

Decision and reasons of Senior Assistant Ombudsman

Application number:	AFOI-RR/25/80004
Applicant:	'DW'
Respondent:	Education Directorate
Respondent reference:	FILE2024/118789
Date:	16 March 2026
Decision reference:	[2026] ACTOFOI 2
Catchwords:	<i>Freedom of Information Act 2016</i> - deciding access - whether information is contrary to the public interest information - content of notice - refusing to give access to information - law enforcement or public safety information - prejudice the investigation of a contravention or possible contravention of the law in a particular case.

Decision

1. For the purpose of section 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 made by the ACT Education Directorate (**Education**) on 21 January 2025 to refuse access to information about the Brindabella Christian College (**BCC**), the Board of Brindabella Christian Education Limited (**BCEL**) or the applicant, and other relevant individuals for the period between 23 August to 28 November 2024.

3. For the reasons set out below, I **confirm** Education's decision under s 82(a) of the FOI Act as disclosure of the information would, or could reasonably be expected to, prejudice the investigation of a contravention or possible contravention of the law in a particular case.

Background to Ombudsman review

4. On 28 November 2024, the applicant applied to the Chief Minister, Treasury and Economic Development Directorate for:

All communication and files in any form be it e-mails, documents, phone texts etc, relating to BCEL, Brindabella Christian College, the Board of BCEL or Greg Zwajgenberg, Alyn Doig, Suzanne Power and John Clarke, and between Mr Sean Moysey and Minister Yvette Berry and her Office, Minister Jason Clare and his Office, Mr Tony Simovski, [Individual], the ACT Revenue Office, the ATO, [Individual], and [a representative of an incorporated association] from 23/08/2024 to current day.

5. On 2 December 2024, the FOI access application was transferred in full to Education. Subsequently, Education contacted the applicant who agreed to revise the scope of their application to:

All communication and files in any form be it e-mails, documents, phone texts etc, from 23/08/2024 to 28/11/24, relating to BCEL, Brindabella Christian College, the Board of BCEL or Greg Zwajgenberg, Alyn Doig, Suzanne Power and John Clarke, between Mr Sean Moysey and

- Minister Yvette Berry
- Minister Berry's Office
- Minister Jason Clare
- Minister Clare's Office
- Mr Tony Simovski
- [individual]
- the ACT Revenue Office
- the ATO
- [individual]
- [a representative of an incorporated association].

6. On 21 January 2025, Education decided not to release the information within the scope of the FOI access application because it is contrary to public interest to disclose under schedule 1, section 1.14(1)(a) of the FOI Act.

7. Education determined disclosure of the requested information would, or could reasonably be expected to, prejudice investigation of a contravention or possible contravention of the law in a particular case.
8. On 21 January 2025, the applicant applied for Ombudsman review of Education's decision and raised concerns that the decision lacked sufficient justification.
9. On 23 January 2025, the Office of the ACT Ombudsman (**the Office**) sought information for the purpose of the review from Education.
10. On 4 February 2025, Education provided information relevant to the review to the Office and an additional letter in response to the applicant's concerns in the Ombudsman review application.
11. On 27 March 2025, following BCC entering a voluntary administration on 5 March 2025, the Office contacted the appointed administrators from Deloitte to seek their views on progressing review.¹ No response has been received.
12. On 31 March 2025, the Office contacted the applicant to confirm whether the applicant wished to withdraw the Ombudsman review application. The applicant made an additional submission in support of continuation of the review.
13. On 23 December 2025, I provided my preliminary view to the parties in a draft consideration.
14. On 24 December 2025, the applicant provided additional submissions in response to the draft consideration.

¹ Independent Education Union of Australia NSW/ACT Branch, 'Brindabella Christian College enters voluntary administration' ([Media release](#), 5 March 2025); Ian Bushnell, 'Brindabella Christian College goes into administration', *Region* (Online, 5 March 2025) <[Brindabella Christian College goes into administration | Region Canberra](#)>.

15. On 2 January 2026, Education accepted the draft consideration but asked for clarification of parts of the draft consideration and suggested an update to the FOI Guidelines concerning the requirement to provide a 'description of the information' in a decision notice.

Background on enforcement regulated activities around BCC

16. In 2021, the Commonwealth Minister of Education found BCEL, which was the proprietor of BCC at that time, was not fit and proper to operate a school and imposed a list of conditions relating to governance and financial management. The decision was appealed to the Administrative Appeals Tribunal (replaced by the Administrative Review Tribunal) and subsequently agreement of conditions was made in 2023.²

17. On 3 September 2024, the ACT Minister for Education (**Minister**) took regulatory action against BCC for non-compliance with 4 registration standards. These standards originated from a show cause issued to BCEL previously, which resulted in a series of conditions being imposed on BCC's registration and for the BCC proprietor to take and demonstrate specific steps to comply with the conditions imposed by the Commonwealth Minister of Education (**Commonwealth Education**) and the Administrative Appeals Tribunal.³

² Sarah Lansdown, 'Minister says Brindabella Christian College is in 'a serious situation'', The Canberra Times (Online, 17 September 2024) <[Brindabella Christian College in 'serious situation' for breaches | The Canberra Times | Canberra, ACT](#)>; Sarah Lansdown, 'Brindabella Christian College owes \$4.8 million to tax office, tribunal told', The Canberra Times (Online, Updated on 5 September 2023, First published on 27 March 2023) <[Brindabella Christian College owes \\$4.8 million to tax office, tribunal told | The Canberra Times | Canberra, ACT](#)>.

