

## Notice of Decision and Reasons for Decision

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Applicant: AA2  
Agency: Department of Justice and Community Safety  
(formerly Department of Justice and Regulation)  
Decision Date: 7 March 2019  
Exemptions considered: Sections 30(1), 33(1) and 38

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FREEDOM OF INFORMATION – Community Corrections Service file – case note - contrary to the public interest - professional opinions and advice of staff

All references to legislation in this document are to the *Freedom of Information Act 1982 (Vic)* (**FOI Act**) unless otherwise stated.

### Notice of Decision

I have conducted a review under section 49F of the Agency's decision to refuse access to documents requested by the Applicant under the FOI Act.

My decision on the Applicant's request is the same as the Agency's decision in relation to the information exempted under section 30(1). I note during the review, the Agency agreed to release information in the document it previously exempted under section 33(1).

Therefore, the document is to be released in part with the information exempted under section 30(1) to be deleted from the document in accordance with section 25.

My reasons for decision follow.

**Joanne Kummrow**  
Acting Public Access Deputy Commissioner

7 March 2019

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency for access to the documents relating to his Community Corrections Services file between [specified time period].
2. In its decision, the Agency identified one document, comprising two pages, falling within the terms of the Applicant's request. It decided to grant access to the documents in part.

### Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. By email dated 20 February 2019, the Agency advised this Office that it withdrew its application of sections 33(1) and 38 to exempt information in the document. The Agency advised this information will be provided to the Applicant upon the completion of this review.
5. Accordingly, my review concerns the Agency's application of section 30(1) to exempt information in the document and does not consider the application of section 33(1) or 38.
6. I have examined a copy of the document subject to review. It is a case note dated [specified date].
7. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
8. I have considered all communications and submissions received from the parties, including:
  - (a) the Agency's decision on the FOI request;
  - (b) information provided with the Applicant's review application; and
  - (c) the Agency's submission dated 31 January 2019.
9. In undertaking my review, I have had regard to the object of the FOI Act, which is to create a general right of access to information in the possession of the Government or other public bodies, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.

### Review of exemptions

10. The Agency relied on the exemption in section 30(1) to refuse access to the document in part. The Agency's decision letter sets out the reasons for its decision.

### *Section 30(1)*

11. Section 30(1) has three requirements:
  - (a) the document must disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister; and
  - (b) such matter must be made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government; and

- (c) disclosure of the matter would be contrary to the public interest.
12. The exemption does not apply to purely factual material in a document.<sup>1</sup>
  13. The term 'officer of an Agency' is defined in section 5(1). It includes a member of the agency, a member of the agency's staff, and any person employed or engaged by or on behalf of the agency whether or not that person is one to whom the provisions of the *Public Administration Act 2004* (Vic) apply.
  14. The document is a case note in the Applicant's Community Corrections Services (**CCS**) file. The Agency applied section 30(1) to a small amount of information in the document which records the professional opinion and observations of a CCS officer.
  15. Having viewed the information, I am satisfied the exempted information was recorded by an agency officer and comprises the opinions and advice of the officer, provided as part of the Agency's deliberative process concerning the supervision and ongoing management of a person serving a Community Corrections Order (**CCO**).
  16. However, the relevant consideration with respect to section 30(1) is whether release of the advice, opinions and deliberations of an agency would be contrary to the public interest. This requires a 'process of the weighing against each other conflicting merits and demerits'.<sup>2</sup>
  17. In deciding if release is contrary to the public interest, I must consider all relevant facts and circumstances remaining mindful the object of the FOI Act is to facilitate and promote the disclosure of information.
  18. In this case, I have taken the following factors into account:<sup>3</sup>
    - (a) the right of every person to gain access to documents under the FOI Act;
    - (b) the degree of sensitivity of the issues involved;
    - (c) whether the disclosure would be likely to inhibit frankness and candour in the making of communications;
    - (d) whether the disclosure will give merely a part explanation rather than a complete explanation for the taking of a particular decision; and
    - (e) the likelihood that disclosure would create mischief in one way or another such as risk of mischievous interpretation.
  19. The Applicant did not submit any public interest factors with his application or in a submission to support the release of the exempt information in the document.
  20. The Agency, in its decision, advised release of the document would be contrary to the public interest as CCS officers need to be able to freely communicate their opinions and observations regarding the presentation of offenders to ensure the proper management of a person subject to a CCO.
  21. Generally speaking, the observations and opinions recorded by CCS officers are sensitive in nature given their role in supervising persons, who are subject to a CCO, following their release from prison. In this case, the exempt information is particularly sensitive in that it relates to information about the

