

Notice of Decision and Reasons for Decision

Applicant:	'AE1'
Agency:	Monash University
Decision Date:	24 May 2019
Exemption considered:	Section 33(1)
Citation:	'AE1' and Monash University (<i>Freedom of Information</i>) [2019] VICmr 37 (24 May 2019)

FREEDOM OF INFORMATION – name of an administrative decision maker – documents affecting personal privacy

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 differs from the Agency's decision in that I have decided to release additional information to the Applicant.

My reasons for decision follow.

Sven Bluemmel
Information Commissioner

24 May 2019

Reasons for Decision

Background to review

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

All documents exchanged between the faculty of arts staff members in processing my remission of debt application lodged on [date] and decided on [date].

2. In its decision, the Agency identified two documents 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. The Applicant advised [they are] seeking access to part of the information denied by the Agency, being the names of the Agency staff who made a decision on [their] application for remission of debt application.
5. I have examined a copy of the document 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) the Applicant's review application and subsequent information provided to this office regarding the scope of [their] review request; and
 - (c) the Agency's submission dated 20 March 2019.

Review of exemptions

8. The Agency relied on the exemption in section 33(1) to refuse access to part of the document. 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;¹ and
 - (b) such disclosure would be 'unreasonable'.
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.²

¹ Sections 33(1) and (2).

² Section 33(9).

11. 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.
12. The Agency advised it consulted with the third parties in this matter. The third parties are Agency staff.
13. In its submission, the Agency provided the following reasons for deciding the disclosure of the personal affairs information in the document is unreasonable:
 - (a) The University staff members whose information are exempt in Document 1 hold non-executive positions. It is unreasonable to disclose the names of staff holding non-executive positions.³
 - (b) Disclosure is less likely to be unreasonable where the applicant's motives are commendable; disclosure is more likely to be unreasonable where the applicant's reason for seeking access is out of some particular personal crusade, or for the purpose of embarrassing or otherwise harming the third persons concerned.⁴
 - (c) The absence of any public interest in disclosure of personal affairs information or where disclosure is not in the public interest.⁵
 - (d) The existence in section 13 of the Charter of the right of a person not to have his or her privacy, family or home arbitrarily interfered with.
 - (e) It is unreasonable to release the personal affairs information of persons who have said that they did not want their names and personal information released, as apparent by the outcome of the section 33(2B) consultations.
14. The information subject to review is two Agency staff names that appear on page four of the Applicant's 'application for remission of debt in special circumstances' form. The names in the document are the 'assessed by (name)' and the 'reviewed by (name)'.
15. This information is personal affairs information. Therefore, I must decide whether it would be unreasonable to release it.
16. I have decided it would not be unreasonable to release this information, for the following reasons:
 - (a) I generally agree that, consistent with decision of the Victorian Civil and Administrative Tribunal (VCAT) in *Coulson v Department of Premier and Cabinet*⁶ (**Coulson decision**), whether agency staff personal affairs information is exempt under section 33(1) must be considered in the context of the particular circumstances of each matter.
 - (b) In the Coulson decision, the respondent's submission noted the fact the non-executive staff were not the decision makers in relation to the case. In relation to the document subject to this review, however, the personal affairs information relates to Agency staff who made the initial decision to refuse the Applicant's remission of debt application.
 - (c) In my view, where a person is affected by the decision of a public officer, the affected person should be able to assure themselves the decision was properly made, and by a duly authorised

³ *Coulson v Department of Premier and Cabinet* [2018] VCAT 229 at [124-127], *Proctor v Mornington Peninsula Shire Council* [2018] VCAT 638 at [102-103], *Cowen v Monash University* [2018] VCAT 694, *Smeaton & Smeaton v Victorian WorkCover Authority* [2018] VCAT 914.

⁴ *Gunawan v Department of Education* (unreported, Victorian Civil and Administrative Tribunal, Member Davis, 15 December 1998) 18; *Proctor v Mornington Peninsula Shire Council* [2018] VCAT 638.

⁵ *Mildenhall v Department of Planning and Development* (unreported, Administrative Appeals Tribunal, Member Preuss, 16 August 1995) 6.

⁶ *Ibid.*

person. The disclosure of these staff members' names fulfils this purpose and provides for accountability by decision makers.

- (d) The personal affairs information is not particularly sensitive.
- (e) Nor is the content or nature of the documents sensitive – they relate to and arise from an application of an administrative nature that was made by the Applicant to the Agency for remission of debt associated with [their] university studies.
- (f) I note one of the Agency staff members advised they object to the release of their personal affairs information. However, for the reasons set out above, I consider the right of access to information under the FOI Act outweighs that staff member's personal privacy in the particular circumstances of this matter.
- (g) While I note the Agency's submission in relation to section 13 of the *Charter of Human Rights and Responsibilities 2006* (Vic) (**Charter**), and in addition I note the obligation on public authorities to interpret provisions in Victorian legislation consistent with human rights in the Charter,⁷ I do not consider my decision to disclose personal affairs information of Agency staff contravenes section 13 of the Charter as disclosure of the information in the documents subject to review is not of a nature that would provide for an arbitrary interference with those individuals' 'privacy, family or home' given it arises solely in the context of their professional employment.

17. Accordingly, I have determined the document is not exempt under section 33(1).

Section 25

- 18. 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.
- 19. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁸ 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 25.⁹
- 20. I note the Agency considered the signatures of Agency staff members exempt under section 33(1). The Applicant is not seeking this information. Therefore, the signatures are irrelevant to the request.
- 21. I have considered the effect of deleting irrelevant information from the documents. In my view, it is practicable for the Agency to delete this information, because it would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

- 22. On the information available, I am satisfied the exemption in section 33(1) does not apply to the document. Therefore, I have decided to grant access to the document to the Applicant with the irrelevant information deleted.

Review rights

⁷ Section 38 of the Charter.

⁸ *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].

⁹ *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].

23. 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.¹⁰
24. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹¹
25. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹²
26. 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.
27. 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.¹³

When this decision takes effect

28. I have decided to release documents that contain information relating to the personal affairs of two third parties.
29. The relevant third parties will be notified of my decision and each is entitled to apply to VCAT for a review within 60 days from the date they are given notice.
30. For that reason, my decision does not take effect until that 60 day period expires, or if an application to VCAT is made, until the VCAT proceeding is concluded.

¹⁰ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹¹ Section 52(5).

¹² Section 52(9).

¹³ Sections 50(3F) and (3FA).