

Notice of Decision and Reasons for Decision

Applicant:	'BA7'
Agency:	Goulburn Valley Health
Decision Date:	24 January 2020
Exemptions considered:	Sections 30(1), 32(1), 33(1), 35(1)(b)
Citation:	'BA7' and Goulburn Valley Health (<i>Freedom of Information</i>) [2020] VICmr 11 (24 January 2020)

FREEDOM OF INFORMATION – health service records – records of complaint about a health practitioner – legal advice regarding complaint – information provided by respondents and witnesses to a complaint – draft correspondence where final provided – draft notes of outcome of complaint

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 differs from the Agency's decision.

On the information available, I am satisfied the exemptions in sections 30(1), 32(1), 33(1), 35(1)(b) apply to certain documents and have decided to release the documents in part.

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
24 January 2020

Reasons for Decision

Background to review

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

All files, notes, records, reports, case notes, assessments, correspondence, communications, or other documents (as defined in the *Interpretation of Legislation Act 1984* and the *Evidence Act 2008*) relating to the complaint made on [date] by [Applicant] in relation to [named Agency staff member], including but not limited to details of all interviews undertaken and transcripts thereof, details of what action has been taken to discipline [named Agency staff member] and to educate [them] with respect to [their] obligations as a medical practitioner; and what steps will be taken by Goulburn Valley Health to ensure such behaviour is not repeated and that patients are not exposed to similar intimidation from medical practitioners in the future.

2. In its decision, the Agency identified 110 documents within the scope of the request. The Agency decided to release 42 documents in full, three documents in part, and to refuse access to 65 documents 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. The Applicant also lodged a complaint with this office in relation to the adequacy of the document search conducted by the Agency. The complaint has been dismissed in accordance with section 61B(1)(b).
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 and submissions received from the parties, including:
 - (a) the Agency's decision on the FOI request;
 - (b) the Applicant's review application and submission dated [date];
 - (c) the Agency's submission dated [date].
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 exemptions in sections 30(1), 32(1), 33(1), 35(1)(b) and 38 to refuse access to parts of the documents. The Agency's decision letter sets out the reasons for its decision.

Section 30(1)

10. 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;
 - (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.
11. The exemption does not apply to purely factual material in a document.¹
 12. I must also be satisfied releasing this information is not contrary to the public interest. This requires a 'process of the weighing against each other conflicting merits and demerits'.²
 13. In deciding if release is contrary to the public interest, I must consider all relevant facts and circumstances remaining mindful that the object of the FOI Act is to facilitate and promote the disclosure of information.
 14. In deciding whether disclosure of the matter would be contrary to the public interest, I have taken the following into consideration³:
 - (a) the right of every person to gain access to documents under the FOI Act;
 - (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 of 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.
 15. My decision in relation to each document is set out in the schedule at **Annexure 1**.

¹ Section 30(3).

² *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].

³ *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

Section 32(1)

16. Section 32(1) provides:

Documents affecting legal proceedings

- (1) 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.

17. A document will be subject to legal professional privilege and exempt under section 32(1) where it contains a confidential communication:⁴

- (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
- (b) between the client's professional legal advisers and third parties, that was made for the dominant purpose of pending or contemplated litigation; or
- (c) 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.

18. The High Court of Australia has held the purpose of legal professional privilege, or client privilege ensures a client can openly and candidly discuss legal matters with their legal representative and seek legal advice:

The rationale of this head of privilege, according to traditional doctrine, is that it promotes the public interest because it assists and enhances the administration of justice by facilitating the representation of clients by legal advisers, the law being a complex and complicated discipline. This it does by keeping secret their communications, thereby inducing the client to retain the solicitor and seek his advice and encouraging the client to make a full and frank disclosure of the relevant circumstances to the solicitor.⁵

19. In considering whether legal professional privilege applies, I must consider the dominant purpose for which the confidential communication was made.⁶

20. My decision in relation to each of the documents the Agency decided is exempt under section 32(1) is set out in the schedule at **Annexure 1**.

Section 33(1)

21. 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'.

⁴ *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.

⁵ *Grant v Downs* (1976) 135 CLR 674 at [19].

⁶ *Eso Australia Resources Limited v Commissioner of Taxation* [1999] HCA 67; 201 CLR 49.

⁷ Sections 33(1) and (2).

22. 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
23. 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 matter.
24. Section 33(2A) requires, in deciding whether the 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. However, I do not consider this to be a relevant factor in the circumstances.
25. 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 (or their next of kin, if deceased) 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.⁹ 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
 - (c) it is not practicable to do so.¹⁰
26. The Agency consulted with certain affected third parties in this matter. I have taken their responses into consideration in my assessment of each document claimed under section 33(1).

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

27. The Agency applied section 33(1) to the following types of information:
- (a) the email address of the Agency officer subject to the complaint;
 - (b) sensitive health and personal information about an Agency officer that was communicated in confidence;
 - (c) the names, roles and personal accounts of Agency officers; and
 - (d) the name of another patient.
28. I agree the above is personal affairs information of individuals other than the Applicant.

Would release of the personal affairs information be unreasonable?

29. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the personal interest in privacy. I have considered the following factors in the circumstances of this case:
- (a) the nature of the personal affairs information;

⁸ Section 33(9).

