

Notice of Decision and Reasons for Decision

Applicant:	'AM8'
Agency:	Department of Education and Training
Decision Date:	24 September 2019
Exemption considered:	Section 30(1)
Citation:	'AM8' and Department of Education and Training (<i>Freedom of Information</i>) [2019] VICmr 116 (24 September 2019)

FREEDOM OF INFORMATION – internal working documents – educational institution – communication between agency officers

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 fresh 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 in the documents.

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

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
24 September 2019

Reasons for Decision

Background to review

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

A full and complete copy of all the information and or the full file held by [specified school] for [name and date of birth of child who] resides with [parent] at [specified address] and is currently enrolled at [specified school]. My name is [Applicant's name] and I am the [parent] of [named child].
2. In its decision, the Agency identified 67 documents falling within the terms of the Applicant's request. It decided to release 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. Section 49M(1) permits an agency to make a fresh decision on an FOI request during a review.
5. On [date], the Agency made a fresh decision to release further information to the Applicant. The fresh decision was made within the required 28 days under section 49M(2).
6. The Agency decided to:
 - (a) release 18 documents in full;
 - (b) release 47 documents in part; and
 - (c) refuse access to two documents in full.
7. The Applicant did not agree with the Agency's fresh decision and, as required by section 49MA(2), I proceeded with my review on the basis of the fresh decision.
8. I have examined copies of the documents subject to review.
9. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
10. I have considered all communications received from the parties, including:
 - (a) the Agency's decision on the FOI request;
 - (b) the information provided with the Applicant's review application; and
 - (c) communications between OVIC staff, the Applicant and the Agency.
11. 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.
12. I note the Applicant also lodged a complaint with OVIC in relation to the processing of the FOI request by the Agency and the complaint was finalised in [month and year].

Review of exemptions

13. The Agency's fresh decision relied on the exemptions under sections 30(1), 33(1) and 38 to refuse access to the documents. The Agency's fresh decision letter sets out the reasons for its decision.

Section 33(1)

14. On [date], the Applicant stated:

... we request that all information not directly related to identification [of] individuals at this stage be made available to me.

15. Accordingly, I have excluded personal affairs information exempted by the Agency from my review as the Applicant does not seek review of this information. I consider this information to be irrelevant to my review.

Section 30(1)

16. Section 30(1) has three requirements:

- (a) the document must disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister; and
- (b) such matter must be made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government; and
- (c) disclosure of the matter would be contrary to the public interest.

17. The exemption does not apply to purely factual material in a document.¹

18. The term 'officer of an Agency' is defined in section 5(1). It includes a member of the agency, a member of the agency's staff, and any person employed by or for the agency, whether that person is one to whom the provisions of the *Public Administration Act 2004* (Vic) apply or not.

Do the documents disclose matter in the nature of opinion, advice, recommendation, consultation or deliberation of an officer?

19. The Agency identified documents of varying nature as relevant to the Applicant's FOI request. The Schedule of Documents in **Annexure 1** describes these various documents.
20. Having reviewed the documents, I am satisfied information exempted by the Agency is in the nature of an Agency officer's opinions, advice and/or recommendations noting the documents contain information relating to staff observations, comments, assessments, diary notes and other forms of internal communications.
21. On [date], the Agency confirmed the Independent Office for School Dispute Resolution (**Independent Office**) is part of the Department of Education and Training. Accordingly, I am satisfied the officer from the Independent Office is an 'officer' of the Agency.

¹ Section 30(3).

Were the communications made in the course of the Agency's deliberative processes?

22. Having reviewed the documents, I am satisfied the above information was provided in the course of the Agency's deliberative processes relating to the provision of educational and developmental services in a Victorian government school.

Would release of the information be contrary to the public interest?

