



National Education & Care Services
FOI & Privacy Commissioners & Ombudsman

National Education and Care Services Freedom of Information Commissioner

J Hutchinson Pty Ltd and Queensland Education and Care Services Regulatory Authority

Decision of the National Education and Care Services Freedom of Information Commissioner (NECS IC)

| | |
|----------------------------|--|
| Review Applicant: | J Hutchinson Pty Ltd (trading as Hutchinson Builders) represented by Carter Newell Lawyers |
| Respondent: | Queensland Education and Care Services Regulatory Authority, Qld Department of Education ¹ |
| Other parties: | G8 Education Limited |
| Decision Date: | 10 March 2020 |
| Application number: | FOIC 01/2020 |
| Catchwords: | Freedom of Information - (CTH) <i>Freedom of Information Act 1982: s 47 Exemption - Documents disclosing trade secrets or commercially valuable information; Education and Care Services National Law (Queensland) Act 2011; Education and Care Services National Regulations.</i> |

Decision

1. Under s55k of the *Freedom of Information Act 1982* (Cth) (the FOI Act) I make the following decisions:
 - i. I affirm the decision of the Queensland Regulatory Authority of 19 December 2019 to refuse access to 115 documents pursuant to s47 - Exemption - Documents disclosing trade secrets or commercially valuable information - of the FOI Act. The 115 documents are referred to in paragraph 14 of this Decision and comprise the 223 documents which the Queensland Regulatory Authority found in response to the FOI request, less the 108 documents referred to in paragraph 1(ii) immediately below.
 - ii. I note the applicant no longer seeks access to the lease agreement between G8 Education and the building owner and I determine that these documents are therefore irrelevant to the FOI request. These documents comprise 108 pages and are referred to in paragraphs 7(iii) and 14 of this decision.

Scope of the Review

2. By correspondence dated 13 September 2019 Carter Newell Lawyers (the Applicant's lawyers), acting on behalf of J Hutchinson Pty Ltd, trading as Hutchinson Builders (the Review Applicant) applied to the Queensland Department of Education (the Department) under the NSW *Right to Information Act 2009* (RTI Act) for access to:

"All documents concerning applications for operating a childcare centre at Level 1, 133 Mary Street Brisbane by CCLP Consulting Pty Ltd or G8 Education Limited, including, but not limited to, correspondence, applications, inspections, reports and written decisions" for the period 1 September 2017 to the date of the application."

¹ The Chief Executive, Queensland Department of Education is the Regulatory Authority (*Education and Care Services National Law (Queensland) Act 2011 – s 14*).

3. In a telephone conversation on 23 September 2019 the Department discussed the scope of the request and advised the Applicant's lawyers that the documents sought by their client were not subject to the RTI Act, and that the request must be made under the Commonwealth *Freedom of Information Act 1982* (the FOI Act)². Under the FOI Act, the request is made to the Regulatory Authority.
4. By email later that same day, the Applicant's lawyers lodged the request under the FOI Act and confirmed the scope of the request by stating:

"The allegations against our client are that materials allegedly falling from our client's constructions (sic) site prevented the childcare centre from opening. The claimant says that it applied to the Department for approval (we understand on more than one occasion) to open the centre, but because of falling materials, the approval was not given.

The documents we are after, therefore, are documents showing all requests/applications for approval to the Department to open the childcare centre and all documents from the Department in response to those requests."

The period covered by the request was 1 September 2017 to 23 September 2019. I deduce this period from the period specified in the applicant's lawyers' letter of 13 September 2019, which sought all documents from *1 September 2017 to the present*, and that the applicant's email of 23 September 2019 made the same request under the FOI Act (Cth), thereby extending the end period of the request from the 13 to the 23 September.

5. The processing time for the Regulatory Authority's decision was extended by 30 days under s15(6) of the FOI Act to undertake consultation with an affected third party, and a further 30 days under s15AA of the FOI Act with the agreement of the applicant.
6. The Regulatory Authority found 223 documents which it considered fell within the scope of the FOI application. All documents were written in nature. I note that for the purposes of counting or listing documents, each document has been identified as a separate page. The documents have been grouped into two files – File A and File B – by the Regulatory Authority.
7. All 223 documents were determined by the Regulatory Authority to include information relating to the business interests of G8 Education Limited (G8 Education) - a childcare provider that was seeking to operate a childcare service. In its Decision Notice of 19 December 2019, the Regulatory Authority described the documents as consisting of:
 - i. "Specific details of how the childcare service will operate once it has opened, including plans, programs, and potential designs;
 - ii. Correspondence between the Department and G8 Education relating to the applications for approval to run the service; and
 - iii. A copy of the lease agreement entered into by G8 and the building owner and various associated building operation documents".
8. Section 27 of the FOI Act relevantly states that if an agency forms the view that a person or organisation might reasonably wish to contend that a document is exempt under s47 (trade secrets or commercially valuable information), then the agency must not give access to the document unless the person or organisation has been given a reasonable opportunity to make submissions in support of the exemption contention. The section contains a number of other requirements, including that the opportunity to make

