

[REDACTED]

Email: [REDACTED]

Dear [REDACTED]

FREEDOM OF INFORMATION (FOI) REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the FOI Act), received by the Education Directorate (the Directorate) on 21 May 2026, in which you sought access to:

1. *The most recent version of the 'ACT Disability Education Program Entry Criteria' if updated since 2023, and any current operational guidelines, eligibility criteria, assessment frameworks, or equivalent documents currently used by the Directorate for disability assessment and program entry criteria (including any associated appendices, attachments, implementation guidance, or related operational documents used by the Directorate)*
2. *All internal documentation providing current policy and procedural guidance to Directorate staff about management of restrictive practices, including but not limited to guidelines, frameworks, protocols, training materials, standard operating procedures, or equivalent documents, addressing issues such as*
 - a. *Distinctions between 'reasonable action' and 'restrictive practice'*
 - b. *Development of 'behaviour and safety plans'*
 - c. *Development of 'positive behaviour support plans' which include a restrictive practice component*
 - d. *Strategies which may be used to avoid the use of restrictive practice*
3. *Records relating to Malkara Specialist School – 2025 Condition Assessment, specifically*
 - a. *Assessment criteria and frameworks*
 - b. *Internal departmental guidance or working documents;*
 - c. *Documents assessing compliance against policy requirements;*
 - d. *Documents assessing compliance against legislative requirements;*
 - e. *Inspection reports, consultant reports, audit documents, briefing materials, correspondence, emails, file notes, meeting records, and internal communications relating to the assessment;*
 - f. *The final condition assessment report and any recommendations or findings arising from the assessment.*
 - g. *Correspondence with Minister(s)*

- h. Documents relating to communication of assessment and outcomes publicly (including documents relating to decisions about communications)*
4. *All communications between the Directorate and the Office of the Senior Practitioner (OSP) in relation to the OSP's visit to Malkara School on 19 March 2026 and the OSP's finding that the school was in breach of the Senior Practitioner Act 2018 due to manual handles on classroom doors being determined as an 'environmental restraint' and a breach of student human rights. ** Records relating to administrative arrangements for the visit will be excluded.*

I am an Information Officer appointed by the Director-General under section 18 of the FOI Act to deal with access applications made under Part 5 of the FOI Act.

In accordance with section 40 of the FOI Act, the Directorate was required to provide a decision on your access application within 30 working days of receipt, being 6 July 2026. On 1 July 2026, you were sent an email requesting an extension of time to complete your application by 27 July 2026. As you did not respond within seven working days, the requested extension was taken to be granted.

Decision on access

Searches were completed for relevant records and 27 records were identified that fall within the scope of your request.

I have included as Attachment A to this decision the schedule of relevant records. This provides a description of each record that falls within the scope of your request and the access decision for each of those records.

In summary, my decision is:

- full access to 14 records,
- partial access to nine records with deletions applied, and
- refused access to four records.

The records released to you are provided as Attachment B to this letter.

My access decisions are detailed further in the following statement of reasons.

Material considered

In reaching my access decision, I have taken the following into account:

- the FOI Act, particularly sections 16, 17, 35 and 50, and schedules 1 and 2,
- the content of the records that fall within the scope of your request,
- the *Human Rights Act 2004*,
- the *Information Privacy Act 2014*,
- the FOI Guidelines issued under section 66 of the FOI Act by the Ombudsman.

Reasons for decision

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.

Section 50 of the FOI Act provides for records to be partially released with deletions applied where they contain contrary to the public interest information that can be removed, which enables the remainder of the record to be released. This provision has been applied where appropriate.

Access to information refused

Section 43(1)(d) of the FOI Act provides for the processing of an access application to be wholly or partially refused if the information is sought is already available to the applicant. Section 45 sets out the definition of 'information already available to the applicant', which includes information which is publicly available (section 45(a)). As some of the information sought is publicly available, it has not been released as part of this decision; however, links to the information are provided in the schedule.

Information taken to be contrary to the public interest to disclose

None of the records contain information that is taken to be contrary to the public interest to disclose.

Information, the disclosure of which would, on balance, be contrary to the public interest

The public interest test requires the identification of factors favouring disclosure and non-disclosure, the balancing of those factors, and a decision whether, on balance, disclosure of the information would be contrary to the public interest.

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

- promote open discussion of public affairs and enhance the government's accountability (Schedule 2, 2.1(a)(i))
- contribute to positive and informed debate on important issues or matters of public interest (Schedule 2, 2.1(a)(ii))
- inform the community of the government's operations, including the policies, guidelines and codes of conduct followed by the government in its dealings with members of the community (Schedule 2, 2.2(a)(iii))

These factors are relevant because education is important to a large part of the community with inclusive education being of particular importance to some members of the community. The information sought is in the public interest to release because it is

important for the public to have access to government information as this contributes to the proper working of representative democracy, as well as enabling the public to participate in government processes. Therefore, I give these factors favouring disclosure strong weight.

I have decided that the applicable factor favouring non-disclosure, as listed at Schedule 2.2 of the FOI Act, is that disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy or any other right under the *Human Rights Act 2004* (Schedule 2, 2.2(a)(ii)).

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.

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

As the factor favouring non-disclosure has been given significant weight and the factors favouring disclosure have strong weight, information within the records has been redacted where it has been deemed contrary to the public interest to disclose.

In addition, information that is outside of the scope of your request has been deleted.

Charges

Processing charges are not applicable for this request because I have decided that the number of pages involved that are material to your request because of the public interest associated with information sought.

Online publishing – disclosure log

Under section 28 of the FOI Act, the Directorate maintains an online record of access applications called a disclosure log. Information about your request, my decision and records released to you in response to your access application will be published in the Directorate's disclosure log between three and 10 working days after a decision on access has been provided to you. Your personal information will not be published.

You may view the Directorate's disclosure log at www.act.gov.au/open/foi-disclosure-logs/education-foi-disclosure-logs.

Review of decision

Ombudsman review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the FOI Act. You have the right to seek Ombudsman review of this outcome under section 73 of the FOI Act within 20 working days from the day my decision is provided to you, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) review

Under section 84 of the FOI Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision.

Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
Allara House, 15 Constitution Ave
GPO Box 370
Canberra City ACT 2601

Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

If you have any questions concerning the Directorate's processing of your request, please contact the Directorate's FOI team on 02 6205 0720 or email EducationFOI@act.gov.au.

Yours sincerely



Paula Murray
Information Officer

27 July 2026