

Notice of Decision and Reasons for Decision

Applicant:	'AS8'
Agency:	Monash University
Decision date:	22 November 2019
Exemption considered:	Section 33(1)
Citation:	'AS8' and Monash University (<i>Freedom of Information</i>) [2019] VICmr 171 (22 November 2019)

FREEDOM OF INFORMATION – university student marks – matching anonymous data – re-identification – re-identified data – de-identified data

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 refuse access to some of the information in the documents under section 33(1).

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

22 November 2019

Reasons for Decision

Background to review

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

I require the following documents in regards to MEDICAL SELECTION for the courses no. [specified course numbers]:

1. I need the marks for all students selected in the MEDICAL PROGRAM (DOCTOR OF MEDICINE) in [specified date]
 - Interview marks
 - ATAR scores
 - UMAT scores
2. Interview marks
ATAR scores
UMAT scores for:
[named person]
[named person]
3. My interview scores [named Applicant], especially the marks given to me by the 8 examiners- individual marks by 8 examiners.

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

3. The clarified request sought access to the following documents:

I prefer my marks from the interview if available individually. But if this is not possible then I will except it in collated form as a total. [sic]

...

Case – I need to know my position in the merit list before the interview and also my position after the interview. Therefore I need to know the ATAR scores, UMAT scores and the interview marks separately of all the selected candidates in medicine course [year].

Example - -

Candidate A UMAT score 93
 ATAR score [sic] 99
 Interview score 25

If possible please let me know under which category these students were selected (eg. rural category, International students, general category etc)

4. An ATAR score is a ranking calculated by the Victorian Tertiary Admissions Centre solely for the use of tertiary institutions to compare the overall achievement of students who have completed different combinations of Victorian Certificate of Education studies.¹
5. The UMAT (renamed UCAT in 2019) is an undergraduate medical and health sciences admission test used as an entry requirement for students wishing to study medicine or dentistry at university.
6. The UMAT score is considered by universities alongside other entry requirements, such as academic grades and interview scores.²

¹ www.vtac.edu.au > results-offers > atar-explained.

7. In its decision, the Agency identified three documents falling within the terms of the Applicant's request. It decided to grant access to one document in full and one document in part and refuse access to one document in full.

Review

8. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
9. I have examined copies of the documents subject to review.
10. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
11. 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 2 July 2019; and
 - (d) all other communications with the Applicant and the Agency.
12. 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

13. The Agency relied on the exemptions under sections 33(1), 34(4)(a)(i) and 34(4)(a)(ii) to refuse access to parts of the documents. The Agency's decision letter sets out the reasons for its decision.

Section 33(1)

14. 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;³ and
 - (b) such disclosure would be 'unreasonable'.
15. 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.⁴

Do the documents contain the 'personal affairs information' of individuals other than the Applicant?

16. The Agency, in its submission, stated the following in relation to the personal affairs information in Document 1:

²See <https://www.monash.edu/medicine/news/latest/2018-articles/new-admissions-test-announced-for-future-healthcare-students>.

³ Sections 33(1) and (2).

⁴ Section 33(9).

In considering whether disclosure would “involve” disclosure of personal information, it is possible that a document may involve unreasonable disclosure of personal information about an individual not because of what is in the document taken alone, but because of what that information may reveal when it is considered in light of other information that may be known to the person seeking the document. [*Victoria Police v Marke* [2008] VSCA 218 (“*Marke*”) at [7], [9], [94.]] Therefore, even if names are not contained in the document, other information in the context in which it appears may be sufficient to identify to the applicant based on information already known, the individuals referred to in the exempt document.

....

While Document 1 does not contain the candidates’ name, the above information is sufficiently specific such that candidates would nevertheless be identifiable in light of other information that may already be known. This is especially the case given the prestige of the program and its candidates.

17. Document 1 consists of a table of data, including, the enrolment status of each candidate, whether a student is a rural applicant, the candidates’ interview score, UMAT score, their final aggregate score, their ATAR ranking and final ranking.
18. I am of the view that while the document does not contain names or other identification numbers (for example a student ID), this type of information could be matched with other publicly available information, such as ATAR and UMAT scores, in order to discover the individual to which the data belongs.
19. Similarly, I also consider information, such as the rural status of a candidate, could be matched with other publicly available data that in turn could be used to identify the names of those whose academic scores that appear in the documents. Therefore, I consider this information is information from which a person’s identity or location can reasonably be determined.
20. Document 2 consists of information relating to the names of two candidates and their individual scores and final ranking.
21. Having reviewed the contents of the documents subject to review, I am satisfied information in the documents relates to the personal affairs of persons other than the Applicant.

