

Notice of Decision and Reasons for Decision

Applicant:	'BR5'
Agency:	Victoria Police
Decision date:	22 June 2020
Exemptions considered:	Section 30(1)
Citation:	'BR5' and Victoria Police (<i>Freedom of Information</i>) [2020] VICmr 167 (22 June 2020)

FREEDOM OF INFORMATION – workplace documents – emails – return to work – contrary to the public interest to release

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.

I am satisfied the information in the document sought by the Applicant is exempt under section 30(1).

As I am satisfied it is practicable to provide the Applicant with an edited copy of the document with irrelevant and exempt information deleted in accordance with section 25, I have determined to grant access to the document in part.

My reasons for decision follow.

Joanne Kummrow

Public Access Deputy Commissioner

22 June 2020

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to certain documents. Following discussion with the Agency, the Applicant clarified the scope of their request as:

All medical records related to or regarding [the Applicant's Return to Work / specified personnel file];

All correspondence between [named person 1] (role description) and any other party involved in [the Applicant's Return to Work / specified personnel file];

All correspondence between [named person 2] (role description) and any other party involved in [the Applicant's Return to Work / specified personnel file]; and

All other documents related to or regarding [the Applicant's Return to Work / specified personnel file].

2. In its decision, the Agency identified 320 pages of documents falling within the terms of the Applicant's request. The Agency relied on the exemptions in sections 30(1) and 33(1) to deny access to parts of the documents. 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. The Applicant advised they seek review of the Agency's application of section 30(1) only. The Agency applied section 30(1) to one document, comprising two emails.
5. I have examined a copy of the document subject to review.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered all communications received from the parties, including:
 - (a) the Agency's decision on the FOI request;
 - (b) the Applicant's review application; and
 - (c) subsequent communications with the Applicant.
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

Section 30(1)

9. 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.

10. The exemption does not apply to purely factual material in a document.¹

Does the document 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?

11. The document is an email exchange between two agency officers. I am satisfied it contains matter in the nature of opinion, advice or recommendation.

Was the document 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?

12. I am satisfied the document was made in the course of the deliberative processes of the agency, in that it concerns consultation and discussion between Agency officers regarding the Applicant's return to work.

Would disclosure of the document be contrary to the public interest?

13. In deciding if disclosure would be contrary to the public interest, I must consider all relevant facts and circumstances remaining mindful the object of the FOI Act is to facilitate and promote the disclosure of information.

14. In determining whether the information exempted by the Agency under section 30(1) would be contrary to the public interest, I have given weight to the following factors:

- (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 document and the broader context giving rise to the creation of the document;
- (c) the stage of the relevant decision or a process being undertaken at the time the communications were made;
- (d) whether disclosure of the document 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 document 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; 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. Having reviewed the document and the context in which it was created, I am satisfied it would be contrary to the public interest to release the document for the following reasons:

¹ Section 30(3).

- (a) on balance, the document relates to a sensitive matter and contains sensitive information, in that it was created for the purposes of the Agency maintaining a safe workplace in accordance with its statutory obligations;
- (b) such opinions must be able to be obtained and recorded as part of the Agency's appropriate and necessary consultative and decision making processes in the context of it complying with its statutory obligations to maintain a safe workplace, particularly given the nature of the workplace duties undertaken;
- (c) having carefully reviewed the document and the context in which the opinion was provided, in my view, it was not determinative in any final decision made, but appropriately led to a further opinion or opinions being sought in order to inform a final decision;
- (d) the disclosure of such information would be reasonably likely to inhibit open communication and documentation of such opinions in the future, which would negatively impact on the Agency's consultative and decision making processes, which would be contrary to its statutory obligations to maintain a safe workplace; and
- (e) while I acknowledge, the Applicant's strong personal interest in obtaining access to the document, I note the Agency released the majority of the documents to the Applicant and the release of information exempted by the Agency in this document is not, in my view, fundamental to the Applicant understanding the Agency's decision making process in relation to their return to work.

16. For the above reasons, I am satisfied the document is exempt under section 30(1).

Deletion of exempt or irrelevant information

- 17. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
- 18. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'² and the effectiveness of the deletions. Where deletions would render a document meaningless, they are not 'practicable', and release of the document is not required under section 25.³
- 19. The Applicant advised they do not seek review of information the Agency exempted under section 33(1), therefore, this information is irrelevant to the request.
- 20. I have considered the effect of deleting irrelevant and exempt information from the document in accordance with section 25. I am satisfied it is practicable to delete the irrelevant and exempt information, as to do so would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

- 21. On the information before me, I am satisfied the information in the document sought by the Applicant is exempt under section 30(1).

² *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].

³ *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].

22. As I am satisfied it is practicable to provide the Applicant with an edited copy of the document with irrelevant and exempt information deleted in accordance with section 25, I have determined to grant access to the document in part.

Review rights

23. If either party to this review is not satisfied with my decision, they are entitled to apply to the Victorian Civil and Administrative Tribunal (**VCAT**) for it to be reviewed.⁴
24. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁵
25. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁶
26. Information about how to apply to VCAT is available online at www.vcat.vic.gov.au. Alternatively, VCAT may be contacted by email at admin@vcat.vic.gov.au or by telephone on 1300 018 228.
27. The Agency is required to notify the Information Commissioner in writing as soon as practicable if either party applies to VCAT for a review of my decision.⁷

When this decision takes effect

28. My decision does not take effect until the relevant review period (stated above) expires.
29. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

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).