23. In its fresh decision, the Agency stated disclosure would be contrary to the public interest due to:
- (a) the degree of sensitivity of the issues involved in the consideration;
 - (b) disclosure would be likely to inhibit frankness and candour in the making of communications as well as inhibit the independence of officers of making proper and detailed submissions;
 - (c) disclosure would give a part, rather than a complete, explanation for decisions made; and
 - (d) disclosure would lead to confusion relating to the possibilities considered.
24. The Applicant advised OVIC they seek access to the documents:
- (a) to amend false or misleading information in their child's educational records;
 - (b) to obtain an understanding of all information any future educational provider may have access to in relation to the Applicant and their child; and
 - (c) to comprehensively respond to any present or future allegations or investigations against the Applicant.
25. Having carefully reviewed the documents, I am of the view it would not be contrary to the public interest to release certain information in the documents such as:
- (a) a staff member's factual recording or recollection of events;
 - (b) information that provides further clarity in relation to the Agency's decisions; and
 - (c) information that was released to the Applicant by the Agency in other documents or information of which the Applicant would otherwise already be aware.
26. However, the following factors have informed my decision to exempt certain information in the documents on grounds disclosure would be contrary to the public interest:
- (a) I note the sensitivity of the information in the documents. While I consider a parent is entitled to an understanding of an educational institution's decisions in relation to their child, this does not equate to a right of access to all documents prepared by an educational institution particularly where disclosure may undermine the integrity of the educational institution's internal processes designed specifically to address particular sensitive issues.
 - (b) I appreciate the Applicant has a strong personal interest in obtaining access to the information. Furthermore, I acknowledge a broader public interest in disclosure where it is clear from the face of a document there may be a flawed process or legitimate questions are raised as to the appropriateness or fairness of an outcome reached. However, in this case, there is nothing on the face of the documents to suggest there was anything unusual about the Agency's processes. Rather, in this case, I note an allegation made against the Applicant was investigated by another government body with no further action taken against the Applicant.

Therefore, I am not satisfied there is a broader public interest in the disclosure of certain information in the documents.

- (c) I consider the Agency's internal assessment and deliberative processes require its officers to discuss a number of relevant issues before deciding on an outcome. In such circumstances, it is desirable for the Agency officers to seek and exchange opinions in an open and candid way.
- (d) Finally, I consider the disclosure of written records detailing preliminary deliberations and consultations would be reasonably likely discourage or inhibit Agency officers from recording similar communications in a detailed manner in the future. This would be contrary to the public interest as it would have a detrimental effect of the ability of an agency to conduct a thorough and considered process, which in turn would compromise the outcome of any similar process.

Deletion of exempt or irrelevant information

- 27. 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.
- 28. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'² 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 25.³
- 29. I have considered the effect of deleting irrelevant and exempt information from the documents. In my view, it is practicable to delete such information as to do so would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

- 30. Accordingly, I have determined certain information in the documents is exempt under section 30(1) and certain other information is not exempt under section 30(1) and is to be released to the Applicant. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.
- 31. In light of my decision, it is not necessary for me to consider additional exemptions relied on by the Agency such as section 38.

Review rights

- 32. 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.⁴
- 33. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁵
- 34. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁶

² *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].

³ *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].

⁴ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁵ Section 52(5).

35. 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.
36. 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.⁷

When this decision takes effect

37. 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.

⁶ Section 52(9).

⁷ Sections 50(3F) and (3FA).

Annexure 1 – Schedule of Documents

Doc. No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1	[Date]	Student absence learning plan	2	Released in part Section 33(1)	Not subject to review	On [date], the Applicant excluded personal affairs information from the scope of the review. Therefore, this information is not subject to review and is irrelevant.
2	[Date]	Student absence learning plan	2	Released in part Section 33(1)	Not subject to review	See comments for Document 1.
3	[Date]	Student absence learning plan	2	Released in part Section 33(1)	Not subject to review	See comments for Document 1.
4	[Date]	Student absence details report	5	Released in part Section 33(1)	Not subject to review	See comments for Document 1.
5	[Date]	Behaviour management plan	2	Released in part Section 33(1)	Not subject to review	See comments for Document 1.
6	[Date]	Behaviour management plan	2	Released in part Section 33(1)	Not subject to review	See comments for Document 1.
7	[Date]	Behaviour management plan	2	Released in part Section 33(1)	Not subject to review	See comments for Document 1.
8	Undated	Communication history	6	Released in part Sections 30(1), 33(1)	Release in part Sections 30(1), 25	Section 25: See comments for Document 1.

