

Notice of Decision and Reasons for Decision

Applicant:	'AR9'
Agency:	Department of Health and Human Services
Decision date:	14 November 2019
Exemption considered:	Section 33(1)
Citation:	'AR9' and Department of Health and Human Services (<i>Freedom of Information</i>) [2019] VICmr 163 (14 November 2019)

FREEDOM OF INFORMATION – personal affairs information – Redevelopment of Acute and Psychiatric Directions (RAPID) report – medical records – alert note

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 is the same as the Agency's decision in that I have decided to refuse access to parts of the documents.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
14 November 2019

Reasons for Decision

Background to review

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

I request all files, 'documents', 'record', and all 'document of an agency or document of the agency' and anything that relates in relation to the above named person [Applicant] at any and all times admitted to the [medical institution] in [month] or [month] of [year]: Including any and all times of all matters and events that has followed before or afterwards: Request all the files in its entirety, including all names involved, departments, authorities, etc, for legal reasons and compensation, to clear my name...

2. Following consultation with the Agency, the Applicant clarified the initial request.

3. The clarified request was for access to the following documents:

I, [Applicant], seek my medical and psychiatric records held by DHHS.

4. In its decision, the Agency identified one document (the **Document**) falling within the terms of the Applicant's request. The Agency granted access to the Document in part.

Review

5. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access in full.
6. Section 49M(1) permits an agency to make a fresh decision on an FOI request during a review.
7. On 5 September 2019, the Agency made a fresh decision to release additional material in the Document to the Applicant. I note the fresh decision provided to the Applicant is dated 5 August 2019 in error.
8. The Applicant did not agree with the Agency's fresh decision. As required by section 49MA(2), I proceeded with my review on the basis of the fresh decision.
9. The Applicant advised they do not seek the personal affairs information of the Agency officer who performed the administrative function of retrieving the Document. Accordingly, this review does not consider the Agency's exemption of that information.
10. I have examined a copy of the Document subject to review.
11. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
12. I considered all communications and submissions received from the parties, including:
 - (a) the Agency's decision on the FOI request;
 - (b) information provided with the Applicant's review application; and
 - (c) the Agency's submission dated 18 October 2019.
13. 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

14. The Agency relied on the exemptions under sections 30(1) and 33(1) to refuse access to parts of the Document. The Agency's decision letter sets out the reasons for its decision.

Section 33(1) – Document containing personal affairs information

15. 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
 - (a) such disclosure would be 'unreasonable'.

Does the document contain personal affairs information?

16. Information relates to the 'personal affairs' of a person if it is reasonably capable of identifying them, or of disclosing their address or location.²
17. It has also been held information relates to an individual's personal affairs if it 'concerns or affects that person as an individual'.³
18. 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 identify a third party.⁴
19. The Document contains the first name and surname of 19 health care practitioners. It also contains five alert notes.
20. I am satisfied the names of the health care practitioners and the alert notes are reasonably capable of identifying the third parties particularly in light of the information in the Document that was released to the Applicant.
21. Accordingly, I am satisfied the Document contains the personal affairs information of individuals other than the Applicant.

Would release of the personal affairs information be unreasonable?

22. The concept of 'unreasonable disclosure' involves determining whether the public interest in disclosure of official information is outweighed by the personal interest in privacy.
23. I adopt the view expressed in *Victoria Police v Marke*⁵ by the Supreme Court of Victoria Court of Appeal in which it was held there is 'no absolute bar to providing access to documents which relate to the personal affairs of others', and the exemption under section 33(1) 'arises only in cases of unreasonable disclosure' and '[w]hat amounts to an unreasonable disclosure of someone's personal affairs will necessarily vary from case to case'.

¹ Sections 33(1) and (2).

² Section 33(9).

³ *Hanson v Department of Education & Training* [2007] VCAT 123 at [9].

⁴ *O'Sullivan v Department of Health and Community Services (No 2)* [1995] 9 VAR 1 at [14]; *Beauchamp v Department of Education* [2006] VCAT 1653 at [42].

⁵ [2008] VSCA 218 at [76].

24. As also stated in *Victoria Police v Marke*, '[t]he protection of privacy, which lies at the heart of section 33(1), is an important right that the FOI Act properly protects. However, an individual's privacy can be invaded to a lesser or greater degree'.⁶

25. In determining whether disclosure of the personal information in the document would be unreasonable, I have considered the following factors:

(a) The nature of the personal affairs information and the circumstances in which the information was obtained

The nature of the personal affairs information is the first name and surname of 19 health care practitioners, and five alert notes.

