National Education & Care Services
FOI & Privacy Commissioners & Ombudsman

X1 and Australian Children's Education and Care Quality Authority

DECISION AND REASONS FOR DECISION OF THE NATIONAL EDUCATION AND CARE SERVICES FREEDOM OF INFORMATION COMMISSIONER (NECS FOIC)

Review Applicant:	**X1**
Respondent:	**Australian Children's Education and Care Quality Authority**
Other parties:	**Victorian Department of Education**
Decision Date:	**15 November 2023**
Application number:	**FOIC Review 03 - 2023**
Catchwords:	**Freedom of Information – (CTH) *Freedom of Information Act 1982* - irrelevant material (s22 FOI Act) - personal privacy (section 47F FOI Act)- Education and Care Services National Law and Education and Care Services National Regulations.**

[Note: Any references appearing in square brackets indicate that information has been omitted from this decision and replaced with generic information in accordance with a direction made under section 55(2)(e) of the *Freedom of Information Act 1982*.]

DECISION

1. Under s55K of the *Freedom of Information Act 1982* (the FOI Act) I vary the decision of the Australian Children's Education and Care Quality Authority to provide partial access to the material requested by the applicant to the extent that a mobile phone number that was redacted in 11 documents is not irrelevant to the request. I substitute my decision that the phone number is not exempt pursuant to s47F of the FOI Act. Otherwise, I affirm the decision.

SCOPE OF REVIEW

2. On 14 July 2023 the applicant (referred to in this decision as X1) made an application under the FOI Act to the respondent seeking "*all documents you hold containing information about X2 (the son of X1) and X1 including all correspondence from* [Preschool]*".*[1]

3. The respondent replied on the same day stating that the request related to functions carried out by the Victorian Department of Education and Training and requesting the applicant direct her request to that department.[2] On 15 July the applicant replied requesting that her application not be withdrawn as she was seeking "*all correspondence between acecqa, myself and* [Preschool] *which includes information about me and my son X2)".*[3]

[1] Email X! To ACQCQA 14 July 2023
[2] Email ACECQA to X1 14 july 2023
[3] Email X1 to ACECQA 15 July 2023

4. On 19 July the respondent wrote to the applicant notifying her that it was processing her request and that the processing time was to be extended for a further 30 days as it was required to consult with the department. The respondent also advised that the applicant would need to establish that she was the parent of X2 prior to the release of any information.[4]

5. On 24 July the respondent again wrote to the applicant seeking clarification that the scope of her request was "*for any documents relating to correspondence between ACECQA and yourself; ACECQA and X2; yourself and* [Preschool]*."*[5]

6. The applicant replied the same day. She stated she was seeking

   - *Correspondence between ACECQA and X1; ACECQA and X2; X1 and* [Preschool]
   - *Correspondence between Qard and X1; Qard and X2; X1 and* [Preschool]*; Qard and* [Preschool] *in relation X1 and or X2*
   - *Correspondence between Education department and X1; education department and X2; X1 and* [Preschool]*; Education department and* [Preschool] *in relation to X1 and X2.*[6]

7. On 12 September the respondent issued its decision. The decision granted partial access to the documents requested.

APPLICATION BY FOI REVIEW APPLICANT

8. On 23 September the applicant submitted an application to me for review of the decision.[7] In her application the applicant cited both ACECQA and the Department of Education. The applicant subsequently clarified that she was seeking review of the ACECQA decision. The applicant confirmed she had made a separate FOI application to the department. That process is not subject to this review.

9. In her application the applicant stated that her reason for seeking review was that "*The agency refused me access to documents or parts of documents".* The outcome she is seeking is that all information about her and her son's health be given to her.[8]

DECISION UNDER REVIEW

10. The decision under review is the decision made by a delegate of ACECQA on 12 September 2023. That decision granted partial access with redactions being made pursuant to s22 of the FOI Act on the ground that the redacted material was irrelevant.

11. The respondent identified 33 documents, comprising 67 pages, as coming within the scope of the request. These consisted of a Case Summary report, logs of telephone calls, emails, a letter and search records. Material was redacted from 24 of the documents.

