

Notice of Decision and Reasons for Decision

Applicant:	'BE5'
Agency:	Deakin University
Decision Date:	6 March 2020
Exemption considered:	Section 33(1)
Citation:	'BE5' and Deakin University (<i>Freedom of Information</i>) [2020] VICmr 47 (6 March 2020)

FREEDOM OF INFORMATION – complaint made to university – complainant seeking access to complaint information – personal affairs information – information obtained in confidence – email correspondence

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 document 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 the document.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

6 March 2020

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to:

All documents and correspondence relied upon that relates to an alleged complaint about myself and/or my property that has resulted in the [Agency service] blacklisting me from using the [Agency service] to advertise my [service] [type of service].
2. The Agency identified one document falling within the terms of the Applicant's request and decided to refuse access to the document in full.

Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. I have examined a copy of the document subject to review.
5. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
6. 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 18 February 2020; and
 - (d) correspondence between OVIC staff and the Applicant.
7. 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

8. The Agency relied on the exemption under section 33(1) to refuse access to the document. The Agency's decision letter sets out the reasons for its decision.

Section 33(1)

9. 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
 - (b) such disclosure would be 'unreasonable'.

¹ Sections 33(1) and (2).

10. 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.²
11. 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.

Does the document contain the personal affairs information of an individual other than the Applicant?

12. The document is an email that contains a complaint made by a third party about the Applicant. It contains the name and various statements made by the third party.
13. Having carefully reviewed the document, I am satisfied it contains the personal affairs information of the third party.
14. While the document also contains information relating to the Applicant, due to the inherent nature of the document, I consider this information to be heavily intertwined with that of the third party.

Would disclosure of the personal affairs information be unreasonable?

15. The concept of 'unreasonable disclosure' involves balancing the competing public interest in disclosure of official information with the personal interest in privacy. The following matters are particularly relevant in the circumstances of this case:

(a) The nature of the personal affairs information

As discussed above, this document contains a complaint made about the Applicant by a third party. I consider the content of the document to be personal and sensitive. This factor weighs against disclosure.

(b) The extent to which the information is available to the public

The information within the document is not publicly available. This factor weighs against disclosure.

(c) The circumstances in which the information was obtained

I am of the view the information was provided to the Agency on the understanding it will remain confidential. This factor weighs against disclosure.

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

On 21 February 2020, the Applicant advised OVIC staff the Agency had 'blacklisted' them from advertising their service [type of service] on the Agency's website following receipt of a complaint. The Applicant seeks access to the document in order to respond to the complaint.

I am of the view there is a public interest in the Agency maintaining the confidentiality of third parties who make complaints to the Agency in order for the Agency to preserve its ability to continue obtain such information for the purpose of performing its functions in relation to the provision of certain services [type of service]. This factors weight against disclosure.

² Section 33(9).

- (e) Whether the individual to whom the information relates objects to the release of the information

The Agency consulted with the relevant third party, in accordance with section 33(2B), who objected to the release of their personal affairs information. While the third party's view is not determinative, I consider this factor weighs against disclosure in the circumstances of this matter.

16. 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.³ However, I do not consider this to be a relevant factor in the circumstances.
17. In considering the above factors, I am of the view it would be unreasonable to release the personal affairs information in the document.
18. Accordingly, I am satisfied the document is exempt under section 33(1).

Deletion of exempt or irrelevant information

19. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable for the agency to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
20. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁴ 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 25.⁵
21. I have considered the effect of deleting exempt information from the document in accordance with section 25. I am satisfied it is not practicable to delete such information, as to do so would render the document meaningless.

Conclusion

22. On the information before me, I am satisfied the document is exempt under section 33(1).
23. As it is not practicable to delete exempt information in the document in accordance with section 25, I have determined to refuse access to the document in full.

Review rights

24. 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.⁶
25. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁷

³ Section 33(2A).

⁴ *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].

⁵ *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].

⁶ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁷ Section 52(5).

26. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁸
27. 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.
28. 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.⁹

When this decision takes effect

29. 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.

⁸ Section 52(9).

⁹ Sections 50(3F) and (3FA).