

██████████
Via email to ██████████

15 June 2021

Dear ██████████

Freedom of Information (FOI) Application Ref: 210200 and 210201

I refer to your applications under the [Freedom of Information Act 2016 \(ACT\)](#) (**the Act**), initially received by the University of Canberra (**University**) on 31 March 2021, with the scope of information confirmed on 14 May 2021.

Your first application seeks access to:

1. Records dated between 1 January 2019 until 14 May 2021 regarding sexual misconduct, which are:
 - a. email briefings;
 - b. reports made in the University's incident reporting system;
 - c. audits; and
 - d. AV material including CCTV, video footage and photos, held by:
 - e. the Office of the Vice-Chancellor;
 - f. the Office of the Dean of Students; and
 - g. People and Diversity.

Your second application seeks access to:

1. Records between 1 January 2019 until 14 May 2021, that are:
 - a. email briefings;
 - b. reports; and
 - c. AV material including CCTV, video footage and photos, held by the Office of the Vice-Chancellor, regarding
 - d. staff misconduct;
 - e. staff bullying; and
 - f. staff harassment.

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Australian Government Higher Education
Registered Provider Number (CRICOS) #00212K

- Quarterly reports prepared by People and Diversity containing summaries of the status of investigations regarding the matters identified at 1(d), 1(e) and 1(f), between 1 January 2019 and 14 May 2021.

Authority

I am the Information Officer appointed by the Vice-Chancellor of the University to make decisions in respect of FOI applications in accordance with section 18 of the Act.

Decision

I have identified 29 records within scope of your first FOI application. I have identified 9 records in scope of your second FOI application. These records are outlined in the **attached** *Schedule of Documents*.

The University is currently consulting with a third party regarding one record. As such, the decision for this record is pending.

For the reasons identified in the *Schedule of Documents* and pursuant to section 35(1)(c) of the Act, I have refused access to all other records within scope of your FOI applications. On consideration, I have decided that the release of the information is contrary to the public interest. Reasons for my decision are set out in the **attached** *Reasons for Decision*.

Your rights of review

You may apply to the ACT Ombudsman pursuant to section 73 of the Act for a review of my decision not to release information to you, within 20 working days of the decision.

If you are not satisfied with the University's administration of your application, you may submit a complaint to the ACT Ombudsman pursuant to section 69 of the Act.

More information about the ACT Ombudsman is available on the ACT Ombudsman website via <http://www.ombudsman.act.gov.au/improving-the-act/freedom-of-information>.

If you have any questions, please email foi@canberra.edu.au.

Kind regards



Mr Eric Wells

FOI Information Officer
General Counsel and University Secretary
University of Canberra

Schedule of Documents

Document No.	Date	Description	Decision	Reasons for Decision
Application 1				
1	Sept 2019	AV material	Refuse	Schedule 2, section 2.2(a)(ii)
2	Sept 2019	AV material	Refuse	Schedule 2, section 2.2(a)(ii)
3	Sept 2019	AV material	Refuse	Schedule 2, section 2.2(a)(ii)
4	Sept 2019	AV material	Refuse	Schedule 2, section 2.2(a)(ii)
5	Sept 2019	AV material	Refuse	Schedule 2, section 2.2(a)(ii)
6	Sept 2019	AV material	Refuse	Schedule 2, section 2.2(a)(ii)
7	Sept 2019	AV material	Refuse	Schedule 2, section 2.2(a)(ii)
8	Sept 2019	AV material	Refuse	Schedule 2, section 2.2(a)(ii)
9	Sept 2019	AV material	Refuse	Schedule 2, section 2.2(a)(ii)
10	Sept 2019	AV material	Refuse	Schedule 2, section 2.2(a)(ii)
11	Oct 2019	Email briefing	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv)
12	Apr 2019	Report via incident reporting system	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv) Schedule 2, section 2.2(a)(xii)
13	Sept 2019	Report via incident reporting system	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv) Schedule 2, section 2.2(a)(xii)
14	Sept 2019	Report via incident reporting system	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv) Schedule 2, section 2.2(a)(xii)

Document No.	Date	Description	Decision	Reasons for Decision
15	Nov 2019	Report via incident reporting system	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(a)(xii)
16	Nov 2019	Report via incident reporting system	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv) Schedule 2, section 2.2(a)(xii)
17	Aug 2019	Report via incident reporting system	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv) Schedule 2, section 2.2(a)(xii)
18	Aug 2019	Report via incident reporting system	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv) Schedule 2, section 2.2(a)(xii)
19	Sept 2019	Report via incident reporting system	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv) Schedule 2, section 2.2(a)(xii)
20	Sept 2019	Report via incident reporting system	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv) Schedule 2, section 2.2(a)(xii)
21	Nov 2020	Report via incident reporting system	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv) Schedule 2, section 2.2(a)(xii)
22	Jan 2020	Report via incident reporting system	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv) Schedule 2, section 2.2(a)(xii)
23	Feb 2020	Report via incident reporting system	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(a)(xii)

Document No.	Date	Description	Decision	Reasons for Decision
24	Mar 2021	Report via incident reporting system	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv) Schedule 2, section 2.2(a)(xii)
25	Mar 2021	Report via incident reporting system	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv) Schedule 2, section 2.2(a)(xii)
26	May 2019	Report via incident reporting system	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv) Schedule 2, section 2.2(a)(xii)
27	Oct 2019	Report via incident reporting system	Decision pending – third party consultation required.	
28	Mar 2019	Email briefing	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv)
29	Apr 2019	Email briefing	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv)
Application 2				
1	Jun 2020	Report	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv) Schedule 2, section 2.2(a)(xii)
2	Jun 2020	Report	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv) Schedule 2, section 2.2(a)(xii)
3	Oct 2019	Report	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv) Schedule 2, section 2.2(a)(xii)
4	Mar 2019	Report	Refuse	Schedule 2, section 2.2(a)(ii)