³ 'EDU_2025_010 records', *Education FOI disclosure logs* <[Education FOI disclosure logs - Open Government Information](#)>; Ian Bushnell, 'This is serious': Berry orders Brindabella Christian College to prove it's compliant', *Region* (Online, 16 September 2024) <[This is serious': Berry orders Brindabella Christian College to prove it's compliant | Region Canberra](#)>.

18. On 12 December 2024, the Australian Charities and Not-for-profits Commissions (**ACNC**) issued a show cause notice to BCEL setting out the ACNC's concerns regarding their compliance with providing relevant financial documentations for charity status.⁴
19. In February 2025, the Australian Tax Office (**ATO**) commenced court actions in the Federal Court regarding tax debt incurred by BCC and penalties for not paying staff super on time.⁵
20. On 20 February 2025, a show cause notice was issued to BCC regarding its governance and financial issues.⁶
21. Deloitte was appointed as an administrator and the college entered voluntary administration on 5 March 2025.⁷
22. In May 2025, the administrators of BCC applied to transfer the registration of Brindabella Christian College to a new proprietor Christian Community Ministries (**CCM**).⁸ CMM is the current proprietor and holds a conditional registration, whilst consideration of the regulatory action remains in progress.⁹

⁴ ACNC News, 'ACNC confirms it is investigating Brindabella' (25 March 2025) <[ACNC confirms it is investigating Brindabella | ACNC](#)>.

⁵ Elizabeth Byrne, 'ATO launches court action against Canberra private school owing \$8 million as government considers its own regulatory action', *ABC News* (Online, 21 February 2025) <[ATO launches court action against Canberra private school owing \\$8 million as government considers its own regulatory action - ABC News](#)>.

⁶ Ian Bushnell, 'Berry takes action on Brindabella Christian College', *Region* (Online, 20 February 2025) <[Berry takes action on Brindabella Christian College | Region Canberra](#)>.

⁷ Claire Fenwicke, 'Any 'possible misconduct' by former Brindabella Christian Education directors to be revealed in upcoming report', *Region* (Online, 8 July 2025) <[Any 'possible misconduct' by former Brindabella Christian Education directors to be revealed in upcoming report | Region Canberra](#)>.

⁸ ACT Government, 'Notice of Report for a Registration Amendment of a Non-Government School' ([Public Notice](#), Published on 12 May 2025).

⁹ Ian Bushnell, 'Brindabella's new owners face a raft of conditions and legacy issues', *Region* (Online, 19 May 2025) <[Brindabella's new owners face a raft of conditions and legacy issues | Region Canberra](#)>; 'Registration details – Brindabella Christian College',

23. On 18 June 2025, ACNC revoked the charity status of BCEL.¹⁰

Information at issue

24. The information at issue in this Ombudsman review is correspondence with attachments comprising a total 459 pages relating to BCC, BCEL, the board of BCC, the applicant, 4 other individuals, between Mr Sean Moysey and other individuals, from 23 August to 28 November 2024.

25. Education did not supply a description of the information or a schedule of records to the applicant. This is one of the applicant's concerns that had been responded to by the respondent. This will be discussed below.

26. The key issue to be decided in this Ombudsman review is whether the information at issue is contrary to the public interest information.

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

- Education's decision notice of 21 January 2025
- the FOI access application dated 28 November 2024 including correspondence rescoping the application
- the applicant's Ombudsman review application dated 21 January 2025, the applicant's submissions dated 31 March 2025, and submissions received on 24 December 2025
- Education's letter dated 4 February 2025, response received on 2 January 2026, and FOI processing file
- the [FOI Act](#), particularly ss 7, 9, 16, 35, 51, 54 and schedule 1

Register of non-government schools <[Register of non-government schools - ACT Government](#)>.

¹⁰ 'Brindabella Christian Education Limited', *Charity Register* <[Brindabella Christian Education Limited | ACNC](#)>.

- [Education Act 2004](#) (ACT) (**Education Act**), [Education Regulation 2005](#) (ACT) (**Education Regulation**), [Registration Standards Guidelines for ACT Non-government Schools](#) (**Registration standards**)
- [Legislation Act 2001](#) (ACT) (**Legislation Act**)
- [Right to Information Act 2009](#) (Qld) (**RTI Act**)
- [Australian Education Regulations 2023](#) (Cth)
- the Freedom of Information Guidelines (FOI Guidelines) made under section 66 of the FOI Act, particularly:
 - [Freedom of Information \(Volume 3 – Dealing with access applications\) Guidelines 2020](#) (**Guidelines 3**)
 - [Freedom of Information \(Volume 4 – Considering the public interest\) Guidelines 2023](#) (**Guidelines 4**)
- relevant caselaw including:
 - [Abbot Point Bulkcoal Pty Ltd and Department of Environment and Science; Mackay Conservation Group Inc \(Third Party\)](#) [2018] QICmr 26
 - [Byers and Department of Justice and Attorney-General](#) [2014] QICmr 34
 - [Brindabella Christian College and Education Directorate](#) [2020] ACTOFOI 23
 - [Canberra Metro Construction and Chief Minister, Treasury and Economic Development Directorate](#) [2019] ACTOFOI 8
 - [Health Insurance Commission v Freeman](#) [1998] FCA 1340; 88 FCR 544

- [Robertson v Deputy Secretary, Local Government, Planning and Policy](#) [2023] NSWCATAP 88
- [Parker and Australian Securities and Investments Commission \(Freedom of Information\)](#) [2016] AATA 767
- [T and Department of Health](#) (1994) 1 QAR 386
- relevant media releases, newspapers, articles and information available on government registers.

