

Our reference: **ACTHDFOI21-22.31**



Dear 

### **DECISION ON YOUR ACCESS APPLICATION**

I refer to your application under Section 30 of the *Freedom of Information Act 2016* (FOI Act), received by ACT Health Directorate (ACTHD) on **Wednesday 10 November 2021**.

This application requested access to:

*'The evidence used to justify the recently declared Public Health (ACT School or Early Childhood Education and Care Workers COVID-19 Vaccination) Emergency Direction 2021?*

*Information provided must contain evidence to support the grounds listed below you have used to authorise the Public Health Emergency Direction.*

- a. the Australian Capital Territory has experienced persistent community transmission since the outbreak of the Delta variant of COVID-19 in the Australian Capital Territory on 12 August 2021;*
- b. the Delta variant of COVID-19 (labelled as a variant of concern) has proven highly transmissible both nationally and internationally, demonstrating that elimination of the virus is not feasible and community transmission will continue as the Australian Capital Territory seeks to mitigate the impact of this public health risk;*
- c. there is an increased risk of transmission of COVID-19 among children (under 12 years of age) at ACT Schools and Early Childhood Education and Care facilities in circumstances where the COVID-19 vaccine is not currently available for children.*
- d. high vaccination rates reduce the likelihood of COVID-19 outbreaks, providing protection against severe illness or death and a reduction in the risk of onward transmission of COVID-19.'*

I am an Information Officer appointed by the Director-General of ACT Health Directorate (ACTHD) under Section 18 of the FOI Act to deal with access applications made under Part 5 of the Act. ACTHD was required to provide a decision on your access application by **Wednesday 8 December 2021**.

I have identified four documents holding the information within scope of your access application. These are outlined in the schedule of documents included at [Attachment A](#) to this decision letter.

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided as [Attachment B](#) to this letter.

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

- The FOI Act;
- The contents of the documents that fall within the scope of your request;
- The views of relevant third parties; and
- The *Human Rights Act 2004*.

The public health order also sets out the Chief Health Officer's considerations in relation to this Direction - [Public Health \(ACT School or Early Childhood Education and Care Workers COVID-19 Vaccination\) Emergency Direction 2021 | Notifiable instruments](#)

### **Decisions on access**

I have decided to:

- grant partial access to one document; and
- refuse access to three documents.

### **Refuse Access**

I have decided to refuse access to three documents at references 1 – 3. These documents are wholly comprised of Information that would reveal deliberations of Cabinet. These documents are therefore taken to be contrary to the public interest to release, under Schedule 1.6 (1) Cabinet Information (d) the disclosure of which would reveal any deliberation of Cabinet (other than through the official publication of a Cabinet decision).

### **Partial Access**

I have decided to grant partial access to one document at reference 4. Partial redactions have been made to the document where it contains information that I consider, on balance, to be contrary to the public interest to disclose under the test set out in Section 17 of the Act. The information contained in these folios is partially comprised of personal information.

### **Public Interest Factors Favouring Disclosure**

The following factors were considered relevant in favour of the disclosure of the documents:

- Schedule 2, 2.1(a)(i) promote open discussion of public affairs and enhance the government's accountability; and
- Schedule 2, 2.1(a)(ii) contribute to positive and informed debate on important issues or matters of public interest.

### **Public Interest Factors Favouring Non-Disclosure**

The following factors were considered relevant in favour of the non-disclosure of the documents:

- Schedule 2, Schedule 2.2 (a)(ii) prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004.

Following the consideration of the above factors I have decided, regarding personal information, the factor favouring non-disclosure outweighed the factors favouring disclosure. Therefore, and I have determined the information identified is contrary to the public interest and I have decided not to disclose this information.

### **Charges**

Processing charges are not applicable to this request.

### **Disclosure Log**

Under section 28 of the FOI Act, ACTHD maintains an online record of access applications called a disclosure log. The scope of your access application, my decision and documents released to you will be published in the disclosure log not less than three days but not more than 10 days after the date of this decision. Your personal contact details will not be published.