² Section 6 of the *Education and Care Services National Law (Queensland) Act 2011* excludes the Queensland RTI Act from applying for the purposes of the *Education and Care Services National Law (Queensland)*. Section 264(1) of the *National Law* applies the Commonwealth *Freedom of Information Act 1982* as a law in Qld for the purposes of the National Quality Framework for education and care services.

submissions only applies if it is reasonably practicable to give the person or organisation a reasonable opportunity to do so, and that the agency must not decide to give access to the document unless it has regard to any submissions made, and that if the person or organisation makes submissions then the agency must not give access to the document unless the person's or organisation's review or appeal rights in relation to a decision to give access have expired.

9. Pursuant to s27, on 9 December 2019 the Regulatory Authority invited a consultation submission from G8 Education. G8 Education subsequently provided a submission dated 16 December 2019 objecting to the release of all 223 documents under s 47(1)(b) of the FOI Act on the basis that the documents were commercially sensitive and not otherwise in the public domain. G8 Education submitted:

"The requested information contains confidential and commercially sensitive information pertaining to the establishment and proposed operation of our new childcare centre Until such time as this service becomes operational, this information remains confidential and is commercially sensitive. We do not have any contractual relationship with Hutchinson Builders requiring them to keep this information confidential and have concerns that the release of this information to the general public could allow our competitors to obtain a commercial advantage."
10. Following consideration of all matters, by letter dated 19 December 2019 the Regulatory Authority advised the Applicant's lawyers of its Decision to *"refuse access to the 223 documents pursuant to section 47 of the FOI Act - Documents disclosing commercially valuable information - because certain information contained in the documents is exempt information."* In its reasons for Decision, the Regulatory Authority stated that it found that the documents contained information that had a commercial value, and that the commercial value could be diminished or destroyed if released.

Application by FOI Review Applicant

11. By letter dated 30 December 2019 the Applicant's lawyers requested a NECS Freedom of Information Commissioner Review of the Regulatory Authority's decision under s 54L of the FOI Act.
12. In its request for a Review, the Applicant's lawyers submitted that while it accepted that *"some documents might contain some commercial information that may make them exempt, we find it difficult to accept all documents, particularly correspondence relating to applications for approval and [Regulatory Authority] responses fall under this category."*
13. The Applicant's lawyers also stated they did not seek a review of the Regulatory Authority's decision in respect of the lease agreement entered into by G8 Education Limited and the building owners described at paragraph 7(iii) of this Decision, as they already held a copy.

Decision Under Review

14. The decision under review is the decision of the Regulatory Authority dated 19 December 2019 discussed at paragraph 10, excluding the documents discussed at paragraphs 7(iii) and 13 relating to the lease agreement. The lease agreement consists of 87 pages numbered as documents 59 to 145 in File B. Twenty one documents in File A (numbered as documents 16 to 36 in that File) are duplicates of pages 125 to 145 in the lease agreement documents, and I have therefore also excluded them from my consideration. Therefore 108 pages of the 223 pages which were the subject of the Regulatory Authority's decision, are excluded from this Review, and this review only involves 115 documents.
15. In making my Decision, I have had regard to the following:
 - the FOI applications dated 13 September 2019 and 23 September 2019 , and the NECS IC Review application;
 - the 115 documents at issue (the 115 documents);

- the parties' submissions, including the views of the consulted third party;
- the FOI Act, in particular s 11A (5), s 27, s 47(1);
- the *Education and Care Services National Law (Queensland) Act 2011*, the *Education and Care Services National Law (Queensland)* and the *Education and Care Services National Regulations 2011* as in force;
- the FOI Guidelines issued under s 93A of the FOI Act by the Australian Information Commissioner;³ and
- relevant case law.

