

## Notice of Decision and Reasons for Decision

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Applicant: AA9  
Agency: Department of Health and Human Services  
Decision Date: 22 March 2019  
Exemptions considered: Section 33(1)

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FREEDOM OF INFORMATION – Meeting minutes – staff details – personal affairs information

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 that I have decided to release the documents in part.

My reasons for decision follow.

Joanne Kummrow  
**Acting Public Access Deputy Commissioner**

22 March 2019

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency for access to:

... document relating to investigations of [a government department]. I am also applying for their annual reports and meeting minutes from the period of 1990-1993.
2. In its decision, the Agency:
  - (a) advised that no documents were located relating to investigations or annual reports; and
  - (b) identified a total of 32 pages relating to the meeting minutes from the specified time period. It decided to grant access to these 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 to the documents in part.
4. I have examined copies of the documents subject to review.
5. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
6. 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;
  - (c) the Agency's submission dated 18 January 2019; and
  - (d) communications between OVIC staff, the Applicant and the Agency.
7. 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

8. The Agency relied on the exemption under section 33(1) to refuse access to parts of the documents. The Agency's decision letter sets out the reasons for its decision.

### Section 33(1)

9. A document is exempt under section 33(1) if two conditions are satisfied:
  - (a) disclosure of the document under the FOI Act would 'involve' the disclosure of information relating to the 'personal affairs' of a person other than the Applicant;<sup>1</sup> and
  - (b) such disclosure would be 'unreasonable'.

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<sup>1</sup> Sections 33(1) and (2).

*Do the documents contain personal affairs information of individuals other than the Applicant?*

10. Information relating to a person's 'personal affairs' includes information that identifies any person, or discloses their address or location. It also includes any information from which this may be reasonably determined.<sup>2</sup>
11. The deleted information relates to the names of the Agency's staff. I am satisfied that this relates to the personal affairs information of individuals other than the Applicant.

*Would disclosure of the personal affairs information be unreasonable?*

12. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the personal interest in privacy in the particular circumstances of a matter.
13. In its submission, the Agency stated:

[It] is unreasonable to release the personal affairs information of non-executive staff in this circumstance as:

- non-executive staff are generally employed with the understanding that they do not have the skills or authority to act on behalf of the department and to be accountable for its decision making (as opposed to executive staff who may represent the department);
- non-executive staff therefore work under the assumption that their identities and contact information will not be released to the public; and
- it is inherently stressful for non-executive staff to have their identities and contact information relates to the public.

...

In the recent case of *Coulson v Department of Premier and Cabinet*,<sup>3</sup> the [Victorian Civil and Administrative Tribunal (**the Tribunal**)] ... concluded as follows:

"With the ... increasing prominence of rights of privacy, in my view an approach regarding disclosure of the names of staff holding non-executive positions as unreasonable disclosure is the correct and preferable approach"

14. Having reviewed the documents, I note most documents have been released to the Applicant except for staff names. I do not consider release of this information will further assist the Applicant in understanding the documents or the care provided to her or her family members, as clients of the Agency.
15. I also do not consider there to be any wider public interest in the release of the staff names, particularly given the remaining contents of the meeting minutes have been released.
16. The Agency deemed it impracticable and unreasonable to consult with the various individuals named in the documents due to the age of the documents, the difficulty in locating the relevant individuals and the likely distress to those individuals if they were to become aware that their personal information would potentially be released.
17. In considering the above factors, alongside the Agency's submission in relation to non-executive staff, I am of the view it would be reasonably likely the third parties would object to the release of their personal affairs information.

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<sup>2</sup> Section 33(9).

<sup>3</sup> [2018] VCAT 229.

18. The Applicant advised she sought access to the names of the persons who chaired the meetings. However, there is no information before me to suggest the meeting chairs held executive positions. From reviewing the documents, the meetings were chaired by various individuals and it is possible some of these individuals held non-executive positions.
19. In considering the above factors, I am satisfied it would be unreasonable to release the personal affairs information contained in the document.
20. Accordingly, I have determined the personal affairs information is exempt under section 33(1).

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

21. 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.
22. 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>
23. 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 documents would retain meaning.

#### **Review rights**

24. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.<sup>6</sup>
25. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>7</sup>
26. 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>
27. 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.
28. 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***

29. 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>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].

<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).