[4] Email ACECQA to X1 19 July 2023
[5] Email ACECQA to X1 24 July 2023
[6] Email X1 to ACECQA 24 July 2023
[7] Submission to NECS FOIC by X1 23 September 2023
[8] Op cit

12. In its decision ACECQA did not identify or provide reasons for why the redactions were made. In a subsequent email to me it explained the redactions were of:

- A mobile phone number of a Department of Education staff member, as requested by the Department of Education
- Headers and footers of screenshots. These showed programs and links used by the ACECQA IT staff member who searched the NQA ITS for the records, not information relating to the applicant's request.
- A log of the records held on the NQA ITS relating to the preschool. The log did not exist as a record as such – it was a search view of the relevant documents. All the records listed on the log that were related to the FOI request were provided to the applicant
- Logs of emails held in the NQA ITS. Each of these emails was provided in full to the applicant.[9]

13. In making my Decision, I have had regard to the following:

- the original FOI and the NECS FOIC Review applications;
- the documents at issue (the documents);
- the explanation provided by ACECQA as to why redactions were made;
- the FOI Act, in particular sections 22 and 47F; and
- the FOI Guidelines issued under s93A of the FOI Act by the Australian Information Commissioner.

DISCUSSION

Scope of the search

14. The applicant clarified the documents she was seeking as set out in [6] above. The decision states that the documents she requested were "*all correspondence between ACECQA,* [Preschool]*, the Victorian Department of Education (including the Quality Assessment and Regulation Division, yourself and your son, X2".* Whilst this is in different terms to the applicant's request in my opinion it accurately summarises that request.

Exempt or Irrelevant Matter

15. Section 22 of the FOI Act provides that an agency may prepare an edited copy of a document by deleting information "that would reasonably be regarded as irrelevant to the request for access" (s 22(1)(a)(ii))

16. ACECQA has deleted material as being "not relevant" from 24 documents. As set out at [12] above there are 4 reasons for these deletions. A mobile phone number has been redacted on 11 occasions. When I raised the question of the mobile phone with ACECQA they responded that while they had originally decided that the material was irrelevant on review they considered the phone number should have been redacted for personal privacy reasons.[10] I agree that the phone number could not be considered as irrelevant. I will consider the personal privacy issue below.

17. I have examined unredacted copies of the documents where redactions have been made for the other reasons set out at [12] above. I agree that the redactions are consistent with those reasons and that they are irrelevant to the request.

[9] Email ACECQA to NECS FOIC 27 September 2023
[10] Op Cit

Finding

18. I am satisfied that, apart from the mobile phone number, the material redacted as "not relevant" is irrelevant to the FOI request pursuant to s 22(1)(a)(ii) of the FOI Act.

Personal Privacy

19. ACECQA originally found 11 documents to be partially exempt from disclosure as they contained a mobile phone number. As discussed above ACECQA now considers these should have been exempted for personal privacy reason pursuant to s47F of the FOI Act.

20. The main requirements of the s 47F personal privacy conditional exemption are that a document:

- contains 'personal information'; and
- that disclosure in response to the applicant's FOI request would be 'unreasonable' (s 47F(1)); and
- it would be 'contrary to the public interest' to release the material at the time of the decision (s 11A(5)).

21. Under section 4 the FOI Act '**personal information'** has the same meaning as in the Commonwealth *Privacy Act 1988* which provides in section 6 of that Act that:

> *Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:*
>
> *a. Whether the information or opinion is true or not; and*
> *b. Whether the information or opinion is recorded in a material form or not.*
>
> ***Individual** means a natural person*

22. I have examined unredacted copies of the 11 documents. I am satisfied that the material contains information or an opinion about an identified individual, that being her personal mobile number I am further satisfied that the information says something about that individual.

Unreasonable disclosure

23. Having found that the documents contain personal information for the purposes of s 47F of the FOI Act I must consider whether disclosure of the documents would involve an "unreasonable" disclosure of personal information**.**

26. The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The FOI Guidelines discuss that the test of 'unreasonableness' under s 47F 'implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals.

27. In deciding whether disclosure would be unreasonable, s 47F(2) of the FOI Act provides that a decision maker must have regard to:

a. the extent to which the information is well known;
b. whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
c. the availability of the information from publicly accessible sources; and
d. any other matters that the agency … considers relevant.