Section 47 Exemption - Documents disclosing commercially valuable information

16. Section 47(1) of the FOI Act provides that *a document is an exempt document if its disclosure under this Act would disclose:*

a) trade secrets; or

b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

17. The Regulatory Authority's Decision Notice does not contain consideration of the documents in relation to s 47(1)(a) - the trade secrets exemption. It found 223 documents to be exempt pursuant to s 47(1)(b) of the FOI Act.

18. I have examined all 223 documents. File A contains 65 documents and File B contains 158 documents. As identified in the Regulatory Authority's Decision Notice, they consist of education and care service approval applications and correspondence from the Regulatory Authority in relation to those applications.

19. In considering the relevant 115 documents in the context of the s47 exemption, I determined that while there are 115 separate pages discovered as relevant to the FOI application, the pages do not stand alone as separate entities as might be inferred from their identification as such by the Regulatory Authority. Rather they must be considered within the context of their interrelationships. It would be inaccurate – and in fact meaningless - to consider them as separate documents for the purposes of s47.

20. In forming this view, I have taken into account two matters:

- the nature of service approval applications; and
- relevant case law on the meaning of a *document* for the purposes of the FOI Act.

Service Approval Applications

21. The *Education and Care Services National Law (Queensland)* and *Education and Care Services National Regulations 2011* set out the requirements for an application by an approved provider to seek approval to operate an education and care service.⁴ The application comprises several component parts which can be described broadly as:

- the application form itself containing standard details such as the approved provider, the proposed name, location and hours of operation of the service, the proposed number and ages of children, a description of the nature of the service, an attestation that the applicant has prepared the policies and procedures referred to in Regulation 168; (Regulation 24);
- details about the proposed education and care service premises including but not limited to planning permits, detailed plans prepared by a building practitioner, soil assessments, building permits, and statements by qualified practitioners of compliance under relevant building laws; evidence of appropriate insurance; and evidence of entitlement to occupy the premises; and

³ *Freedom of Information (FOI) Guidelines*. Australian Information Commissioner. Combined November 2019

⁴ *Education and Care Services National Law Queensland* ss 43, 44; *Education and Care Services National Regulations*, in particular, regs. 24, 25, 29 and 32

- iii. information required by the Regulatory Authority during the course of assessing the application which must include consideration of the adequacy of the policies and procedures of the service required by Regulation 168; the suitability of the premises, site and location for an education and care service; and evidence of the consent of a person to be a nominated supervisor at the service⁵

22. An application for service approval cannot be considered complete without it meeting all these legislated requirements, nor can the outcomes of the service application be determined without consideration of all these components. As such, they are intended to be read and considered together.

Meaning of document

23. In considering the meaning of “document” in this matter, I have been assisted in particular by two Administrative Appeal Tribunal cases which contain helpful and detailed comments on the meaning of a *document* for the purposes of the FOI Act and how the s47 exemption (with the application of s22) should be applied. The cases are *Diamond and Chief Executive Officer of the Australian Curriculum, Assessment and Reporting Authority* [2014]⁶ and *Re Public Interest Advocacy Centre and Department of Community Services and Health and Schering Pty Ltd* [1991]⁷.
24. The objects of the FOI Act are to give the Australian community the right of access to government held information. The Act expresses this right in terms of access to certain *documents* (s 11) and the way in which a person may exercise the right is expressed in s 15 in terms of a request for access to a *document*. Section 11 does not provide unqualified access - it excludes access to documents that are exempt *documents*. The right of access to information has been expressed in terms of a document because Parliament intended that the right to information would extend only to that which was already held in documentary form by agencies and Ministers.
25. Similarly, the exemption provisions of the Act are framed in terms of consequences of disclosure of a *document*. As Deputy President S.A Forgie stated in *Diamond* and the CEO of ACARA: “*They [the exemption provisions] are not focused on disclosure of particular passages of the document but on disclosure of a document that contains those certain passages. If the consequences [of disclosure] fall within those described in one or other of the exemption provisions, the whole document is exempt regardless of whether disclosure of the remaining information in the document would not*”⁸.
26. This reflects the definition of *exempt matter* at s 4(1) of the FOI Act as being “*matter the inclusion of which in a document causes the document to be an exempt document*”.
27. Section 22 of the FOI Act provides for access to be given to an edited copy of a document with exempt or irrelevant matter deleted in certain circumstances. However, “*at no time does it or the FOI Act generally permit an agency or Minister to treat information per se as a document or treat a segment of a document as a document in its own right*”.⁹ The consideration of s22 in relation to this FOIC Review is discussed further at paragraph 44 of this Decision.