Relevant law

28. 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.¹¹
29. Contrary to the public interest information is defined in section 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.
30. The public interest test set out in section 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.
31. 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.

¹¹ FOI Act section 35(1)(c).

32. 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.
33. 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 section 16.
34. Schedule 2 of the FOI Act sets out the public interest factors which must be considered, where relevant, when determining the public interest.
35. Schedule 1, section 1.14 covers protection of law enforcement or public safety information where release of information at a particular time would deprive the regulatory agency of some advantage in questioning or being able to take timely action against individuals or organisations identified as of concern.¹²
36. Schedule 1, section 1.14 (1)(a), (4) and (5) provides:
 - (1) Information the disclosure of which would, or could reasonably be expected to—
 - (a) prejudice the investigation of a contravention or possible contravention of the law in a particular case; or
 - ...
 - (4) However this section does not apply to—
 - (a) information revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law; or
 - (b) information containing a general outline of the structure of a program adopted by an agency for dealing with a contravention or possible contravention of the law; or

¹² [Freedom of Information \(Volume 4 - Considering the Public Interest\) Guidelines 2023](#) (Guidelines 4), page 40.

- (c) a report on the degree of success achieved in a program adopted by an agency for dealing with a contravention or possible contravention of the law; or
 - (d) a report prepared in the course of a routine law enforcement inspection or investigation by an agency whose functions include that of enforcing the law (other than the criminal law or the law relating to corruption); or
 - (e) a report on a law enforcement investigation that has already been disclosed to the entity the subject of the investigation.
- (5) In this section:

law includes law of the Commonwealth, a State or a foreign country.

37. Dictionary, part 1 of the Legislation Act provides 'breach includes contravene' and 'contravene' is defined as 'includes failure to comply with'.
38. As neither the Legislation Act or the FOI Act specifically define 'prejudice' appearing in schedule 1, section 1.14, should be given its ordinary meaning which is 'harm or injury that results or may result from some action or judgement'.¹³
39. The meaning of the phrase 'would, or could reasonably be expected' has been considered previously in *Canberra Metro Construction and Chief Minister, Treasury and Economic Development Directorate*,¹⁴ which considers it should be given ordinary meaning, and the expectation must be reasonably based, highly likely and not merely speculative, conjectural or hypothetical.

The submissions of the parties

40. In the decision notice, Education stated:

A search of the Directorate's records identified information that falls within the scope of your request. My decision is to not release the information sought.

¹³ Guidelines 4, page 8.

¹⁴ [2019] [ACTOFOI 8](#), [50]; Guidelines 4, page 10.

...In the circumstances, a schedule of the records has not been produced because the reason for non-release of the information precludes provision of information about them.

I have considered the records that are relevant to your request in accordance with the requirements of the FOI Act.

Section 6(a) of the FOI Act provides for a right of access to government information unless access would, on balance, be contrary to the public interest. Contrary to the public interest information is defined at section 16 of the FOI Act as information that is taken to be contrary to the public interest to disclose under Schedule 1; or the disclosure of which would, on balance, be contrary to the public interest under the test set out in section 17.

Information taken to be contrary to the public interest to disclose

The records contain information that is taken to be contrary to the public interest under Schedule 1 of the FOI Act, in particular Schedule 1, 1.14(1)(a), because disclosure could reasonably be expected to prejudice the investigation of a contravention or possible contravention of the law in a particular case. The investigations referred to are in the public domain, are current and ongoing, and involve a number of entities with regulatory functions. These are matters with potentially serious consequences for a number of individuals and entities that may escalate to the courts. Preservation of the integrity of these investigations is very important to the outcomes that are yet to be determined. Consequently, the information is not released.

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

The Directorate has refused to release any information under Schedule 1, Clause 1.14(1)(a) of the FOI Act, citing concerns about prejudicing ongoing investigations.

I respectfully submit that this decision lacks sufficient justification. Specifically:

Insufficient Detail: The Directorate has not provided clear evidence or explanations demonstrating how disclosure of specific documents would prejudice investigations.

Failure to Produce a Schedule of Records: The refusal to provide even a summary of documents contradicts the FOI Act's purpose of promoting transparency.

Overly Broad Application of Exemption: The Directorate has rejected the entire request without addressing whether non-sensitive material could be separated and disclosed.

The information sought relates to significant public interest matters, including governance and oversight within the Education Directorate where we as an organisation have been publicly prosecuted by Minister Yvette Berry in the local media, and Registrar Sean Moysey has leaked sensitive information to the media detrimental to the College also vexatiously affecting our capacity to seek funding in the financial markets, both without any communication whatsoever directly with us on any of these matters.

I respectfully request that your office review this decision to ensure compliance with the FOI Act and to promote the principles of transparency and accountability. Please let me know if you require further details or supporting documentation.

