[Insert agency letterhead]

[Date]

Ref: [agency reference]

[Applicant name]

**By email: [insert email]**

Dear [Name]

**Notice of decision – request for documents under the *Freedom of Information Act 1982* (Vic)**

1. This letter contains my decision on behalf of [insert agency name] in relation to your request for documents under the *Freedom of Information Act 1982* (Vic) (**FOI Act**).
2. In making my decision, I have considered the object of the FOI Act, which is to create a general right of access to information, limited only by exceptions and exemptions necessary to protect essential public interests, privacy, and business affairs.
3. My decision and reasons are provided below. [A schedule outlining the documents and my decision is also attached to this letter.]

Where it is practicable, it is suggested that a schedule of documents is provided to the applicant to assist their understanding of the decision.

**Background**

[Use the below paragraph if the request is clear and valid from the outset, otherwise delete]

1. On [insert date] you requested:

 [*Insert the terms of the request*]

[Use the two paragraphs below if clarification was required, otherwise delete]

1. On [insert date] you made a request. On [insert date] we advised your request was not valid under section 17(2) of the FOI Act because the terms of your request were not clear enough to enable us to reasonably identify documents relevant to your request.
2. After you clarified your request, we considered it to be valid under section 17 of the FOI Act. Your request sought access to:

 [*Insert the terms of the clarified request*]

[Use the two paragraphs below if the application fee was not paid or evidence of hardship not provided, otherwise delete]

1. On [insert date] you made a request. On [insert date] we advised your request was not valid under section 17(2A) of the FOI Act, because you did not pay the application fee. We requested you to pay the application fee of $XX.XX or provide evidence that paying the application fee would cause you hardship.
2. On [insert date] you [paid the application fee **OR** provided evidence of hardship] and we considered your request valid.

Add contextual or other relevant information regarding the request where necessary. It may be useful to describe the context in which the document was created or what the request relates to generally. For example, ‘your request seeks access to various documents relating to a reported incident in which you were involved on 3 May 2018’.

**Document[s] relevant to your request**

1. A thorough and diligent search for document[s] within the terms of your request was undertaken. The following searches were conducted:

[Describe the searches undertaken]

For example:

* we made enquiries with the relevant officers who responded to the incident;
* we searched our hard copy filing systems;
* we searched our electronic records management system using your name as a key word to search for relevant documents.

Under *Professional Standard 8.4* you are only required to explain your searches when you cannot find a document or it not longer exists, however it is good practice to provide a brief summary of searches undertaken to demonstrate the steps taken to find documents even if you believe you located all relevant documents.

1. On this basis, we located [describe how many documents were located] relevant to the terms of your request.

When describing how many documents were discovered, try to be as specific as possible. Where practicable, specify exactly how many documents were discovered (for example, ‘32 documents’). In other instances, it may be appropriate to be more general (for example, ‘your patient file’).

1. These documents [insert a description of the documents or types of documents discovered – for example, the documents relate to the incident you were involved in on 3 May 2018, and include the brief, witness statements, report, handwritten notes and emails].

Under *Professional Standard 8.3(b)*, in a written decision, other than in accordance with sections 27(2) or 33(6) of the FOI Act, an agency must take reasonable steps to describe the documents or types of documents discovered.

Where practicable, an agency should prepare a schedule of documents. This schedule should provide a brief description of each document, how many pages the document contains, and your decision on each document. An example is provided at the end of this letter.

[Use the below paragraph if the FOI Act does not apply to one or more documents, otherwise delete]

1. The FOI Act does not apply to some of the documents you requested because [insert why the FOI Act does not apply to the relevant document].

[Use the below paragraph if a requested document does not exist, otherwise delete]

1. [Insert description of the document] does not exist, and therefore it was not located, because [explain why the document does not exist].

[Use the below paragraph if a requested document could not be located after conducting a thorough and diligent search, otherwise delete]

1. After conducting the searches outlined above, [insert a description of the document] could not be located because [explain why the document could not be located].

Under *Professional Standard 8.4*, if an agency cannot locate a document or a document does not exist in relation to a request or part of a request, it must:

1. where a search was conducted, provide a summary of the searches undertaken for the document, which may include:
	1. the locations searched by the agency;
	2. the method or type of searches undertaken; and
	3. where applicable, the key words used in the searches; and
2. where practicable, explain why the relevant document does not exist or could not be located.