⁵ Sections 45, 46 & 47 of the *Education and Care Services National Law Queensland* provide for the Regulatory Authority to seek additional information, carry out investigations and have regard to certain matters, as part of a service approval application. consideration.

⁶ *Diamond and Chief Executive Officer of the Australian Curriculum, Assessment and Reporting Authority* [2014] AATA 707 (29 September 2014)

⁷ *Re Public Interest Advocacy Centre and Department of Community Services and Health and Schering Pty Ltd* [1991] AATA 18;14 AAR 180 23 ALD 714 (16 August 1991)

⁸ *Diamond* Op cit. para 66

⁹ *Diamond* Op cit. para 67

28. The identification of a document in which information relevant to an access request is found, is determined by reference to its own characteristics, including its content and its interrelationship with other information. A document may comprise various parts. In *Diamond and the CEO of ACARA*, the example is given of the outcome of a search in which information sought is found in an attachment, or attachments, to a report. Deputy President S.A Forgie concluded that “*the document comprises the report and all of the attachments for they are intended to be read together and as a whole*”.¹⁰
29. In *Re Public Interest Advocacy Centre and Department of Community Services and Health*¹¹ consideration was also given to the meaning of *document* in a case where the respondent to an FOI request had determined that large amounts of material were classified or grouped for the purpose of the request as single documents. The Tribunal's decision notes that Counsel for the applicant, Dr Peter Cashman, submitted that the documents in question:
- “could not be classified as single documents for the purposes of the FOI Act”. He stated that ...a document for the purposes of the FOI Act cannot be a collection of large numbers of documents having different authors, different dates and some of which are external and some of which are internal. Dr Cashman submitted that there were practical consequences as a result of the distinction between the documents in issue being described as single documents or as collections of separate documents. He stated that s 22 of the FOI Act provides for the release of material within a document which would otherwise contain material which was exempt. He further stated that the fact that a document contains exempt matter does not mean that the document is exempt. He said that the application of s 22 would be made more difficult as, in deciding to release a document with deletions, the whole document must be examined to determine which portion of it may be released.”*¹²
30. The Tribunal in response determined that Dr Cashman had misconstrued the function of the FOI Act and, in particular, s22, stating:
- It is clear from ss 11 and 22 of the Act that the Act applies in general to documents and not matter contained in documents. **It is the whole document which is exempt** if it contains exempt matter...Section 22 is merely an ameliorating provision which enables the release of an otherwise exempt document in certain circumstances.*
- The Tribunal must take a commonsense approach to what is and what is not a document for the purposes of the FOI Act. There are some circumstances where a collection of material may be viewed as one document while in others that collection may rightly be broken down into a number of documents. Having viewed the material in issue in this case the Tribunal is not persuaded that the material should not be classified as single documents, even though those documents contain a large number of folios ... Nor is the Tribunal persuaded that in this case its task under s 22 of the Act is made more difficult by such a classification.*¹³
31. I draw the following important points from paragraphs 23 to 30:
- i. the FOI Act provides for access to documents and the exemptions similarly provide exemptions to documents (not information);
 - ii. if a document contains exempt material then the whole document is exempt, regardless of whether disclosure of the remaining information would not be exempt;
 - iii. identification of what defines a document is determined by a number of factors including its content and interrelationship with other information. It is not determined by the way in which a person frames a request for access to a document under the FOI Act;

¹⁰ Diamond Op cit. para 72

¹¹ Op cit

¹² Public Interest Advocacy Centre Op cit. pars 21-22

¹³ Public Interest Advocacy Centre Op cit. pars 23-24

- iv. there can be circumstances where a collection of material may be viewed as one document, while in other circumstances that collection may be broken down into a number of documents; and
- v. section 22 of the FOI Act provides for an edited copy of an exempt document to be made if the circumstances set out in that section apply;