42. In submissions provided to our Office, Education addressed the applicant's concerns raised in the review application, stating:

- a. 'Education has not provided clear evidence or explanations demonstrating how disclosure of specific documents would prejudice investigations'

As noted in the decision letter, issues involving Brindabella Christian College involve a number of regulatory bodies and there are potentially serious consequences for a number of entities and individuals that may escalate to the courts. For your information, the bodies involved are the Commonwealth Department of Education, Australian Tax Office and the Australian Charities and Not-for-Profits Commission. Investigations are underway in relation to a number of contraventions or possible contraventions of laws. These are highly complex matters that are being tightly and carefully managed by Commonwealth and ACT agencies, particularly to ensure that the actions of regulators are synchronised and that the actions of one do not compromise the functions and activities of others. This level of cooperation and collaboration is necessary to manage the multiplicity of issues concerned. The decisions the regulators will take have the potential to directly impact over 1000 students (including some at critical stages in their education), hundreds of families and an unknown number of staff, as well as secondary impacts to a range of others.

The significance of these issues is well known to the Canberra community as concerns about Brindabella Christian College have been the subject of sustained media coverage over a long period. Some recent articles are:

- 23 January 2025 - <https://region.com.au/dont-let-brindabella-christian-college-reopen-without-assurances-reform-group-urges-ministers/840821/>
- 18 January 2025 - <https://www.canberratimes.com.au/story/8868861/brindabella-christian-college-faces-staff-exodus-in-charnwood/>
- 17 January 2025 - <https://region.com.au/time-for-education-minister-to-act-on-brindabella-christian-college/839670/>
- 15 January 2025 - <https://www.canberratimes.com.au/story/8866800/decision-pending-on-brindabella-christian-college-regulatory-action/>

Consequently, it was decided that it would be detrimental to disclose information that would potentially compromise the investigations being undertaken for the purpose of performing very important regulatory functions.

- b. 'The refusal to provide a summary of documents contradicts the FOI Act's purpose'

Whilst the applicant contends that the non-production of a schedule of records is contrary to the FOI Act's purpose of promoting transparency, section 51(3) of the FOI Act states that "The respondent is not required to include any contrary to the public interest information in a decision notice". In this case, the decision that the records are contrary to the public interest to disclose in accordance with Schedule 1, 1.14(1)(a) extends to information about the records because this would reveal information about communications between regulatory bodies, including who, when, what the communication was about and what information was provided as attachments. The release of this information may also be prejudicial to regulatory considerations. This was stated in the decision letter, specifically that the reason for non-release of the records precluded provision of information about them in the form of a schedule.

- c. 'Education has rejected the entire request without addressing whether non-sensitive material could be disclosed'

Consideration was given to whether section 50 of the FOI Act could be applied to the records and it was decided to not be appropriate in the circumstances because of the particular Schedule 1 factor involved and for the reasons outlined above.

43. In the correspondence dated 31 March 2025, the applicant said:

... I confirm that I wish to continue with the review, and I do not intend to withdraw my application.

As the [relevant involver] of Brindabella Christian College, I have a legitimate interest in ensuring transparency and accountability in relation to the Education Directorate's actions, particularly given the significant public and regulatory scrutiny surrounding the College.

The appointment of administrators to Brindabella Christian College does not, in my view, diminish the public interest in disclosure or affect my rights under the Freedom of Information Act 2016 (ACT) (FOI Act). I address this point further below, citing the relevant legislative framework.

Section 7 of the FOI Act establishes a legally enforceable right to access government information unless disclosure would, on balance, be contrary to the public interest.

The appointment of administrators to the College is an administrative action that does not alter the Education Directorate's obligations under section 9 to process and respond to FOI requests, nor does it extinguish my right as an applicant to seek review under section 73.

The Act contains no provision suggesting that the appointment of administrators to a third-party entity (such as the College) suspends or terminates an ongoing FOI process involving a government agency like the Education Directorate.

Moreover, section 74(1) of the FOI Act empowers the Ombudsman to review a decision where an access application has been refused or inadequately addressed.

My application for review falls squarely within this jurisdiction, and the administrative status of Brindabella Christian College is irrelevant to the Education Directorate's conduct or the merits of my request.

The suggestion that the appointment of administrators "may impact" open FOI access applications or reviews appears to lack a clear basis in law and risks undermining the object of the Act, as articulated in section 6, to promote government accountability and public participation.

If the Education Directorate contends that the administrators' appointment justifies withholding information, I would expect this to be explicitly justified under Schedule 1 of the FOI Act (e.g., as information contrary to the public interest) and subject to proper review. Absent such a determination, I see no lawful ground for delaying or discontinuing my application.

To the contrary, the administrators' involvement may heighten the public interest in disclosure, particularly regarding the Directorate's oversight of the College, as reflected in decisions such as Brindabella Christian College and Education Directorate [2020] ACTOFOI 23 (16 November 2020), which underscored the importance of informed debate on matters of public significance.

I therefore request that the Ombudsman proceed with the review without delay.

44. In response to the draft consideration, the applicant made a submission, on 24 December 2025, as below:

...First, the draft proceeds on the basis that disclosure of the information sought would, or could reasonably be expected to, prejudice investigations of possible contraventions of the law. With respect, the reasoning does not identify with sufficient particularity the investigation or investigations relied upon, the statutory footing on which they are conducted, or the manner in which disclosure of specific categories of documents would give rise to the asserted prejudice. In the absence of that specificity, it is difficult to assess whether the threshold of "reasonably expected" prejudice has been met, as distinct from a more general or speculative concern. (**First concern**)

Secondly, I remain concerned by the acceptance of a position that even the provision of a **schedule of documents** would itself be prejudicial. While I accept that such an approach may be justified in exceptional circumstances, the information at issue here concerns administrative and regulatory communications that have already been the subject of extensive public statements and media reporting by government actors.

