

## Notice of Decision and Reasons for Decision

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Applicant:	'AR2'
Agency:	The Royal Women's Hospital
Decision date:	11 November 2019
Exemption considered:	Section 33(1)
Citation:	'AR2' and The Royal Women's Hospital ( <i>Freedom of Information</i> ) [2019] VICmr 156 (11 November 2019)

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FREEDOM OF INFORMATION – hospital records – child’s birth details – date and time of birth – weight at birth

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 deny access to the documents sought by the Applicant.

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  
11 November 2019

## Reasons for Decision

### Background to review

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

New born baby [gender] record – [named] mother, [Applicant's name] father.
2. The Applicant states he is the father of the child, whose information is the subject of the FOI request.
3. In its decision, the Agency identified certain documents within the scope of the Applicant's request. The Agency decided to deny access to the documents in full.

### Review

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. The Applicant indicated they seek access to the date and time of birth and the baby's weight at birth only.
6. Based on the refined scope of information sought by the Applicant, I have examined copies of relevant documents subject to review.
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 review application and subsequent information provided to OVIC; and
  - (c) the Agency's submission dated 24 October 2019.
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 exemptions

10. The Agency relies on section 33(1) to deny access to the documents. The Agency's decision letter sets out the reasons for its decision.

### **Section 33(1)**

11. 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;<sup>1</sup> and
  - (b) such disclosure would be 'unreasonable'.

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<sup>1</sup> Sections 33(1) and (2).

12. 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.<sup>2</sup>
13. 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.
14. In deciding whether disclosure of a document would involve the unreasonable disclosure of a third party's personal affairs information, an agency must notify that person an FOI request has been received for documents containing their personal information and seek their view as to whether disclosure of the document should occur.<sup>3</sup> However, this obligation does not arise if:
  - (a) the notification would be reasonably likely to endanger the life or physical safety of a person, or cause them undue distress, or is otherwise unreasonable in the circumstances;
  - (b) the notification would be reasonably likely to increase the risk to the safety of a person experiencing family violence; or
  - (c) it is not practicable to do so.<sup>4</sup>
15. I note the following information provided by the Applicant in support of his review application:
  - (a) he is the father of the child;
  - (b) he needs the information to register the child with Victorian Births, Deaths and Marriages – as well as for Medicare and for other services;
  - (c) the mother of the child will not provide the information he seeks to him; and
  - (d) he is currently pursuing legal action to obtain access to his children.
16. I have also reviewed the Agency's submission in this matter. This includes confidential information, as well as the following information:
  - (a) the Agency is unable to confirm the Applicant's relationship to the child; and
  - (b) while third party consultation was attempted, it was unsuccessful.

*Would disclosure of the document involve the disclosure of personal affairs information?*

17. I am satisfied the information sought by the Applicant is the personal affairs information of a person other than the Applicant.

*Would disclosure of the information be unreasonable in the circumstances?*

18. I have given weight to the following factors in determining whether disclosure of the personal affairs information sought by the Applicant would be unreasonable in the circumstances:
  - (a) the nature of the personal affairs information;

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<sup>2</sup> Section 33(9).

<sup>3</sup> Section 33(2B).

<sup>4</sup> Section 33(2C).

- (b) the circumstances in which the information was obtained by the Agency;
  - (c) the Applicant's interest in the information (including their purpose for seeking access to the document); and
  - (d) whether the individuals to whom the information relates object or would be likely to object to the release of the information.
19. Based on the information before me, I have made the following findings upon which my decision is based:
- (a) While the Applicant states he is the father of the child, and I accept a parent of a child has a strong interest in obtaining information about their child, based on the information provided by the Applicant, I am unable to verify his legal relationship to the child. This factor weighs against disclosure.
  - (b) While the child's mother was unable to be contacted by the Agency, I am of the view she would be reasonably likely to object to disclosure of the information to the Applicant under the FOI Act in circumstances where the Applicant states she will not provide him with the information sought. This factor weighs against disclosure.
  - (c) I consider the nature of the personal affairs information sought is sensitive given the above circumstances. This factor weighs against disclosure.
  - (d) The Agency obtained the information during the provision of a health service to third parties other than the Applicant (ie the child and its mother). This factor weighs against disclosure.
  - (e) Section 33(2A) also requires that, in deciding whether disclosure of a document would involve the unreasonable disclosure of information relating to the personal affairs of any person, I must take into account whether the disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person. In the circumstances of this matter, I am unable to discount the possibility that disclosure of the information sought would not endanger the life or physical safety of any person. This factor weighs against disclosure.
20. Based on the information before me and the circumstances of this matter, I am satisfied it would be unreasonable to disclose the personal affairs information sought by the Applicant. Accordingly, the documents sought are exempt under section 33(1).

***Deletion of exempt or irrelevant information***

21. 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.
22. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>5</sup> 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.<sup>6</sup>

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<sup>5</sup> *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].

<sup>6</sup> *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. In this matter the Applicant is seeking access to certain information in the documents subject to review only. I am satisfied it would not be practicable to provide the Applicant with an edited copy of the documents as I have determined all information sought is exempt under section 33(1).

### **Conclusion**

24. On the information available, I am satisfied section 33(1) applies to the information sought by the Applicant.
25. As I am satisfied it would not be practicable to provide the Applicant with an edited copy of the documents, the documents are exempt in full.

### **Review rights**

26. 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.<sup>7</sup>
27. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>8</sup>
28. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>9</sup>
29. 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.
30. 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>10</sup>

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

31. My decision does not take effect until the relevant review period (stated above) expires. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

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<sup>7</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>8</sup> Section 52(5).

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

<sup>10</sup> Sections 50(3F) and (3FA).