

Notice of Decision and Reasons for Decision

Applicant:	'BJ5'
Agency:	Mercy Hospitals Victoria Ltd
Decision date:	27 March 2020
Exemption considered:	Section 33(1)
Citation:	'BJ5' and Mercy Hospitals Victoria Ltd (<i>Freedom of Information</i>) [2020] VICmr 92 (27 March 2020)

FREEDOM OF INFORMATION – medical records – health records – mobile telephone number of medical practitioner

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 part of the document is exempt under section 33(1).

As it is practicable to release the document with exempt information deleted under section 25, I have determined to release the document in part.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

27 March 2020

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to their medical records.
2. In its decision, the Agency identified four documents falling within the terms of the Applicant's request. It decided to grant access to Documents 1 and 2 in full and Documents 3 and 4 in part.
3. The Agency relied on section 33(1) to deny access to certain information in the documents. The Agency's decision letter sets out the reasons for its decision.

Review

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. The Applicant indicated [they are] seeking full access to [their] records.
6. I have examined copies of the documents subject to review.
7. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
8. 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
 - (c) the Agency's submission dated 19 March 2020.
9. 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

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'.
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 this may be reasonably determined.²

¹ Sections 33(1) and (2).

² Section 33(9).

12. 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.
13. Section 33(2A) requires that, 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.
14. 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 on disclosure of that information.³ 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.⁴
15. The Agency advised it considered it was not practicable to consult with the third party in this matter.
16. The Agency applied section 33(1) to a mobile telephone number that appears on Documents 3 and 4.
17. I am satisfied the mobile telephone number is personal affairs information from which a person other than the Applicant can be identified.
18. I am also satisfied disclosure of the mobile telephone number would be unreasonable as:
 - (a) while such telephone numbers can be used for professional and work purposes, a mobile telephone number is more likely to also be used to contact a person while they are not working, which extends access to the person in their personal life;
 - (b) it is unlikely the person concerned would consent to the release of their mobile telephone number to the Applicant;
 - (c) I accept the Agency's submission that as this telephone number is now more than [number of] years old, it may no longer belong to the person named in the documents; and
 - (d) the Applicant's interest in seeking access to the document in full will serve a personal interest, and no public interest would be served by disclosure of the document in full.

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 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'⁵ and the effectiveness of the deletions. Where

³ Section 33(2B).

⁴ Section 33(2C).

⁵ *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

deletions would render a document meaningless, they are not 'practicable', and release of the document is not required under section 25.⁶

21. I have considered the effect of deleting exempt information in the documents in accordance with section 25. I am satisfied it is practicable to delete the exempt information, as to do so would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

22. On the information before me, I am satisfied section 33(1) applies to the documents in part.
23. As it is practicable to edit some of the documents to delete exempt information, I have determined to grant access to the documents in part.

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.⁷
25. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁸
26. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁹
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.¹⁰

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.

⁶ *Honeywood v Department of Human Services* [2006] VCAT 2048 [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140], [155].

⁷ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁸ Section 52(5).

⁹ Section 52(9).

¹⁰ Sections 50(3F) and (3FA).