⁹ Section 33(2B).

¹⁰ Section 33(2C).

- (b) the circumstances in which the information was obtained;
 - (c) the Applicant's interest in the information;
 - (d) whether any public interest would be promoted by the release of the information;
 - (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 of the information would, or would be reasonably likely to, endanger the life or physical safety of any person.
30. In relation to the personal affairs of the subject of the complaint, and the other Agency officer who provided information in relation to the event (the information in paragraphs 27 (a), (b) and (c) above), I have considered the following:
- (a) The information is sensitive as it relates to their personal accounts of the events being complained about, including their perception of the conduct of all parties and the affect it had on them;
 - (b) The information was obtained in the course of investigating a complaint. I consider in these circumstances there would be an expectation of confidentiality. I also note that one of the Agency officer's objects to the disclosure of their personal affairs information;
 - (c) I note the Applicant's interest in the information, in that they wish to be satisfied the complaint was properly investigated, and their view that there is a public interest in disclosure;
 - (d) I must also consider that this exemption is designed to protect individuals' privacy;
 - (e) While this matter relates to Agency staff in the performance of their professional roles, some of the information clearly relates to them as individuals and reflects their personal and private lives; the impact therefore of disclosure, while unlikely to endanger those persons, may cause distress.
 - (f) From my reading of the documents, I cannot see any public interest in disclosure, in that they do not disclose serious misconduct or mismanagement that would benefit from public airing and therefore the public interest in disclosure does not outweigh the interest in privacy of those concerned.
31. On balance, I consider this information is exempt under section 33(1).
32. In relation to the other patient's name, I consider this information appears incidentally in the documents and falls outside the scope of the Applicant's request. Therefore, it is irrelevant to the request and is to be deleted in accordance with section 25.
33. I also note the Agency consulted with two Agency officers. One Agency officer objected to disclosure of their information whilst the other Agency officer did not respond to consultation. While I have had regard to this information, an individual's objection is not determinative.
34. In this matter, I have decided it would not be unreasonable to disclose the names of Agency staff directly involved in the handling of the complaint. Some of the parties will be known to the Applicant, and many of their names have been provided to the Applicant in documents released to them in full. In relation to the other staff members not known to the Applicant, they appear only in relation to the performance of their professional roles and it is therefore not unreasonable to release their names.

35. My decision in relation to this information is set out in the schedule at **Annexure 1**.

Section 35(1)(b)

36. A document is exempt under section 35(1)(b) if two conditions are satisfied:

- (a) disclosure would divulge information or matter communicated in confidence by or on behalf of a person or a government to an agency or a Minister; and
- (b) disclosure would be contrary to the public interest as it would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.

37. When determining whether information was communicated in confidence, it is necessary to consider the position from the perspective of the communicator.¹¹ In this case, the individuals who provided the information to the Agency.

38. The Agency has claimed this exemption for the following types of documents:

- (a) information provided to the Agency by the Agency officer subject to the complaint;
- (b) information provided by other agency officers to the Agency regarding the complaint; and
- (c) emails between Agency officers about the management of the complaint.

Was the information or matter communicated in confidence?

39. When determining whether information was communicated in confidence, it is necessary to consider the position from the perspective of the communicator. In this case, the individuals who provided the information to the Agency.

40. Further, confidentiality can be express or implied from the circumstances of the matter.¹²

41. Generally, the exemption in section 35(1)(b) applies to information communicated to an agency from outside sources, not to internal communications between agency staff carrying out their usual duties and responsibilities. However, in certain circumstances, section 35(1)(b) may apply to information communicated in confidence between agency officers, for example, where an agency officer provides confidential information to their agency to assist in the investigation of a workplace incident or dispute.¹³

42. In this matter, information was communicated to Agency officers managing the investigation of a complaint, in their capacity as the subject of the complaint, or witnesses to the complaint. Accordingly, I am satisfied the nature of this communication falls within the scope of information communicated in confidence to the Agency under section 35(1)(b).

43. While I do not have information before me to confirm the Agency officers communicated information to the Agency on a confidential basis, I am satisfied they would reasonably have had an expectation it was being communicated in confidence to the Agency given the nature and circumstances of what would have been a sensitive matter.

¹¹ *XYZ v Victoria Police* [2010] VCAT 255 at [265].

¹² *Ibid.*

¹³ See *Sportsbet v Department of Justice* [2010] VCAT 8 at [71]-[78]; *XYZ v Victoria Police* [2010] VCAT 255 at [287]-[288]; and *Birnbaumer v Inner and Eastern Health Care Network* [1999] VCAT 1363 at [14]-[15].

44. In contrast, I am not satisfied communications between Agency officers who were responsible for managing the investigation of workplace complaints is information communicated in confidence to the Agency for the purposes of section 35(1). Accordingly, I am not satisfied information of this nature is exempt under section 35(1)(b).

Would disclosure of the information impair the ability of the Agency to obtain similar information in the future?

45. I acknowledge the Agency's submission that it provided information to OVIC in confidence and it considered its disclosure would compromise its ability to investigate patient complaints, as staff may be reluctant to provide, or be less forthcoming in providing, information during the course of an investigation.
46. My decision in relation to this information is set out in **Annexure 1**.

