National Education & Care Services
FOI & Privacy Commissioners & Ombudsman

AA and Chief Executive Officer, WA Department of Communities, and Camp Australia Pty Ltd

Decision and Reasons for Decision of the National Education and Care Services Freedom of Information Commissioner

Review applicant:	**AA (pseudonym)**
Respondent:	**Director General, Western Australian Department of Communities**
Third party:	**Camp Australia Pty Ltd**
Application number:	**FOIC01-2026**
Decision number:	**D01/2026**
Decision Date:	**30 June 2026**
Catchwords:	**Freedom of Information – Whether single document generated in response to access application satisfies scope of access application – Whether disclosure would unreasonably adversely affect an organisation in respect of its lawful business affairs – Whether material in document is irrelevant to request – exclusion of identifying information – Whether individuals are 'reasonably identifiable' – *Freedom of Information Act 1982* (CTH) ss 11A, 11B, 22, 37(1)(b), 47F, 47G – *Education and Care Services National Law* s 270 and *Education and Care Services National Regulations***

Decision

1. Under s 55K of the *Freedom of Information Act 1982* (the FOI Act)[1] I set aside the decision made on 1 July 2025 by a delegate of the Director General of the Western Australian Department of Communities as the Western Australian Regulatory Authority for the purposes of the Education and Care Services National Law (the Authority)[2]. In substitution I decide that:

   - the document is not exempt, in part or in full, under s 47G of the FOI Act

   - the information specified in the confidential schedule provided to the Authority and the third party is identifying information about individuals and is outside the scope of the access application and this review and is therefore irrelevant material in accordance with s 22 of the FOI Act

   - the document is not otherwise exempt

   - the applicant is to be given an edited copy of the document with the irrelevant material deleted.

2. In accordance with s 55N of the FOI Act, the Authority must comply with this decision and give the applicant a copy of the document, edited only to the extent necessary to delete the irrelevant material. However, the Authority must not give access to the document unless, after all the

[1] The application of the FOI Act to the Authority under the Education and Care Services National Law is described at Attachment A.
[2] Section 26 of the *Education and Care Services National Law Application Act 2026* (WA) declares that the Western Australian Regulatory Authority under the Education and Care Services National Law is the chief executive officer of the department principally assisting in the administration of the *Child Care Services Act 2007* (WA), presently the Director-General of the Department of Communities.

opportunities of the third party for review of this decision have expired, the decision to give access still stands or is confirmed.[3] The parties have 28 days[4] to apply to the relevant administrative tribunal, in this case the WA State Administrate Tribunal,[5] for review of this decision. Accordingly, the Authority should not give access to the document until either the third party notifies the Authority that it will not seek tribunal review, the period has expired and no tribunal review application has been made or, if a tribunal review application has been made, until after the tribunal review is completed.

Background

3. This decision follows my review of the internal review decision made by the Authority on 1 July 2025 in respect of a request for access under the FOI Act made to it by the applicant on 8 May 2025.

4. The applicant initially requested access to a range of documents relating to compliance actions and complaints concerning Camp Australia's outside school hours care (OSHC) services in Western Australia, as well as 'specific site information' relating to the Camp Australia OSHC service at Tuart Rise Primary School. An FOI officer subsequently corresponded with the applicant and, on 14 May 2025, the applicant agreed to revise the terms of the request. The revised request was for access to:

> *'1. A report detailing the total number of complaints received by ECRU specific to the Tuart Rise Primary School OSHC service by Camp Australia from 1 July 2021*
>
> *2. A report detailing the issue raised and outcome of each complaint identified for Point 1, including any compliance action undertaken.'*

5. On 4 June 2025, the Authority made a decision in response to the request (the initial decision). The decision-maker said that the Education and Care Regulatory Unit (ECRU) was 'requested to collate the documents within the scope of the request and that one document was found to fall within scope and considered for release.'

6. As the Authority did not propose to give access to the document, it was not required to consult any affected third party and accordingly neither Camp Australia (the third party) nor any other third party was consulted. A decision was made to refuse access to the document in full, relying on three exemptions in the FOI Act. The decision-maker said the exemption in s 37 of the FOI Act applied on the basis that the document 'contained information that is still currently being investigated by the agency and to release this information could prejudice the outcome of the investigation'. The decision-maker also decided that the s 47F (personal privacy) conditional exemption and the s 47G (business affairs) conditional exemption applied to information within the document and that disclosure of that information would be contrary to the public interest.

7. The applicant requested an internal review of the initial decision. On 1 July 2025, an internal review decision was made. The internal review decision-maker noted that the applicant had referred to s 47F in the request for review and advised that they did not request access to any identifying information, and requested that the document be anonymised, by applying s 22 of the FOI Act. The internal review decision-maker did not further consider or rely on s 47F. The internal review decision-maker determined that the document was exempt in full under s47G and that parts of it were exempt under ss 37(1)(a) (prejudice an investigation) and 37(1)(b) (disclose a confidential source).

8. The applicant applied to the National Education and Care Services Freedom of Information Commissioner (this office) for review of the internal review decision (the decision under review) on 2

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[3] FOI Act s 27(7)

[4] State Administrative Tribunal Rules rule 9.

[5] *Education and Care Services National Law Application Act 2026* (WA) s 27

July 2025. After being informed of the application for review, the Authority notified the third party of the review application, and the third party subsequently advised this office that it wished to be joined as a party to the review. The applicant, the Authority and the third party made written submissions to assist my consideration of this matter.

9. In communications with the Authority in relation to the access application, the applicant agreed to being identified by the Authority to any third party for consultation purposes. However, as it transpired that no consultation was undertaken, as I understand it the applicant was not identified to any third party. During my review the applicant maintained an objection to the disclosure of their identity to the third party. Hence, to protect the applicant's personal privacy, I have used the pseudonym AA to refer to the applicant in the title of this decision and the applicant's identity has not otherwise been disclosed to the third party by this office in the course of this review.