<https://www.health.act.gov.au/about-our-health-system/freedom-information/disclosure-log>.

### **Ombudsman review**

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

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

The ACT Ombudsman  
GPO Box 442  
CANBERRA ACT 2601  
Via email: [ACTFOI@ombudsman.gov.au](mailto:ACTFOI@ombudsman.gov.au)  
Website: [ombudsman.act.gov.au](http://ombudsman.act.gov.au)

### **ACT Civil and Administrative Tribunal (ACAT) review**

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal  
Level 4, 1 Moore St  
GPO Box 370  
Canberra City ACT 2601  
Telephone: (02) 6207 1740  
<http://www.acat.act.gov.au/>

### **Further assistance**

Should you have any queries in relation to your request, please do not hesitate to contact the FOI Coordinator on (02) 5124 9831 or email [HealthFOI@act.gov.au](mailto:HealthFOI@act.gov.au).

Yours sincerely



Fiona Barbaro  
**Executive Branch Manager**  
ACT Health Directorate


2 December 2021

## FREEDOM OF INFORMATION SCHEDULE OF DOCUMENTS

Please be aware that under the *Freedom of Information Act 2016*, some of the information provided to you will be released to the public through the ACT Government's Open Access Scheme. The Open Access release status column of the table below indicates what documents are intended for release online through open access.

Personal information or business affairs information will not be made available under this policy. If you think the content of your request would contain such information, please inform the contact officer immediately.

Information about what is published on open access is available online at: <http://www.health.act.gov.au/public-information/consumers/freedom-information>

APPLICANT NAME	WHAT ARE THE PARAMETERS OF THE REQUEST	FILE NUMBER
	<p><i>'The evidence used to justify the recently declared Public Health (ACT School or Early Childhood Education and Care Workers COVID-19 Vaccination) Emergency Direction 2021?</i></p> <p><i>Information provided must contain evidence to support the grounds listed below you have used to authorise the Public Health Emergency Direction.</i></p> <p><i>a. the Australian Capital Territory has experienced persistent community transmission since the outbreak of the Delta variant of COVID-19 in the Australian Capital Territory on 12 August 2021;</i></p> <p><i>b. the Delta variant of COVID-19 (labelled as a variant of concern) has proven highly transmissible both nationally and internationally, demonstrating that elimination of the virus is not feasible and community transmission will continue as the Australian Capital Territory seeks to mitigate the impact of this public health risk;</i></p> <p><i>c. there is an increased risk of transmission of COVID-19 among children (under 12 years of age) at ACT Schools and Early Childhood Education and Care facilities in circumstances where the COVID-19 vaccine is not currently available for children.</i></p> <p><i>d. high vaccination rates reduce the likelihood of COVID-19 outbreaks, providing protection against severe illness or death and a reduction in the risk of onward transmission of COVID-19.'</i></p>	<p><b>ACTHDFOI21-22.31</b></p>

Ref Number	Page Number	Description	Date	Status Decision	Factor	Open Access release status
1.	1 – 2	Minister for Health Cabinet Brief – Mandatory COVID-19 vaccination– industrial relations policy issues	15 September 2021	Refuse Release	Schedule 1.6 Cabinet Information	NO
2.	3 – 24	Cabinet Submission – Mandatory COVID-19 vaccination– industrial relations policy issues	15 September 2021	Refuse Release	Schedule 1.6 Cabinet Information	NO
3.	25 – 33	Cabinet Submission – Mandatory COVID-19 Vaccination Policy for Workers in Primary Schools, Specialist Schools and Early Childhood Education and Care Settings	4 October 2021	Refuse Release	Schedule 1.6 Cabinet Information	NO
4.	34 – 37	Email – RE: Risk Assessment	25 October 2021	Partial Release	Schedule 2, 2 (a)(ii) Privacy	YES
<b>Total Number of Documents</b>						
<b>4</b>						

**From:** [Moore, Nicole](#)  
**To:** [Barbaro, Fiona \(Health\)](#); [Haire, Katy](#)  
**Cc:** [Smith, Charmaine \(Health\)](#)  
**Subject:** RE: Risk Assessment  
**Date:** Monday, 25 October 2021 3:48:41 PM  
**Attachments:** [image001.png](#)

OFFICIAL

Hi Fiona

Our People and Performance Branch have been in touch with this teacher already and are in the process of preparing a written response incorporating your dot points.