In those circumstances, it is not apparent why high-level descriptors—such as document type, date range, or originating agency—could not be provided without compromising any investigation. (**Second concern**)

Thirdly, the draft does not appear to independently interrogate whether **partial access under section 50 of the FOI Act** could be afforded. Even where substantive content is properly withheld, there remains a question as to whether neutral or procedural information—such as metadata, chronology, or cost-related material—could be released in a manner consistent with the objects of the Act. (**Third concern**)

Fourthly, while I understand the emphasis placed on the protection of ongoing investigations, the public-interest analysis does not expressly engage with the **demonstrable harm already suffered** as a result of regulatory action taken in parallel with sustained public commentary. The cumulative effect of non-disclosure, when combined with public assertions made by officials, is a relevant consideration in assessing whether the balance has been struck appropriately. (**Fourth concern**)

45. I note the applicant's 4 concerns in response to the draft consideration. These are marked above for the ease of analysis below.

Preliminary issues

Right of access to government information

46. In the submission made on 31 March 2025, the applicant identified sections 7, 9, 73 and 74 of the FOI Act in support of their request for access to information and also referred to a previous matter involving BCC before ACT Ombudsman to highlight the importance of informed debate on matters of public significance.¹⁵

47. I agree that these sections and the objectives of the FOI Act are important concepts. However, the FOI Act provides 'a right of access to government information unless access to the information would, on balance, be contrary to the public interest'.¹⁶

¹⁵ [Brindabella Christian College and Education Directorate](#) [2020] ACTOFOI 23 at [24]-[25].

¹⁶ FOI Act section 6(a).

48. The right of access to government information is not unlimited and one of the ways an access application can be decided is by refusing to give access to contrary to the public interest information.
49. Importantly, in this review matter, Education identified the information sought is taken to be contrary to the public interest information under Schedule 1, not after completing the public interest test under section 17 of the FOI Act.
50. As the above previous Ombudsman review decision referred to by the applicant involved the consideration of whether information was contrary to the public interest information after completing a public interest test and assessment of public interest factors under Schedule 2, it is distinct from this matter which involves a consideration of Schedule 1, section 1.14.
51. For the reasons set out in this decision, I am not required to perform a public interest test in circumstances where I have determined the information at issue would be taken to be contrary to the public interest information under Schedule 1.

Description of information in decision notice and schedule of documents

52. As noted above, a description of the information sought was not included in Education's decision notice. The applicant also raised their concern about the non-production of a schedule of information.
53. Education submitted they are not required to include any contrary to the public interest information in a decision notice under section 51(3) of the FOI Act. In response to the draft consideration, Education also noted the FOI Guidelines do not elaborate on the requirement to provide a 'description of the information'.

54. In responding to the Office's draft consideration, the applicant remained concerned about the absence of a schedule of documents – their second concern, which states '*...the acceptance of a position that even the provision of a schedule of documents would itself be prejudicial...'*'.
55. Relevantly, a description of information must be supplied in the decision notice where a decision to refuse to give access is made under section 54(1)(a) of the FOI Act. Respondents are not required to include any contrary to the public interest information in a decision notice.¹⁷ I acknowledge templates included within the FOI guidelines 3 sets out a common practice for information officers to include a schedule of documents where possible.¹⁸
56. The FOI Act does not require a schedule of documents be provided in addition to a decision notice, it requires a decision-maker to include a description of the information within a decision notice. In some circumstances this may result in a limited description of the information being included in the decision notice, as referring to the existence or nature of certain information could result in contrary to the public interest information being included in the decision notice.¹⁹
57. I note the FOI guidelines do not expand on what 'a description of the information' must or should include and our Office will consider updating the FOI Guidelines to include more detail about how to achieve this when describing information within Schedule 1 for the purpose of s 54(1)(a) of the FOI Act.

¹⁷ FOI Act section 51(3).

¹⁸ FOI Guidelines 3, pages 49, 74 and 75.

¹⁹ FOI Act sections 51(3), 54(1)(a).

58. Importantly, the fundamental purpose for including a description, especially for decisions to refuse access to the information, is to help applicants to understand how the agency has reached its findings e.g. why this information is contrary to the public interest to disclose.
59. Further, providing a schedule of documents can greatly assist with understanding the outcome and effect of a decision on an application in relation to particular documents. I consider it is best practice to supply a schedule of documents where possible.
60. Education provided our Office with a copy of the information at issue and a schedule of information which includes details about the information within the scope of the access application and ongoing investigations.
61. With the evidence before me, I accept Education's argument that provision of a more detailed summary of the information sought in a schedule would reveal information about communications between regulatory bodies, including timing, addresses, the content and what information was provided as attachments. I consider even if contrary to the public interest information was deleted from a schedule summarising the information, the remaining contents would be futile as it would not meaningfully describe the information (e.g. email, attachments).
62. In relation to the requirement to provide a description of the information in the decision notice, I consider Education should have included a general description of information identified within the scope of the application outlining the nature, elements, and/or features of the information sought to comply with the notice requirements set out in section 54(1)(a) of FOI Act.

63. As noted in this decision, I consider it is possible to summarise or provide a general description of the information within the scope to explain how the information has been determined to be contrary to the public interest information (e.g. communications between regulatory bodies and law enforcement bodies for the purpose of investigation contraventions of the Education Act).