Scope of Review

10. In the review application, in addition to requesting review of the Authority's application of exemptions, the applicant questioned why there was only one document identified by the Authority in response to the request.

11. In its submissions, the Authority maintained that the document is exempt under s 47G and that parts of the document are exempt under s 37(1)(b) but advised that the Authority no longer seeks to rely on the exemption in s 37(1)(a). The Authority also noted that, as the applicant was not seeking personal information about individuals, information of that kind could be deleted under the provisions of s 22. The third party in its submissions maintained that the document is fully exempt from release under s 47G and contains personal information that is exempt from release under s 47F.

The issues

12. Considering the terms of the decision under review and the parties' submissions, the issues to be decided in this IC review are:

    - whether there is only one document falling within the scope of the request
    - whether the entire document that has been identified as falling within the scope of the request or any part of it is conditionally exempt from release under s 47G, and, if so, whether disclosure at this time would, on balance, be contrary to the public interest
    - if the entire document is not exempt from release, whether any part of the document:
        - may reasonably be regarded as irrelevant to the request under s 22
        - is exempt from release under s 37(1)(b) or
        - is conditionally exempt under s 47F and, if so, whether giving the applicant access to that material at this time would, on balance, be contrary to the public interest.

Onus

13. The Authority bears the onus of establishing that its decision is justified, or that I should make a decision adverse to the applicant (s 55D(1)).

Materials considered

14. In making my decision, I have had regard to the following:

    - the original FOI request and other documents held by the Authority relating to the handling of the request, including the initial decision
    - the decision under review, made on 1 July 2025
    - the review application
    - the document at issue
    - the parties' submissions

- the FOI Act, in particular ss 11A(5), 11B, 17, 22, 27, 37(1), 47F and 47G
- the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (FOI Guidelines)[6]
- relevant case law
- publicly available information about the third party on the internet, including on its website
- publicly available information concerning three actions relating to the third party's Tuart Rise Primary School OSHC service outlined on the Authority's Education and Care Regulatory Unit - enforcement actions webpage as at the date of this decision.

The document at issue

15. In the review application, the applicant questioned why there was only one document identified by the Authority in response to the request. The Authority in its submissions explained that, in response to the applicant's access application, enquiries were made to ascertain the data captured and the amount of work that would be involved in dealing with the application. The applicant was subsequently informed that some data requested may not be readily available as it was not the type of information captured on a database and would require a manual review of documents to confirm relevance. The applicant informed the Authority that the applicant did not require access to full complaint records or internal source documents and was happy to refine the request to a summary only.

16. Although, in confirming the narrowed scope of the request, the Authority indicated that it would prepare 'reports' containing the specified information, the Authority ultimately prepared a single, two-page report to cover the matters referred to in the revised request (the report). The Authority explained that the report was automatically generated based on the fields requested by the applicant from the Authority's Central Records Management National Quality Agenda IT System, which houses all data for all ECRU cases.

17. Section 17 of the FOI Act relevantly provides that, where it appears from a request that the desire of the access applicant is for information that is not available in discrete form in the written documents of the agency, and such a document could be produced by use of a computer or other equipment ordinarily available to the agency, the agency shall deal with the request as a request for access to such a document. The Authority made no reference to s 17 in the decision under review. Nevertheless, I am satisfied that the applicant's revised request was reasonably understood by the Authority to require the preparation of a report to satisfy the request.

18. In view of that, and having considered the correspondence between the applicant and the Authority in relation to narrowing the scope of the access application and the report itself, I accept that the only document falling within the scope of the applicant's revised request is the report. The report is therefore the sole document at issue in this review.

Section 47G Public Interest Conditional Exemption – business affairs

19. The Authority and the third party maintain that the entire report is exempt from release under s 47G(1)(a) of the FOI Act. Insofar as is relevant here, a document is conditionally exempt under s 47G(1)(a) where its release:

    - would disclose information concerning the business, commercial or financial affairs of an organisation or undertaking and

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6 March 2026 Compilation available at https://www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines.

- would, or could reasonably be expected to, unreasonably affect that organisation or undertaking adversely in respect of its business, commercial or financial affairs.

20. There are three elements to be established for a document or part of a document containing information about an organisation or undertaking to be conditionally exempt under s 47G(1)(a). Firstly, it must be established that release of the document would disclose information concerning the business, commercial or financial affairs of an organisation or undertaking. Secondly, it must be established that disclosure would, or could reasonably be expected to, have an adverse effect on that organisation or undertaking in respect of its lawful business, commercial or financial affairs. Finally, it must be established that the adverse effect would be unreasonable.

21. If all those elements are established and the document is therefore conditionally exempt under s 47G(1)(a), that is not the end of it. Section 47G is a 'conditional exemption'. Even if a document satisfies all the criteria and is conditionally exempt under s 47G(1)(a) at a particular time, the agency must nonetheless give the access applicant access to the document unless access to the document at that time would, on balance, be contrary to the public interest.

Business affairs

22. The term 'business affairs' has been interpreted to mean 'the totality of the money-making affairs of an organisation or undertaking as distinct from its private or internal affairs': FOI Guidelines [6.191][7]. The FOI Guidelines explain that, while the operation of s 47G depends on the effect of disclosure rather than the precise nature of the information itself, the information must have some relevance to the business, commercial and financial affairs of the organisation: FOI Guidelines [6.181].

Unreasonable adverse effect

23. The FOI Guidelines stress at [6.187] that, as indicated above, it is not enough to assert that '… a third party's business affairs would be adversely affected by disclosure.' It also requires that '[t]he effect … be *unreasonable'* and '[t]his requires a balancing of interests, including the private interests of the business and other interests such as the public interest.'