Deletion of exempt or irrelevant information

47. 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.
48. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹⁴ and the effectiveness of the deletions. Where deletions would render a document meaningless they are not 'practicable' and release of an edited document is not required under section 25.¹⁵
49. I have considered the effect of deleting irrelevant and exempt information from the documents. I am satisfied it is practicable to delete irrelevant and exempt information from the documents as to do would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

50. On the information before me, I am satisfied certain documents are exempt under sections 30(1), 32(1), 33(1) and 35(1)(b).
51. As noted above, I have considered the effect of deleting irrelevant and exempt information from the documents in accordance with section 25. As I am satisfied it is practicable to delete irrelevant and exempt information from the documents, I have decided to release the documents in part.
52. My decision in relation to each document is set out in **Annexure 1**.

Review rights

53. 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.¹⁶
54. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁷

¹⁴ *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].

¹⁵ *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].

¹⁶ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁷ Section 52(5).

55. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁸
56. 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.
57. 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.¹⁹

Notification to third parties of review rights

58. Section 49P(5) states, if I decide to disclose a document claimed to be exempt under section 33(1), if practicable, I must notify any person who has a right to apply to VCAT for review of my decision of their right to do so.

59. In considering the meaning of 'practicable' in relation to other sections of the FOI Act, VCAT has held:

The use of the word 'practicable' in the legislation to my mind connotes a legislative intention to apply common sense principles. 'Practicable' is not a term of art or a term of precise meaning.

.... The use of the word indicates there should be imported into the process the exercise of judgment by the agency concerned. It does not allow for the conclusion that because a task is possible, it must, ergo, be undertaken.²⁰

60. VCAT also considers the possibility of an unnecessary intrusion into the lives of third parties is relevant when assessing the practicability of notifying them.²¹
61. I have decided notification of third parties of their review rights would be an unnecessary intrusion for the following reasons:
- (a) the nature of the information;
 - (b) the information only appears in a professional context and, in some instances, is publicly available;
 - (c) the information is not sensitive personal information; and
 - (d) a significant number of Agency staff names have been released to the Applicant by the Agency in documents that were released in full.
62. On balance, given the unnecessary intrusion into the lives of the individuals, whose personal information appears in the documents, I am not satisfied would be practicable to notify those individuals of their right of review.

When this decision takes effect

63. 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.

¹⁸ Section 52(9).

¹⁹ Sections 50(3F) and (3FA).

²⁰ *Re Schubert and Department of Premier and Cabinet* (2001) 19 VAR 35 at [45].

²¹ *Coulston v Office of Public Prosecutions Victoria* [2010] VCAT 1234 at [42].

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
Note: Documents 1 to 75 are emails. Attachments to those emails are Documents 76 to 114.						
1	[date]	Email to legal representatives	1	Refused in full Section 32(1)	Refuse in full Section 32(1)	Section 32(1): The document is a confidential communication between the Agency and its legal advisers that was made for the dominant purpose of obtaining legal advice. It is therefore exempt under section 32(1).
2	[date] and [date]	Emails between Agency staff	1	Refused in full Sections 35(1)(b) and 33(1)	Release in part Sections 33(1), 25 The document is to be released with the following exempt information deleted in accordance with section 25: <ul style="list-style-type: none"> the email dated [date]; and the mobile phone number and private email address from the email dated [date]. 	Section 35(1)(b): I do not consider the email dated [date] is exempt under section 35(1)(b) as it is an email between Agency officers dealing with the complaint. Section 33(1): The email dated [date] is exempt under section 33(1) for the reasons set out above. In relation to the private email address and mobile phone number in the email dated [date], I consider this is personal affairs information that is unreasonable to release. It appears to relate to that individual's private contact information rather than publicly available information. Further, I do not consider its release will aid the Applicant's understanding of the matter.
3	[date]	Emails between agency staff	2	Released in full	Not subject to review	
4	[date]	Emails between	2	Released in full	Not subject to review	

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
		agency staff and Applicant				
5	[date]	Emails between agency staff and legal adviser	3	Refused in full Section 32(1)	Refuse in full Section 32(1)	Section 32(1): See Document 1.
6	[date]	Emails between agency staff and legal adviser	2	Refused in full Section 32(1)	Refuse in full Section 32(1)	Section 32(1): See Document 1.
7	[date]	Emails between agency staff and Applicant	3	Released in full	Not subject to review	
8	[date]	Emails between agency staff and Applicant	2	Released in full	Not subject to review	
9	[date]	Emails between agency staff and Applicant	2	Released in full	Not subject to review	
10	[date]	Emails between agency staff	2	Released in full	Not subject to review	
11	[date]	Emails between agency staff	2	Released in full	Not subject to review	

