

Notice of Decision and Reasons for Decision

Applicant:	'AY3'
Agency:	State Revenue Office
Decision Date:	23 December 2019
Exemptions considered:	Sections 30(1), 32(1) and 33(1)
Citation:	'AY3' and State Revenue Office (<i>Freedom of Information</i>) [2019] VICmr 220 (23 December 2019)

FREEDOM OF INFORMATION – privacy complaint – legal professional privilege – confidential communications – FOI decision of an agency – contrary to public interest – personal affairs information

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.

I am satisfied the documents are exempt under sections 30(1), 32(1) and 33(1) in part and in full.

As I am satisfied it is practicable to delete irrelevant and exempt information from the documents in accordance with section 25, I have decided to grant access to certain documents in part and refuse access to certain documents in full.

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
23 December 2019

Reasons for Decision

Background to review

1. On 11 January 2019, the Applicant made a request to the Agency for various documents.
2. In consultation with the Agency, the Applicant agreed to narrow the terms of the request to the following documents:
 - (a) Details and data searches of my records (customer number [relevant number]) by the SRO from [date range], for example, who searched my records, what was searched, when was the search conducted and reasons recorded for the search made in the e-sys database or for accessing my records;
 - (b) Instances from [date range] where my records have been provided to people outside the SRO;
 - (c) Any documents, emails, file notes etc that mention my name (or any part of it) that have been created from [date range];
 - (d) Any documents associated with the SRO's decision on my FOI request and privacy audit, which was dated [date] and signed by [relevant individual] of the SRO;
 - (e) Any documents associated with the letter dated [date] written by [relevant individual] of the SRO to me;
 - (f) Details of payments made, or fees owed, by the SRO to [law firm] or any other external laws with respect to matters involving me, from [date range];
 - (g) Any notes, emails letters, documents of actions or decisions or instruction to destroy electronic records referred to in [relevant individual] letter of [date];
 - (h) Details of the contract and engagement agreement with the external investigator referred to by [relevant individual] in letter of [date].
3. The Applicant advised in their initial request that access to documents already in their possession is not sought, which was confirmed by the Agency in letters sent to the Applicant.
4. In its decision, the Agency identified 24 documents falling within the terms of the Applicant's request, three of which were created by the Agency in accordance with section 19. The Agency decided to grant access to six documents in full, 15 documents in part and refuse access to three documents in full.
5. 'Duplicate' information and documents and information in the possession of the Applicant were deleted as 'not relevant' to the scope of the Applicant's request in accordance with section 25.

Review

6. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
7. By email dated 20 November 2019, the Applicant confirmed access to information deleted by the Agency as 'duplicate' is not sought as part of the review.
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 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;
 - (c) the Agency's submission dated 6 May 2019; and
 - (d) all communications between OVIC and the Applicant and the Agency during the review.
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.

Review of exemptions

12. The Agency relies on the exemptions in sections 30(1), 32(1) and 33(1) to refuse access to documents. The Agency's decision letter sets out the reasons for its decision.

Section 32(1)

13. Section 32(1) provides a document is an exempt document 'if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege or client legal privilege'.
14. Client legal privilege, often characterised as legal professional privilege, exists to protect the confidentiality of certain communications made in connection with giving or obtaining legal advice or the provision of legal services.
15. A document will be subject to legal professional privilege, and exempt under section 32(1), where it contains a confidential communication:¹
 - (a) between the client (or the client's agent) and the client's professional legal advisers, that was made for the dominant purpose of obtaining or providing legal advice or is referable to pending or contemplated litigation; or
 - (a) between the client's professional legal advisers and third parties, that was made for the dominant purpose of pending or contemplated litigation; or
 - (b) between the client (or the client's agent) and third parties that was made for the purpose of obtaining information to be submitted to the client's professional legal advisers for the dominant purpose of obtaining advice on pending or contemplated litigation.
16. Legal privilege exists to protect the confidentiality of communications between a lawyer and a client. However, privilege will be lost where the client has acted in a way that is inconsistent with the maintenance of that confidentiality – for instance where the substance of the information has been disclosed with the client's express or implied consent.²

¹ *Graze v Commissioner of State Revenue* [2013] VCAT 869 at [29]; *Elder v Worksafe Victoria* [2011] VCAT 1029 at [22]. See also *Evidence Act 2008* (Vic), section 119.