24. The FOI Guidelines explain at [6.184] that the presence of 'unreasonably' in s 47G(1)(a) 'implies a need to balance public and private interests', and that '[t]he public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure … is unreasonable'. The FOI Guidelines go on to say at [6.185] that '[t]he test of reasonableness applies not to the claim of harm but to the objective assessment of the expected adverse effect; and that what is required is 'a weighing of a public interest against a private interest, preserving the profitability of a business …' .

25. In *Bell and Secretary, Department of Health (Freedom of information)* [2015] AATA 494 Forgie DP explained that consideration of the public interest is relevant when determining whether disclosure would, or could reasonably be expected to, have an unreasonable adverse effect for the purposes of s 47G(1)(a). Forgie DP explained:

> ' … it seems to me that the addition of a public interest test in s 11A(5) makes no difference to the continuing relevance of public interest when interpreting s 47G(1)(a). The public interest, or some aspect of it, will be one of the factors in determining whether the adverse effect of disclosure on a person in respect of his or her business affairs is unreasonable. It will be balanced against factors that may not be regarded as aspects of the public interest but as aspects relevant only to the interests of the person whose interests might be affected by disclosure. The outcome of balancing all of the relevant factors – public interest or otherwise – will resolve the issue of whether disclosure of a document under the FOI Act would, or could reasonably be expected to, unreasonably affect that

[7] Referring to *Re Mangan and The Treasury* [2005] AATA 898 citing *Cockcroft and Attorney-General's Department and Australian Iron and Steel Pty Ltd* (party joined) (1985) 12 ALD 462

person adversely in respect of his or her business affairs or have another adverse effect described in s 47G(1)(a).'

Submissions of the parties

The Authority

26. The Authority submits that the following matters are relevant to assessing whether disclosure would, or could reasonably be expected to, have an unreasonable adverse effect:

    - the capacity for the information to be made more broadly known beyond the applicant
    - the competitive nature of the childcare sector
    - the currency of the information and the absence of contextual explanation in the report.

27. In respect of the first point above, the Authority submits that the fact the applicant has mentioned in their submissions that they are aware of complaints made by families who are clients of the third party and expresses the view that 'regulatory complaint data about children's services is inherently a matter of public interest' means it is 'reasonable to expect that the content of the document in question could become public in some way that may lead to the identified Approved Provider becoming the subject of speculation and debate.'

28. In respect of the second, it is the Authority's submission that '[t]he education and care sector is a competitive business environment with services vying for parents seeking childcare' and that '[d]epending on supply variables it is reasonable to expect that any such speculation and debate regarding the Approved Provider may impact negatively on its business.'

29. In respect of the latter point, the Authority submits that '[t]he complaints and enforcement actions detailed in the document at issue relate to events that occurred from 2021 to present' and '[a]s such they may not accurately reflect the current situation [of the] Approved Provider.'

30. With reference to the concerns expressed by the third party, the Authority also submits the following:

> 'Without having complete information about the matters raised and how they were resolved, the information could be used to damage the reputation of the service.
>
> '… Camp Australia are [sic] concerned that if those parties [who made complaints] become aware that information about their complaint has been released, they may lose confidence in the service and the care provided to their children. Other parents/families may become unduly alarmed or concerned about the care their children are receiving and may mistakenly believe that matters are current, and issues have not been resolved by the Approved Provider.
>
> 'Camp Australia consider [sic] parents may become reluctant to raise concerns or complaints to the Regulatory Authority in the future, fearing it could be used in ways that were not intended, or might adversely affect their own child/ren attending the service.
>
> 'Additionally, the majority of action taken by the Regulatory Authority in response to the complaints, is now resolved and is not publicly available. If published more broadly, it could be taken out of context, thus affecting the reputation of the service and impacting the confidence of the School Community at the Approved Providers service.'

The applicant

31. The applicant submits the claim that the s 47G(1)(a) business affairs exemption applies to the report should be rejected for the following reasons:

> '1. Regulatory complaint information about children's services is not a private commercial asset. It directly concerns child safety, service quality, and regulatory compliance under the Education and Care Services National Law. These are matters of strong public interest.

'2. The Regulatory Authority already publishes enforcement actions (s 270(5) National Law). The existence of this statutory framework demonstrates that transparency regarding non-compliance is contemplated by Parliament and aligned with public interest, not a threat to business reputation.

'3. A service provider's concern that parents may become aware of patterns of complaints is not a valid ground for withholding information. FOI does not exist to shield regulated entities from accountability, nor to prevent families from being informed.

'4. The Authority acknowledges that many complaints have been resolved. Resolution does not retrospectively erase the public interest in understanding historic safety or compliance concerns.

'5. The claim that disclosure may lead to "speculation" is too remote and speculative. FOI decision-making cannot turn on a provider's fear of reputational scrutiny.'

The third party

32. The third party submits that disclosure of the report would, or could reasonably be expected to, have an unreasonable adverse effect. In particular, it submits the following:

'… [T]here [is] a distinction between enforcement actions which may be published under section 270(5), and complaints which are not captured as information that may be published under the National Law. In our view, this distinction is intentional. The legislative scheme provides that information may only be published where a complaint is substantiated and results in an enforcement outcome. Complaints about alleged conduct are not treated as a standalone public accountability mechanism. Treating complaint information as inherently in the public interest would disrupt the balance that the National Law strikes, and undermine the Regulatory Authority's role in assessing and determining whether concerns are legitimate and warrant enforcement action.

'… Moreover, section 270(5) confers a discretion where the Regulatory Authority *may* publish enforcement information, but it is not required to do so. This reinforces that Parliament did not contemplate universal disclosure of all regulatory material, and certainly not of unsubstantiated or incomplete complaint information that has the ability to negatively impact on a business' reputation.
…

'… [The third party] has never suggested that it is seeking to conceal any patterns of complaints. Rather, we hold significant concerns that disclosure of the Documents, which include information of historic matters which lack a consideration of all factors and the appropriate context, may cause undue concern. There is no requirement that the applicant keep any information in the Documents confidential and, further, no obligations not to use that information in ways that could adversely affect the staff or the service. Without having complete information about the matters raised, and how they were resolved, the information could be used to negatively impact the staff and/or the service.

