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Notice of Decision and Reasons for Decision

Applicant:	'BN3'
Agency:	Victorian WorkCover Authority
Decision date:	8 May 2020
Exemption considered:	Section 33(1)
Citation:	'BN3' and Victorian WorkCover Authority (<i>Freedom of Information</i>) [2020] VICmr 128 (8 May 2020)

FREEDOM OF INFORMATION – WorkSafe claims data – personal affairs information – unreasonable disclosure

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.

My reasons for decision follow.

Sven Bluemmel
Information Commissioner

8 May 2020

Reasons for Decision

Background to review

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

The total number of Worksafe claims by staff from the [specified department] during calendar year [specified period]. This data should be broken down by occupation, type of injury, the status of the claim (accepted/rejected/pending), and total payments made. It should also include a description/details of the incident that occurred which resulted in the claim. If the information does not exist in discrete documents, I would accept a table produced under the provisions of Section 19 of the FOI Act.

2. In its decision, the Agency identified a document falling within the terms of the Applicant's request. It decided to grant access to the document 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. 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; and
 - (c) the Agency's submissions dated [date] and [date].
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 section 33(1) to refuse access to the document in part. 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'.
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

¹ Sections 33(1) and (2).

reasonably determined.² It has also been held information relates to a person's personal affairs if it 'concerns or affects that person as an individual'.³

11. The Victorian Civil and Administrative Tribunal (**VCAT**) has held a document will disclose personal affairs information if the document is capable of, either directly or indirectly, identifying a particular individual whose personal affairs are disclosed. As the nature of disclosure under the FOI Act is unrestricted and unconditional, this is to be interpreted by the capacity of any member of the public to potentially identify a third party.⁴

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

12. The document is a table that consists of columns titled 'Report year', 'Payments at [date]', 'Nature of affliction', 'Bodily location', 'Occupation', 'Accident text' and 'Claim liability'.
13. The document contains information concerning the injuries sustained by the workers' compensation claimants, such as a descriptive summary of the incident that caused harm or injury in a column titled 'Accident text' and limited information in the 'Nature of affliction' column, some of which are specific in nature. I note that column is written in the terms the injured workers provided as they were required to describe it as part of their workers' compensation claim application.
14. I note the applicant disagrees that the document contains personal affairs information. In their review application, the Applicant states, in part:

...[the Agency] has not granted access to any description of incidents. This is inconsistent with [the Agency's] previous decision to grant access to this information. I have previously lodged the same FOI request in [year], where [the Agency] did include a description of the incident... It is plainly in the public interest for this information about the use of tax payer resources to fund [the Agency] claims to be subject to disclosure. [The Agency] now argues that the disclosure of all descriptions of incidents is exempt pursuant to Section 33 (1) -- Personal affairs/privacy. ...section 33 of the Act is irrelevant in these circumstances. No identifying information has been requested or disclosed. The information sought is not "information relating to the personal affairs of any person", the definition of which in section 33 of the Act includes information that identifies or can reasonably identify a person or their location. The data does not detail the employees' gender, age or location.

15. In my view, while the claimants are not expressly named in the document, I consider it does contain personal affairs information for the following reasons:
 - (a) the information is detailed enough for people involved in the incidents to identify themselves or people they know; and
 - (b) given the level of detail involved, it is probable that the information either on its own or combined with other publicly available information could be used to identify individuals.
16. Therefore, I am satisfied the document contains personal affairs information of individuals other than the Applicant.

Would release of the personal affairs information be unreasonable?

17. 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.

² Section 33(9).

³ *Hanson v Department of Education and Training* [2007] VCAT 123 at [9].

⁴ *O'Sullivan v Department of Health and Community Services (No 2)* [1995] 9 VAR 1 at [14]; *Beauchamp v Department of Education* [2006] VCAT 1653 at [42].