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
12	[date]	Emails between agency staff	4	Refused in full Section 30(1)	Release in full	<p>Section 30(1): The document is an email chain that describes how the Agency was responding to the Applicant's complaint at that time.</p> <p>As set out above, the email contains matter in the nature of consultation between officers which took place as part of the Agency's deliberative processes.</p> <p>I have decided it would not be contrary to the public interest to release the document. While it relates to a sensitive matter, I do not consider disclosure would be likely to inhibit communications between officers or provide merely part of an explanation for the process being undertaken by the Agency. Rather, disclosure demonstrates the actions being taken by the Agency to assist the Applicant.</p>
13	[date]	Emails between agency staff	2	Released in full	Not subject to review	
14	[date]	Emails between agency staff	2	Refused in full Section 30(1)	Release in full	<p>Section 30(1): I note this email could be considered outside the scope of the request, as it does not directly relate to the Applicant's complaint, however, I agree FOI requests should be interpreted in the broadest possible terms. Therefore, I consider this document falls within the scope of the request.</p> <p>I note the FOI request was formally accepted by the Agency on [date] making this document within scope of the request.</p>

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						The email contains matter in the nature of consultation between officers which took place as part of the Agency's deliberative processes, namely, responding to the Applicant's FOI request. I do not consider this document is exempt under section 30(1) given it does not contain any substantive deliberation or consultation between officers the disclosure of which would be contrary to the public interest.
15	[date]	Emails between agency staff	2	Refused in full Section 30(1)	Release in full	Section 30(1): This document is similar to Document 14 and is not exempt for the same reasons.
16	[date]	Emails between agency staff	3	Refused in full Section 30(1)	Release in full	Section 30(1): This document is similar to Document 14 and is not exempt for the same reasons.
17	[date]	Emails between agency staff	4	Refused in full Section 30(1)	Release in part Sections 33(1), 25 The document is to be released with the following exempt information deleted in accordance with section 25: <ul style="list-style-type: none"> the email dated [date][time]. 	Section 30(1): Except for the email dated [date][time], the remainder of the document is similar to Document 14 and is not exempt for the same reasons. In my view, the email dated [date][time] contains the personal affairs of a person other than the Applicant. Therefore, I have considered section 33(1) in relation to this information. Section 33(1): In relation to the email dated [date][time], I consider it contains personal affairs information of a person other than the Applicant that would be unreasonable to release.

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p>I have made this decision as the information is sensitive and it is reasonably likely the person concerned would object to its release. I also consider there would be no broader public interest promoted by releasing the information that outweighs the privacy of the person concerned.</p> <p>I have considered whether this email could be edited to remove exempt information in accordance with section 25, however, I have decided that to do so would render the email meaningless.</p>
18	[date]	Emails between agency staff and Applicant	5	Released in full	Not subject to review	
19	[date]	Email between agency staff and Applicant	1	Refused in full Section 30(1)	Release in full	Section 30(1): The document is not exempt under section 30(1) for the reasons set out in Document 12.
20	[date]	Email between agency staff	1	Refused in full Section 30(1)	Release in full	Section 30(1): My view is that even if the email could be considered to contain matter in the nature of consultation between officers that has taken place for the deliberative processes of the Agency, that it would not be contrary to the public interest to release it. The email does not contain sufficient substantive consultation or deliberation to have such an effect.
21	[date]	Email between agency staff	1	Refused in full Section 30(1)	Release in full	Section 30(1): The email is similar to Document 20 and is not exempt under section 30(1) for the reasons

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						outlined above.
22	[date]	Emails between agency staff and Applicant	2	Released in full	Not subject to review	
23	[date]	Email between agency staff	1	Released in full	Not subject to review	
24	[date]	Email between agency staff	1	Released in full	Not subject to review	
25	[date]	Email between agency staff	1	Out of scope	Not subject to review	Document created after the date of the FOI request
26	[date]	Email between agency staff	1	Out of scope	Not subject to review	Document created after the date of the FOI request
27	[date]	Email between agency staff	1	Out of scope	Not subject to review	Document created after the date of the FOI request
28	[date]	Email between agency staff	1	Refused in full Section 30(1)	Release in full	Section 30(1): The email contains matter in the nature of consultation between officers, that has taken place for the deliberative processes of the Agency. However, I have decided it would not be contrary to the public interest to release it because it does not contain sufficient substantive consultation or deliberation to have such an effect.

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
29	[date]	Email between agency staff	1	Released in full	Not subject to review	
30	[date]	Email between agency staff	1	Refused in full Section 30(1)	Release in full	Section 30(1): The document is not exempt for the reasons set out in Document 28.
31	[date]	Email between agency staff	1	Refused in full Section 30(1)	Release in full	Section 30(1): The document is not exempt for the reasons set out in Document 28.
32	[date]	Email between agency staff	1	Refused in full Section 30(1)	Release in full	Section 30(1): The document is not exempt for the reasons set out in Document 28.
33	[date]	Email from agency to another agency	1	Refused in full Section 35(1)(b)	Release in full	<p>Section 35(1)(b): The document is an email from an Agency officer to another agency. It does not contain information not already known to the Applicant, which has been received by the Agency. Rather, it is a record of the Agency providing information to another agency. It is therefore not exempt under section 35(1)(b).</p> <p>Section 30(1): For completeness, my view is that the document is also not exempt under section 30(1) as it does not contain sufficient substantive consultation or deliberation for its disclosure to be contrary to the public interest.</p>
34	[date]	Email between	2	Released in full	Not subject to review	

