

Notice of Decision and Reasons for Decision

Applicant:	'BL4'
Agency:	Victorian WorkCover Authority
Decision date:	8 April 2020
Exemption considered:	Section 33(1)
Citation:	'BL4' and Victorian WorkCover Authority (<i>Freedom of Information</i>) [2020] VICmr 110 (8 April 2020)

FREEDOM OF INFORMATION – workplace investigation – personal affairs information of individuals other than the applicant – unreasonable disclosure of personal affairs information.

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.

I am satisfied the pages subject to review are not exempt under section 33(1) and have decided to grant access to the documents in full.

The Schedule of Documents in **Annexure 1** sets out my decision in relation to each page.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

8 April 2020

Reasons for Decision

Background to review

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

Requesting the names of persons identified as part of Worksafe Investigation. Report included with application. Requesting documents submitted to Worksafe. Cross reference of dates. Reviewable decision. Meeting attended [date]. WorkSafe Office [address]. Attached Worksafe Report.
2. In its decision, the Agency identified 4,248 pages falling within the terms of the Applicant's request. It decided to refuse access to certain pages in part relying on the exemption under section 33(1). The Agency's decision letter sets out the reasons for its decision.

Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. On [date], the Applicant indicated they seek review of five pages only (the **document**).
5. On [date], OVIC informed the Agency of the narrowed scope of the review and provided the Agency with a copy of the five pages.
6. On [date], the Agency agreed to release further information within the document to the Applicant. Accordingly, my review relates to the remaining deleted information.
7. I have examined copies of the pages subject to review.
8. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
9. I have considered all communications or submissions received from the parties, including:
 - (a) the Agency's decision on the FOI request;
 - (b) information provided with the Applicant's review application; and
 - (c) communications between the Applicant, the Agency and OVIC staff.
10. 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 exemption

Section 33(1)

11. 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

¹ Sections 33(1) and (2).

(b) such disclosure would be 'unreasonable'.

12. 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

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

13. The information exempted by the Agency relates to the names of individuals other than the Applicant. I am satisfied it relates to the personal affairs information of those individuals.

Would the disclosure of this information be unreasonable?

14. The document subject to review is a chronological summary of emails, text messages, telephone calls and meetings related to the Applicant [and their circumstances].
15. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with protecting the personal privacy of an individual in the circumstances.
16. I have had regard to the following factors in determining whether disclosure of the personal affairs information would be unreasonable in the circumstances:

(a) The nature of the personal affairs information

The Agency exempted the names of individuals who sent, received or participated in a series of communications related to the [Applicant's circumstances]. While I would generally consider such information to be sensitive, I note the Applicant was involved directly in most of these discussions. Therefore, in these circumstances, I do not consider the personal affairs information to be particularly sensitive.

This factor weighs in favour of disclosure.

(b) The circumstances in which the information was obtained by the Agency

The Agency obtained the information in connection with its investigative powers and functions. However, as discussed above, given the Applicant's direct involvement in the relevant interactions discussed in the document, I do not consider disclosure of this information would be unreasonable.

This factor weighs in favour of disclosure.

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

The Agency has not provided me with any views of the relevant individuals' opinions regarding disclosure of their personal affairs information to the Applicant. While this is not a determinative factor, in the context of the pages subject to review, I do not consider the relevant individuals would be likely object to the release of their personal affairs information.

This factor weighs in favour of disclosure.

² Section 33(9).

17. 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 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.
18. In weighing the above factors, on balance, I am satisfied it would not be unreasonable to release the personal affairs information in the pages to the Applicant.
19. Accordingly, I am satisfied this information is not exempt under section 33(1).

Conclusion

20. On the information before me, I am satisfied the pages subject to review are not exempt under section 33(1) and have decided to grant access to the documents in full.
21. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each page.

Review rights

22. 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.⁴
23. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁵
24. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁶
25. 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.
26. 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.⁷

Third party review rights

27. As I have decided to release information relating to the personal affairs of third parties and I am satisfied it is practicable to notify those individuals of my decision and right to apply to VCAT for a review within 60 days from the date they are given notice.⁸

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.

³ Section 33(2A).

⁴ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁵ Section 52(5).

⁶ Section 52(9).

⁷ Sections 50(3F) and (3FA).

⁸ Sections 49P(5) and 50(1)(3).

Annexure 1 – Schedule of Documents

Page No.	Document Description	Agency's Decision	OVIC Decision	OVIC Comments
1.	Table commencing with "[date]"	Release in part Section 33(1)	Release in full	<p>Section 33(1): I have determined to release this information because the Applicant had been part of the relevant correspondence and, in the circumstances of this case, I am not satisfied release of the personal affairs information would be unreasonable for the following reasons:</p> <ul style="list-style-type: none"> - [date]: The Applicant sent this text message. - [date]: The Applicant attended this meeting and would know the identity of the other person. - [date]: The Applicant sent this text message. - [date]: The Applicant made this telephone call.
2.	Table commencing with '[date]'	Release in part Section 33(1)	Release in full	<p>Section 33(1): See reasoning above for page 1.</p> <ul style="list-style-type: none"> - [date]: The Applicant attended this meeting and would know the identity of the other persons.
3.	Table commencing with '[date]'	Release in full	Not subject to review	On [date], the Agency agreed to release this page in full.
4.	Table commencing with '[date]'	Release in part Section 33(1)	Release in full	<p>Section 33(1): See reasoning above for page 1.</p> <ul style="list-style-type: none"> - [date]: While the Applicant did not send or receive this email or telephone call, the document describes events involving the Applicant. Given the information has already been released, I am not satisfied disclosure of the names would be unreasonable in the circumstances. - [date]: The Applicant attended this meeting and would know the

Annexure 1 – Schedule of Documents

Page No.	Document Description	Agency's Decision	OVIC Decision	OVIC Comments
				identity of the other persons.
5.	Table commencing with '[date]'	Release in part Section 33(1)	Release in full	<p>Section 33(1): See reasoning above for page 1.</p> <p>- [date]: The Applicant made this telephone call.</p>