

Notice of Decision and Reasons for Decision

Applicant:	'BG2'
Agency:	The Royal Children's Hospital
Decision Date:	12 March 2020
Exemption considered:	Section 33(1)
Citation:	'BG2' and The Royal Children's Hospital (<i>Freedom of Information</i>) [2020] VICmr 62 (12 March 2020)

FREEDOM OF INFORMATION – medical records – documents affecting personal privacy of third parties

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.

I am satisfied certain information in the documents is exempt under section 33(1).

As I am satisfied it is practicable to provide the Applicant with an edited copy of the documents in accordance with section 25, I have determined to grant access to the documents in part.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
12 March 2020

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to-

...copies of all medical reports, clinical notes and writings, appointment schedules, assessments, medical reports, charts, referral letters and other documents in relation to any medical history, admission, treatment, diagnosis and prognosis held in relation to [the Applicant] and [the Applicant's child].
2. In its decision, the Agency granted access to three documents in part.

Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. By telephone on 5 September 2019, the Applicant advised they do not seek access to the mobile telephone number deleted by the Agency in Document 3. As such, this information falls outside the scope of this review and my review relates to Documents 1 and 2 only.
5. I have examined copies of the documents subject to review.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered all communications received from the parties, including:
 - (a) the Agency's decision on the FOI request; and
 - (b) correspondence from the Applicant and the Agency.
8. 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

9. The Agency relied on the following exemption under section 33(1) to refuse access to certain information contained in the documents. The Agency's decision letter sets out the reasons for its decision.

Section 33(1)

10. 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).

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

11. 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 such information may be reasonably determined.²
12. The documents are consultation Progress Notes for the Applicant's child (the **patient**). The information exempted by the Agency under section 33(1) is medical information of third parties, however, the identity of the third parties has not been redacted.
13. I am satisfied the information exempted by the Agency is 'personal affairs information' for the purposes of section 33(1).

Is disclosure of the personal affairs information unreasonable?

14. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the interest in protecting the personal privacy of a person other than the Applicant in the circumstances.
15. In determining whether disclosure of the personal affairs information would be unreasonable, I have considered the following factors:

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

The information deleted by the Agency in documents is medical information of third parties related to the Applicant and their child. It was obtained by the Agency for the purpose of recording a detailed medical history for the Applicant's child. In my view, the medical information of third parties is sensitive and personal in nature.

This factor weighs against disclosure.

(b) The likelihood of further disclosure of information, if released

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 as they choose.³ Accordingly, I must consider the likelihood and potential effects of further dissemination of the third parties' personal affairs information, if released.

In this matter, there is no information before me that suggests the personal affairs information would be disseminated in disclosed to the Applicant. However, considering the sensitivity of the information and the effects broader disclosure of this information would have on the privacy of the relevant third parties, I consider this factor weighs against disclosure.

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

I do not consider there is a broader public interest that would be promoted by releasing the personal affairs information in this instance. I consider the Applicant's interest in the information would serve a personal interest only and there is a public interest in protecting the privacy of the relevant third parties.

This factor weighs against disclosure.

² Section 33(9).

³ *Victoria Police v Marke* [2008] VSCA 218 at [68].

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

There is no information before me indicating whether the Agency consulted with third parties to obtain their view on disclosure of their personal information.

Having considered the sensitive nature of the information, and in the absence of any information concerning the third parties' views, I am of the view they would be reasonably likely to object to the disclosure of their medical information under the FOI Act.

This factor weighs in favour of 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.⁴

The Applicant has not provided reasons as to why they seek access to the documents. Therefore, I consider this factor neither weighs in favour nor against disclosure.

- (f) Whether the disclosure of information would, or would be reasonably likely to endanger the life or physical safety of any person⁵

There is no information before me to suggest this is a relevant factor in this case.

16. Having considered the above factors, I am satisfied it would be unreasonable to disclose the personal affairs information exempted by the Agency the documents. Accordingly, this information is exempt under section 33(1).

Deletion of exempt or irrelevant information

17. 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.
18. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁶ and the effectiveness of the deletions. Where deletions would render a document meaningless, they are not 'practicable', and release of the document is not required under section 25.⁷
19. I have considered the effect of deleting exempt and irrelevant information from the documents in accordance under section 25. I am satisfied it is practicable to delete the exempt and irrelevant information in the documents as to do so would not require substantial time and effort, and the edited documents would retain meaning.

⁴ *Victoria Police v Marke* [2008] VSCA 218 at [104].

⁵ Section 33(2A).

⁶ *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].

⁷ *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].

Conclusion

20. On the information before me, I am satisfied the document is exempt under section 33(1).
21. As the Applicant does not seek access to the mobile telephone number deleted by the Agency in Document 3, I consider the mobile telephone number is irrelevant to the scope of the request.
22. As I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with exempt and irrelevant information deleted in accordance with section 25, I have determined to grant access to the documents in part.

Review rights

23. 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.⁸
24. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁹
25. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁰
26. 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.
27. 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.¹¹

When this decision takes effect

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

⁹ Section 52(5).

¹⁰ Section 52(9).

¹¹ Sections 50(3F) and (3FA).