32. It is in this context that I turn now to the documents at hand for consideration under the s47 exemption provisions. Of the 115 relevant documents under consideration, 78 are various component parts of service approval applications. The remaining 37 are responses from the Regulatory Authority in relation to specific aspects of those applications. I note that some parts of the Regulatory Authority's responses include generic information about relevant sections of the National Law and regulations relating to aspects of the service approval applications and the powers of the Regulatory Authority. The documents are interdependent and must be viewed as such in order both to be comprehensible and to fulfil the definition of service approval applications under legislation.
33. As discussed in the FOI Guidelines and relevant case law, to be exempt under s 47(1)(b) a document must satisfy two criteria:
- the document must contain information that has a commercial value either to an agency or to another person or body; and
 - the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed.
34. It is a question of fact whether documents have a commercial value. The commercial value may relate, for example, to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved. The information need not necessarily have "exchange value" in the sense that it can be sold as a trade secret or intellectual property.¹⁴
35. The FOI Guidelines¹⁵ provide a list of factors that may assist in determining whether information has a commercial value. Relevant to this Decision are:
- whether the information confers a competitive advantage on the agency or person to whom it relates;
 - whether the information is current or out of date (out of date information may no longer have any value);
 - whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value; and
 - whether the disclosure of the information would reduce the value of a business operation or commercial activity.
36. Clearly the documents under consideration have a commercial value to G8 Education Limited. An education and care service cannot, by law, operate in Australia without meeting the legislated requirements for service approval. The successful outcome of a service approval application confers a competitive advantage on the applicant in being able to establish what may become a lucrative business in the currently strong market for childcare.
37. The service approval process is rigorous, comprehensive and time consuming, driven by the overriding consideration to ensure the health, safety and wellbeing of children. The documents under consideration are comprehensive in nature and have taken considerable time and resources to develop. I am mindful that

¹⁴ *FOI Guidelines*. Op Cit. para 5.205 drawing from *Re Mangan and The Treasury* [2005] AATA 898; *Re Metcalf Pty Ltd and Western Power Corporation* [1996] WAICmr23; and *Mckinnon and Department of Immigration and Citizenship* [2012] AICmr34[42]

¹⁵ *FOI Guidelines* Op Cit. para 5.205

the time and money invested in generating information will not necessarily mean that it has intrinsic commercial value.¹⁶ However I am satisfied that the financial cost of, and time involved in, producing the documents in this case has significant bearing on determining whether they have commercial value. The highly regulated nature of the childcare sector under education and care services National Law together with other applicable laws including those relating to planning, buildings, health and safety, and emergency services, enhances the commercial value of the documents.

38. The information in the documents is current and known only to the applicant for service approval – G8 Education – and the Regulatory Authority. They are not published on any website or distributed as a matter of course to members of the public.
39. Having regard to the matters discussed in paragraphs 36 to 38, I find that the first requirement of s47(1)(b) of the FOI Act is satisfied – namely that the documents under consideration contain information that has a commercial value to G8 Education. I turn now to the second requirement of the section – which is whether the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if disclosed.
40. In *Cordover*¹⁷ the AATA, referencing settled principles in case law, concluded that, when considering whether the disclosure of information could reasonably be expected to destroy or diminish its commercial value, the decision maker is not required to be satisfied there is a high probability or even a likely probability of this occurring. Rather it is sufficient to determine that the likelihood of it occurring is something less than a probability but more than just an intangible possibility.
41. In determining whether I am satisfied that the disclosure of the documents would or could reasonably be expected to destroy or diminish their commercial value I have placed considerable weight on the following factors:
- I. The documents under consideration seek to establish an education and care service in a multi-storey building. The establishment of such services attracts an additional layer of complexity and risk mitigation strategies to be addressed in service approval applications. For example emergency and evacuation procedures are more complex if children have to be moved down several flights of stairs, particularly when a building houses other tenants; the provision of outdoor play space and contact with the natural environment (as required by legislation) attracts particular challenges in a multi-storey building. The Queensland Regulatory Authority has recognised these complexities and has developed specific guidance material for approved providers seeking to operate an education and care services in multi-storey buildings.¹⁸ The document outlines the matters the Regulatory Authority will consider when assessing an application for service approval to operate in a multi-storey building. The documents under consideration in this FOIC Decision address these specific challenges and hence confer a competitive advantage on G8 Education, which would be diminished if the information in the documents were disclosed.
 - II. Childcare is a lucrative, competitive growth industry driven by increasing demands for flexible childcare options that has resulted in growth of childcare services located in central city and multi-storey buildings. The service approval applications coupled with responses from the Regulatory Authority provide roadmaps for other education and care providers seeking to establish such services. Aspirant competitors to G8 Education could conceivably use the documents, if disclosed, to their own advantage.

¹⁶ *Re Hassell and Department of Health Western Australia* [1994] WAICmr 25.

¹⁷ *Cordover and Australian Electoral Commission* [2015] AATA 956 (11 December 2015) paras 42-52

¹⁸ *Guidance for approved providers- early childhood education and care services operating in multi-storey buildings*. Queensland Education and Care Services Regulatory Authority.

