[Insert agency letterhead]

[Date]

Ref: [agency reference]

[Third party name]

**By email: [insert email]**

Dear [Name]

**We are required to consult with you regarding a freedom of information request**

Depending on the circumstances of the request, it may be quicker and reduce formality to call the third party to discuss the request and what is required of them, instead of writing a letter. If you call them, ensure you keep a file note to record the third party’s views on disclosing their information (*Professional Standard 7.3*).

It may be necessary to disclose the identity of the applicant to the third party, so they can decide whether to consent or object to disclosing their information. However, an agency should consider its obligations under the *Privacy and Data Protection Act 2014* (Vic) when disclosing an applicant’s identity to a third party.

We received a request under the *Freedom of Information Act 1982* (Vic) (**FOI Act**) relating to [insert a brief description of the request and why the third party's information is in the document – for example, the request relates to an incident at your workplace that occurred on 2 April 2018, which you witnessed]. Some document[s] relevant to this request contain [your/your organisation’s] information.

Under [use the following applicable section or sections and delete the others: section 29(2), 29A(1D), 31(5), 31(6), 31A(2), 33(2B), 34(3), 35(1A)] of the FOI Act, before we can make a decision on the request we are required to notify you and seek your views as to the disclosure of your information in the document[s].

**[Your/your organisation’s] information in the document[s]**

We located document[s] relevant to the applicant’s request, which contain [outline the relevant information – for example, your witness statement which contains your recollection of the incident, and your name, signature and contact details].

This description should be specific enough for the third party to identify their information in the document so they can properly consider whether they consent to disclosing it to the applicant. You may also consider compiling a table of relevant documents, noting the third party’s information, depending on the circumstances of the matter. Or, you may consider providing a copy of the document to the third party directly if it is practicable to do so.

**[Your/your organisation’s] views on disclosing the information in the document[s]**

We are seeking [your/your organisation’s] views as to whether disclosure of the document[s] should occur.

The FOI Act contains a number of exemptions that may be applied to deny access to a document in full or in part. In relation to the present request, we identified that section [insert relevant section] of the FOI Act may apply to [your/your organisation’s] information. As we noted above, before we can make a decision on the request, we must notify [you/your organisation] and seek [your/your organisation’s] views as to the disclosure of the information.

To assist with forming [your/your organisation’s] views on disclosure of the information, we outlined below what must be established for the exemption in [insert section] of the FOI Act to apply.

[Insert requirements of the relevant exemption – two examples are provided below:

**Example 1 – section 33(1) of the FOI Act**

A document is exempt under section 33(1) of the FOI Act if two conditions are satisfied:

1. 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; and
2. this disclosure would be unreasonable.

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.

**Example 2 – section 34(1)(b) of the FOI Act**

A document is exempt under section 34(1)(b) of the FOI Act if three conditions are satisfied:

1. the document would disclose information acquired by an agency from a business, commercial or financial undertaking;
2. the information relates to matters of a business, commercial or financial nature; and
3. the disclosure of the information would be likely to expose the undertaking unreasonably to disadvantage.]

The note to *Professional Standard 7.3* outlines an agency should ensure a third party is aware of the applicable exemption when consulting and what must be established for the exemption to apply to the information or document. This helps the applicant understand what must be made out for the exemption to apply and is aimed at producing more meaningful responses from third parties which may assist an agency in making their decision on the request.

Please carefully consider whether [you/your organisation] consent[s] or object[s] to us disclosing the document[s] to the applicant.

[Your/your organisation’s] views are one factor we are required to consider. Please note, however, if you object to us disclosing the document[s] to the applicant, we may still be required to release [it/them] if we are not satisfied an exemption in the FOI Act applies.

**Your review rights**

We will take [your/your organisation’s] views into consideration regardless of whether [you/your organisation] consent[s] or object[s] to disclosing the document[s].

However, if [you/your organisation] *consent[s]* to disclosing the document[s] and we decide to release [it/them] to the applicant, we will not notify you of our decision and you cannot apply to the Victorian Civil and Administration Tribunal (**Tribunal**) for a review of our decision to grant access.

If [you/your organisation] *objects[s]* to disclosing the document[s] and we decide to release [it/them] to the applicant, we will notify you of our decision and you may apply to the Tribunal for a review of our decision to grant access.

Under sections 33(3A), 34(3B) and 35(1D) of the FOI Act, an agency is not required to notify a third party who consents to the release of their information in a document if the agency decides to release it. Regardless, depending on the circumstances of the matter, you may wish to contact that third party to let them know when the relevant document is being provided to the applicant.

**What you need to do**

Please advise by [insert date] whether [you/your organisation] consent[s] or object[s] to us disclosing the document[s] to the applicant. If you object, please outline your reasons for objecting.

If we do not hear from you by this date, we will proceed to make a decision on the request without [your/your organisation’s] views.

If you have any questions about this letter, please contact us on [insert telephone number] or [insert email address] and quote [agency reference].

Yours sincerely

[Name of officer]  
[Position title]