There may be several reasons why you could not locate the document. For example:

* As far as it is practicable for you to determine, the document may never have existed or been held by your agency. If so, explain this in your correspondence and provide reasons for why you believe this;
* The document may have previously been in your agency’s possession, but it was destroyed in accordance with a Public Record Office Victoria Retention and Disposal Authority (**RDA**) and your agency’s internal processes. If so, outline which RDA authorised the destruction of the document and when the document was destroyed. Where possible, provide a copy of the document destruction record as evidence; or
* Despite conducting a thorough and diligent search, your agency simply may not be able to locate the document. If so, refer the applicant to the summary of searches outlined in the previous section to demonstrate the steps taken to locate them and explain why you believe they could not be located.

**Decision on each document**

1. I have decided to:
	1. release [number of documents] in full;
	2. release [number of documents] in part;
	3. refuse access to [number of documents] in full.

Under *Professional Standard 8.3(a)*, in a written decision, other than in accordance with sections 27(2) or 33(6) of the FOI Act, an agency must take reasonable steps to identify whether documents are being released in full, released in part or refused in full.

When providing information about your decision, try to be as specific as possible. Where practicable, outline how many documents are released in full, in part or refused in full. For example, ‘I decided to release 15 documents to you in full, 10 documents in part and I refused access to one document in full’. In some instances, it may be appropriate to be more general. For example, ‘I decided to release your entire patient file to you in part’.

**Reasons for decision**

Under section 27(1)(a) of the FOI Act, an agency must state the findings on any material questions of fact, referring to the material on which those findings were based, and the reasons for the decision. Similarly, *Professional Standard 8.2* requires an agency to explain why each exemption applies and address each limb of the exemption. It is not sufficient to simply state the relevant exemption applies.

1. In making my decision, I applied the following exemption[s]: [insert the exemptions you are relying on – for example, sections 30(1) and 33(1) of the FOI Act].

Insert a summary of each exemption you are relying on and why the exemption applies. An example of how you should do this is provided below.

***Section 33(1) of the FOI Act – example***

1. I applied the exemption in section 33(1) of the FOI Act to [describe the types of documents or information in the documents]. This exemption relates to documents which affect personal privacy of people other than an applicant.
2. 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 an applicant; and
	2. such disclosure would be ‘unreasonable’.

*Personal affairs information of individuals other than yourself*

1. The Victorian Civil and Administrative Tribunal (**Tribunal**) 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.
2. The document[s] contain [describe the information], which I am satisfied is personal affairs information.

Describe the nature of the information to explain why it is personal affairs information. Under section 27(2)(a) of the FOI Act, you do not have to include any information in your decision that would reveal exempt information.

*Disclosure of the personal affairs information would be unreasonable*

1. The concept of ‘unreasonable disclosure’ involves balancing the competing public interest in the disclosure of official information with the personal interest in privacy.
2. [Explain why it would be unreasonable to disclose the relevant information or document]

Provide enough detail for the applicant to understand why it is unreasonable to release the personal affairs information. Some factors to consider when doing this may include:

* the nature of the personal affairs – is the information sensitive? If so, why?
* the circumstances in which the information was obtained – was it obtained in confidential circumstances? If so, how?
* the applicant’s interest in the information – why do they want the information and what will they do with it?
* will any public interest be promoted by releasing the information?
* would the individuals to whom the information relates object, or would be reasonably likely to object, to release of the information?
* the extent to which the information is available to the public – is it widely available?
* the likelihood of further disclosure of the information, if released.

**Deletion of exempt or irrelevant information**

Under section 27(1)(c) of the FOI Act, if an agency provides access to an edited copy of a document in accordance with section 25 of the FOI Act, it must state that the document is a copy of a document from which exempt or irrelevant information has been deleted.

1. Section 25 of the FOI Act requires an agency to grant access to an edited copy of a document containing exempt or irrelevant information if it is practicable for the agency to delete that information, and if the applicant is agreeable to receiving an edited copy.
2. Determining what is ‘practicable’ requires us to consider the effort involved in making the relevant deletions and the effectiveness of those deletions – that is, whether editing the document would render it meaningless.
3. Some of the information in the document[s] is not relevant to the scope of your request because [insert reasons to explain why the information is not relevant – for example, the information relates to the name of the accused, which you agreed to exclude from the scope of your request].

[Use the below paragraph if you are providing access to edited copies of a document, otherwise delete]

1. In the current circumstances, I found it was practicable to provide you with an edited copy of the document[s] with [exempt and/or irrelevant] information deleted.

[Use the below paragraph if you are not providing access to edited copies of a document, otherwise delete]

1. In the current circumstances, I found it was not practicable to provide you with an edited copy of the document[s] because [insert reasons – for example, editing the document would render it meaningless].

[Use this section if documents are being released to the applicant and access charges are payable, otherwise delete]

**Access charges**

1. The *Freedom of Information (Access Charges) Regulations 2014* and section 22 of the FOI Act outline that an agency may impose charges for providing access to a document and sets out how to calculate those charges.