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<sup>1</sup> Section 30(3).

<sup>2</sup> *Sinclair v Maryborough Mining Warden* [1975] HCA 17; (1975) 132 CLR 473 at 485, adopted in *Department of Premier and Cabinet v Hulls* [1999] VSCA 117 at [30].

<sup>3</sup> *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

Applicant, including identifying risks to assist in the effective supervision of the Applicant whilst serving part of his sentence on a CCO.

22. While I am mindful of the Applicant's personal interest in accessing official information recorded about him in the document, I am mindful of the overall purpose of the document. Such documents provide CCS officers with an official means of recording frank and candid information about an offender who has been released from prison to serve part of their sentence in the community subject to the terms and conditions of a CCO.
23. While there is no specific evidence before me to suggest disclosing this document to the Applicant would lead to CCS officers not recording their subjective comments about offenders in the future, I am of the view the routine disclosure of the type of information recorded in the document would reasonably lead to a diminution in the degree of candour in the information recorded by CCO officers. I consider this would have an adverse effect on the quality and detail of information recorded by CCS officers and the effective performance of their functions in the supervision and management of offenders in the community.
24. Such an outcome would be contrary to the public interest and the conduct of CCS, which relies on an open and free flow of information from CCS officers to inform its reporting and decisions with respect to offenders. In the circumstances, I consider there is a public interest in ensuring the confidentiality of the Agency's deliberations and maintaining the integrity of the Agency's processes in relation to the management of offenders in the community outweighs the Applicant's personal interest in obtaining access to the information that concerns him.
25. Therefore, I accept the submission of the Agency that disclosure of the opinions and observations in the document would be likely to inhibit CCS officers from freely expressing their opinions, advice and recommendations in the future.
26. Accordingly, I am satisfied the information is exempt under section 30(1).

#### ***Deletion of exempt or irrelevant information***

27. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable for the agency or Minister to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
28. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>4</sup> and the effectiveness of the deletions. Where deletions would render the document meaningless they are not 'practicable' and release of the document is not required in accordance with section 25.<sup>5</sup>
29. I have considered the effect of deleting exempt information from the documents. In my view, it is practicable for the Agency to delete the exempt information, because it would not require substantial time and effort, and the edited document would retain meaning.

#### ***Conclusion***

30. On the information available, I am satisfied the exemption in section 30(1) applies to the information in the document.

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<sup>4</sup> *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 [82].

<sup>5</sup> *Honeywood v Department of Human Services* [2006] VCAT 2048 [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 [140], [155].

## **Review rights**

31. If either party to this review is not satisfied with my decision, they are entitled to apply to the Victorian Civil and Administrative Tribunal (**VCAT**) for it to be reviewed.<sup>6</sup>
32. The Applicant may apply to VCAT for a review up to 60 days from the date he is given this Notice of Decision.<sup>7</sup>
33. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>8</sup>
34. Information about how to apply to VCAT is available online at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au). Alternatively, VCAT may be contacted by email at [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au) or by telephone on 1300 018 228.
35. The Agency is required to notify the Information Commissioner in writing as soon as practicable if either party applies to VCAT for a review of my decision.<sup>9</sup>

## ***When this decision takes effect***

36. My decision does not take effect until the relevant review period (stated above) expires, or if either party applies to VCAT for a review, until the VCAT proceeding is concluded.

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<sup>6</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>7</sup> Section 52(5).

<sup>8</sup> Section 52(9).

<sup>9</sup> Sections 50(3F) and (3FA).