Consideration

64. I have carefully read and examined an unredacted copy of the documents identified within the scope, the submissions of both parties set out above along with other relevant public available information about BCC.

65. Education decided the information at issue relates to current and ongoing investigations where disclosure of information could reasonably be expected to prejudice the investigation of a contravention or possible contravention of the law (Schedule 1, section 1.14(1)(a) of the FOI Act).

Prejudice the investigation of a contravention or possible contravention of the law in a particular case - Schedule 1, section 1.14(1)(a)

66. Education refused access to the information sought on the ground that disclosure of this information would, or could reasonably be expected to, prejudice the conduct of investigations related to BCEL and BCC, and allegations of non-compliance with requirements and obligations of a non-government school.

Is there an investigation being conducted by ACT Education Directorate?

67. For Schedule 1, section 1.14(1) to apply, the following elements must be satisfied:

- an investigation of a contravention, or possible contravention of the law must be current or ongoing

- disclosure would or could reasonably prejudice the investigation in the particular case, and
- none of the exceptions to the exemption, contained in schedule 1, section 1.14(4) are applicable.

68. Education is a government enforcement body responsible for exercising regulatory power on behalf of ACT Government to administer and manage the operation of non-government school in accordance with Education Act, Education Regulation and Registration standards.²⁰ Education has statutory powers to carry out enforcement-related activity including investigation of alleged non-compliances.

69. Regulatory action conducted by the Minister, against the proprietor of a registered school includes:²¹

- imposing, or amending, a condition on the school's registration
- cancelling the school's registration or,
- cancelling the school's registration and disqualifying the proprietor of the school from applying for registration.

70. Prior to deciding whether to exercise regulatory powers, the Minister must be satisfied on reasonable grounds that the school has contravened a condition of its registration, or the proprietor or school has failed to comply with the Education Act.²² The following steps are required to be taken:

- a. Registrar must refer the matter to the Registration Standard Advisory Board (RSAB); (s 123(1))
- b. RSAB must consider the matter, assess appropriate regulatory action and report board's assessment to minister – first report; (s 123(2))

²⁰ Education Act section 84; Education Regulation section 5; Registration standards guidelines for ACT Non-government school, pages 6-7 and 17.

²¹ Education Act section 121.

²² Education Act section 122.

- c. After considering the board report, if the Minister proposes taking regulatory action, a **show cause notice** outlining proposed regulatory action must be given; (s 124)
 - d. Minister's referral to RSAB for a second report including the show cause notice and the proprietor's response to the show cause notice; (s 125(1))
 - e. RSAB gives a second report (board's assessment) to the Minister; (s 125(2))
 - f. In deciding whether to take the regulatory action after complying with above steps and regarding impact of the proposed regulatory action. The Minister can either:
 - i. take regulatory action: A **notice of regulatory action** must be given before taking regulatory action (s 125A(4)); or
 - ii. not take regulatory action: a written notice telling the proprietor that regulatory action will not be taken in relation to the matters stated in the show cause notice (s 125C).
71. The Education Act does not refer or identify the above course of action to take regulatory action specifically as an 'investigation'. The Legislation Act does not define 'investigation' so I considered relevant caselaw:²³

Although the Act does not define an "investigation", it is clear that taken in its context the word bears its ordinary meaning, being the act or process of searching or inquiring in order to ascertain facts: the Macquarie Dictionary. An investigative power conferred in general terms is not to be narrowly confined.

²³ See [Health Insurance Commission v Freeman](#) [1998] FCA 1340; 88 FCR 544 at [552]; [Robertson v Deputy Secretary, Local Government, Planning and Policy](#) [2023] NSWCATAP 88 at [37].

72. The 'law' under schedule 1, section 1.14 includes both criminal and civil laws – that is, any Territory Act, subordinate law, other statutory instrument of a legislative nature, and the common law.²⁴

73. In *T and Department of Health*,²⁵ the Queensland Information Commissioner interpreted the phrase 'contravention or possible contravention of the law' broadly and explained that the phrase:

- is not limited to contraventions of the criminal law; and
- extends to any law that imposes an enforceable legal duty to do or refrain from doing something.²⁶

74. Schedule 3, section 10(1)(a) of the RTI Act employed the same languages as Schedule 1, section 1.14(1)(a) of FOI Act. Therefore, it is relevant to adopt this interpretation of the phrase 'contravention or possible contravention of the law' in this matter.

75. It appears the Minster commenced investigations for regulatory action against BCC.

76. I am satisfied that Education exercised its statutory power to perform enforcement-related activities, specifically investigations, to consider potential regulatory action.

Does the information relate to an ongoing investigation?

77. Based on my assessment of the information which has been provided, I agree the information at issue is held by Education in connection with the ongoing investigative process enforcing legislative requirements, particularly within the Education Act, as mentioned above.²⁷

²⁴ Legislation Act Dictionary part 1 'law'; Guidelines 4, page 41.

²⁵ (1994) [1 QAR 386](#) at [16].

²⁶ [Byers and Department of Justice and Attorney-General](#) [2014] QICmr 34 at [18].

²⁷ Guidelines 4, page 41.