In those circumstances, the disclosure of the information in the documents would or could reasonably be expected to destroy or diminish their commercial value to G8 Education.

- III. The service approval process itself is an iterative one, requiring ongoing exchanges of documents and requests for, and provision of, additional information, and responses to that information, between the applicant and the Regulatory Authority. This exchange continues until the Regulatory Authority is satisfied that a service will be able to meet its legislated obligations and it will not pose a risk to the health, safety and wellbeing of children. The documents under consideration contain point in time information. By their very nature the documents might identify deficits in service approval applications and raise questions regarding the service's proposed operations. Disclosure of the documents as issues are being identified and addressed might shed a negative light on the proposed service before it is even established and cause a loss of confidence in the childcare provider, with a negative flow on effect to the service once it is established. Again, in these circumstances, the disclosure of the documents would or could reasonably be expected to destroy or diminish their commercial value to G8 Education.
 - IV. Disclosure of the fact a service approval application has been lodged, together with details of the proposed location and commencement date for the service might reasonably be expected to provide a competitor (current or aspirant) childcare provider with an advantage in establishing their own competitive service or in marketing to attract potential clients from the proposed new service. Again, in these circumstances, the disclosure of the documents would or could reasonably be expected to destroy or diminish their commercial value to G8 Education.
42. For the reasons discussed in paragraphs 36 to 41, I am satisfied that the information in the documents is commercially valuable information that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed and that the requirements of both limbs of s47(b) are fulfilled.
 43. Section 22 of the FOI Act provides for access to an edited copy of documents to be given with exempt material deleted in certain circumstances. In summary, under s 22 an agency must give an edited copy of an exempt document:
 - if the agency decides to refuse to give access to an exempt document, and
 - it is possible and reasonably practicable for the agency to prepare an edited copy of the document modified by deletions, having regard to the nature and extent of the modification and the resources available to make them, and
 - it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.
 44. I noted at paragraph 32 of this Decision that some pages within the Regulatory Authority's responses to the service approval applications include generic information about relevant sections of the National Law and regulations with respect to service approval applications and the powers of the Regulatory Authority. While this information could not be considered exempt material, I have determined when applying s22, that these documents would not fall within the stated intention of the FOI application, which seeks documents relating to G8 Education being unable to open on time. In these circumstances, I have formed the view that it is apparent from the FOI application that the applicant would decline access to the edited copy, and that s22 does not require edited copies of those documents to be prepared.
 45. I also note that the Regulatory Authority's decision of 19 December 2019 did not contain any reference to it having applied s22 considerations in processing the FOI application. It is important that Regulatory Authorities note the application of that section in relevant circumstances, not only in order to comply with the requirements of the FOI Act, but also to inform applicants that all relevant matters have been considered, and thereby assisting applicants in making an informed decision on whether to seek a review.

Decision

46. Under s55k of the *Freedom of Information Act 1982* (Cwth) (the FOI Act) I make the following decisions:

- I. I affirm the decision of the Queensland Regulatory Authority of 19 December 2019 to refuse access to 115 documents pursuant to s47 - Exemption - Documents disclosing trade secrets or commercially valuable information - of the FOI Act. The 115 documents are referred to in paragraph 14 of this Decision and comprise the 223 documents which the Queensland Regulatory Authority found in response to the FOI request, less the 108 documents referred to in paragraph 46(ii) immediately below.
- II. I note the applicant no longer seeks access to the lease agreement between G8 Education and the building owner and I determine that these documents are therefore irrelevant to the FOI request. These documents comprise 108 pages and are referred to in paragraphs 7(iii) and 14 of this decision.

Lesley Foster

National Education and Care Services Freedom of Information Commissioner

Review rights

If a party to a NECS IC Review is dissatisfied with an IC Review decision they may apply under section 57A of the **FOI Act**, as modified by the *Education and Care Services National Regulations* r209(e) and r210, to have the decision reviewed by the relevant Tribunal. In the case of this IC Review the relevant tribunal is the Queensland Civil and Administrative Tribunal (QCAT).¹⁹ The QCAT provides independent merits review of administrative decisions and has the power to set aside, vary or affirm a NECS IC review decision.

An application to the QCAT must be made within 28 days of the day on which the applicant is given the NECS IC review decision. An application fee may be applicable when lodging an application for review to the QCAT. Further information is available on the QCAT website www.qcat.qld.gov.au or by telephoning 1300 753 228

¹⁹ S40 *Education and Care Services National Law (Queensland) Act 2011*