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
		agency staff				
35	[date]	Emails between agency staff	2	Released in full	Not subject to review	
36	[date]	Emails between agency staff and Applicant	3	Released in full	Not subject to review	
37	[date]	Email	3	Refused in full Section 32(1)	Release in part Sections 32(1), 25 The document is to be released with the following exempt information deleted in accordance with section 25: <ul style="list-style-type: none"> the emails dated [date][time]; and [date][time];. 	Section 32(1): The emails dated [date][time] and [date][time] are confidential communications prepared for the purpose of obtaining legal advice. They are exempt under section 32(1). The emails dated [date][time],[time] and [time] are not such communications and are therefore not exempt under this section.
38	[date]	Emails between agency staff	2	Released in full	Not subject to review	
39	[date]	Emails between agency staff and Applicant	4	Released in full	Not subject to review	

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
40	[date]	Emails between agency staff	4	Released in full	Not subject to review	
41	[date]	Emails between agency staff	2	Refused in full Section 32(1)	Release in full	Section 32(1): The emails do not contain confidential communications prepared for the purpose of obtaining or receiving legal advice. The document is therefore not exempt under section 32(1).
42	[date]	Emails between agency staff	3	Released in full	Not subject to review	
43	[date]	Emails between agency staff	2	Released in full	Not subject to review	
44	[date]	Emails between agency staff	2	Released in full	Not subject to review	
45	[date]	Emails between the agency and another agency	2	Refused in full Section 35(1)(b)	Release in full	Section 35(1): Similar to Document 33, the majority of the information in the document is being provided to another agency rather than being received by the Agency in confidence. It is therefore not exempt under section 35(1)(b). Section 30(1): I note this document contains more detailed information than Document 33. However, I consider much of this information is factual, and in any case, I consider the information in the document does not disclose sensitive communications between the agencies. I therefore do not consider its disclosure

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						would be contrary to the public interest.
46	[date]	Emails between the agency and another agency	3	Refused in full Section 35(1)(b)	Release in full	Sections 35(1)(b): The document is not exempt for the reasons set out in Document 45.
47	[date]	Emails between agency staff	3	Refused in full Section 30(1)	Release in full	Section 30(1): The document is not exempt for the reasons set out in Document 28
48	[date]	Emails between agency staff	3	Released in part Sections 33(1), 38	Release in part with irrelevant information deleted Section 25 The document is to be released with the following information deleted in accordance with section 25: <ul style="list-style-type: none"> the third line of text from the email dated [date][time]; and the fourth and fifth lines of text from the email dated [date][time]. 	Section 25: The emails dated [date][time] and [date][time] contain the name of another complainant. I consider this information is outside the scope of the Applicant's request and is to be deleted from the emails in accordance with section 25.

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
49	[date]	Emails between agency staff	3	Released in part Sections 33(1), 38	<p>Release in part with irrelevant information deleted</p> <p>Section 25</p> <p>The document is to be released with the following information deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the third line of text from the email dated [date][time]; the fourth and fifth lines of text from the email dated [date][time]. 	<p>This document is a duplicate of Document 48.</p> <p>Section 25: The emails dated [date][time] and [date][time] contain the name of another complainant. I consider this information is outside the scope of the Applicant's request and is to be deleted from the emails in accordance with section 25.</p>
50	[date]	Emails from the agency to another agency	1	Refused in full Section 35(1)(b)	Release in full	<p>This document partially duplicates Documents 45 and 46.</p> <p>Sections 35(1)(b): The document is not exempt for the reasons set out in Document 45.</p>
51	[date]	Emails between agency staff	3	Released in full	Not subject to review	
52	[date]	Emails between	2	Released in full	Not subject to review	

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
		agency staff and Applicant				
53	[date]	Emails between agency staff	1	Released in full	Not subject to review	
54	[date]	Email between agency staff	2	Released in full	Not subject to review	
55	[date]	Email within the agency	4	Released in full	Not subject to review	
56	[date]	Email between agency staff	1	Refused in full Sections 30(1), 33(1)	Release in part Sections 33(1), 25 The document is to be released with the following information deleted in accordance with section 25: <ul style="list-style-type: none"> the email address of the addressee. 	<p>Section 30(1): The document is not exempt for the reasons set out in Document 28.</p> <p>Section 33(1): I agree the email addressee contains the personal affairs information of a person other than the Applicant. I consider it would be unreasonable to release such information, where it is a private email address. It is therefore exempt under section 33(1).</p>
57	[date]	Email between agency staff	1	Refused in full Sections 30(1), 33(1)	Refuse in full Section 33(1)	<p>Section 33(1): The document contains the personal affairs information of a person other than the Applicant. It would be unreasonable to release the information because:</p> <ul style="list-style-type: none"> it is sensitive;

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<ul style="list-style-type: none"> it is likely it was provided in confidence; the person objects to its disclosure; the matters it deals with are personal rather than dealing only with the professional role of that person. <p>Section 25: I do not consider it is practicable to edit the document to remove exempt information, as to do so would render the document meaningless.</p>
58	[date]	Email between agency officers	1	Refused in full Sections 33(1), 35(1)(b)	Refuse in full Section 33(1)	Section 33(1): The document contains the personal affairs information of a person other than the Applicant. I have decided it would be unreasonable to release it for the reasons set out in Document 57.
59	[date]	Email between agency officers	1	Refused in full Sections 33(1), 35(1)(b)	Refuse in full Section 33(1)	Section 33(1): The document contains the personal affairs information of a person other than the Applicant. I have decided it would be unreasonable to release it for the reasons set out in Document 57.
60	[date]	Email between agency officers	1	Refused in full Section 30(1)	Release in full	Section 30(1): The document is not exempt for the reasons set out in Document 28.
61	[date]	Email between agency officers	2	Refused in full Sections 33(1), 35(1)(b)	Refuse in full Section 33(1)	Section 33(1): The document contains the personal affairs information of a person other than the Applicant. I have decided it would be unreasonable to release it for the reasons set out in Document 57.

