

## Notice of Decision and Reasons for Decision

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Applicant:	'AF3'
Agency:	Eastern Health
Decision Date:	31 May 2019
Provision considered:	Section 25
Citation:	'AF3' and Eastern Health ( <i>Freedom of Information</i> ) [2019] VICmr 48 (31 May 2019)

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FREEDOM OF INFORMATION – medical records – patient records – hospital records – triage form – irrelevant material – records of an unrelated third party placed on medical file in error

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 refuse access to the irrelevant information in the document.

My reasons for decision follow.

**Joanne Kummrow**  
Public Access Deputy Commissioner

31 May 2019

## Reasons for Decision

### Background to review

1. On 9 January 2019, the Applicant, with the assistance of her son and Power Of Attorney (**POA**), made a request to the Agency for access to the following documents regarding her late husband (**the deceased**):  
  
[Name] Hospital: all medical records for [date] ([redacted] operation); and [Name] [Rehabilitation and Aged Care] Centre: all medical records from [date] to [date] (transition)
2. In its decision, the Agency identified 25 documents, comprising a total of 44 pages falling within the terms of the Applicant's request. It decided to grant access to all documents in part.

### Background to review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. The Applicant, through her son, narrowed the scope of the review to a one page document (page 367) only. Accordingly, this review relates to the one page document only and I have examined a copy of this document.
5. The document is an extract from the medical file of the deceased.
6. The document has the Agency's logo as a header and the deceased's name, date of birth and medical/hospital identification number at the bottom of the document. In its decision, the Agency deleted information in the centre of the document as the information is irrelevant to the Applicant's request in that it relates to another patient. Accordingly, the Agency deleted the irrelevant information in accordance with section 25.
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) the Applicant's submissions dated 19 March and 29 May 2019 and information provided with the Applicant's review application;
  - (c) the Agency's submissions dated 16 May and 30 May 2019; and
  - (d) discussions between the Applicant, the Agency and OVIC staff.
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 refusal to grant access to document

10. As stated above, the Agency relied on section 25 to refuse access to irrelevant information in the document.

11. Section 25 provides that an agency may delete exempt or irrelevant information in a document.
12. Irrelevant information is information that is not relevant to an applicant's FOI request.
13. The Agency submitted in its decision letter dated 22 January 2019:

Section 25 of the FOI Act relates to irrelevant information in otherwise relevant documents. That section applies to information in the medical records that falls outside the scope of your request which has been upheld accordingly.

14. Having reviewed the information deleted from the document by the Agency. I am satisfied the information concerns another patient and does not reference or relate to the deceased. As such, the information is not relevant to the Applicant's FOI request.
15. For the benefit of the Applicant, I assume the irrelevant information was placed on the deceased's medical file in error.
16. Accordingly, I am satisfied the deleted information is irrelevant information and should be deleted from the document in accordance with section 25.

#### **Review rights**

17. 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>1</sup>
18. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>2</sup>
19. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>3</sup>
20. 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.
21. 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>4</sup>

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

22. 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>1</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>2</sup> Section 52(5).

<sup>3</sup> Section 52(9).

<sup>4</sup> Sections 50(3F) and (3FA).