[Use the below three paragraphs if you require payment of access charges, otherwise delete]

1. Before I can provide access to the document[s], you must pay access charges of $XX.XX.
2. We calculated these charges on the following basis:

|  |  |
| --- | --- |
| **Type of charge** | **How the charge was calculated** |
| Searching for documents | No. of hours | Cost per hour | Sub-total |
| XX | $XX.XX | $XX.XX |
| Supervision time | No. of hours | Cost per hour | Sub-total |
| XX | $XX.XX | $XX.XX |
| Photocopying (black and white A4) | No. of pages | Cost per page | Sub-total |
| XX | $XX.XX | $XX.XX |
| Other charges |  |  |  |
|  |  |  |
| **Access charges** | **$XX.XX** |
| **Deposit previously paid** | **$XX.XX** |
| **Total access charges**  | **$XX.XX** |

1. You can pay the required access charges by [bank cheque/money order/bank transfer/credit card/cash].

Outline the payment methods your agency uses to process access charges. The payment methods an agency offers must comply with *Professional Standard 4.3*, which outlines an agency requiring payment of an access charges deposit or access charges must take reasonable steps to provide options for payment of the relevant charge in line with accepted payment methods the agency provides for other services of a similar financial sum.

[Use the below paragraph if you are waiving access charges, otherwise delete]

1. In this instance, I decided to waive the access charges and you do not need to pay anything.

[Use the below section if you are releasing a document or part of a document, otherwise delete]

**Receiving a copy of the document[s]**

1. [Outline when and how the applicant may access the document]

Outline how the applicant will receive access to the document, such as whether they will receive a hard copy, a USB, an invitation to inspect the documents at your agency’s premises.

And, outline when the applicant will receive access to the document, taking into account:

* whether the applicant is required to pay access charges;
* relevant notice periods (for example, if you decided to release an individual’s personal affairs information and that individual did not consent to release).

[Use the two paragraphs below if any third party has a right to appeal decision, otherwise delete]

1. I note that in this instance [a third party has/third parties have] the right to apply for a review of my decision to release their information. The [third party has/parties have] 60 days from the date they are notified of this decision to apply for a review.
2. I cannot release this information until the end of the 60 day appeal period and I have confirmed that no application for review has been made by [a/the third party].

[Use below section if you decided to refuse access to a document in part or in full, otherwise delete]

**Your review rights**

1. If you are not satisfied with my decision you have the right to apply for a review of my decision by the Information Commissioner under section 49A(1)(a) of the FOI Act.
2. A review application must be in writing, identify the decision to be reviewed and the agency who made it.
3. An application must be made to the Information Commissioner within 28 days from the day you receive this letter.

[Use the below paragraphs if any third party has a right to appeal decision, otherwise delete]

1. As I noted previously, I cannot release certain documents to you until the expiry of the 60 day third party appeal period. If you believe you will be unsatisfied with my decision you should make an application to the Information Commissioner to preserve your review rights.
2. The Office of the Victorian Information Commissioner’s (**OVIC**) website has a review form you may download, which contains more information about the review process and what you can expect. OVIC’s contact details are:

Office of the Victorian Information Commissioner

PO Box 24274

Melbourne VIC 3001

Email: enquiries@ovic.vic.gov.au

Phone: 1300 00 6842 (1300 00 OVIC)
www.ovic.vic.gov.au

[Use the below section if a document cannot be located or does not exist, otherwise delete]

**Your complaint rights**

1. Under section 61A of the FOI Act you have the right to make a complaint to the Information Commissioner if a document you requested under the FOI Act does not exist or could not be located.
2. A complaint must be in writing, set out the nature of the complaint, and identify the agency, principal officer or Minister concerned.
3. A complaint must be made to the Information Commissioner within 60 days after the action or conduct complained of occurred.
4. OVIC’s website has a complaint form you may download, which contains more information about the complaint process and what you can expect from it.

**More information**

1. If you have any questions about this decision, please contact me on [insert phone] or by email at [insert email] and quote [agency reference].

Yours sincerely

[Name of officer]

[Position title]

Under section 27(1)(b) of the FOI Act, where a decision relates to an agency, it must state the name and designation of the person giving the decision. Further, section 26(1) of the FOI Act outlines a decision on a request can only be made on behalf of an agency by the responsible Minister or the principal officer of the agency or by an authorised agency officer.

**Schedule of documents**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No.** | **Date of document** | **Document description** | **No. of pages** | **Decision** |
| 1 | [insert date] | [insert document description] | [insert number of pages] | [insert your decision on the document, including whether you decided to release it in full, in part or refuse in full. If you decide to release a document in part or refuse in full, also insert the exemption you relied on to refuse access] |