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Doc. No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					I have determined the entry recorded on [date to date] on page 3 is not exempt under section 30(1) and should be released to the Applicant.	<p>Section 30(1): I am satisfied:</p> <ul style="list-style-type: none"> - it would not be contrary to the public interest to disclose information where it relates to an Agency's officer's factual recollection or recording of an incident. Accordingly, such information in the document is not exempt under section 30(1); and - it would be contrary to the public interest to disclose information relating to an Agency's officer's opinions and deliberations as I am satisfied it would be reasonably likely to discourage or inhibit Agency officers from recording similar communications in a detailed manner in the future which would be contrary to the public interest. Accordingly, such information is exempt under section 30(1).
9	Undated	Classroom record	6	Released in part Sections 30(1), 33(1)	<p>Release in part Sections 30(1), 25</p> <p>I have determined the parts of the document exempted by the Agency under section 30(1) are exempt and should remain deleted.</p>	<p>Section 25: See comments for Document 1.</p> <p>Section 30(1): I am of the view it would be contrary to the public interest for this information to be released. Accordingly, such information is exempt under section 30(1). See comments for Document 8.</p>
10	[Date]	Email	2	Released in part	Not subject to review	See comments for Document 1.

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Doc. No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
				Section 33(1)		
11	Undated	Internal Document	5	Released in part Sections 33(1)	Not subject to review	See comments for Document 1.
12	[Date]	Letter	1	Released in part Sections 33(1)	Not subject to review	See comments for Document 1.
13	Undated	Marked up letter	2	Released in part Sections 30(1), 33(1)	Release in part Sections 30(1), 25 I have determined the parts of the document exempted by the Agency under section 30(1) are exempt and should remain deleted.	Section 30(1): I am of the view it would be contrary to the public interest for the annotated comments and opinions in the document to be released. Accordingly, such information is exempt under section 30(1). See comments for Document 8. Section 25: See comments for Document 1.
14	[Date]	Email	3	Released in part Sections 30(1), 33(1)	Release in part Sections 30(1), 25 I have determined the parts of the document exempted by the Agency under section 30(1) are exempt and should remain deleted.	Section 30(1): I am of the view information relating to a proposed class re-engagement plan and the related three recommendations were preliminary in nature. I consider it would be contrary to the public interest to release such information as it is unclear whether the recommendations were implemented or further refined. Accordingly, such information is exempt under section 30(1). Section 25: See comments for Document 1.
15	[Date]	Communication	1	Released in full	Not subject to review	This document was released to the Applicant in

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Doc. No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
		policy				full. Therefore, it is not subject to review.
16	Undated	Letter	1	Refused in full Sections 30(1), 33(1)	Release in part Sections 30(1), 25 I have determined the part of the document exempted by the Agency under section 30(1) is exempt and should remain deleted.	Section 30(1): This is an unsigned document. It is unclear when or why this document was drafted and whether the author maintains this subjective opinion detailed in the document. Accordingly, I consider it would be contrary to the public interest to release such information and it is exempt under section 30(1). Section 25: See comments for Document 1.
17	Undated	Letter	1	Released in full	Not subject to review	See comment for Document 15.
18	[Date]	Resource allocation list	2	Released in full	Not subject to review	See comment for Document 15.
19	Undated	Student enrolment form	7	Released in full	Not subject to review	See comment for Document 15.
20	Undated	Summary document	1	Released in part Section 33(1)	Not subject to review	See comments for Document 1.
21	[Date]	Letter	1	Released in part Section 33(1)	Not subject to review	See comments for Document 1.
22	[Date]	Letter	1	Released in part Section 33(1)	Not subject to review	See comments for Document 1.