' … [T]he National Law provides for the publication of enforcement actions. [The third party] is not seeking to avoid accountability. Rather, it is seeking to prevent unreasonable harm arising from the release of information that lacks required context.

'… The applicant's statement in its submissions that *"FOI does not exist to… prevent families from being informed"* further compounds our concern, which is shared by the Authority in their submissions, that the applicant may use or disseminate the information among other families. This foreseeable use weighs strongly against disclosure and shifts the public interest balance in favour of protecting the Documents from release.

'… We are also concerned that other parents of the service may lose confidence in the service and in the regulatory system if they become aware of information being released to the applicant, particularly where that information relates to those parents and/or their children. This concern subsists regardless of if there are redactions to the parents or children's names, and is compounded by our concern that the applicant intends to disseminate the information more broadly. Parents may also be reluctant in future to raise

concerns or complaints with the [Authority], fearing that it could be used in ways that were not intended when the complaints were made, or might adversely affect their own child or children attending the service.

'… In the highly competitive education and care sector, any dissemination of information about the service which lacks required context has the ability to negatively impact on the business.
…

' … As noted in the Authority's submissions *"the majority of matters are unique to individual families and have been resolved…"* In assessing the public interest, consideration may be given to the likelihood of harm. Where a complaint has been investigated and resolved, the Regulatory Authority has addressed any safety or compliance concerns. We do not consider that there is a strong public interest in revisiting historic matters that have been appropriately resolved
…

'… [The third party] submits that there is more than speculation or a fear of reputational scrutiny; there is a reasonable and foreseeable risk that disclosure of the Documents would, or could, be used in a way that damages [the third party's] business affairs.'

Consideration

Would disclosure of the report disclose information concerning the business, commercial or financial affairs of the third party?

33. I have examined an unedited copy of the report. The third party is in the business of operating outside school hours care (OSHC) centres and operates multiple centres in Australia, including the third party's OSHC service at Tuart Rise Primary School. The provision of those services is the core of the money-making affairs of the third party. The report contains information concerning complaints about the operation of one of those services, the Tuart Rise Primary School OSHC service. I am satisfied that the report contains information about the third party's business affairs for the purposes of s 47G.

Could disclosure reasonably be expected to have an adverse effect on the third party's business affairs?

34. It is not clear to me from the submissions of the Authority or the third party exactly what adverse effect on the business affairs it is claimed could follow from disclosure of the report. The Authority submits that disclosure to client families of the third party could lead to the third party 'becoming the subject of speculation and debate' which may 'negatively impact on its business'. The Authority does not, however, explain what that negative impact might be or the level of likelihood of it occurring and why it is reasonable to expect it to occur (as opposed to it being a mere possibility).

35. Similarly, the third party asserts that '…there is more than speculation or a fear of reputational scrutiny; there is a reasonable and foreseeable risk that disclosure of the Documents would, or could, be used in a way that damages [the third party]'s business affairs'. However, again, the third party does not explain what damage to its business affairs might follow from disclosure or why it is reasonable to expect it to occur. The third party submits that 'the information could be used to negatively impact the staff and/or the service' but does not explain in what way it could be used to do that. It also submits that its further dissemination to clients of its service may cause those clients to 'lose confidence' in the service but does not explain why or what practical adverse effect that would have on its business affairs.

36. Both the Authority and the third party have submitted that the education and care sector is a competitive business environment with services vying for parents seeking childcare. It may well be a competitive market but each has merely made the assertion and neither has provided any evidence in support of that claim. Further, neither has explained the relevance of that claim. For example, neither suggested in submissions to me that disclosure of this particular document might dissuade prospective clients from seeking to place their children in a service run by the third party (although I note that in the decision under review the Authority expressed the view that '[t]he lack of contextual

information around the compliance actions could lead the public to consider the service provider less favourably and adversely affect their ability to retain or attract new clients).'

37. I note in this regard, although I draw no conclusion based on it, that there is some indication in publicly available resources that demand for places may well outstrip supply which could mean the competition is between families for places rather than between service providers for families. For one example, in its submission to the 2023 Australian Competition and Consumer Commission inquiry into the market for the supply of childcare services, the Outside School Hours Council of Australia, the peak body representing 'providers who account for more than 30 per cent of the national OSHC market', including the third party, submitted that OSHC participation has been the fastest growing care type of the sector over the past several years.

38. However, even if I were persuaded of the competitiveness of the market, I am not persuaded that the particular information contained in the document could reasonably be expected to have an adverse effect on the business affairs of the third party by dissuading prospective clients from placing their children with services run by the third party or persuading current clients to remove their children. It is speculation and nothing has been provided that supports it.

39. Given, in particular, the nature of the information in the report and the information provided by the applicant indicating that issues concerning the service have previously been the subject of discussion and correspondence as indicated in paragraph 71 below, I do accept that it is reasonable to expect that disclosure of the report could lead to discussion amongst parents and, depending on the breadth of any further dissemination, possibly in the community, concerning the number and nature of complaints made in relation to the third party's Tuart Rise OSHC service in recent years. It is also reasonable to expect that any discussion could include some critical comments, whether justified or not, about the operation of that service and the third party. That may result in some reputational damage, although as discussed below the extent and duration of that may to some extent be affected by the manner in which the third party responds to the disclosure of the document, as may any loss of confidence in it by its clients that the third party speculates may follow from disclosure.

40. Finally in this regard, I refer to the third party's submission that disclosure may cause parents to lose confidence in the regulatory system and be reluctant in future to raise concerns or complaints with the Authority, 'fearing that it could be used in ways that were not intended when the complaints were made, or might adversely affect their own child or children attending the service'. In what ways parents may fear disclosure adversely affecting their own child or children and their attendance at the OSHC service is not explained. Neither is why such a fear could reasonably be expected to follow from disclosure and dissemination to them of the summary complaint information contained in the document, particularly in light of the fact that the applicant seeks only an anonymised version of the report.

