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Our ref: OIA 23-97

30 June 2023

Tēna koe

Re: Official Information Act 1982 request – Bethlehem College Review

I refer to your email dated 1 June 2023 to the Education Review Office requesting under the Official Information Act 1982 as follows:

- 1. I would like to request any correspondence and documents associated with the reason for the ERO visit and review of Bethlehem College in June 2023.
- 2. This includes internal emails that mention Bethlehem college related to the review planned for June 2023.
- 3. I would also like to know if there were any internal or external complaints or requests for another review so soon after the previous one. If there were external complaints/requests for a review within the last 6 months please release these with the minimal redactions for privacy.

In relation to point 1, ERO will soon be releasing a response to all requesters which includes information for the reasons to review of Bethlehem College in June 2023. You will be informed of ERO's response.

In response to point 2, I am withholding this information under sections 9(2)(a) (privacy), 9(2)(g)(i) (free and frank opinions) and s9(2)(h) to maintain legal professional privilege of the Official Information Act 1982.

Privacy

Section 9(2)(a) of the OIA relates to the protection of the privacy of individuals. I do not consider that the overriding public interest in making this information available is sufficient to outweigh the need to protect the privacy of the individuals.

Free and frank opinions

Section 9(2)(g)(i) of the OIA applies when withholding is necessary to maintain the effective conduct of public affairs through the free and frank expression of opinions. I have considered whether

release of the information would inhibit free and frank expression of opinions in the future; and whether this inhibition will prejudice the effective conduct of public affairs.

If the information were made available, the relevant ERO staff would likely be discouraged from making free and frank opinions. The section recognises that the effective conduct of public affairs requires the candid and unreserved expression of opinions, and that public exposure of those opinions can sometimes have a chilling effect on people's willingness to express themselves openly, honestly and completely in future. I consider this applies in the case of Bethlehem College; there is wider media attention in relation to concerns with the operation of the school and the welfare of the students. ERO's evaluation of the College has considered several complaints in relation to the emotional and physical safety of students from the Ministry, the school and the media.

I have formed the view that the information withheld is subject to free and frank expression of opinions between staff.

Legal professional privilege

Some of the information withheld is also subject to legal professional privilege under section 9(2)(h) of the OIA.

Sections 9(2)(g)(i) and 9(2)(h) are subject to a public interest test. This means the need to withhold must be balanced against the countervailing public interest in release. If the countervailing public interest weighs more heavily, the information must be released. If not, it can be withheld.

There is a public interest in the disclosure of information related to the performance of schools subject to ERO review. There is also a public interest in ensuring that ERO's statutory review functions are carried out by staff in a free and frank manner.

This includes ERO staff receiving proper legal advice. It is well established that agencies have the same rights as private organisations to obtain legal advice. For the purposes of the application of legal professional privilege, it is immaterial whether the lawyer providing the advice is in independent practice or is employed in-house. The information at issue includes communication from ERO's solicitor for the purposes of getting confidential legal advice and assistance. Considering all the facts of this case, I am satisfied that it is necessary to withhold the information at issue in order to maintain legal professional privilege.

In response to point 3, the 2022 review of the school has not concluded and the reason for this will be covered in our response to all requesters as referred in point 1.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at <u>www.ombudsman.parliament.nz</u> or freephone 0800 802 602.

Ngā mihi

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Melissa O'Carroll Deputy Chief Executive Review and Improvement Services Education Review Office | Te Tari Arotake Mātauranga