18. 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.⁵ 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.⁶
19. The Agency determined it was not practicable to consult with all the third parties due to the volume of claimants who the Agency submitted would be unlikely to consent to disclosure of their personal information.
20. In determining whether release of the personal affairs information would be unreasonable, I have considered the following factors:
- (a) The nature of the personal affairs information;
 - (b) the circumstances in which the personal information was obtained;
 - (c) whether the individuals to whom the information relates object, or would be reasonably likely to object to the release of the information;
 - (d) whether any public interest would be promoted by the release of the information; and
 - (e) the Applicant's interest in the information, and purpose for seeking the information.
21. In its submission dated [date], the Agency states:
- ...the exemption applies to content concerning the personal and health information of individuals, specifically incident details derived from injured workers' WorkCover claim forms. ...disclosure would be unreasonable due to the sensitive nature of the information and the fact that it was provided in confidence to [the Agency], directly by injured workers as part of their WorkCover claims process. ... if these details were published or disseminated widely, there is a risk that the injured workers involved would recognise the reference to their own injury, [and] would be reasonable likely to cause them undue distress.
22. In its further submission dated [date], the Agency added:
- ...[the Agency's] view on the release of this kind of information has evolved, and, we submit, evolved in line with community expectations about how [the Agency] handles injured worker's confidential personal and health information. The Accident Text is written by injured workers themselves, in their own words. ...Injured workers are putting into an official document what is often sensitive personal and health information about an event that may have been distressing or painful, and which may have caused them anxiety... Injured workers are entitled to expect that [the Agency] treat this information with the strictest confidence and that it not be released for possible publication [redacted].
- ...the information was obtained in confidence by [the Agency] in carrying out its function as the agency responsible for workers' compensation in Victoria.

⁵ Section 33(2B).

⁶ Section 33(2C).

... While no individuals' names are connected with the material (and we note that this is not necessary to enliven section 33(1)), it is possible that an injured worker could recognise their own claim if they saw their own words along with the amount of their compensation published [redacted] and become distressed. This distress could be caused either by being reminded of their injury, or purely through knowledge that [the Agency] has released the personal and health information that they provided in confidence, for a purpose completely unrelated to the purpose of collection.

...it seems even more unreasonable to release workers' own personal statements when the 'Nature of Affliction' and 'Bodily Location' columns, which provide a version of the same information with a less personal aspect, are being released. If it is in the public interest for the community to be informed of the types of injuries [the Department's] employees are being compensated for under the Victoria's workers' compensation regime (and the amount of compensation being paid, then it is [the Agency's] view that this interest is adequately met by provision of the 'Nature of Affliction' and 'Bodily location' columns. Disclosure of the Accident Text would tilt the balance against the public interest by reducing workers' confidence in [the Agency] as the provider of workers' compensation in Victoria and as an agency who treats their personal and health information in the strictest confidence. Public trust in [the Agency] is essential for [the Agency] to properly exercise its important public functions, and any possible diminution of this trust is clearly not in the public interest.

23. I accept the Agency's submission. I am satisfied disclosure of the information would be unreasonable for the following reasons:
- (a) the information is sensitive personal affairs information;
 - (b) workers' compensation claimants would have provided the information with the expectation it would only be used for the purpose of the Agency's function of assessing and processing their workers' compensation claims;
 - (c) in these circumstances, I consider the workers' compensation claimants would be reasonably likely to object to the release of the descriptions of accidents they provided that caused them harm or injury; and
 - (d) the risk of re-identification is significant and if any individuals were identified I consider it would cause distress to those people.
24. I also consider disclosure of this information is unreasonable given the nature of release under the FOI Act, which is unrestricted and unconditional.
25. I acknowledge the Applicant's interest in the information. I also acknowledge that there is a public interest in ensuring that the use and allocation of public resources by the agency is subject to effective scrutiny. However, I consider the information already released by the Agency provides sufficient detail with respect to the type, occupation, status and total number of workers' compensation claims received from department staff during a specified period and workers' compensation payments made to allow for effective scrutiny.
26. For the reasons set out above, I do not consider any public interest would be served by release of the further information.
27. On the information before me therefore, the information in the 'Accident text' column and certain information the Agency found exempt in the 'Nature of affliction' column in the document is exempt from release under section 33(1).

Deletion of exempt or irrelevant information

28. 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.
29. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁷ 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 25.⁸
30. I have considered the effect of deleting exempt information from the documents. In my view, it is practicable for the Agency to delete the exempt information, because it would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

31. On the information available, I am satisfied the exemption in sections 33(1) applies to parts of the document. I have therefore decided to release the document in part.

Review rights

32. 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.⁹
33. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁰
34. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹¹
35. 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.
36. 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.¹²

When this decision takes effect

37. 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.

⁷ *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].

⁸ *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].

⁹ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁰ Section 52(5).

¹¹ Section 52(9).

¹² Sections 50(3F) and (3FA).