41. Even if it were reasonable to expect such an effect, is also not clear to me how that would be an adverse effect on the business affairs of the third party, as opposed to an adverse effect on the effective operations of the regulator. That argument seems to me to go to the requirements of s 47G(1)(b) which provides conditional exemption for, among other things, information about the business affairs of an organisation or undertaking if its disclosure could reasonably be expected to prejudice the future supply of information to an agency for the purpose of the administration of a law or the administration of matters administered by an agency.

42. Neither the Authority nor the third party has claimed exemption under s 47G(1)(b) and there has been nothing provided that persuades me that it is reasonable to expect that disclosure of the anonymised summary complaint information would have that effect. It is again merely speculation.

Would the adverse effect be unreasonable?

43. If I accept that disclosure of the document could reasonably be expected to have an adverse effect on the third party's business affairs in terms of some reputational damage, the question then is whether that adverse effect on those business affairs would be *unreasonable* in the circumstances. As I have already noted, answering this question requires a balancing of the private interests of the business and other interests, including the public interest. The submissions of the Authority and the third party raise several matters which, they submit, are relevant to the question of whether disclosure could reasonably be expected to have an unreasonable adverse effect on the third party's business affairs. I address each of those in turn.

The currency of the information, the absence of contextual explanation and the potential for 'undue concern'

44. The information in the report comprises limited historical complaint data from July 2021 to May 2025, which, if disclosed, would reveal the number of complaints made to the Authority relating to the third party's Tuart Rise OSHC service over the period, the date, time and source of each complaint (although individuals are not named), case reference numbers assigned to each complaint, brief details of the issues raised and the outcome of each complaint, as at the date the report was generated. All of the information is now more than 12 months old.

45. I accept that the older the information, the less likely it is to be relevant to the operation of the third party's Tuart Rise service today. I also accept that the limited information in the report lacks full contextual details regarding each of the complaints. However, the FOI Act recognises that there is a public interest in the disclosure of government-held information, whether current or not. I also agree with the applicant that there is a significant public interest in transparency concerning child safety, service quality and the regulation of childcare service providers, in accordance with the Education and Care Services National Law, and in parents being able to make fully-informed decisions as to the organisations into whose care they entrust their children.

46. Further, as one of my predecessors noted in *CC1 and New South Wales Department of Education and another* (NECS IC, 31 January 2017), parents are likely to take into consideration a range of factors when selecting an education and care service for their children. Limited historical information concerning complaints may not necessarily be a significant factor. What is likely to carry more weight may be whether and to what extent a service is meeting the National Quality Standard (NQS) under the National Assessment and Rating system for education and care services. The third party's Tuart Rise OSHC service has been rated as meeting the NQS and that information, as well as details of recent regulatory activities in relation to the service, is publicly available on the National Registers published online by the national education and care services authority, the Australian Children's Education and Care Authority (ACECQA), and on the Australian Government's Startingblocks website.

47. The third party expresses a concern that if the information in the report is disclosed parents may become 'unduly alarmed' about the care their children are receiving and may 'mistakenly believe that matters are current, and issues have not been resolved by [the third party].' They also say that if the report is released those who made complaints may lose confidence in the service. The Authority in its submissions draws attention to these submissions made by the third party but does not make further comment.

48. In the absence of anything more, these submissions are merely speculative. They also invite consideration of matters which the FOI Act says must not be taken into account when applying the public interest test: that access to the document could result in any person misinterpreting or misunderstanding the document (s 11B(4)(b)) or could result in confusion or unnecessary debate (s 11B(4)(d)). I therefore do not accord them any weight. I note that it is always open to the third party, either proactively or in response to concerns raised with it, to provide parents or others with further information regarding its handling of past complaints and its current operations with a view to mitigating any potential misunderstanding, loss of confidence or 'undue alarm' due to a lack of contextual information.

Possible publication or circulation to other families whose children attend the third party's Tuart Rise OSHC service

49. The applicant submits that 'FOI does not exist to shield regulated entities from accountability, nor to prevent families from being informed.' The third party submits that this 'foreseeable use weighs strongly against disclosure and shifts the public interest balance in favour of protecting the [report] from release.'

50. Section 11(2) of the FOI Act provides a person's right of access is not affected by any reasons the person gives for seeking access or the agency's belief as to what are his or her reasons for seeking access. However, there are precedents that support the view that an agency may take into account an applicant's reasons for seeking access, or their intended or likely use and dissemination of the information, in assessing unreasonableness or the public interest. In particular, as noted in the FOI Guidelines at [6.138], in *'FG' and National Archives of Australia* [2015] AICmr 26 the Australian Information Commissioner expressed the view that 'any submission an FOI applicant chooses to make in support of their request as to their reasons for seeking access and their intended or likely use or dissemination of the information' is a relevant consideration in determining whether disclosure of personal information would be unreasonable under s 47F(1).

51. While there may be cases where the reasons an applicant gives may be relevant to considering whether disclosure would be unreasonable, in this case I do not think the applicant's statement shifts the public interest balance against release. The FOI Act does not place any restriction on the use or further dissemination of information that is released under the FOI Act[8] and one of the purposes of the FOI Act is to enhance transparency and accountability of the operations of government agencies, including regulatory agencies. It is not surprising or, in my view, objectionable that the applicant takes the view that the parents of children attending a child care service ought to be informed regarding the nature and handling of complaints by the organisation charged with the OSHC care of their children and the regulator that oversees it, and may therefore circulate any information that is released.

Prescribed information that may be published under the Education and Care Services National Law

52. The third party draws attention to the fact that the Education and Care Services National Law authorises publication by a Regulatory Authority of information about enforcement actions, not complaints, and argues that this means complaints about alleged conduct should not be treated 'as a standalone public accountability mechanism', nor should disclosure of such information be treated as 'inherently in the public interest' as it would 'disrupt the balance that the National Law strikes, and undermine the Regulatory Authority's role in assessing and determining whether concerns are legitimate and warrant enforcement action'.