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
62	[date]	Email between agency officers	2	Refused in full Sections 33(1), 35(1)(b)	Refuse in full Section 33(1)	Section 33(1): The document contains the personal affairs information of a person other than the Applicant. I have decided it would be unreasonable to release it for the reasons set out in Document 57.
63	[date]	Email between agency officers	1	Refused in full Sections 33(1), 35(1)(b)	Refuse in full Section 33(1)	This document is a partial duplicate of Document 59. Section 33(1): The document contains the personal affairs information of a person other than the applicant. I have decided it would be unreasonable to release it for the reasons set out in Document 57.
64	[date]	Email between agency officers	1	Refused in full Sections 33(1), 35(1)(b)	Refuse in full Section 33(1)	Section 33(1): The document contains the personal affairs information of a person other than the Applicant. I have decided it would be unreasonable to release it for the reasons set out in Document 57. While I note this email is less sensitive, given it does not add to an understanding of how the hospital responded to the complaint, I have decided the privacy of the person concerned outweighs the public interest in disclosure.
65	[date]	Emails between agency officers and legal advisers	2	Refused in full Sections 32(1)	Refuse in part Sections 32(1), 25 The document is to be released with the following information deleted in accordance with section 25:	Section 32(1): The emails dated [date][time] and [date][time] contain communications between the Agency and its legal adviser. These two emails relate only to timeframes and therefore are not exempt under section 32(1). However, as set out above, the email dated [date] [time] is a confidential communication prepared for the purpose of obtaining legal advice. It is therefore

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					<ul style="list-style-type: none"> the email dated [date] [time]. 	exempt under section 32(1).
66	[date]	Email to Applicant	1	Released in full	Not subject to review	
67	[date]	Email to Applicant	1	Released in full	Not subject to review	
68	[date]	Email to agency from Applicant	3	Released in full	Not subject to review	
69	[date]	Email to agency from Applicant	1	Released in full	Not subject to review	
70	[date]	Email between agency officers	1	Refused in full Sections 33(1), 35(1)(b)	Refuse in full Section 33(1)	<p>This document is a duplicate of Document 57.</p> <p>Section 33(1): The document contains the personal affairs information of a person other than the Applicant. I have decided it would be unreasonable to release it for the reasons set out in Document 57.</p>
71	[date]	Email between agency officers	1	Refused in full Sections 33(1), 35(1)(b)	Refuse in full Section 33(1)	<p>This document is a duplicate of Document 58.</p> <p>Section 33(1): The document contains the personal affairs information of a person other than the Applicant. I have decided it would be unreasonable to release it for the reasons set out in Document 57.</p>

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
72	[date]	Email between agency officers	1	Refused in full Sections 33(1), 35(1)(b)	Refuse in full Section 33(1)	This document is a duplicate of Document 59. Section 33(1): The document contains the personal affairs information of a person other than the Applicant. I have decided it would be unreasonable to release it for the reasons set out in Document 57.
73	[date]	Email between agency officers	1	Refused in full Sections 33(1), 35(1)(b)	Refuse in full Section 33(1)	This document is a duplicate of Document 64, above. Section 33(1): The document contains the personal affairs information of a person other than the Applicant. I have decided it would be unreasonable to release it for the reasons set out in Document 57.
74	[date]	Emails between agency officers and legal advisers	2	Refused in full Sections 32(1)	Refuse in part Sections 32(1), 25 The document is to be released with the following information deleted in accordance with section 25: <ul style="list-style-type: none">the email dated [date] [time].	This document is a duplicate of Document 65, above. Section 32(1): The emails dated [date][time] and [date][time] contain communications between the Agency and its legal adviser. These two emails relate only to timeframes and therefore are not exempt under section 32(1). However, as set out above, the email dated [date][time] is a confidential communication prepared for the purpose of obtaining legal advice. It is therefore exempt under section 32(1).
75	[date]	Email between agency officers	1	Refused in full Sections 33(1), 35(1)(b)	Refuse in full Section 33(1)	This document is a duplicate of Document 63, above. Section 33(1): The document contains the personal affairs information of a person other than the