78. From an analysis of the provided information, to reach a decision whether it is appropriate to take regulatory action, the Registrar and Minister have had to gather evidence from other relevant enforcement bodies including the Commonwealth Education and ATO.
79. For that reason, I consider that internal communications between the Registrar and Minister and her office within ACT Education Directorate along with external correspondence between the Registrar and external stakeholders including the delegates/representatives of the Commonwealth Education and ATO reasonably relates to the ongoing investigation. By disclosing this correspondence (i.e. discussion about whether regulatory or other action is appropriate and information sharing between those entities), I consider disclosure could reasonably be expected to prejudice the current investigation conducted by Education.
80. I am of the view there have been 2 investigations related to taking regulatory actions against a proprietor of BCC. The first investigation concluded in 2024 with the Minister decided to impose conditions on the BCC's registration on 3 September 2024 (**first investigation**).²⁸ The information at issue in this matter is from, and relevant to, this first investigation.
81. I consider the second investigation in 2025 against BCC commenced when the show cause notice was delivered in February 2025 (**second investigation**).
82. Given the complexity and sequence of the above investigations, I accept the information at issue that has been gathered and examined under the concluded first investigation is currently being taken into consideration by the

²⁸ 'EDU_2025_010 records', *Education FOI disclosure logs*, page 1-2 <[Education FOI disclosure logs - Open Government Information](#)>.

Minister for the purpose of the ongoing investigation prior to making a final decision on whether to take additional regulatory actions.

83. In my view, all legislatively required steps to assist the Minister to decide whether to take regulatory action are multiple stages of the current investigation as precursors to the final decision about taking regulatory action pursuant to sections 125A and 125C of Education Act. This would clearly be enforcement-related activities of Education encompassing its investigative functions as set out above.
84. I therefore form the view that the concluded first investigation and any of other categories of information sought in the matter are at the heart of this ongoing investigative process, not at the periphery, in which such correspondence and related attachments would reasonably contain the results of the second investigation underway.²⁹
85. In the submission of 24 December 2025, the applicant's first concern is '*...the reasoning does not identify with sufficient particularity the investigation or investigations relied upon, the statutory footing on which they are conducted, or the manner in which disclosure of specific categories of documents would give rise to the asserted prejudice. In the absence of that specificity, it is difficult to assess whether the threshold of 'reasonably expected' prejudice has been met, as distinct from a more general or speculative concern.*'
86. FOI guidelines 3 states that, to the extent it is possible to do so, the decision should explain how the relevant factor for refusal under schedule 1 applies to the information. The agency must carefully consider whether providing details of the information may involve the disclosure of contrary to the public interest information which can be a complex task, as with some categories of

²⁹ [Robertson v Deputy Secretary, Local Government, Planning and Policy](#) [2023] NSWCATAP 88 at [68].

information revealing the existence of a source or method for obtaining information could harm the effectiveness of investigative methods or coordination between law enforcement entities.³⁰

87. While I acknowledge Education did not provide a description of the information in their decision notice; as set out above, I have determined that there is a relationship between the information at issue and the second investigation.

88. According to the Guideline 4, the words 'in a particular case' indicate that schedule 1, section 1.14(1)(a) only applies to current, continuing or ongoing investigations and does not extend to a closed investigation.³¹

89. Following the above assessment, I consider the investigation is, or would be, concluded once the Minister decides either to take regulatory action or not take regulatory action. In other words, a notice of regulatory action, or a written notice telling the proprietor that regulatory action will not be taken, must be given by the Minister to officially finalise the investigation.³²

90. According to a media report, by 1 October 2025, CCM as the new proprietor must provide the Registrar with a plan to address any remaining non-compliance issues involving regulators, tribunals or courts.³³ It is evident the second investigation is still on foot, pending the ultimate decision from the Minister.

³⁰ Guidelines 3, page 49.

³¹ Guidelines 4, page 42; see [Robertson v Deputy Secretary, Local Government, Planning and Policy](#) [2023] NSWCATAP 88 at [36]; see [Abbot Point Bulkcoal Pty Ltd and Department of Environment and Science; Mackay Conservation Group Inc \(Third Party\)](#) [2018] QICmr 26 at [18]; [Parker and Australian Securities and Investments Commission \(Freedom of Information\)](#) [2016] AATA 767 at [53].

³² Education Act sections 125A(4) and 125C(2).

³³ Ian Bushnell, 'Brindabella's new owners face a raft of conditions and legacy issues', *Region* (online, 19 May 2025) <[Brindabella's new owners face a raft of conditions and legacy issues | Region Canberra](#)>.

Would disclosure of the information prejudice the investigation?

91. The FOI Guidelines 4 asserts that 'it is not enough for decision-makers to simply indicate that there is a current investigation on hand to which the information is relevant. It must be explained why prejudice is expected to result'.³⁴
92. In the course of the investigation and prerequisite of regulatory action, the Minister and Registrar must apply natural justice and procedural fairness by following processes set out in chapter 4 of the Education Act.³⁵ In applying this approach under the Education Act accompanying with the schedule 1, section 1.14 of the FOI Act, it is reasonable to reach a conclusion that disclosure of information, at this stage, would cause harm and injury to the investigation, particularly its natural justice and procedural fairness to the CCM – current proprietor of BCC.
93. In regard to the respondent's submissions, I recognise that the ultimate ensuing decision will directly have a great degree of impact upon affected individuals comprising of over 1000 students, parents and current and former school employees, as well as secondary impacts to a range of others indirectly.³⁶ The Minister bears an obligation to consider these impacts when taking regulatory action under the Education Act.³⁷
94. Noting the above along with the extensive media widely reporting the circumstances of BCC, I consider public opinions would reasonably put unnecessary influences affecting the Minister's final decision. The information

³⁴ Guidelines 4, page 42.