All in hand.

**Nicole Moore** | Executive Branch Manager Strategic Policy

Phone: +61 2 6205 4999 | [nicole.moore@act.gov.au](mailto:nicole.moore@act.gov.au)

Strategic Policy | Education | ACT Government

220 London Circuit | GPO Box 158 Canberra ACT 2601 | [www.education.act.gov.au](http://www.education.act.gov.au)

I often work flexibly and may send emails outside of normal business hours. No need to respond to my emails outside of yours.



**I acknowledge the traditional custodians of the ACT and their continuing connection to land and community. I pay my respect to them and their culture, and to the elders both past and present.**



**From:** Barbaro, Fiona (Health) <[Fiona.Barbaro@act.gov.au](mailto:Fiona.Barbaro@act.gov.au)>

**Sent:** Monday, 25 October 2021 2:43 PM

**To:** Haire, Katy <[Katy.Haire@act.gov.au](mailto:Katy.Haire@act.gov.au)>; Moore, Nicole <[Nicole.Moore@act.gov.au](mailto:Nicole.Moore@act.gov.au)>

**Cc:** Smith, Charmaine (Health) <[Charmaine.Smith@act.gov.au](mailto:Charmaine.Smith@act.gov.au)>

**Subject:** RE: Risk Assessment

**Importance:** High

OFFICIAL

Hi Nicole – can we leave the below request from a teacher to Education Directorate re COVID-19 vaccines to you to respond to, or can you redirect to appropriate person in education?

I have included some dot points below that you might want to incorporate into a letter that you can add some of your education words around protecting students and ensuring safe return, continuation of classes etc,

Thanks, happy to discuss.

Fiona

**Fiona Barbaro** | Executive Branch Manager (lead)

COVID-19 Vaccination Program | **Health Directorate** | ACT Government

**P** via Teams (02) 512 46146 or 0435 572 241 | **E** [fiona.barbaro@act.gov.au](mailto:fiona.barbaro@act.gov.au)

**W** [health.act.gov.au](http://health.act.gov.au)

- Vaccination of all adults around children is the most effective way to protect children from COVID-19.
- There is a large body of evidence supporting the policy behind the public health order. I also note similar orders have been made in other jurisdictions, including NSW and Victoria, on the same grounds. For example, the AHPPC states that a vaccinated person is less likely to introduce COVID-19 into schools. A copy of the statement is here: [Australian Health Protection Principal Committee \(AHPPC\) statement on COVID-19, schools and reopening Australia | Australian Government Department of Health](#)

- The public health order itself sets out the chief Health Officer's considerations as to why the direction is necessary, see here: [2021-615 \(1\).PDF](#) . As you are aware this is a legal direction that must be complied with.
- I recommend that in making your decision whether to get vaccination that you get your information from trusted sources. This includes the Commonwealth and ACT COVID-19 Government websites. I cannot stress enough the importance of credible information. The Commonwealth Government has also worked to dispel many concerns about COVID-19 vaccines, this may be of interest to you: [Is it true? Get the facts on COVID-19 vaccines | Australian Government Department of Health](#) . This page is updated regularly.
- There is also information about the Australian Government's approval process for COVID-19 vaccines here: [Approved COVID-19 vaccines | Australian Government Department of Health](#) .
- As you know the public health order only applies in settings with children under the age of 12. This is because vaccines are not yet available for this group. The AHPPC states that children under 12 remain susceptible to COVID-19, however their opportunities to acquire infection are reduced if the adults around them are vaccinated. It is possible that younger students may be able to be vaccinated in time to return to school in 2022. For this reason the order only applies until 31 December, at this stage.
- Further, due to the inclusive nature of ACT schools, there are a number of students with disability and many with underlying medical conditions across all of our schools. These students may experience worse health outcomes from COVID-19. ATAGI states that there is a stronger public health imperative to encourage vaccination of staff when schools cater for the needs of students with disability.