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Doc. No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
23	[Date]	Letter	1	Released in full	Not subject to review	See comment for Document 15.
24	[Date]	Letter	1	Released in full	Not subject to review	See comment for Document 15.
25	[Date]	Program form	2	Released in part Section 33(1)	Not subject to review	See comments for Document 1.
26	[Date]	Out of Round Severe Behaviour Application submission	1	Released in part Sections 30(1), 33(1)	Release in part Section 25 The list of documents (in dot points) is to be released to the Applicant with the exception of the individuals' names and position titles which are irrelevant and to be deleted in accordance with section 25.	Section 30(1): The exempted information relates to a list of documents. I am not satisfied the release of the names of the supporting documents would be contrary to the public interest because this information is not particularly sensitive. Additionally, these documents have been released to the Applicant as part of this FOI request. Accordingly, such information is exempt under section 30(1). Section 25: See comments for Document 1.
27	[Date]	Principal Report	2	Released in part Sections 30(1), 33(1)	Release in part Section 25 I have determined the first three paragraphs on page 2 are not exempt under section 30(1) and are to be released to the Applicant.	Section 25: See comments for Document 1. Section 30(1): The exempted information relates to statements made by the Principal as part of an 'out of round' application on behalf of the Applicant's child. I do not consider it would be contrary to the public interest to release this information to the Applicant as it demonstrates the Agency made comprehensive submissions as part of the application process. Accordingly, such information is exempt under section 30(1).

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Doc. No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
28	[Date]	Table	1	Released in full	Not subject to review	See comment for Document 15.
29	Undated	Student education program summary statement	1	Released in full	Not subject to review	See comment for Document 15.
30	[Date]	Program for students with disabilities form	4	Released in part Section 33(1)	Not subject to review	See comment for Document 1.
31	[Date]	Table	5	Released in part Section 33(1)	Not subject to review	See comment for Document 1.
32	[Date]	Program for students with disabilities form	2	Released in part Section 33(1)	Not subject to review	See comment for Document 1.
33	[Date]	Consent form	1	Released in full	Not subject to review	See comment for Document 15.
34	[Date]	Summary document	1	Released in full	Not subject to review	See comment for Document 15.
35	[Date]	Email	3	Released in part Sections 30(1), 33(1)	Release in part Section 25 I have determined the information under the	Section 25: See comment for Document 15. Section 30(1): I am satisfied the exempted information relates to administrative matters that are not particularly sensitive. Additionally,

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Doc. No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					'Status/Additional Information Request' is to be released to the Applicant the exception of any staff names or position titles which are irrelevant and to be deleted in accordance with section 25.	the release of this information would provide the Applicant with an understanding of the status of their child's funding application. I am not satisfied the release of this information would be contrary to the public interest. Accordingly, such information is not exempt under section 30(1).
36	[Date]	Letter	1	Released in part Section 33(1)	Not subject to review	See comment for Document 1.
37	[Date]	Medical report	1	Released in full	Not subject to review	See comment for Document 15.
38	[Date]	Report	8	Released in part Section 33(1)	Not subject to review	See comment for Document 1.
39	[Date]	Report	3	Released in part Section 33(1)	Not subject to review	See comment for Document 1.
40	[Date]	Individual behaviour/social learning plan	1	Released in full	Not subject to review	See comment for Document 15.
41	[Date]	Individual behaviour/social learning plan	1	Released in part Section 33(1)	Not subject to review	See comment for Document 1.
42	[Date]	Individual behaviour/social	1	Released in part	Not subject to review	See comment for Document 1.

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Doc. No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
		learning plan		Section 33(1)		
43	[Date]	Plan	1	Released in part Section 33(1)	Not subject to review	See comment for Document 1.
44	[Date]	Return to School plan	2	Released in part Section 33(1)	Not subject to review	See comment for Document 1.
45	[Date]	Return to School plan	2	Released in part Section 33(1)	Not subject to review	See comment for Document 1.
46	[Date]	Return to School plan	1	Released in part Section 33(1)	Not subject to review	See comment for Document 1.
47	[Date]	Return to School plan	1	Released in full	Not subject to review	See comment for Document 15.
48	[Date]	Support strategies document	3	Released in part Section 33(1)	Not subject to review	See comment for Document 1.
49	Undated	Publication	20	Released in full	Not subject to review	See comment for Document 15.
50	Undated	Document	3	Refused in full Sections 30(1), 33(1)	Release in part Section 25 The final dot point on page 1 is not exempt under section 30(1) and is to be released	Section 25: See comment for Document 1. Section 30(1): Having reviewed this document, I am satisfied the information in the document is not particularly sensitive and its release would not be contrary to the public interest.

