.

29. The FOI Act itself is silent on what constitutes reasonable steps. Guidance provided in the explanatory statement to the Freedom of Information Bill 2016 notes that at a minimum it would include a search of electronic records and physical records in cases where that is applicable.⁵

30. The Office has reviewed the internal search consultations provided by Education. In the evidence of searches provided by Education, a copy of the applicant's access application dated 9 May 2025 was included in the search minute requests sent to the relevant business units.

31. The search minute directs officers to complete searches for all relevant records within the scope of the access application. The search minute also includes guidance for officers stating:

A record is a document or any other source of information compiled, recorded or stored in written form or by electronic process, or in any other manner or by any other means. Records may be emails, electronic recordings, photographs, videos, spreadsheets, databases, maps, diary notes, Powerpoint presentations, Word documents, handwritten notes, post-it notes, text messages, and/or chats in messaging apps. Records may be hard copy or electronic, including but not limited to official and unofficial files (current or archived), G drive, emails (including archived), Trim, SAS, MS Teams, Sharepoint, OneNote, and on official or personal phones.

⁵ [Explanatory Statement](#), Freedom of Information Bill 2016 (ACT).

32. Education searched all expected locations where the information of the kind applied for may have been stored. This included 3 business areas (branches) conducting searches of their records to locate any documents that may be within scope of the application. The activities of these branches include school planning, policy, and communications.
33. The business areas identified 5 documents within scope of the request. The documents are email chains, with Records 1 and 2 evidencing Education's engagement with the Yowani Development (Lyneham Development) Estate Development Plan, and Records 3–5 resulting from community engagement with Minister Berry.
34. I am of the view Education conducted searches for the information contained in the access application (being a 1000+ luxury apartment development in Lyneham also known as the Lyneham development). I consider the searches for the requested information undertaken by Education to be reasonable.
35. I do not agree the scale of the development, the involvement of a Minister, and the media attention surrounding the project would necessarily result in Education holding additional records within scope.
36. The applicant has not provided additional information about how the information in the media reports relates to the activities of the Education Directorate or otherwise demonstrates the searches were inadequate.
37. While the functions of the Education Directorate include monitoring and analysis of student enrolments, I do not expect Education to hold substantial records about the potential effects of the proposed Lyneham development. It appears Education's involvement was limited to giving advice in relation to the development application under s 149 of the *Planning and Development Act 2007* (ACT).

38. Additionally, the applicant has raised in their request for review that the documents are over-redacted. The applicant does not provide further information regarding which redactions they believe are inappropriate. I believe the applicant is referring to the redactions made to Records 3-5. Education has provided evidence that paragraphs of these documents were deleted as they were outside of the scope of the request.

39. I am of the view redactions made to out of scope material were appropriate. I agree this information concerns other issues about schools and government policy unrelated to the Lyneham development. I note the applicant was given access to information within Records 3-5 about Education monitoring enrolment growth which relates to school capacity and infrastructure planning.

40. I am satisfied that all reasonable steps have been taken to identify government information held by the agency within the scope of the request.

Issue 2: partial release of documents

Public interest test

41. 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

42. In its original decision, Education identified 3 factors favouring disclosure applied to the information within scope.

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

43. A factor favouring disclosure of information is where disclosure could reasonably be expected to promote open discussion of public affairs and enhance the government's accountability.
44. I am of the view release of the requested information may promote open discussion regarding the development plan for the Yowani Development and may enhance accountability regarding Education's response to the Draft Estate Development Plan.
45. Records 1 and 2 detail the Code (Lyneham Precinct Map and Code) Education considers when considering future enrolment in the area which I am of the view would increase public knowledge and understanding of government processes.
46. Education raised that decisions relating to education in the ACT are important to a large part of the community, particularly enrolment pressures on schools in inner-north suburbs which supports release of the information.
47. I agree with this view, as the documents reveal Education's requests for further information and reasoning regarding their position on the development application.

48. I attribute moderate weight to this factor.

Contribute to positive and informed debate on important issues or matters of public interest—Schedule 2, s 2.1(a)(ii)

49. A factor favouring disclosure is where release could reasonably be expected to contribute to positive and informed debate on important issues or matters of public interest.

50. I am of the view that release of the information could show how Education critically assessed this development proposal. Additionally, Records 1 and 2 provide contextual information regarding Education's decision-making process surrounding future enrolment predictions and its impact on school planning.

51. The detail provided in the internal consultations regarding the Draft Estate Development Plan would likely inform public debate about the Yowani Development project and its potential impact on the local community.

52. As discussed above, the information in the documents relates to Education's engagement with the development proposal, that being the bodies of the emails that form Records 1 and 2. While this information contain Education's view on the draft application, disclosure would not reveal the outcome of the application process or activities of Education in response to the development. I note, at this time, the development proposal is publicly available.⁶

53. I attribute moderate weight to this factor.

Inform the community of the government's operations including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community—Schedule 2, s 2.1(a)(iii)

⁶ Ibid, n1.

54. Education identified this factor as being relevant in the original decision, noting that it would be reasonably likely to inform the public on government operations concerning the processes and policies around enrolment.
55. Records 3, 4, and 5 consist of formal responses from Minister Berry's Office to public contacts made about Lyneham schools which concern future school planning. The emails contain approved statements by the Minister regarding the projected population increase and school planning processes.
56. I am of the view that release of the information would inform the community about the procedures followed by Minister Berry's Office in its dealings with members of the community and the Minister's views on future enrolment planning in this area.
57. However, I consider release would not provide detailed information about enrolment estimates, calculation methods, community consultation or engagement or other decision-making processes.
58. I attribute moderate weight to this factor.

Factors favouring nondisclosure

59. 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)

60. 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**).
61. 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.

62. Section 12 of the Human Rights Act provides:

Everyone has the right -

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

63. Having reviewed the information at issue, the names of staff members of third parties are included in Record 1, and the names and contact information of multiple members of the public included in Records 3-5. I consider this information to be personal information of individuals who is not the applicant.

64. I am of the view that the third parties would be reasonably identifiable from the information contained in the documents.

65. 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.⁷

66. 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

⁷ Section 11 of the [Information Privacy Act 2014](#) (IP Act).

purpose) unless the individual consents or an exception in TPP 6.2 or 6.3 applies.

67. I do not consider the individuals to whom the personal information relates have consented to the disclosure of this information to the applicant. The information is held by Education as the information was communicated to the Minister for the purpose of raising awareness of certain school issues and to seek a response from the responsible Minister.
68. I consider disclosure of the personal information captured in the documents 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. I am not of the view that any exceptions contained in the TTPs apply.
69. I attribute significant weight to this factor.

Balancing the factors

70. 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.
71. In this matter, I identified 3 public interest factors favouring disclosure and I attribute moderate weight to these factors.
72. I identified one public interest factor favouring nondisclosure and I have attributed significant weight to this factor.
73. 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.

74. The FOI Act has a pro-disclosure bias,⁸ 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'.⁹

Conclusion

75. I am of the view that, on balance, disclosure of the personal information of multiple third parties would be contrary to the public interest as it would constitute an interference with the third parties' right to privacy. Identification of the third parties would not increase scrutiny or inform public debate, rather it may cause detriment to those individuals. I am also of the view that Education took all reasonable steps to locate information within the scope of the request.

Decision

76. For the reasons set out above in this decision, I **confirm** Education's decision under s 82(2)(a) of the FOI Act.

Katrina Dwyer

Senior Assistant Ombudsman

28 October 2025

⁸ Section 17 of the [FOI Act](#).

⁹ [Explanatory Statement, Freedom of Information Bill 2016](#).