² Sections 122(2) and (3) of the *Evidence Act 2008* (Vic) (for CLP) or *Mann v Carnell* (1999) 201 CLR 1 at [28] (for LPP).

17. The Agency refused access to Document 13 in part and Documents 18 and 19 in full because the communications are of such a nature they would be privileged from production in legal proceedings on grounds of legal professional privilege or client legal privilege.

Internal communications – Documents 13 and 18

18. The documents comprise an email, which includes handwritten notes and an internal briefing between the Agency's legal division and Deputy Commissioner.
19. Having reviewed the documents, I am satisfied they constitute confidential communications between the Agency and a legal practitioner acting in the capacity of an inhouse legal counsel. I am also satisfied the confidential communications were made for the dominant purpose of requesting and the provision of legal advice.
20. Further, an inhouse lawyer must possess the requisite measure of independence for legal professional privilege to apply.³ Having considered the nature of the relationship between the Agency's inhouse legal counsel and the subject matter of the documents, I am satisfied this requirement is satisfied on grounds the inhouse legal counsel, in providing advice, acted independently in the performance of their legal duties.
21. Accordingly, I am satisfied Documents 13 and 18 are exempt under section 32(1).

Document 19

22. The dominant purpose for which a confidential communication was made will determine whether section 32(1) applies.
23. The Agency relies on section 32(1) to exempt Document 19 in full. The document is an email chain between the Agency and its external legal advisers, which contains an attachment. The attachment is a letter sent to the Agency by the legal representatives of a third party.
24. In my view, it is clear from the face of the emails they contain a record of legal advice sought from the Agency and provided by its external legal advisers and shared between relevant Agency officers. Therefore, I am satisfied the emails are exempt under section 32(1).
25. With respect to the email attachment, which is a letter communicated to the Agency from an external party, having regard to the dominant purpose test and the requisite lawyer/client relationship, I am not satisfied this document constitutes a privileged communication for the purpose of section 32(1).
26. However, having viewed the document I am satisfied it contains the personal affairs information of a third party who is not the Applicant. In the circumstances, I consider section 33(1) is the more appropriate exemption and applies to the letter in full. The application of section 33(1) to the email attachment is discussed below.

Has privilege been waived?

27. As stated above, legal professional privilege exists to protect the confidentiality of communications between a client and their lawyer. Privilege will be lost where a client acts in a way that is inconsistent with the maintenance of that confidentiality. For instance, where the substance of the legal advice is disclosed by a client or with their express or implied consent.⁴

³ *Waterford v Commonwealth* (1987) 163 CLR 163.

⁴ *Mann v Carnell* (1999) 201 CLR 1 at [28].

28. There is no evidence before me to establish legal professional privilege in the documents has been waived.
29. In summary, I am not satisfied the email attachment to Document 19 is exempt under section 32(1) on grounds the dominant purpose for which the document was created does not meet the requirements for legal professional privilege. However, in all other instances, I am satisfied the documents under exempt under section 32(1).
30. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document and section 32(1).

Section 30(1)

31. The Agency relied on the exemption in section 30(1) to refuse access to Documents 13 and 16 in part and Documents 14, 18 and 19 in full. The documents comprise email communications between Agency officers, an internal memo regarding the Applicant's complaint and handwritten notations and markings.
32. 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.

Do the documents contain information in the nature of opinion, advice, recommendation, consultation or deliberation prepared by an officer?

33. Having reviewed the documents, I am satisfied they contain information in the nature of opinion, advice and recommendation and relate to an Agency investigation and matters concerning the Applicant's privacy complaint.

Were the documents prepared in the course of the Agency's deliberative processes?

34. I am satisfied the information was produced in the course of, and for the purposes of, the Agency's deliberative process in responding to the Applicant's privacy complaint, including assessing the substance of the concerns raised. Therefore, I am satisfied the first two requirements of section 30(1) are met.

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

35. The third requirement under section 30(1) is that disclosure would be contrary to the public interest. This requires a 'process of weighing against each other conflicting merits and demerits'.⁵
36. In deciding this issue, I have remained mindful the object of the FOI Act is to facilitate and promote the disclosure of information and have given weight to the following relevant facts:⁶
- (a) the right of every person to gain access to documents under the FOI Act;

⁵ *Sinclair v Maryborough Mining Warden* [1975] HCA 17; (1975) 132 CLR 473 at 485, adopted in *Department of Premier and Cabinet v Hulls* [1999] VSCA 117 at [30].