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Doc. No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					to the Applicant with exception of the names of third parties which are irrelevant and to be deleted in accordance with section 25.	Accordingly, such information is not exempt under section 30(1).
51	[Date]	Progress report	1	Released in full	Not subject to review	See comment for Document 15.
52	[Date]	Handwritten Document	1	Released in full	Not subject to review	See comment for Document 15.
53	[Date]	Reading test results	4	Released in full	Not subject to review	See comment for Document 15.
54	[Date]	Publication	35	Released in full	Not subject to review	See comment for Document 15.
55	[Date]	Record of meeting	3	Released in part Section 33(1)	Not subject to review	See comment for Document 1.
56	[Date]	Summary of program support group meeting	1	Released in part Section 33(1)	Not subject to review	See comment for Document 1.
57	[Date]	Summary of support meeting	4	Release in part Section 30(1), 33(1)	Release in part Section 25 I have determined the information in the cell under	Section 30(1): Given the Agency's interactions with the Applicant, I am satisfied the Applicant would be aware of this information and do not consider this information is particularly sensitive. Therefore, the release of this information would

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Doc. No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					the column titled 'Actions' and the row titled 'Key Actions Arising' on Page 3 is not exempt under section 30(1) and is to be released to the Applicant.	not be contrary to the public interest. Accordingly, such information is not exempt under section 30(1). Section 25: See comment for Document 1.
58	[Date]	Internal Document	1	Refused in full Sections 30(1), 33(1)	Refuse in full Section 30(1)	Section 30(1): This document is a staff member's personal record of incidents as well as their opinions. I am of the view disclosure of this information would be contrary to the public interest as it would stifle open and candid internal communications. Accordingly, such information is exempt under section 30(1).
59	[Date]	Internal Document	1	Refused in full Sections 30(1), 33(1)	Refuse in full Section 30(1)	See comment for document 58.
60	[Date]	Internal Document	1	Released in part Section 33(1)	Not subject to review	See comment for Document 1.
61	[Date]	Notes from telephone call	2	Release in part Sections 30(1), 33(1)	Release in part Sections 30(1), 25 I have determined the first paragraph on page 2 is not exempt under section 30(1) and it is to be released to the Applicant with the exception of any names and identifying information	Section 30(1): See comments for Document 8. Section 25: See comment for Document 1.

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					<p>which is irrelevant and to be deleted in accordance with section 25.</p> <p>The remainder of the information exempted by the Agency under section 30(1) is exempt and is to remain deleted.</p>	
62	[Date]	Summary of student support meeting	6	Release in part Sections 30(1), 33(1)	<p>Release in part Section 25</p> <p>I have determined the information on Page 6 under the column titled 'Minutes' is not exempt under section 30(1) and it is to be released to the Applicant.</p>	<p>Section 30(1): See comments for Document 57.</p> <p>Section 25: See comment for Document 1.</p>
63	[Date]	Summary of SSG meeting	3	Release in part Sections 30(1), 33(1)	<p>Release in part Sections 30(1), 25</p> <p>I have determined the parts of the document exempted by the Agency under section 30(1) are exempt and should remain deleted.</p>	<p>Section 25: See comment for Document 1.</p> <p>Section 30(1): The deleted information relates to a list of queries from a staff member prior to a meeting. I do not consider the release of the questions would add any value to the Applicant's understanding considering information that has already been released to the Applicant. Additionally, I am satisfied disclosure would be reasonably likely to discourage or inhibit Agency officers from recording similar communications in a detailed manner in the future which would</p>

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						be contrary to the public interest. Accordingly, such information is exempt under section 30(1).
64	[Date]	Summary of student support meeting	3	Release in part Section 33(1)	Not subject to review	See comment for Document 1.
65	[Date]	Summary of student support meeting	3	Release in part Section 33(1)	Not subject to review	See comment for Document 1.
66	[Date]	Summary of student support meeting	5	Release in part Section 33(1)	Not subject to review	See comment for Document 1.
67	[Date]	Summary of student support meeting	4	Release in part Section 33(1)	Not subject to review	See comment for Document 1.