Document No.	Date	Description	Decision	Reasons for Decision
				Schedule 2, section 2.2(b)(iv) Schedule 2, section 2.2(a)(xii)
5	Oct 2019	Report	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv) Schedule 2, section 2.2(a)(xii)
6	Jan 2019	Email briefing	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv)
7	Aug 2019	Report	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv)
8	Mar 2019	Report	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv) Schedule 2, section 2.2(a)(xii)
9	Sept 2019	Report	Refuse	Schedule 2, section 2.2(a)(ii) Schedule 2, section 2.2(b)(iv)

Reasons for Decision

In reaching my decision, I have considered:

- your FOI applications dated 14 May 2021;
- your initial FOI applications dated 31 March 2021;
- correspondence with you up until the date of your valid FOI applications;
- the records containing the information within scope of your FOI applications;
- consultations with University officers about:
 - the nature of the information held in these records;
 - how the University deals with the matters you have sought information about;
- the Act;
- the *Human Rights Act 2004* (ACT);
- the *Information Privacy Act 2014* (ACT); and
- the ACT Ombudsman FOI Guidelines.

I am authorised to make decisions under section 18 of the FOI Act.

I have decided the information held in the records within scope of your FOI applications contain information that is on balance, contrary to the public interest to disclose under the test set out in section 17 of the Act. My findings of fact and reasons are discussed below.

Schedule 2, section 2.2(a)(ii) Prejudice the protection of an individual's right to privacy

Schedule 2, section 2.2(a)(ii) is a factor favouring nondisclosure if:

disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004 (ACT).

I have applied Schedule 2, 2.2(a)(ii) of the Act to all records which are about sexual misconduct, staff misconduct, staff bullying and staff harassment, and include the following types of information:

1. identifying information about complainants, witnesses, confidants, staff, students, third parties, and offenders (alleged and substantiated);
2. complaints, reports, briefings about incidents – whether true or not;
3. personal decisions, opinions and discussions; and
4. specific individual circumstances and environments.

The individuals considered in these records would expect the University to protect their privacy. I am satisfied the disclosure of this information could reasonably be expected to prejudice the protection of their right to privacy.

Schedule 2, section 2.2(a)(xii) Prejudice an agency's ability to obtain confidential information

Schedule 2, section 2.2(a)(xii) is a factor favouring nondisclosure if:

disclosure of the information could reasonably be expected to prejudice an agency's ability to obtain confidential information.

I have applied Schedule 2, section 2.2.(a)(xii) of the Act to some records. Where this factor has been applied, the University has obtained that information on the basis it was obtained confidentially. The University encourages staff, students, and the public to report incidents, especially those of a serious nature as contemplated in the scope of these FOI applications. The University explicitly provides to anyone making a report, that the report “will be treated confidentially and with respect.” If the University discloses this kind of information to the public, the University’s ability to obtain that kind of information in the future may be prejudiced. The University relies on its community to report such incidents so that it can take appropriate action.

Schedule 2, section 2.2(b)(iv) disclosure is prohibited by an Act of the Territory, a State or the Commonwealth

Schedule 2, section 2.2(b)(iv) is a factor favouring nondisclosure if:

the information is information disclosure of which is prohibited by an Act of the Territory, a State or the Commonwealth.

The University is subject to the *Information Privacy Act 2014* (ACT) (**IPA**). The IPA regulates the handling of personal information by public sector agencies. The IPA defines “personal information” at section 8, as:

1. 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; but
2. does not include personal health information about the individual.

The records in scope of the FOI applications contain personal information pursuant to section 8 of the IPA. The University must use and disclose personal information in accordance with the IPA. The University does not have consent from the individuals whose information is included in the records to disclose their personal information to the public.

If the University releases the personal information of these individuals without their consent, the release of that personal information may result in those individuals making a privacy complaint against the University to the Australian Information Commissioner pursuant to section 34 of the IPA.

Public interest considerations

The public interest test set out in section 17 of the Act involves a process of balancing public interest factors favouring disclosure against public interest factors favouring nondisclosure, to decide whether on balance, disclosure would be contrary to the public interest.

When weighing up the public interest for and against disclosure under Schedule 2 of the Act, I have taken into account relevant factors in favour of disclosure. I have considered the extent to which disclosure would promote the objects of the Act and promote open discussion of public affairs and enhance the University’s and governments’ accountability.

I have also considered that statistical information regarding the matters contemplated by the scope of your FOI applications might promote open discussion and enhance the University's and governments' accountability, without infringing upon the rights of individuals and prejudicing the University's ability to handle these matters. However, I note that you refused the University's offer to create a record of this information in the format which you had set out.

Based on the above, I have decided in this instance, the public interest in disclosing email briefings, reports and AV material about sexual misconduct and staff misconduct, bullying and harassment is outweighed by the public interest against disclosure. This is because disclosure of this information would:

1. prejudice individuals' rights to privacy;
2. be prohibited (without consent) by the IPA; and
3. prejudice the University's ability to obtain confidential information in the future.

I have not taken into account any of the irrelevant factors set out in section 17(2) of the Act in making this decision.

Summary of my decision

In conclusion, I have decided to refuse access to all records in scope of the FOI applications.