53. The third party is correct about the publication the National Law authorises. Section 270(5)(a) of the National Law permits (but does not require) the publication by Regulatory Authorities of 'enforcement actions taken under this Law, including information about compliance notices, prosecutions, enforceable undertakings, suspension or cancellation of approvals'. Regulation 227 of the Education and Care Services National Regulations sets out what the enforcement actions are and the nature of information that may be published. A complaint may lead to an enforcement action, and the Regulations permit the publication of information about the reason for taking the enforcement action, including details of the relevant breach or alleged breach of the National Law or Regulations. However, the National Law and Regulations do not contemplate the publication of information about complaints *per se*.

54. It may be that the third party is also correct in suggesting that the legislative scheme has been deliberately crafted to provide that information may only be published under the National Law where

[8] Note however that other laws may constrain the further dissemination of certain kinds of information.

a complaint is substantiated and results in an enforcement outcome. However, the publication scheme under the National Law is not an exclusive or exhaustive publication scheme in relation to the NQF and the ECS agencies. The legislators also deliberately made provision in the National Law for the application of the FOI Act to ECS agencies. The FOI Act is not limited in its application by s 270 of the National Law, which permits Regulatory Authorities to publish certain information about enforcement actions. Regulatory Authorities are required to comply with s 270 of the National Law with regard to publication of enforcement actions, and at the same time are required to comply with the FOI Act. There is no conflict in fulfilling these obligations.

55. I agree with the third party that the disclosure of 'complaint information' is not *inherently* in the public interest. However, the fact that the National Law does not make specific provision for its publication does not mean complaint information is not accessible under the FOI Act. Whether it is or is not depends on the application of the provisions of the FOI Act, not the National Law, and I do not consider the disclosure of complaint information under the FOI Act to be unreasonable merely because the information is not available under the National Law publication scheme.

56. In my view, there is no sense in which release of such information under the FOI Act 'would disrupt the balance that the National Law strikes and undermine the Regulatory Authority's role in assessing and determining whether concerns are legitimate and warrant enforcement action.' Other than making the assertion, the third party has not explained how the Regulatory Authority's role in assessing and determining complaints could be undermined by disclosure of complaint information generally and I cannot see how it could be undermined by the disclosure of the particular, summary, historical complaint information contained in the report.

Finding

57. I find that disclosure of the report would disclose information concerning the business affairs of the third party. However, while it may be reasonable to expect that the disclosure of information in the report could cause some adverse effect upon the third party's business affairs in terms of reputational damage, having weighed that private interest and the other factors referred to in paragraphs 44-56 above against the public interests in disclosure of the information, I have formed the view that any such effect would not be an *unreasonable* adverse effect in the circumstances. That is particularly so given that it is open to the third party to takes steps, either proactively or responsively, to mitigate any potential reputational damage by providing contextual information to its clients and potential clients.

58. I have therefore determined that the report is not fully or partially exempt under s 47G(1). I find the material the Authority decided is exempt under s 47G(1) of the FOI Act is not conditionally exempt under that provision and I do not need to consider whether the disclosure would be contrary to the public interest.

Whether any part of the report is irrelevant or otherwise exempt from release

59. As I have found that the report is not fully or partially exempt under s 47G(1), it is necessary to consider whether any parts of the report should not be disclosed for any other reason. In this case, that involves considering whether any parts of the document are outside the scope of the request, and therefore irrelevant to the request, or exempt from disclosure on any other basis.

Section 22 - irrelevant Information

60. The report was automatically generated based on the fields requested by the applicant from the Authority's Central Records Management National Quality Agenda IT System and comprises a summary of historical complaint data from July 2021 to May 2025. It was acknowledged in the decision under review, and the applicant has stressed in submissions, that the request is for 'summary-level data only' and that access is not sought to 'identifying information'.

61. Section 22 of the FOI Act requires, subject to two provisos, that access be provided to a copy of a document from which information that is exempt or would reasonably be regarded as irrelevant is redacted. The first proviso is that it is not apparent that the applicant would decline access to an edited copy of the document. In this case the applicant has made it clear they seek access to an edited copy. The second proviso is that it is reasonably practicable to prepare such an edited copy. In the decision under review the internal review decision-maker noted that the applicant sought summary-level information only and did not seek identifying information and said 'consideration would have been given to redacting identify [sic] information if access to the document was being provided', and there is nothing to suggest it would be impracticable to prepare an edited copy.

Identifying information – 'reasonably identifiable'

62. When excluding 'identifying information' from the scope of the access application, the applicant referred to the personal information conditional exemption (s 47F) and said the information requested could easily be anonymised. Section 4 the FOI Act provides that 'personal information' has the same meaning as in the Commonwealth *Privacy Act 1988*, in which it is defined as:

> *'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.'*

63. One individual is identified by name in the report. Their name should be redacted as it is clearly irrelevant to the request.

64. The report does not contain any other information that directly identifies an individual. However, the report contains the case reference numbers assigned to each complaint, the date and time each complaint was made, information about the source of complaints, and a brief summary of the issues that were raised for each complaint referred to in the report. The question arises whether any individual is reasonably identifiable from any of that information.

65. The FOI Guidelines say at [6.130] that whether or not an individual is reasonably identifiable 'depends on the practicability of linking pieces of information to identify them'. In *Paul Farrell and Authority of Home Affairs (No. 2)* (Freedom of information) [2025] AICmr 29 (*Farrell No. 2*) the applicant sought access to reasons for decisions to grant travel exemptions to a particular category of outgoing passengers in August 2020. The Freedom of Information Commissioner considered whether certain information in the 171-page document - relating to approximately 20 travel exemptions per page - that was identified as relevant to the request was personal information.