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						Applicant. I have decided it would be unreasonable to release it for the reasons set out in Document 57.
76	[date]	Letter to Applicant	1	Released in full	Not subject to review	
77	[date]	Letter to Applicant	1	Released in full	Not subject to review	
78	[date]	Account of [job title]	1	Refused in full Sections 33(1), 35(1)(b)	Refuse in full Sections 33(1), 35(1)(b)	<p>Section 35(1)(b): The document was prepared by an Agency staff member regarding the incident being complained about by the Applicant. It also appears in Document 102.</p> <p>I note the person concerned did not respond to the Agency's consultation under the FOI Act, when asked for their views on whether disclosure of this document should occur.</p> <p>However, given the document was prepared by an Agency staff member in response to a complaint, I consider that it can be reasonably understood to have been provided in confidence to the Agency.</p> <p>While I consider staff members are obliged to provide such responses, I must consider whether disclosure would affect the ability of the Agency to obtain frank accounts of such incidents in the future voluntarily and with as little formality as possible. I have therefore decided disclosure of the document would be contrary to the public interest because disclosure would be reasonably likely to impair the ability of the</p>

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p>Agency to obtain similar information in the future.</p> <p>Section 33(1): I also consider the document is exempt under section 33(1). It contains the personal affairs of a person other than the Applicant. I consider it would be unreasonable to release this information for the following reasons:</p> <ul style="list-style-type: none"> • it is sensitive; • it is likely it was provided in confidence; • the matters it deals with are personal rather than dealing only with the professional role of that person.
79	[date]	Letter to Applicant	1	Released in full	Not subject to review	
80	[date]	Letter to Applicant	1	Released in full	Not subject to review	
81	[date]	'Correspondence tracker' and letters to and from the Applicant	5	Released in part Section 33(1), 25	<p>Release in part</p> <p>Section 25</p> <p>The document is to be released with the following information deleted in accordance with section 25:</p> <ul style="list-style-type: none"> • the first page of the 	<p>Section 25: I agree the first page of the document relates to a compliment rather than a complaint as described in the FOI request. It is therefore outside the scope of the request.</p>

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					document.	
82	Undated	Document appears to be correspondence between agency officers	1	Refused in full Sections 30(1), 33(1)	Refuse in full Section 33(1)	Section 33(1): The document contains the personal affairs information of a person other than the Applicant. I have decided it would be unreasonable to release it for the reasons set out in Document 57.
83	Undated	Draft letter to Applicant	1	Refused in full Section 30(1)	Release in full	Section 30(1): The document is a draft letter to the Applicant. It contains matter in the nature of opinion and advice that has been prepared by an Agency officer as part of the deliberative processes of the Agency. I have decided it would not be contrary to the public interest to release it. While it is clearly an early draft of a document, I note there is no final version as with the other draft letters subject to review and I do not consider the substance of it to depart substantially from other letters provided to the Applicant. It is therefore not exempt under section 30(1).
84	[date]	Letter from Applicant to agency	6	Released in full	Not subject to review	
85	[date]	Draft letter to Applicant	3	Refused in full Section 32(1)	Refuse in full Section 32(1)	Section 32(1): I accept this document was prepared as part of seeking advice on how to respond to some of the issues raised by the Applicant regarding several complaints they made to the Agency.

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						I am satisfied it amounts to a confidential communication passing between the Agency and its legal advisers for the purpose of obtaining legal advice. Therefore, the document is exempt under section 32(1).
86	[date]	Letter to Applicant	3	Released in full	Not subject to review	
87	[date]	Feedback report	5	Released in full	Not subject to review	
88	[date]	Draft letter to Applicant	3	Refused in full Section 30(1)	Refuse in full Section 30(1)	<p>Section 30(1): This is a draft letter to the Applicant. The final version of this letter appears at Document 86 and has been released to the Applicant in full.</p> <p>The draft versions of this letter appear at Documents 85 (that was amended and added to a legal advice request and therefore exempt under section 32(1)), 93, 94, 95 and 114.</p> <p>These documents contain matter in the nature of opinion and advice prepared by Agency officers and consultation that has taken place between officers as part of the deliberative processes of the Agency. I have decided it would be contrary to the public interest to release it for the following reasons:</p> <ul style="list-style-type: none"> • it relates to early versions of the document; • the disclosure of the document would not clearly or accurately reflect the Agency's final views on

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p>the matter; and</p> <ul style="list-style-type: none"> in any case, the final version has been provided to the Applicant.
89	[date]	Draft letter to Applicant	6	Refused in full Section 30(1)	Release in full	<p>Section 30(1): This document is a copy of a letter from the Applicant with certain matters raised by them highlighted in yellow. It also contains two comments in relation to those matters added by the Agency in the margin.</p> <p>While I consider it contains matter in the nature of opinion and advice prepared by an Agency officer and consultation that has taken place between officers as part of the deliberative processes of the Agency, I do not consider its release would be contrary to the public interest as it does not contain substantive or sensitive information.</p>
90	[date]	Statement of respondent	6	Refused in full Section 35(1)(b)	Refuse in full Sections 35(1)(b), 33(1)	<p>Sections 35(1)(b), 33(1): This document also appears in draft and final form in Documents 99, 103, 104, 105 and 106.</p> <p>It is exempt from release under both sections 35(1)(b) and 33(1) for the reasons set out in Document 78, above.</p>
91	[date]	Letter from Applicant to agency	4	Released in full	Not subject to review	