⁶ *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

- (b) the degree of sensitivity of the issues discussed in the documents and the broader context giving rise to the creation of the documents;
 - (c) the stage or a decision or status of policy development or a process being undertaken at the time the communications were made;
 - (d) whether disclosure of the documents would be likely to inhibit communications between agency officers, essential for the Agency to make an informed and well-considered decision or participate fully and properly in a process in accordance with the Agency's functions and other statutory obligations;
 - (e) whether disclosure of the documents would give merely a part explanation, rather than a complete explanation for the taking of a particular decision or the outcome of a process, which the Agency would not otherwise be able to explain upon disclosure of the documents;
 - (f) the impact of disclosing documents in draft form, including disclosure not clearly or accurately representing a final position or decision reached by the Agency at the conclusion of a decision or process; and
 - (g) the public interest in the community being better informed about the way in which the Agency carries out its functions, including its deliberative, consultative and decision-making processes and whether the underlying issues require greater public scrutiny.
37. In summary, the Agency's submissions state the management of a privacy inquiry is a corporate function and there is a public interest in maintaining confidentiality in collating matters required for executive consideration. Disclosure of the advice, opinions and recommendations of Agency officers would be likely to undermine the finality and confidentiality of the 'privacy letter' issued by the Agency.
38. I appreciate the Applicant has a personal interest in obtaining access to the documents. The denied information concerns the alleged unauthorised access of the Applicant's personal information and the Agency's management of the privacy complaint.
39. Further to this private interest, I acknowledge there is a broader public interest in disclosure where it is clear from the face of the documents there may be the lack of a fair and independent process or legitimate questions arise about the handling of a matter or fairness in an outcome reached by an agency. However, having carefully reviewed the documents subject to review, there is no information in the documents to suggest there is anything unusual about the manner in which the Agency has conducted its investigation. Therefore, I am not satisfied there is a broader public interest that would be promoted by release of the documents.
40. I note the sensitivity of the documents, and concerns raised by the Agency in its submissions regarding the release of information that interrelates with broader matters involving the Agency, but does not involve the Applicant. Considered in this context, I accept there is sensitivity in the Agency's deliberations and consultations in this matter.
41. I also consider the Agency's internal process of managing privacy complaints requires Agency officers to discuss relevant issues before preparing advice. In such circumstances, it is desirable for Agency officers to seek and exchange opinions in an open and candid way before providing an official response on such matters. I consider the release of preliminary deliberations and consultations would reasonably discourage Agency officers from recording similar communications in the future. This would be contrary to the public interest as it would have a detrimental effect on the ability of an agency to conduct a thorough and considered process, which in turn would compromise the outcome of any process.

42. In this matter, I note the Applicant received a final outcome following their privacy complaint made to the Agency. Where information appears to be a first iteration or draft of a final response provided to the Applicant, I am satisfied it would be contrary to the public to release. Having viewed the documents, I am satisfied release of an earlier version would not clearly represent the final outcome or position reached by the Agency.
43. Further, where the Applicant has had the opportunity to make a complaint and receive the Agency's decision, I consider release of the documents would not serve the public interest. Given the sensitivities of this matter, I am of the view release of the document would undermine and inhibit the decision-making processes of the Agency and interfere with matters yet to be determined.
44. Lastly, section 30(3) provides purely factual information will not be exempt under section 30(1). This provision must be considered in conjunction with section 25, which allows for an edited copy of a document to be released with exempt or irrelevant information deleted. While I acknowledge section 30(1) does not apply to exempt each word in the documents, I am of the view deleting factual information from the deliberative content would render the documents, refused in full, meaningless, and possibly be misleading, given the intertwined nature of factual and deliberative information in the documents.
45. Weighing the public interest factors above, I am satisfied Documents 13 and 16 are exempt in part and Documents 14, 18 and 19 are exempt in full.
46. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document and section 30(1).

Section 33(1)

47. 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;⁷ and
 - (b) such disclosure would be 'unreasonable'.
48. 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.⁸
49. In deciding whether the exemption applies, it is necessary to determine whether disclosure of personal affairs information would be unreasonable. Consideration of whether disclosure would be unreasonable involves balancing the public interest in the disclosure of official information with the personal interest in privacy in the circumstances.
50. I acknowledge the Applicant may already know some of the third parties named in the documents. However, even where an applicant claims to know the identity of a third party, disclosure of their personal affairs information may still be unreasonable in the circumstances.⁹
51. The proper application of section 33(1) involves consideration of 'all matters relevant, logical and probative to the existence of conditions upon which the section is made to depend'.¹⁰

⁷ Sections 33(1) and (2).