66. The Commissioner noted that the issue was whether 'the particular information deleted by the Authority in the context of the document itself and the parameters of the applicant's FOI request could be linked to identify individuals.' The Commissioner concluded that information such as 'references to names, dates of birth, dates of specific life events, case reference numbers …' was personal information, but that other information such as 'references to gender, age, relationship to others (eg brother, wife etc), life events (eg birth, death, marriage) without dates …' was 'less specific and in [the Commissioner's] view its release would not enable individuals to be reasonably identified in the absence of names or other identifying information'.[9]

67. The Australian Information Commissioner's *Australian Privacy Principles Guidelines* list at [B94] certain considerations relevant to an agency determining whether an individual is reasonably identifiable from particular information, for the purposes of the *Privacy Act 1988*. These include:

[9] see paragraphs [28]-[32] of the decision.

'• the nature and amount of information
• the circumstances of its receipt
• who will have access to the information
…
• if the information is publicly released, whether a reasonable member of the public who accesses that information would be able to identify the individual.'

68. In the context of this matter, there arises a question as to whether it can be considered that an individual's identity is reasonably ascertainable if it can be ascertained by an access applicant by virtue of additional information available to that person but not generally available to other people in the community. In *Lobo and Department of Immigration and Citizenship* [2011] AATA 705 (11 October 2011), at paragraph 300, considering the predecessor to the s47F exemption, Forgie DP expressed the view that:

> '[a]s the definition of "*personal information*" requires that an individual's identity is apparent or can reasonably be ascertained from the information or opinion, the context in which that is ascertained must also be defined by reference to the information that is apparent in the public arena or can reasonably be ascertained from it.'

69. The Deputy President then considered the question in relation to information that is available to some members, or even one member, of the public but is not available to all. At paragraph 302, she expressed the following view:

> 'It seems to me that regard should be had to all resources that may be available to a member of the public in deciding whether an individual's identity can reasonably be ascertained from the information or opinion. That may be information that is available to all members of the public or may be available only to a limited number of them. The existence or nature of the information cannot be a matter of conjecture or speculation for the individual's identity must be something that "*can reasonably be ascertained, from the information or opinion*". The word "*reasonably*" effectively eliminates conjecture or speculation.'

70. I respectfully agree with that view, particularly now that the definition no longer requires that the identity be apparent or reasonably ascertainable *'from the information or opinion'.*

Are individuals referred to in the document reasonably identifiable?

71. I doubt that a member of the general public would be able to identify any of the individuals involved in any of the cases from the reference numbers, source information or summary of issues contained in the report. However, in the request for review the applicant indicated that they are aware of a number of families having submitted complaints to the Authority about the third party's Tuart Rise service and that they are aware of the nature of those complaints. The applicant also submits that complaints about the service '…have been referenced in public forums, shared with me directly by affected families, and in some cases were cited in … correspondence to ECRU.' Accordingly, the applicant's knowledge of these matters may enable the applicant to ascertain the identities of individuals from information that would not enable a general member of the public to ascertain their identities.

72. Further, given that, subject to the application of other laws that may constrain publication, no restrictions can be imposed on the dissemination of information released under the FOI Act, it is not unreasonable to expect that any information that is released may come to the attention of members of the local community, in particular parents whose children attend or have attended the third party's Tuart Rise OSHC service. Should that occur, these people similarly may be able to identify complainants, staff or the children involved in one or more of the incidents from information that would not identify those individuals to the general public.

73. It appears to me that some, but not all, the information in the summary of issues for each complaint listed in the report may, if released, enable an individual or individuals to be identified. The Authority has provided this office with a marked-up copy of the report for the purposes of the review. For the most part, but with some exceptions, I agree that the material in the summary column identified by the Authority as identifying information - and therefore irrelevant to the request under s 22 - is identifying information and irrelevant. I have identified in a confidential schedule provided to the Authority and the third party the material I consider to be identifying information and which should be deleted before access to the document is given.

74. In this context I have noted the information the Authority has published under the National Law in relation to enforcement actions concerning the third party's Tuart Rise OSHC. As would be expected given the terms of the request, some of the complaints appear to relate to those enforcement actions. I note that the published information does not describe the incident the subject of the enforcement action nor identify the complainant.

75. The source of each complaint is not named in the report but rather is identified by a descriptor. In most circumstances I would not consider that to be information from which the complainants could be considered to be reasonably identifiable. However, taking into account the circumstances described in paragraphs 71 and 72 above, I consider that the descriptor in most entries, combined with the edited summary description of the complaint, would render some of those complainants reasonably identifiable by the applicant and some client parents of the service, given the additional information available to them. I therefore find all the descriptors in the sixth column from the left of the document on each page to be identifying information which is outside the scope of the access application and which should be deleted in accordance with s 22 before access to the document is given.

76. Although the Freedom of Information Commissioner in *Farrell No. 2* took the view case reference numbers were personal information, the context there was different because the case reference numbers related to specific individuals, whereas here they relate to incidents. I do not think the Authority's case reference for each complaint would of itself enable any individuals to be identified by any 'reasonable member of the public' or anyone other than the Authority, the service provider and possibly the complainants themselves, to whom the information is already known. I find therefore that information is not identifying information and so is within the scope of the access application and should not be deleted under s 22.

77. It seems to me that some of the information, combined with information the applicant claims to have and which is likely also to be known to at least some client parents of the service - for example because they were present on the day of an incident occurring or otherwise became of aware of an incident occurring at that time - may if released enable an individual or individuals to be identified. That information is the time, day and month information, but not the year. The time, day and month of each complaint is therefore irrelevant to the access application and should be deleted before access to the document is given. The year of each complaint should not be deleted.

