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Information Commissioner

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## Notice of Decision and Reasons for Decision

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Applicants:	AD1
Agency:	Department of Education and Training
Decision Date:	13 May 2019
Exemption considered:	Section 33(1)
Citation:	'AD1' and Department of Education and Training ( <i>Freedom of Information</i> ) [2019] VICmr 28 (13 May 2019)

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FREEDOM OF INFORMATION – CCTV footage – primary school – children in playground – school staff – personal affairs information – unreasonable disclosure

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 Applicants under the FOI Act.

My decision on the Applicants' request is the same as the Agency's decision in that I have decided to refuse access to the document in full.

My reasons for decision follow.

**Joanne Kummrow**

Acting Public Access Deputy Commissioner

13 May 2019

## Reasons for Decision

### Background to review

1. On 1 March 2019, the Applicants made a request to the Agency for access to:

A copy of the CCTV footage in relation to an incident which occurred with [applicants' child] who is [age] and another [child] who is [age] on [date] between [time period] on the [identified] play equipment around the monkey bar area at [named primary school]; and

A copy of contemporaneous notes which were compiled at the time of the incident.

2. In its decision letter dated 14 March 2019, the Agency identified five documents falling within the terms of the Applicants' request. It decided to grant access to four documents in part, and refuse access to one document in full.

### Review

3. On 18 March 2019, the Applicants sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. The Applicants indicated they were requesting 'review of the decision made... denying our access to view footage ... we would like a review of the decision to access and view the footage'. Accordingly, this review only relates to the Agency's refusal to grant access to the CCTV footage in full.
5. I have viewed the CCTV footage subject to review.
6. The Applicants 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, dated 14 March 2019;
  - (b) the Applicants' review application, dated 17 March 2019; and
  - (c) the Agency's written submission, dated 25 March 2019.
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 the CCTV footage in full.

### ***Section 33(1) – Documents containing personal affairs information***

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 Applicants;<sup>1</sup> and
  - (b) such disclosure would be 'unreasonable'.

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

11. Information relates to the 'personal affairs' of a person if it is reasonably capable of identifying them, or of disclosing their address or location.<sup>2</sup> It has also been held information relates to a person's personal affairs if it 'concerns or affects that person as an individual'.<sup>3</sup>
12. The Victorian Civil and Administrative Tribunal (**VCAT**) has held a document will disclose personal affairs information if the document is capable of, either directly or indirectly, identifying a particular individual whose personal affairs are disclosed. As the nature of disclosure under the FOI Act is unrestricted and unconditional, this is to be interpreted by the capacity of any member of the public to potentially identify a third party.<sup>4</sup>
13. The VCAT has determined CCTV footage may disclose the personal affairs of persons other than an applicant even if it does not show their faces. An individual may be capable of being identified by what they were wearing or what they were doing.<sup>5</sup>

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

14. The CCTV footage is captured from inside the grounds of a primary school. It is 26 minutes in duration, and depicts children playing on outdoor play equipment and a basketball court. The footage also depicts several staff members undertaking what appears to be yard duty or some other supervisory function.
15. I consider the quality of the footage is sufficiently clear at various times and to varying degrees to show identifying features of the individuals captured in the footage; such as facial features, movement and attire.
16. I am satisfied the identities of the individuals, whose images appear in the footage, are reasonably capable of being determined by persons with knowledge of or involvement in the events to which they relate, or any other member of the public.
17. Therefore, I am satisfied the CCTV footage contains the personal affairs information of individuals other than the Applicants.

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

18. The concept of 'unreasonable disclosure' involves determining whether the public interest in disclosure of official information is outweighed by the personal interest in privacy.
19. I have determined disclosure of the personal affairs information contained in the documents would be unreasonable for the following reasons:

- (a) The nature of the personal affairs information – The footage contains the facial features, movements and clothing of school staff and children.

I am satisfied the personal affairs information of children is of a highly sensitive nature.

I consider the actions captured in the CCTV footage of staff members were within the scope of their professional or official duties. It has been held there is nothing particularly sensitive about matters occurring or arising in the course of one's official duties, and disclosure of this type of information is generally considered not unreasonable.<sup>6</sup> In line with this, I do not consider there to be anything particularly sensitive or confidential about the movements of staff members as captured in the footage.

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

<sup>3</sup> *Hanson v Department of Education and Training* [2007] VCAT 123 at [9].

<sup>4</sup> *O'Sullivan v Department of Health and Community Services (No 2)* [1995] 9 VAR 1 at [14]; *Beauchamp v Department of Education* [2006] VCAT 1653 at [42].

<sup>5</sup> *Wilner v Department of Economic Development, Jobs, Training and Resources* [2015] VCAT 669 at [17].

<sup>6</sup> See Deputy President Macnamara's comments in *Milthorpe v Mt Alexander Shire Council* [1996] VCAT 368.

- (b) The Applicants' interest in the information, and whether their purpose for seeking the information is likely to be achieved – The Applicants seek access to the information so they 'can make an informed decision on the tense of the situation so we know what our next step will be for the best safety measure going forward for our [child's] education'. The Applicants further refer to a history of physical altercations between their [child] and another student.

I acknowledge the Applicants' strong personal interest in the documents.

I note the placement of the CCTV camera, form of the play equipment, shadows cast by the overhead shade structure, and the movement of playing children operate to conceal a significant portion of the monkey bars and the children playing on them.

My view is the footage does not reveal any additional information about the reported incident or the events following the incident that would achieve the Applicants' purpose for seeking it.

- (c) Whether the individuals to whom the information relates object, or would be likely to object to the release of the information – There is no information before me to suggest the Agency consulted with any third parties whose personal affairs information is in the document. However, I have considered the Agency's submission that it believes consent would not be provided by the parents of the children captured by the CCTV footage.

Having regard to the age of the children, and that release of the footage under the FOI Act would be unrestricted and unconditional, I accept that the parents of the individuals whose images appear in the footage would likely object to its release.

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

20. 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.
21. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>7</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 under section 25.<sup>8</sup>
22. I have considered the Agency's submission that it does not have the technical ability to pixelate the footage to remove personal affairs information. In my view, attempting to edit the footage is not practicable, taking into account the movement of the individuals captured by the footage, and the fact that the edited footage would not be of any assistance to the Applicants.
23. Accordingly, I am satisfied there is no scope for the Agency to provide an edited copy of the document requested.

#### ***Conclusion***

24. On the information available, I am satisfied the exemption in section 33(1) applies to the CCTV footage.
25. As it is not practicable to edit the footage, I have determined to refuse access to the CCTV footage in full.

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<sup>7</sup> *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 at [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

<sup>8</sup> *Honeywood v Department of Human Services* [2006] VCAT 2048 at [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140] and [155].

## **Review rights**

26. 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>9</sup>
27. The Applicants may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>10</sup>
28. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>11</sup>
29. 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.
30. 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>12</sup>

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

31. 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>9</sup> The Applicants in section 50(1)(b) and the Agency in section 50(3D).

<sup>10</sup> Section 52(5).

<sup>11</sup> Section 52(9).

<sup>12</sup> Sections 50(3F) and (3FA).