⁸ Section 33(9).

⁹ *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 at [58]; *Akers v Victoria Police* [2003] VCAT 397.

¹⁰ *Marke v Victoria Police* [2008] VSCA 218 at [104].

52. In this case, I have considered the following factors¹¹ when determining if the release of the personal affairs information in the documents would be unreasonable in the circumstances:
- (a) the nature of the personal affairs information that would be disclosed;
 - (b) the circumstances in which the information was obtained;
 - (c) the Applicant's interest in the information;
 - (d) the likelihood of further disclosure of the information, if released;
 - (e) whether the individuals to whom the information relates object, or would be likely to object to the release of the information;
 - (f) whether disclosure would cause the individuals stress, anxiety or embarrassment;
 - (g) whether the information has any current relevance; and
 - (h) whether disclosure would, or would be reasonably likely to, endanger the life or physical safety of any person.
53. Section 33(2B) requires, in deciding whether the disclosure of a document under the FOI Act would involve the unreasonable disclosure of information relating to the personal affairs of any person, the agency must:
- (a) notify the person who is the subject of that information (or if that person is deceased, that person's next of kin), that the agency has received a request for access to the document;
 - (b) seek that person's view as to whether disclosure of the document should occur; and
 - (c) state that if the person consents to disclosure of the document, or disclosure subject to deletion of information relating to the personal affairs of the person, the person is not entitled to apply to the Tribunal for review of a decision to grant access to that document.
54. The Agency advised it consulted with third parties, whose personal affairs information appears in the documents. Copies of these responses have been provided for my review. I note in most cases, the third parties objected to the release of their personal affairs information.

Access logs

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

55. The Agency applied section 33(1) to remove the names and initials of Agency officers contained in access audit checks, undertaken in response to a privacy complaint lodged to the Agency, by the Applicant.
56. I am satisfied the exempt information is the personal affairs information of a person other than the Applicant.

Would disclosure of the information be unreasonable in the circumstances?

57. The Agency submitted it would be unreasonable to release the personal affairs information of non-executive officers who performed relatively minor roles in the administration of the Applicant's affairs and, in some instances, the officers no longer holds that position. Further, release of the

¹¹ A number of these factors were identified in *Page v Metropolitan Transit Authority* (1988) 2 VAR 243.

names of staff who legitimately accessed the Applicant's records is not likely to achieve the Applicant's purpose in identifying circumstances where accesses occurred for non-business purposes.

58. Having reviewed the documents and considered the particular context in which the personal affairs information was obtained, I am satisfied release of the names of Agency officers contained in the access log audits would be unreasonable.
59. The personal affairs information relates to the identities of staff obtained in the circumstances of the Agency executing its functions of investigating a privacy breach, raised by the Applicant. I consider the manner in which the personal affairs information was obtained to be highly sensitive.
60. I accept the Applicant has a personal interest in access to information which concerns them. I also consider there is a broader public interest in individuals being able to access information, which may assist a better understanding of how an agency handled an investigation or review into matters related to them. However, this does not equate to automatic right of access to all information held by an agency.
61. On the information at hand, I do not consider there is any information to suggest the public interest would be promoted by release of the personal affairs information in this instance. In this case, I consider the greater public interest lies in the protection of confidentiality throughout the process of internal complaint investigations.
62. I also consider the Applicant's interest in the information would more closely serve their personal interest, rather than any broader public interest. Where an applicant's motivation for seeking access to personal affairs information of a third party is more closely related to an applicant's own interest or curiosity in obtaining the information without a broader public interest, access to such information is more likely to be unreasonable.¹²
63. I am also mindful some of the personal affairs information exempted in the documents relates to Agency staff in the performance of their role.
64. Generally speaking, where information does no more than reveal a public servant performing a relevant aspect of his or her professional duties, the information will not be considered sensitive. Such information (names and job titles) are often available online via public profiles and is not generally considered to be obtained in confidence or through involuntary circumstances. These factors weigh in favour of release.
65. However, having regard to the context in which the information was obtained by the Agency, and noting the relevant individuals all objected to the release of their personal information, I consider release in the circumstances may cause a certain level of stress and/or anxiety for some individuals.
66. I have also taken into consideration the nature of disclosure of a document under the FOI Act is unconditional and unrestricted, which means an applicant is free to disseminate widely or use a document disclosed to them as they choose.¹³
67. Accordingly, I am satisfied release of the names of Agency staff contained in access logs is unreasonable. Therefore, in these circumstances, I have determined the individuals' personal privacy outweighs the public interest in disclosure.

