

Shaw v Department of Justice and Regulation (Review and Regulation) [2018] VCAT 2038 (20 December 2018)

Freedom of Information Act 1982 – ss 30(1), 33(1), 35(1) and 50(4)

Background

On 20 December 2018, the Victorian Civil and Administrative Tribunal (**Tribunal**) affirmed the Respondent's decision to deny the Applicant access to documents falling within his freedom of information (**FOI**) request.

In July 2015, the Applicant was charged with "offensive behaviour" and suspended as a Bail Justice and Justice of Peace. The Attorney-General recommended that the Applicant be removed from those positions. The Applicant was later found guilty of the offence and resigned.

On 19 September 2016, the Applicant made a FOI request to the Respondent for 'any and all documents that the [Respondent] has on its records and in its files in relation to [his] "suitability or otherwise" to be a Justice of the Peace and Bail Justice (and other offices) since 2006.'

The relevant documents were an investigation report, briefing, draft orders, memorandums, and external emails. The external emails were from:

- other agencies to the Respondent and were about the Applicant's suitability to remain as a Bail Justice and Justice of the Peace; and
- a Police Officer containing third party personal affairs information.

The Tribunal's decision

Section 30(1) - Exemption for internal working documents

The Tribunal held 'there [was] no question' the investigation report, briefing, draft orders and memorandum were prepared by an officer and contained opinions, advice or recommendations.¹ The Tribunal held the public interest in accountability was outweighed by the public interest in the ability of an investigator of serious and sensitive allegations to undertake investigations in 'a frank and fearless manner' because this was critical to public confidence in the criminal justice system.²

The Tribunal found the external emails about the Applicant's suitability to remain as a Bail Justice and Justice of the Peace were not exempt under s 30 because the complaints in the emails did not come from an 'officer' as required by s 30(1).

Section 33(1) - Personal affairs exemption

The Tribunal held it would be unreasonable to disclose any emails containing third party personal affairs information due to 'the objections of the persons concerned and the sensitivity of the information'.³

Section 35(1) - Exemption for documents containing information obtained in confidence

The Tribunal held some of the external emails about the Applicant's suitability were exempt under s 35(1)(b) because their disclosure 'may cause harm, distress or embarrassment to the complainant' and

¹ *Shaw v Department of Justice and Regulation (Review and Regulation) [2018] VCAT 2038 (20 December 2018) (Shaw)* at [26].

² *Ibid* at [30].

³ *Shaw* at [17].

‘discourage others from coming forward with complaints’.⁴

The Tribunal held the remaining external emails about the Applicant’s suitability were exempt under s 35(1)(a) because they contained information provided in confidence by a person and ‘the information would be exempt matter if it were generated by an agency or Minister’.

Public interest override

The Tribunal did not accept that the ‘public interest override’ under s 50(4) applied because the ‘high-threshold’⁵ was not met.

Further Information

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This case note is general in nature and does not constitute legal advice.

⁴ Ibid at [45].

⁵ *Osland v Department of Justice* (2010) 241 CLR 320.