The information was obtained in the context of providing mental health services to the Applicant.

In the circumstances, I consider this factor neither weighs in favour or against disclosure.

(b) The Applicant's interest in the information, and whether their purpose for seeking the information is likely to be achieved

The FOI Act provides a general right of access that can be exercised by any person, regardless of their motive or purpose for seeking access to a document. However, the reasons why an applicant seeks access a document is a relevant consideration in determining whether disclosure would be unreasonable.⁷

The terms of the Applicant's initial request indicate they seek access to the documents 'for legal reasons and compensation, to clear my name'.

The Agency submits the Document is a copy of the Applicant's Redevelopment of Acute and Psychiatric Directions (**RAPID**) history. RAPID forms part of a statewide information system that stores all client service level information collected by public clinical mental health services.

The information recorded in RAPID is a select data set of information that was extracted from the more comprehensive, Client Management Interface (**CMI**) system used by each public mental health service attended by the Applicant.

Accordingly, the RAPID history is an incomplete extract of the Applicant's medical treatment. The information stored on the CMI of each public mental health service provides more contextual and detailed information in relation to the Applicant's medical treatment. The CMI of each public mental health service is inaccessible by the Agency.

The Agency further submits:

...releasing the names of staff working at the mental health services...will not further the Applicant's interest.

Furthermore, as the department only holds a select set of data provided by the mental health services the Applicant attended for the purpose of monitoring and reporting, it is more appropriate for the mental health service who recorded the information, and who has a complete record of the interaction, to make an assessment of what information should be released to the Applicant at this point in time.

⁶ [2008] VSCA 218 at [79].

⁷ *Victoria Police v Marke* [2008] VSCA 218 at [104].

The department has already released the names of all mental health services the Applicant attended and the dates [they] attended them. This is sufficient information to enable the Applicant to seek more comprehensive records from the mental health services directly. To further assist the Applicant in this process, we have also provided the contact details for each of the health services [they] attended.

This factor weighs against disclosure.

(c) Whether any public interest would be promoted by release of the information

While I acknowledge the Applicant's personal interest in seeking access to the information, there is no information before me to suggest the public interest would be promoted by the release of the personal affairs information of any third parties captured. This factor weighs against disclosure.

(d) Whether the individuals to whom the information relates object, or would be likely to object, to the release of the information

I do not have any information before me as to the views of the persons to whom the information relates. The Agency submits consultation was deemed impracticable due to:

- (a) the time and effort involved in consulting with the individuals; and
- (b) the context in which the information is shared by health services within the department.

Having considered the incomplete nature of the information and the circumstances in which it was obtained, I am of the view the individuals whose personal affairs information is contained in the documents would be likely to object to the release of that information. This factor weighs against disclosure.

(e) Whether release of the information could lead the persons to whom it relates suffering stress and anxiety

Having considered the incomplete nature of the information and the circumstances in which it was obtained, I consider it reasonably likely release of the Document could lead to the persons to whom it relates suffering stress and anxiety. I consider this factor, also when considered in combination with the factor immediately above, weighs against disclosure.

(f) Whether the disclosure of the information would, or would be reasonably likely to endanger the life or physical safety of any person⁸

I must consider section 33(2A) in determining if release of the personal affairs information of third parties would be unreasonable. This provision requires that I consider whether disclosure of information in the Document would, or would be reasonably likely, to endanger the life or physical safety of any person.

Having reviewed the document, I am of the view there are reasonable grounds to consider concerns exist in relation to the effect of disclosure of this information to the Applicant on the safety of third parties.

26. Having weighed up the above factors, I am satisfied disclosure of the personal affairs information contained in the Document is unreasonable in the circumstances. Accordingly, I am satisfied the Document is exempt in part under section 33(1).

⁸ Section 33(2A).

27. As I am satisfied the Document is exempt in part under section 33(1), it is not necessary for me to consider the application of section 30(1) to the document.

Deletion of exempt or irrelevant information

28. 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.
29. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁹ 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 25.¹⁰
30. I am satisfied it is practicable to delete exempt information from the Document and provide the Applicant with a copy of the Document as per the deletions made by the Agency.

Conclusion

31. On the information available, I am satisfied the Document is exempt under section 33(1) and have decided to grant access to the Document in part.

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.¹¹
33. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹²
34. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹³
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.¹⁴

When this decision takes effect

37. 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.

⁹ *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].

¹⁰ *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], [155].

¹¹ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹² Section 52(5).

¹³ Section 52(9).

¹⁴ Sections 50(3F) and (3FA).