¹² *Gunawan v Department of Education* [1999] VCAT 665.

¹³ *Victoria Police v Marke* [2008] VCSCA 218 at [68].

All other circumstances

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

68. I am satisfied the documents disclose identifying information of people other than the Applicant, such as names, email addresses and direct telephone numbers.
69. The Agency has also applied section 33(1) to a small portion of information in Document 13, which is the opinions and comments of an Agency officer. Having viewed the information, I am not satisfied it would be unreasonable to release as it is information that concerns the Applicant. I am of the view the information has been recorded by the Agency officer in the performance of their professional duties and does not relate to matters concerning their personal or private lives. However, where the information relates to matters not involving the Applicant, I am satisfied it would be unreasonable to release.
70. With respect to the balance of material exempted by the Agency under section 33(1), while I accept seniority of staff is a relevant consideration and, in some instances, an objection to the release of personal affairs information has been raised, these views are not determinative on release under section 33(1). Subject to an agency demonstrating that special circumstances apply, in my view it is not unreasonable to disclose the names of non-executive Agency officers and third parties, where they are merely carrying out their usual duties or responsibilities as public servants.
71. Therefore, I consider the disclosure of such information would not be reasonably likely to affect the frankness and candour of Agency officers in their provision of opinion or advice. Nor do I accept disclosure would have any material or lasting effect on advice provided to the Agency in the future, as Agency officers are required to fulfil their employment duties in accordance with their employment responsibilities and relevant public sector values in the *Code of Conduct for Victorian Public Sector Employees* issued by the Victorian Public Sector Commissioner under section 61 of the *Public Administration Act 2004* (Vic).¹⁴
72. Other information redacted by the Agency relates to telephone and email addresses of Agency officers and third parties. I have determined release of this information would be unreasonable. Although I do not consider such information to be particularly sensitive, I am unaware if the information remains current. Nor do I consider the information would aid the Applicant's understanding of the documents.
73. Further, as mentioned above, I am satisfied section 33(1) would apply to exempt the attachment to Document 19 in full on the grounds that it would be unreasonable to release information received by the Agency, which pertains to matters concerning a third party. In such circumstances, I consider the third party would have an expectation that their personal information would only be used for the purposes in which it was provided and would not expect their information to be released under the FOI Act, without any restriction on its further use and disclosure. Therefore, in such circumstances, I have determined the individuals' personal privacy outweighs the public interest in disclosure.
74. I am also required to consider whether disclosure of the information would be reasonably likely to endanger the life or physical safety of any person. There is no information before me to suggest this arises in the circumstances of this matter.
75. Accordingly, I am satisfied section 33(1) applies to exempt personal affairs information in the documents. However, I am not satisfied in each instance the Agency's application of section 33(1) is upheld.

¹⁴ See, for example, the public sector value of 'Responsiveness' which requires Victorian public sector employees to demonstrate responsiveness by 'providing frank, impartial and timely advice to the Government'.

Section 25

76. Section 25 provides in relation to the deletion of exempt matter or irrelevant material in a document:

Where—

- (a) a decision is made not to grant a request for access to a document on the ground that it is an exempt document or that to grant the request would disclose information that would reasonably be regarded as irrelevant to the request;
- (b) it is practicable for the agency or Minister to grant access to a copy of the document with such deletions as to make the copy not an exempt document or a document that would not disclose such information (as the case requires); and
- (c) it appears from the request, or the applicant subsequently indicates, that the applicant would wish to have access to such a copy—

the agency or Minister shall grant access to such a copy of the document.

77. In its decision, the Agency determined that certain information in documents is not relevant to the Applicant's request and deleted that information from documents released to the Applicant in accordance with section 25.
78. Having examined each document, and in consideration of the terms of the Applicant's amended request, I am not satisfied the Agency's decision to delete information as 'not relevant' in accordance with section 25 is correct in each instance. In some instances, I have decided the deleted document or information does meet the terms of the Applicant's request and subsequently, this information is subject to my review in accordance with section 49P.