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**From:** Coleman, Kerryn (Health) <[Kerryn.Coleman@act.gov.au](mailto:Kerryn.Coleman@act.gov.au)>

**Sent:** Monday, 25 October 2021 12:23 PM

**To:** Smith, Charmaine (Health) <[Charmaine.Smith@act.gov.au](mailto:Charmaine.Smith@act.gov.au)>; Barbaro, Fiona (Health) <[Fiona.Barbaro@act.gov.au](mailto:Fiona.Barbaro@act.gov.au)>

**Cc:** ACT Health Office of the Chief Health Officer <[ACTHealthOCHO@act.gov.au](mailto:ACTHealthOCHO@act.gov.au)>

**Subject:** FW: Risk Assessment

OFFICIAL

Can I leave this one with you?

K

**Kerryn**

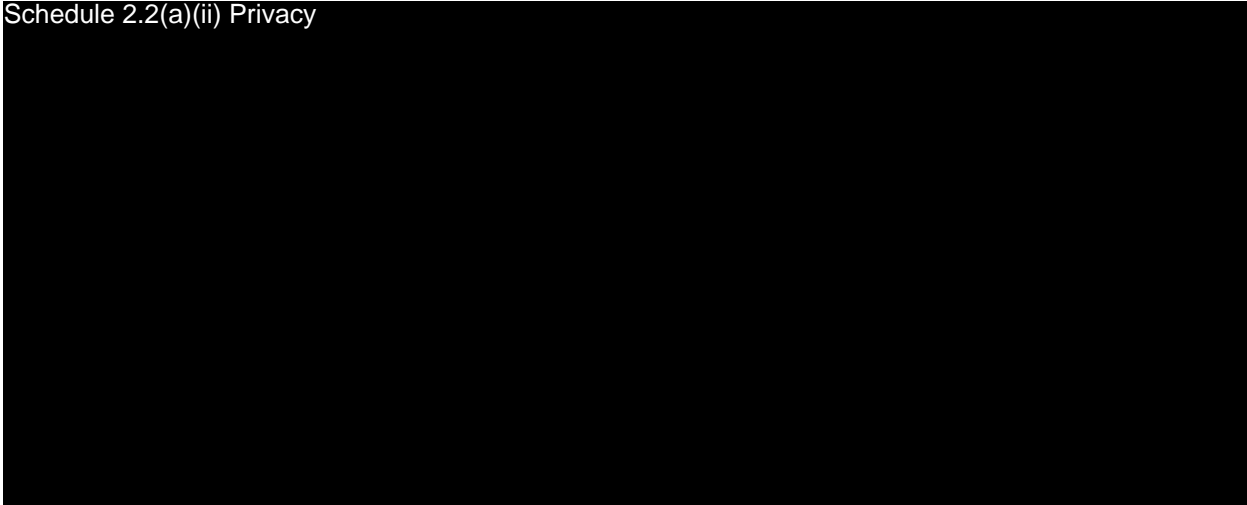
Public Health, Protection and Regulation | **ACT Health Directorate**

**PH** 5124 9442 | **MOB** [REDACTED]

25 Mulley Street, HOLDER ACT 2611 | GPO Box 825, Canberra City ACT 2601

E [Kerryn.coleman@act.gov.au](mailto:Kerryn.coleman@act.gov.au) W <https://health.act.gov.au/>

Schedule 2.2(a)(ii) Privacy



Schedule 2.2(a)(ii) Privacy