Would release of the personal affairs information be unreasonable?

22. The concept of ‘unreasonable disclosure’ involves balancing the public interest in the disclosure of official information with the personal interest in privacy in the circumstances of a particular matter.
23. The Applicant may know some of the third parties mentioned in the documents. However, even where an applicant claims to know the third parties involved, disclosure of personal affairs information may still be unreasonable.⁵
24. 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.⁶ 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

⁵ *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 at [58]; *Akers v Victoria Police* [2003] VCAT 397.

⁶ Section 33(2B).

(c) it is not practicable to do so.⁷

25. The Agency in its submission advised it did not consult with the individuals whose personal affairs information had been exempted under section 33(1) as it determined consultation would be unreasonable in the circumstances for the following reasons:
- the large number of individuals whose information is contained in Document 1 requiring unreasonable time and resources to consult with each individual;
 - the likelihood that consultation would cause undue distress to candidates;
 - the age and inexperience of those candidates; and
 - the sensitivity of the information and the likelihood that the candidates would, in any case, object to the disclosure of that information under the FOI Act.
26. I have considered the following factors in determining whether disclosure of the personal affairs information in the documents would be unreasonable:
- (a) The nature of the personal affairs information – The personal affairs information in the documents includes information which discloses a candidate’s marks and whether a candidate was offered a position in the relevant course. In the circumstances, I consider this information to be sensitive in nature, given that it relates to the personal performance of each candidate. This factor weighs against disclosure.
- (b) The extent to which the information is available to the public – I acknowledge some of the information exempted by the Agency includes publicly available information such as ATAR scores. However, as mentioned above, release of this information in the circumstances could be used to identify the names of the students from the data. This factor weighs against disclosure.
- (c) Whether any public interest would be promoted by release of the information – I do not consider there is any broader public interest that would be promoted by release of the personal affairs information in the circumstances of this matter. Rather, I consider there is a strong public interest in the Agency preserving the privacy of the third parties in these circumstances. 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 – As noted above, the Agency advised it did not consult with the individuals whose personal affairs information had been exempted under section 33(1).
- I support the Agency’s decision in this regard. In any case, I am of the view the individuals to whom the information relates would be reasonably likely to object to the release of their personal affairs information to the Applicant. This factor weighs against disclosure.
- (e) 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 to a document is a relevant consideration in determining whether disclosure would be unreasonable.
- (f) The Applicant has indicated they are seeking access to the documents to establish a pattern, if any, where candidates are selected or eliminated based on their performance at the interview

⁷ Section 33(2C).

stage of the selection process. It is not clear to me whether disclosure would assist the applicant in this regard. This factor weighs neither for nor against disclosure.

- (g) The likelihood of further disclosure of the information, if released – However, release under FOI imposes no restrictions on further use or dissemination. There is no information before me to suggest this factor is relevant in the circumstances.
- (h) Whether disclosure of the information would, or would be reasonably like to, endanger the life or physical safety of any person – There is no information before me to suggest this is a relevant factor.

27. In balancing the above factors, I have determined it would be unreasonable to release the personal affairs information in the documents to which the Agency has refused access under section 33(1).

Section 34

28. In light of my decision, it is not necessary for me to consider the additional exemptions relied on by the Agency under section 34(4)(a)(i) and 34(4)(a)(ii).

Deletion of exempt or irrelevant information

29. 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.

30. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁸ 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 25.⁹

31. I have considered the effect of deleting exempt information from the documents. In my view, it is practicable to delete the exempt information in one of the documents, because it would not require substantial time and effort, and the edited document would retain meaning.

Conclusion

32. On the information available, I am satisfied the exemption in section 33(1) applies to:

- (a) Document 1: all the data that appears under the column headings 'MMI_8st', 'UMAT_Total_score', 'Final_Agg' and 'ATAR_Rank'; and
- (b) Document 2 in full.

33. As I am satisfied it is practicable to edit Document 1 to delete exempt information, I have determined to grant access to Document 1 in part.

Review rights

⁸ *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].

⁹ *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].

34. 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.¹⁰
35. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹¹
36. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹²
37. 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.
38. 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.¹³

When this decision takes effect

39. 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.

¹⁰ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹¹ Section 52(5).

¹² Section 52(9).

¹³ Sections 50(3F) and (3FA).