Deletion of exempt or irrelevant information

79. Section 25 also 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.
80. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹⁵ 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 25.¹⁶
81. I have considered the effect of deleting irrelevant and exempt information from the documents. In my view, it is practicable for the Agency to delete the irrelevant and exempt information, because it would not require substantial time and effort, and the edited documents would retain meaning.
82. However, with respect to documents refused in full, I have considered the effect of deleting exempt information from these documents. In my view, it is not practicable to delete the exempt information as doing so would render the documents meaningless.

Conclusion

83. On the information available, I am satisfied the exemptions in sections 30(1), 32(1) and 33(1) apply to the documents. In most instances, I consider it practicable to edit the documents to delete exempt information, therefore, I have determined to grant access to documents in part.

¹⁵ *Mickelburgh 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].

¹⁶ *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].

84. However, where the removal of exempt material under section 25 would result in an incomprehensible version, it is not practical to edit the document in that a meaningful version could not be released. Therefore, in such circumstances the document is exempt in full.

Review rights

85. 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.¹⁷
86. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁸
87. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁹
88. 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.
89. 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.²⁰

When this decision takes effect

90. Section 49P(5) provides, if I make a decision to disclose a document claimed to be exempt under section 33(1), if practicable, I must notify any person who has a right to make an application for review of the decision under section 50(3) of the existence of that right.
91. I have decided to release documents that contain information relating to the personal affairs of third parties.
92. However, in the circumstances, I do not consider it is practicable to notify all persons who provided information I am satisfied is exempt under section 33(1).
93. In most instances, I consider there is not enough information to ascertain correctly the identity or contact details of the person to whom the information relates. For example, the personal affairs information is an image or voice only. Therefore, I do not consider it practicable to notify these individuals in the circumstances.
94. Where practicable to do so, the relevant persons will be notified of my decision of their right to apply to VCAT for a review within 60 days from the date they are given notice of my decision.
95. For that reason, my decision does not take effect until that 60-day period expires. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

¹⁷ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁸ Section 52(5).

¹⁹ Section 52(9).

²⁰ Sections 50(3F) and (3FA).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1.	[Date]	Internal email requesting e-sys log	16	Released in part Section 33(1)	<p>Release in part Sections 33(1), 25</p> <p>I have determined the names of Agency officers are not exempt under section 33(1) and are to be released to the Applicant.</p> <p>Duplicate and irrelevant information to be deleted under section 25</p>	<p>Section 33(1): I am satisfied it would not be unreasonable for the names of Agency officers to be released where the information appears in the context of those officers performing their usual work duties at the Agency, and in the absence of any relevant sensitivities that would factor against release of this information in light of the object of the FOI Act. Accordingly, such information is not exempt under section 33(1).</p> <p>However, I have determined it would be unreasonable to release the direct emails and telephone numbers of Agency officers for the reasons set out in the Notice of Decision. Accordingly, such information is exempt under section 33(1).</p> <p>Section 25: The Agency deleted duplicate information in the document, such as emails commencing from email dated [Date] sent at [Time], which was released to the Applicant. The Agency also removed information irrelevant to the Applicant's request. Having viewed such information, I am satisfied it is irrelevant and should remain deleted under section 25.</p>
2.	[Date]	Internal email requesting RM8 searches	3	Released in part Section 33(1)	<p>Release in part Sections 33(1), 25</p> <p>I have determined the names of Agency officers are not exempt under section 33(1) and are to be released to the</p>	<p>Section 33(1): For the reasons in Document 1 above, I am satisfied it would not be unreasonable to disclose the name of the Agency officer, who conducted the document search. Accordingly, such information is not exempt under section 33(1).</p> <p>However, for the reasons set out in the Notice of Decision, I am satisfied the identities of individuals in the search result would be unreasonable to release</p>