³⁵ Education Act s 116; Australian Capital Territory, *Answer to question taken on notice during public hearings*, Legislative Assembly, hearing dated 1 August 2024 ([QTON No.177](#)).

³⁶ ACT Government, 'Urgent amendment aimed at ensuring future of Brindabella Christian College' ([Media Release](#), 8 April 2025).

³⁷ Education Act section 125A.

could reasonably effect business activities of BCC. Premature disclosure also could compromise the plan of BCC proprietor with the Registrar during the investigation and CCM's capabilities to rectify all non-compliance issues.

95. Additionally, given the complication of multiple investigations conducted by several Commonwealth and ACT agencies that already, or potentially, could be escalated to the courts and tribunals, disclosure of information at issue would highly likely inhibit and hamper other enforcement bodies performing their contemporaneous investigations. As such, prejudice of the investigation could be reasonably expected to result if the information is disclosed at this stage.

Do any exemptions to Schedule 1 apply?

96. In reviewing the provided information at issue, I am required to consider whether there is any exemption under schedule 1, section 1.14(4) refuting the application of schedule 1, section 1.14(1).³⁸ I am satisfied that the matter does not fall within the exemptions.

97. Further, I have not identified any evidence of corruption; or commission of an offence by a public official; or that the scope of a law enforcement investigation had exceeded the limits imposed by law to not consider the information at issue as contrary to the public interest under section 16(2) of FOI Act.

98. For the above reasons, I am of the view that the information at issue, provided by the respondent, constitutes information disclosure of which is taken to be contrary to the public interest under Schedule 1, section 1.14(1)(a).

³⁸ Guidelines 4, pages 41-42.

Other relevant investigations conducted by other enforcement bodies

99. Having reviewed the information at issue, I am of the view the information relates to, and could be reasonably expected to, inform the ongoing investigations concerning several contraventions or possible contraventions of laws led by a number of enforcement bodies.

100. At the time of making this final decision, in addition to Education's ongoing investigation, media reports suggest there are possibly finalised and continuing investigations initiated by other enforcement bodies namely the Commonwealth Education, ATO and ACNC.³⁹

101. While some other investigations have concluded (such as where ACNC ultimately revoked BCEL's charity status); other investigations and judicial proceedings are still in progress. As set out above, the law within schedule 1, section 1.14 includes law of the Commonwealth and a State.⁴⁰ Other relevant circumstances and factors originated from related investigations might be considered in a potential fresh FOI application when the current investigation of Education concluded.

Partial access under section 50 of the FOI Act – Third concern

102. The applicant also raised a third concern that *'the draft does not appear to independently interrogate whether partial access under section 50 of the FOI*

³⁹ Ian Bushnell, 'Not compliant': Brindabella Christian College to know fate soon as investigation nears end', *Region* (Online, 8 November 2024) <['Not compliant': Brindabella Christian College to know fate soon as investigation nears end | Region Canberra](#)>; Harry Frost, 'Union takes Canberra private school to Fair Work Commission over unpaid wages and superannuation', *ABC News* (Online, 26 February 2025) <[Union takes Canberra private school to Fair Work Commission over unpaid wages and superannuation – ABC News](#)>; Sarah Lansdown. 'The last step': what Tax Office wind-up action means for Brindabella', *the Canberra Times* (Online, 20 February 2025) <[What Tax Office wind-up means for Brindabella Christian College | The Canberra Times | Canberra, ACT](#)>.

⁴⁰ FOI Act schedule 1, section 1.14(5).

Act could be afforded' when considering the information at issue under the schedule 1, section 1.14(1)(a).

103. As part of my assessment of the information at issue, I have considered whether all of the information within the scope of the application relates to the ongoing investigation and whether disclosure of this information could prejudice the investigation. I acknowledge parts of the information at issue may relate to matters which are now in the public domain (i.e. references to the first investigation outcome).

104. Despite this, I am satisfied of the connection between the information concerning the first investigation and the second investigation, where disclosure of any of the information at issue could reasonably be expected to prejudice the finalisation of the second investigation. For this reason, I do not consider it is possible to prepare an edited version of the documents under section 50 of the FOI Act.

Demonstrable harm as a result of regulatory action

105. The applicant also raised that *'while I understand the emphasis placed on the protection of ongoing investigations, the public-interest analysis does not expressly engage with the demonstrable harm already suffered as a result of regulatory action taken in parallel with sustained public commentary...'*

106. If the information under consideration is listed under schedule 1, subject to exceptions under section 16(2) of FOI Act, the information is taken to be contrary to the public interest information.⁴¹ These provisions under Schedule 1 which the ACT Legislative Assembly has deemed to be contrary to the public interest to disclosure in all circumstances. This is because disclosure in

⁴¹ Guidelines 4, page 49.

circumstances under Schedule 1 would typically always be contrary to the public interest.⁴²

107. The Guidelines 4 outline that matters of public interest are distinct from matters that are of interest to the public, or public curiosity in knowing something. The fact that certain information is of great interest or significance to a particular person or group, does not necessarily mean it is the public interest to release it.⁴³

Conclusion

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

Katrina Dwyer

Senior Assistant Ombudsman

16 March 2026

⁴² Guidelines 4, page 10.

⁴³ Guidelines 4, page 9.