28. In what is considered to be the leading Australian Information Commissioner review decision in relation to the application of the s 47F conditional exemption - *'FG' and National Archives or Australia* (**FG**)[11] a number of other factors considered to be relevant when deciding whether the disclosure of personal information would be unreasonable are discussed. Of these, I consider factors relevant to this FOIC Review include:

- the nature, age and current relevance of the information;
- any detriment that disclosure may cause to the person to whom the information relates;
- any opposition to disclosure expressed or likely to be held by that person;
- the circumstances of an agency's collection and use of the information; and
- the fact that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the FOI Act

29. The FOI Guidelines discuss the matter of disclosure of public servants' personal information. The Guidelines state that *"where public servants' personal information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose unless special circumstances existed. This is because the information would reveal only that the public servant was performing their public duties."*[12]

30. In claiming that the personal mobile number should have been exempted pursuant to s 47F ACECQA submitted *'disclosure of a personal mobile phone number of a Department of Education staff member would involve unreasonable disclosure of their personal information.'*

31. I consider a public servant's personal mobile number to be in a different category to the type of material discussed at [29]. It is not material that shows the person was performing their duties. I agree with ACECQA that the disclosure would normally be unreasonable.

32. However as I have noted at [8] above the applicant has also made an FOI request to the Department of Education. As part of her correspondence with me the applicant has provided me with a series of email correspondence between herself and an officer of the department. That officer coincidentally is the same officer whose mobile phone number was redacted by the respondent. This, of course, was not information that was available to the decision maker of the respondent.

33. The FOI Guidelines state that an Information Commissioner review is a merit review where the Commissioner does not simply review the reasons given by the original decision maker. The Commissioner determines the correct or preferable decision in the circumstances. The guidelines also state that the Commissioner can consider additional material not considered by the original decision maker including relevant new material that has arisen since the decision was made.[13]

34. Considering that the person whose phone number was redacted has given that phone number to the applicant herself and that the applicant would know that person's mobile phone number it cannot be determined that disclosure would be unreasonable. It follows that material is not conditionally exempt.

35. As discussed above this finding involves no criticism of the original decision as the decision maker was not aware of the disclosure directly by the officer of the department.

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[11] FG and National archives of Australia [2015] AICmr 26
[12] OAIC FOI Guidelines at 6.153
[13] OAIC FOI Guidelines at 10.16

Finding

36. I am not satisfied that a Department of Education's staff member's mobile phone number is exempt from disclosure.

CONCLUSION

37. I vary the decision of the Australian Children's Education and Care Quality Authority to provide partial access to the material requested by the applicant to the extent that a mobile phone number that was redacted in 11 documents is not conditionally exempt. I substitute my decision that the phone number is not exempt pursuant to s47F of the FOI Act. Otherwise, I affirm the decision.

Alan Grinsell-Jones
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 Victorian Civil and Administrative Tribunal (VCAT). The VCAT 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 VCAT must be made within 28 days of the day on which the applicant is given the NECS FOIC review decision. An application fee may be applicable when lodging an application for review to the VCAT. Further information is available on the VCAT website at www.vcat.vic.gov.au or by telephoning 1300 018 228.

APPLICATION OF THE *FREEDOM OF INFORMATION ACT 1982* (CTH) TO THE AUSTRALIAN CHILDREN'S EDUCATION AND CARE QUALITY AUTHORITY

1. The National Quality Framework (NQF) is a national, uniform regulatory and quality assurance system for early childhood education and care and outside school hours care services across Australia. It includes National Law and National Regulations, national quality standards, assessment and rating processes, and national learning frameworks. Further information is available at www.acecqa.gov.au

2. Regulation 208 of the *Education and Care Services National Regulations 2011* (the **ECS Regulations**) applies the FOI Act (Cth) as if it were modified so that it **applies only to agencies** and those agencies are the National Authority (the Australian Children's Education and Care Quality Authority - ACECQA) and the Regulatory Authority of each participating jurisdiction.

JURISDICTION OF THE NATIONAL EDUCATION AND CARE SERVICES FREEDOM OF INFORMATION COMMISSIONER (NECS FOI COMMISSIONER)

3. Section 264(2)(b) of the ECS National Law modifies the FOI Act (Cth) to require all references to the Australian Information Commissioner in the FOI Act (Cth) to be read as referring to the NECS FOI Commissioner. The ECS Regulations at r 204 to r 211 set out further modifications to the FOI Act (Cth) in its application under the ECS National Law.