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					Applicant.	and are exempt under section 33(1). Section 25: I am satisfied it is practicable to provide the Applicant with an edited copy of the document with exempt information deleted in accordance with section 25.
3.	Undated	File note and attachments	3	Released in part Section 33(1)	Release in part Sections 33(1), 25 I have determined the names of Agency officers are not exempt under section 33(1) and are to be released to the Applicant.	Section 33(1): For the reasons in Document 1 above, I am satisfied it would not be unreasonable to disclose the name of the Agency officer, who conducted the document search. Accordingly, such information is not exempt under section 33(1). Sections 25: See comments for Document 2 above.
4	[Date]	Emails: consultation with OVIC regarding disclosure of personal affairs information	7	Released in part Section 33(1)	Release in part Sections 33(1), 25 I have determined the names of Agency officers are not exempt under section 33(1) and are to be released to the Applicant.	Section 33(1): I am satisfied it would not be unreasonable to disclose the names of the third parties. Accordingly, such information is not exempt under section 33(1). However, for the reasons set out in the Notice of Decision, I am satisfied the direct emails and telephone numbers are exempt under section 33(1).
5	[Date]	Internal emails: search requests and responses	4	Released in part Section 33(1)	Release in part Sections 33(1), 25 I have determined the names of Agency officers are not exempt under section 33(1) and are to be released to the	Section 33(1): I am satisfied it would not be unreasonable to disclose the Agency officer names. Accordingly, such information is not exempt under section 33(1). However, for the reasons set out in the Notice of Decision, I am satisfied the direct emails and telephone numbers are exempt under section 33(1). Section 25: See comments for Document 1 above.

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					Applicant. Duplicate and irrelevant information to be deleted under section 25	In this case the duplicate information is an email sent on [Date] at [Time].
6	Various	Internal emails: Consultation regarding disclosure of personal information	14	Released in part Section 33(1)	Release in part Sections 33(1), 25 I have determined the names of Agency officers are not exempt under section 33(1) and are to be released to the Applicant.	Section 33(1): I am satisfied it would not be unreasonable to disclose the name of the agency officer. Accordingly, such information is not exempt under section 33(1). However, for the reasons set out in the Notice of Decision, I am satisfied the direct email and telephone numbers are exempt under section 33(1). Section 25: See comments for Document 1 above. In this case the duplicate information is the same email in Document 5 above.
7	[Date]	Internal email forwarding scanned letter (Letter dated [Date])	2	Released in part Section 33(1)	Release in part Sections 33(1), 25 I have determined the names of Agency officers are not exempt under section 33(1) and are to be released to the Applicant.	Section 33(1): I am satisfied it would not be unreasonable to disclose the Agency officer names. Accordingly, such information is not exempt under section 33(1). However, for the reasons set out in the Notice of Decision, I am satisfied the direct email and telephone numbers are exempt under section 33(1). Section 25: See comments for Document 1 above.
8	[Date]	Email and file note re: phone call with OVIC	3	Released in full Section 25	Release in full	Section 25: The Agency deleted a section of the file note on page 3 as it determined it was 'outside scope', and not relevant to the Applicant's request. Having reviewed this information, I am of the view it is relevant to the Applicant's request as it discusses issues concerning the handling of privacy matters by

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						<p>the Agency. Although the information concerns a general enquiry by the Agency, I consider the information flows on from and is related to the preceding paragraphs, which I note were released to the Applicant in full.</p> <p>As the deleted information does not concern discrete issues of an individual or confidential information obtained by the Agency, I am satisfied the information is not exempt under the FOI Act, and should be released to the Applicant.</p>
9	[Date]	Email forwarding letter from Applicant to SRO	5	Released in part Section 33(1)	Release in part Sections 33(1), 25 Duplicate and irrelevant information to be deleted under section 25	<p>Section 33(1): For the reasons set out in the Notice of Decision, I am satisfied it would be unreasonable to disclose the direct emails of Agency officers. Accordingly, such information is exempt under section 33(1).</p> <p>Section 25: I am satisfied it is practicable to provide the Applicant with an edited copy of the document with exempt and irrelevant information deleted in accordance with section 25.</p>
10.	[Date]	Internal email forwarding email from Applicant	n/a	Released in full	Not subject to review	
11.	[Date]	Internal email forwarding email from Applicant	n/a	Released in full	Not subject to review	
12	[Date]	Internal email	2	Released in part Section 33(1)	Release in part Sections 33(1), 25	Sections 33(1) and 25: See comments for Document 9 above.
13	[Date]	Internal email	2	Released in part	Release in part	Section 33(1): For the reasons set out above, I am

