

Notice of Decision and Reasons for Decision

Applicant: AB1
Agency: Department of Health and Human Services
Decision Date: 22 March 2019
Exemptions considered: Section 33(1)

FREEDOM OF INFORMATION – Wardship and youth justice records of a deceased family member – 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.

The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

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 the following request to the Agency:

I am requesting records (particularly psychiatric, and other medical records and wardship) of my deceased [family member, named person and date of birth].
2. Following consultation with the Agency, the Applicant clarified the initial request to:

... my [family member's] wardship and youth justice records.
3. In its decision, the Agency identified 74 pages falling within the terms of the Applicant's request. It decided to release 66 pages in full and release eight pages in part.

Review

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. I have examined copies of the documents subject to review.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. 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 22 January 2019; and
 - (d) communications between OVIC staff and the Applicant.
8. 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

9. 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)

10. 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;¹ and
 - (b) such disclosure would be 'unreasonable'.

¹ Sections 33(1) and (2).

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

11. 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.²
12. The information in the document relates to the Applicant's [family member], staff who performed administrative duties and various other individuals other than the Applicant or [their family member].
13. I am satisfied the information in the documents exempted by the Agency relates to individuals other than the Applicant.

Would release of the personal affairs information be unreasonable?

14. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the personal interest in privacy. I have given particular consideration to the following factors in the circumstances of this matter:
 - (a) The nature of the personal affairs information – The information in the documents relates to information about individuals such as the Applicant's [family member] and other wards of state. I note that the Applicant has made a request for [their] deceased [family member's] information as [their] next-of-kin and not on behalf of [their family member]. Given the content of the information in the documents, I am of the view that this information is highly sensitive and personal to the Applicant's [family member] and the wards of state. This weighs against disclosure.
 - (b) The extent to which the information is available to the public – I do not consider the information in the document is available to the public. This weighs against disclosure.
 - (c) Whether any public interest would be promoted by release of the information – The Applicant advised that access to the information was sought to obtain an understanding of [their family member's] life. Therefore, access would serve a personal and private interest rather than a public interest. While I note the Applicant's genuine personal interest in seeking access to information about [their family member], I do not consider there is a public interest in the disclosure of the information such that the public interest would be promoted by release of the information. This weighs against disclosure.
 - (d) Whether the individuals to whom the information relates object or would be likely to object to the release of the information – The Agency advised it had not consulted with the individuals whose information had been exempted under section 33(1). This is because these individuals had either passed away or consultation with the individuals or their surviving family members would cause undue distress and anxiety. Given the nature of the information in the documents, I am of the view that the individuals to whom the information relates would be likely to object to the release of their information. This weighs against disclosure.
 - (e) Whether disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person – There is no information before me to suggest this is a relevant factor.
15. In balancing the factors above, I have decided it would be unreasonable to release the personal affairs information in the documents.

² Section 33(9).

Deletion of exempt or irrelevant information

16. 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.
17. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'³ 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 under section 25.⁴
18. 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

19. 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.⁵
20. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁶
21. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁷
22. Information about how to apply to VCAT is available online at www.vcat.vic.gov.au. Alternatively, VCAT may be contacted by email at admin@vcat.vic.gov.au or by telephone on 1300 018 228.
23. 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.⁸

When this decision takes effect

24. 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.

³ *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].

⁴ *Honeywood v Department of Human Services* [2006] VCAT 2048 [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 [140], [155].

⁵ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁶ Section 52(5).

⁷ Section 52(9).

⁸ Sections 50(3F) and (3FA).

Annexure 1 – Schedule of Documents

Page Number	Document	Agency's Decision	OVIC Decision	OVIC Comments
12	Handwritten Letter	Release in part Section 33(1)	Release in part Section 33(1)	This document contains highly sensitive and personal information relating to the Applicant's [family member]. I am of the view it would be unreasonable to release this information.
23	Document Label	Release in part Section 33(1)	Release in part Section 33(1)	I am of the view it would be unreasonable to release the name of a non-executive staff member performing administrative duties.
35	Letter	Release in part Section 33(1)	Release in part Section 33(1)	The document is a letter from the Applicant's [family member]. The deleted information relates to the name of another ward of state. Given the circumstances in which this document was created, I am of the view it would be unreasonable to release this information.
38	Letter	Release in part Section 33(1)	Release in part Section 33(1)	The document is a single letter written to both the Applicant's [family member] and another ward of state. The deleted information relates to the other ward of state's name. Given the circumstances in which this document was created, I am of the view it would be unreasonable to release this information.
39	Letter	Release in part Section 33(1)	Release in part Section 33(1)	See comment for page 38.
40	Letter	Release in part Section 33(1)	Release in part Section 33(1)	See comment for page 35.
70	Statement to the police	Release in part Section 33(1)	Release in part Section 33(1)	See comment for page 12.

Annexure 1 – Schedule of Documents

Page Number	Document	Agency's Decision	OVIC Decision	OVIC Comments
74	Log book	Release in part Section 33(1)	Release in part Section 33(1)	The document contains the names of wards of state admitted and discharged from the Agency during a particular week. Information relating to the Applicant's [family member] has been released. The deleted information relates to wards of state other than the Applicant's [family member]. I am of the view that it would be unreasonable to release this information to the Applicant.