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
92	[date]	Draft letter to Applicant	2	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): The document is a draft letter, the final of which is Document 96 that has been provided to the Applicant in full. The drafts of the letter also appear in Documents 107, 108 and 112. The draft letters are exempt under section 30(1) for the reasons set out in Document 88.
93	[date]	Draft letter to Applicant	3	Refused in full Section 30(1)	Refuse in full Section 30(1)	See Document 88.
94	[date]	Draft letter to Applicant	3	Refused in full Section 30(1)	Refuse in full Section 30(1)	See Document 88.
95	[date]	Draft letter to Applicant	3	Refused in full Section 30(1)	Refuse in full Section 30(1)	See Document 88.
96	[date]	Letter to Applicant	2	Released in full	Not subject to review	
97	[date]	Letter to Applicant	1	Document is outside of scope	Document is outside of scope	Section 25: I agree the document relates to a compliment rather than a complaint as described in the FOI Request. It is therefore outside the scope of the request.
98	[date]	Letter from Applicant to the	6	Released in full	Not subject to review	N/A

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
		agency				
99	[date]	Statement of respondent	6	Refused in full Section 35(1)(b)	Refuse in full Sections 35(1)(b), 33(1)	See Document 90.
100	[date]	Internal working notes	3	Refused in full Section 30(1)	Refuse in full Section 30(1)	<p>Section 30(1): The document is described by the Agency as draft working notes taken by the investigator from the Applicant's clinical notes.</p> <p>I consider it contains matter in the nature of opinion and advice that was prepared by an officer for the deliberative processes of the Agency, being the Agency's response to a complaint.</p> <p>I have decided it would be contrary to the public interest to release the document for the following reasons:</p> <ul style="list-style-type: none"> the notes were selected from the patient's record at an early stage of responding to the Applicant's complaint; while I note they contain part of the Applicant's clinical notes, which in most circumstances would be released to them, my concern is that in these particular circumstances, the particular parts of their record may have been selected in such a way the disclosure of which would give a part explanation for the Agency's decision making processes (I note also that it is open to the Applicant to request their clinical records);

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<ul style="list-style-type: none"> the document would therefore not clearly or accurately represent the Agency's final position or decision taken at the conclusion of the complaint handling process.
101	[date]	Internal working notes	3	<p>Refused in full</p> <p>Section 30(1)</p>	<p>Release in full</p>	<p>Section 30(1): This document also appears in Documents 109 and 110. It is a draft document noting the Applicant's complaint and an Agency officer's initial comments in response.</p> <p>I consider it contains matter in the nature of opinion and advice that was prepared by an officer for the deliberative processes of the Agency, being its response to a complaint.</p> <p>I understand why the disclosure of such documents could be considered contrary to the public interest for similar reasons as those set out in Document 100, above.</p> <p>However, in this particular instance, having carefully reviewed the document, I consider that it would not be contrary to the public interest to release it for the following reasons:</p> <ul style="list-style-type: none"> some of the document contains factual information and is therefore not exempt under section 30(3); the document, while not final, appears to represent some of the Agency's final views on the matter, as expressed in its correspondence with

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p>the Applicant;</p> <ul style="list-style-type: none"> there is no other information in the document the disclosure of which would be contrary to the public interest.
102	[date]	Account of [job title]	1	Refused in full Sections 33(1), 35(1)(b)	Refuse in full Sections 33(1), 35(1)(b)	This document is a duplicate of Document 78, above. See Document 78.
103	Undated	Statement of respondent	2	Refused in full Section 35(1)(b)	Refuse in full Sections 35(1)(b), 33(1)	See Document 90.
104	[date]	Statement of respondent	8	Refused in full Section 35(1)(b)	Refuse in full Sections 35(1)(b), 33(1)	See Document 90.
105	[date]	Statement of respondent	8	Refused in full Section 35(1)(b)	Refuse in full Sections 35(1)(b), 33(1)	See Document 90.
106	Undated	Statement of respondent	2	Refused in full Section 35(1)(b)	Refuse in full Sections 35(1)(b), 33(1)	See Document 90.
107	[date]	Draft letter to Applicant	2	Refused in full Section 30(1)	Refuse in full Sections 30(1)	See Document 92.

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
108	[date]	Draft letter to Applicant	2	Refused in full Section 30(1)	Refuse in full Sections 30(1)	See Document 92.
109	[date]	Internal working notes	2	Refused in full Section 30(1)	Release in full	See Document 101.
110	[date]	Internal working notes	2	Refused in full Section 30(1)	Release in full	See Document 101.
111	[date]	Letter from Applicant to agency	6	Released in full	Not subject to review	
112	[date]	Draft letter to Applicant	2	Refused in full Section 30(1)	Refuse in full Sections 30(1)	See Document 92.
113	[date]	Draft letter to Applicant	1	Refused in full Section 30(1)	Release in full	<p>Section 30(1): This document is a draft letter to the Applicant.</p> <p>While I consider it contains matter in the nature of opinion and advice prepared by an Agency officer as part of the deliberative processes of the Agency, I do not consider its release would be contrary to the public interest as it does not contain substantive or sensitive information.</p>

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
114	[date]	Draft letter to Applicant	3	Refused in full Section 30(1)	Refused in full Section 30(1)	See Document 88.