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		regarding the preparation of the response		Sections 30(1), 32(1), 33(1)	Sections 32(1), 33(1), 25 I have determined the names of Agency officers are not exempt under section 33(1) and are to be released to the Applicant. Duplicate, irrelevant and exempt information to be deleted under section 25	not satisfied it would be unreasonable to release information recorded by the Agency that concerns the handling of the Applicant's matter, including the name of the Agency officer. Accordingly, this information is not exempt. However, where the information concerns a third party, I am satisfied it would be unreasonable to release this information. Accordingly, this information is exempt under section 33(1). Section 32(1): For the reasons set out above, I am satisfied the document contains privileged communications and this information is exempt under section 32(1). Section 25: See comments for Document 1 above. In this case the duplicate information is the same email sent on [Date] at [Time] and released in Document 12.
14	[Date]	Draft reply to Applicant (not sent)	1	Refused in full Sections 30(1), 33(1)	Refuse in full Section 30(1)	Section 30(1): I am satisfied the email, which provides an earlier iteration of a final decision of the Agency and includes handwritten notes and markings, is a communication containing opinion, advice and recommendations shared between Agency officers. I am also satisfied it would be contrary to the public interest to release an earlier version where it would not represent the final outcome or position reached by the Agency. Accordingly, this information is exempt under section 30(1). Section 25: I am satisfied it is not practicable to provide the Applicant with an edited copy of the

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						document with exempt information deleted in accordance with section 25.
15	[Date]	Internal email	n/a	Released in full	Not subject to review	
16	Various	Internal emails regarding background memorandum for briefing purposes	9	Released in part Sections 30(1), 33(1)	Release in part Sections 30(1), 33(1), 25	<p>Section 30(1): For the reasons set out above, I am satisfied the document contains information in the nature of opinion, advice and recommendations, which has been provided for the Agency's deliberative process of managing a complaint inquiry. I am also satisfied release in the circumstances would be contrary to the public interest as it would have a detrimental effect on the Agency's complaint inquiry function.</p> <p>Section 33(1): The direct emails of Agency staff are exempt under section 33(1).</p> <p>Section 25: I am satisfied it is practicable to provide the Applicant with an edited copy of the document with exempt information deleted in accordance with section 25.</p>
17	Undated	Post it note	n/a	Released in full	Not subject to review	
18	[Date]	Brief to Commissioner of State Revenue	10	Refused in full Sections 30(1), 32(1), 33(1)	Refuse in full Section 32(1)	<p>Section 32(1): I am satisfied the document has been prepared for the dominant purpose of assisting in the provision of legal advice, therefore privileged from production in legal proceedings on the ground of legal professional privilege or client legal privilege' and exempt in full, under section 32(1).</p> <p>Section 25: I am satisfied it is not practicable to provide the Applicant with an edited copy of the document with exempt information deleted in</p>

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						accordance with section 25.
19	[Date]	Internal email forwarding letter from third party	4	Refused in full Sections 30(1), 32(1), 33(1)	Refuse in full Sections 32(1), 33(1), 25	Section 32(1): For the reasons set out above, I am satisfied the emails are exempt under section 32(1). With respect to the attachment, I am not satisfied it is a confidential communication that satisfies the dominant purpose test. However, I am of the view the attachment, which is a letter received by the Agency, concerns the personal affairs of a third party, which would be unreasonable to release in the circumstances. Accordingly, I am satisfied the document is exempt under section 33(1). Section 25: I am satisfied it is not practicable to provide the Applicant with an edited copy of the document with exempt information deleted in accordance with section 25.
20	[Date]	Email to external lawyers forwarding letter sent to applicant	5	Released in part Section 33(1)	Release in part Sections 33(1), 25	Section 33(1): For the reasons set out above, the direct emails of Agency officers are exempt. Section 25: The Agency deleted a letter sent to the Applicant's as 'outside scope' under section 25. I agree the information, which is the final letter of the Applicant's privacy complaint, would be in the possession of the Applicant and excluded from the scope of the request. Therefore, I am satisfied the information is irrelevant and should remain deleted under section 25.
21	[Date]	Email	n/a	Released in full	Not subject to review	
22	[Date]	Contract [relevant number] – WorkLogic	1	Released in part Sections 30(1), 32(1), 33(1)	Release in part Sections 33(1), 25 I have determined the	Section 33(1): The names of the Agency officer and third party are not unreasonable to release for the reasons set out above.

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					names of Agency officers are not exempt under section 33(1) and are to be released to the Applicant.	Section 25: See comments for Document 9 above.
23	[Date]	Access Log – E-SYS	3	Released in part Sections 30(1), 32(1), 33(1)	Release in part Sections 33(1), 25	Section 33(1): For the reasons provided in Document 1 above, the names and initials of Agency officers contained in access log audits are exempt from release. Section 25: See comments for Document 9 above.
24	[Date]	Payment Summary	n/a	Released in full	Not subject to review	