Other exemptions – s 37(1)(b) (confidential source) and s 47F (personal privacy)

78. Section 37(1)(b) applies to information the disclosure of which would or could reasonably be expected to disclose, or enable a person to ascertain, the existence or identity of a confidential source of information, or the non-existence of a confidential source of information, in relation to the enforcement or administration of the law. The Authority maintains the sources of the complaints referred to in the document are confidential, in the sense that the Authority understands and infers from the circumstances in which the information was supplied that they would wish their identities to be known only to those who need to know it for the purpose of enforcing or administering the law. In the decision under review the decision-maker acknowledged that the report identifies the source only by a category rather than name but took the view that the disclosure of 'this along with other

identifying information described in the case summary, would in turn reveal the existence or identity of those confidential sources'.

79. The requirements for exemption under s47F(1) are that: a document contains 'personal information'; disclosure in response to the applicant's FOI request would be 'unreasonable' (s 47F(1)); and that it would be 'contrary to the public interest' to release the material at the time of the decision (s 11A(5)). In its submissions, the third party maintains:

> '9.1 [The third party] holds concerns even if the documents were redacted under section 22, individuals could still be identified. The Documents include contextual details (dates, times, staff roles, behavioural descriptions, locations, sequences of events) which can indirectly identify individuals even without names, and the small size of school community means de-identification is often ineffective, particularly as students and staff are known to the applicant.
>
> 9.2 As such, [the third party] considers that disclosing the Documents would be an unreasonable disclosure of personal information about children, other parents, and staff of the service. The public interest in protecting their privacy outweighs any public interest in disclosing the Documents. Parents are entitled to expect that their personal information and that of their children is kept confidential. If *staff are* approached by the applicant in relation to information in the Documents, they are likely to become distressed and feel that they are being unfairly or unreasonably targeted, particularly in relation to historical matters they would reasonably believe have been resolved or dealt with appropriately. We are concerned to ensure that they are not subjected to such occurrences.'

80. It is clear the common concern of the Authority and the third party is with disclosure of identifying information, whether of parents, children, staff or others. Neither s 37(1)(b) nor s 47F has any operation unless the information in question identifies an individual, or an individual is reasonably identifiable from the information. The applicant does not seek access to identifying information. I have already indicated the information that in my view fits that description and decided it is irrelevant to the applicant's request and therefore not to be disclosed. I need not, therefore, consider the claims for exemption under ss 37(1)b) or 47F any further.

Darryl Everett
National Education and Care Services Freedom of Information Commissioner

Review rights

If a party to a review conducted by the National Education and Care Services Freedom of Information Commissioner is dissatisfied with the decision, they may apply to the relevant administrative tribunal for review of the decision: FOI Act s 57A as modified by the *Education and Care Services National Regulations* regs 209(e) and 210. For this review, the relevant administrative tribunal is the State Administrative Tribunal (SAT): *Education and Care Services National Law Application Act 2026* (WA) s 27. The SAT provides independent merits review of administrative decisions and has the power to affirm, vary or set aside the review decision.

An application to the SAT must be made within 28 days after the day on which a party is given the NECS FOIC review decision: State Administrative Tribunal Rules rule 9. An application fee may be payable when lodging an application for review. Further information is available on SAT's website (www.sat.justice.wa.gov.au) or by telephoning (08) 9219 3111 or 1300 306 017.

ATTACHMENT A

Application of the *Freedom of Information Act 1982* (Cth) to the Western Australian Education and Care Services Regulatory Authority

1. Education and care services across Australia operate under national applied laws. In Western Australia, the *Education and Care Services National Law Application Act 2026* (ECS National Law Application Act (WA)) applies the *Education and Care Services National Law* (the ECS National Law) set out in the Schedule to the *Education and Care Services National Law Act 2010* (Victoria), as amended from time to time, as a law of Western Australia that may be referred to as the *Education and Care Services National Law (WA)*.

2. Section 30(2)(c) of the ECS National Law Application Act (WA) states that the Western Australian *Freedom of Information Act 1992* does not apply to the ECS National Law or to the instruments made under that law.

3. Section 264 of the ECS National Law applies the Commonwealth *Freedom of Information Act 1982* (FOI Act (Cth)) as a law of each participating state or territory, which includes Western Australia, for the purposes of the National Quality Framework. The National Quality Framework is a national, uniform regulatory and quality assurance system for early childhood education and care services across Australia. It includes the ECS National Law, the *Education and Care Services National Regulations* (ECS National Regulations) and the National Quality Standard and quality assessment and rating system set out in the ECS National Regulations. Further information is available at www.acecqa.gov.au.

4. Regulation 208 of the ECS National Regulations applies the FOI Act (Cth) as if it were modified so that it applies to the following agencies: the National Authority (the Australian Children's Education and Care Quality Authority) and the Regulatory Authority of each participating state or territory (ECS Agencies).

5. Section 26 of the ECS National Law Application Act (WA) declares that the Regulatory Authority under the ECS National Law is the chief executive officer of the department principally assisting in the administration of the *Child Care Services Act 2007* (WA). The Director General of the Western Australian Department of Communities is therefore the Western Australian Regulatory Authority. The functions and powers of the Regulatory Authority are delegated to the Education and Care Regulatory Unit of the Authority to administer and enforce the ECS National Law. Officers in the Department's Freedom of Information Unit are authorised to handle FOI requests on behalf of the Regulatory Authority.

Jurisdiction of the National Education and Care Services Freedom of Information Commissioner (NECS FOI Commissioner)

6. The ECS National Law modifies the FOI Act (Cth) to require that all references to the Information Commissioner in the FOI Act (Cth) are to be read as referring to the NECS FOI Commissioner: the ECS National Law s 264(2)(b). The ECS National Regulations set out further modifications to the FOI Act (Cth) in its application under the ECS National Law: see regs 204 to 211.

7. Part VII of the FOI Act sets up a system for the Information Commissioner to receive review applications and to review decisions made by ECS agencies under the FOI Act. The effect of the ECS National Law is that Part VII of the FOI Act empowers the NECS FOI Commissioner to review decisions made under the Act by the ECS Agencies.