

Notice of Decision and Reasons for Decision

Applicant:	'BF8'
Agency:	Dental Health Services Victoria
Decision Date:	12 March 2020
Exemptions considered:	Sections 30(1), 32(1), 33(1), 35(1)(b)
Citation:	'BF8' and Dental Health Services Victoria (<i>Freedom of Information</i>) [2020] VICmr 59 (12 March 2020)

FREEDOM OF INFORMATION – workplace investigation – investigation report – patient complaints – investigation recommendations – patient names provided verbally and in documents

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 in that I have decided to provide additional information to the Applicant.

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

12 March 2020

Reasons for Decision

Background to review

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

The report from the independent investigator, [name], written in late [year]. [Redacted – contextual information].

...

I also request a copy of all documents associated with the patient [name and details redacted].

...

I also request a copy of the material that will clarify who decided that a single complaint about [redacted – details of circumstances] be used as the basis for [action taken with respect to] a [position title] with an excellent [number of years] record. I would like to know the basis of such a decision, and who was consulted in relation to it.

...

I also request all correspondence between you and [name] leading to the decision for you to take action against me in [month year].

I would like a copy of [name] report. I have already asked you to conduct an investigation into this. I have written to the CEO stating that I am most dissatisfied with being just given a précis without actually seeing this report which was so important to me.

...

2. In its decision, the Agency identified certain documents falling within the terms of the Applicant's request. It decided to grant access to some of those documents in full and refuse access to other documents in part and in full.
3. [Redacted – personal information of the Applicant] and the records [they are] requesting relate to complaints made about [them] by [their] patients, and a complaint made by [them] relating to another Agency employee. I note the Agency advised the Applicant was made aware of the names of the patients involved and the nature of the complaints, however, there is no evidence complaint documents were provided to the Applicant.

Review

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
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 received from the parties, including:
 - (a) the Agency's decision on the FOI request;
 - (b) the Applicant's review application and further information received [date]; and
 - (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) and 35(1)(b) 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; and
- (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. The term 'officer of an Agency' is defined in section 5(1). It includes a member of the agency, a member of the agency's staff, and any person employed by or for the agency, whether or not that person is subject to the provisions of the *Public Administration Act 2004* (Vic).

13. I note the Agency engaged specialists to consider the complaints made against the Applicant. In these circumstances, I consider these persons to be consultants to the Agency and, therefore, fall within the meaning of Agency officers for the purposes of section 30(1).

14. I must also be satisfied releasing this information would not be contrary to the public interest. This requires a 'process of the weighing against each other conflicting merits and demerits'.²

15. In deciding if release 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.

16. In deciding whether information exempted by the Agency would be contrary to the public interest, I have given weight to the following relevant factors:³

- (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;

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.

- (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.

17. In the Agency's decision, it advised disclosure of the documents would be contrary to the public interest for the following reasons:

- the public interest in favour of disclosure to maximise disclosure under the FOI Act;
- the sensitivity of the information in question;
- the confidential nature of the communications with staff and the consultants;
- the risk that disclosure would adversely affect the ability of DHSV to obtain similar information of a similar quality and nature from similar sources in future;
- decision-makers should be judged on the final decision and their reasons for it, not on what might have been considered or recommended by others in preliminary or draft internal working documents
- in investigation processes, documents which disclose steps described in evidence gathering and analysis of responses if disclosed would undermine the future effectiveness of those processes;
- it is contrary to the public interest to disclose documents where disclosure would undermine legal professional privilege;
- it is contrary to the public interest to disclose documents that would have adverse effects on the integrity or effectiveness of a decision-making process.

18. I note the Agency consulted with relevant third parties, whose information appears in the documents, in accordance with section 33(2B), including Agency officers who prepared the documents the Agency determined are exempt under section 30(1). I have also taken their responses into consideration in relation to these documents.

19. My decision in relation to each document is set out in **Annexure 1**.

Section 32(1)

20. Section 32(1) provides 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'.

21. 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.
22. Legal privilege exists to protect the confidentiality of communications between a lawyer and a client. Privilege will be lost where the client has acted in a way that is inconsistent with the maintenance of that confidentiality – for instance where the substance of the information has been disclosed with the client's express or implied consent.⁵
23. In relation to section 32(1), the Agency advised:
- In the present case, the documents exempt under this provision would, if disclosed, disclose legal advice provided internally within the DHSV by its lawyers in circumstances where there is a relationship of client and legal adviser. That includes communications such as emails between the DHSV and its lawyers in the context of its lawyers providing legal advice.
24. My decision in relation to each document is set out in **Annexure 1**.

Section 33(1)

25. 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;⁶ and
 - (b) such disclosure would be 'unreasonable'.
26. 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.⁷
27. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the interest in protecting the personal privacy of third party individuals.
28. 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.⁸ However, I do not consider this to be a relevant factor in the circumstances.

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 Sections 122(2) and (3) of the *Evidence Act 2008* (Vic) (for CLP) or *Mann v Carnell* (1999) 201 CLR 1 at [28] (for LPP).

⁶ Sections 33(1) and (2).

⁷ Section 33(9).

⁸ Section 33(2A).

29. 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
30. In relation to section 33(1), the Agency advised it considered the following factors in its decision:
- the consultation process required by s 33 of the FOI Act;
 - the intention of the FOI Act to extend as far as possible the right of access to documents;
 - the balance sought to be drawn by Parliament in protecting the privacy of individuals other than the applicant;
 - the nature of the information;
 - the circumstances in which it was obtained and is held by DHSV;
 - the fact the individuals concerned may not wish to have their personal affairs information (as set out in s 33(9) of the FOI Act) disclosed under the Act and therefore potentially to the world at large;
 - the likelihood that disclosure may cause stress, anxiety or embarrassment to one or more individuals;
 - [the applicant's] intended or expected use of the personal affairs information; and
 - s 33(2A), even if irrelevant.
31. I consider, subject to the Agency demonstrating special circumstances apply, it is not unreasonable to disclose the names and position titles of Agency staff, regardless of their seniority where they are merely carrying out their usual duties or responsibilities as public sector employees.
32. Where practicable, the Agency consulted with third party individuals. I have taken those responses received into account in relation to each document as set out in **Annexure 1**.

Section 35(1)(a)

33. A document is exempt under section 35(1)(a) 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) the information would be exempt matter if it were generated by an agency or Minister.

⁹ Section 33(2B).

¹⁰ Section 33(2C).

34. In relation to section 35(1)(b), the Agency advised it considered certain documents exempt as:

- the confidential and sensitive nature of the information in the documents;
- the purpose for the creation of the documents and provision to DHSV;
- the relationship between DHSV and the consultant;
- the fact that the documents were received in confidence by DHSV; and
- the consultation process required by s 35 of the FOI Act.

35. My decision in relation to each document is set out in **Annexure 1** below.

Deletion of exempt or irrelevant information

36. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable for the agency to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.

37. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹¹ 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 25.¹²

Conclusion

38. On the information before me, I am satisfied certain documents are exempt under sections 30(1), 32(1), 33(1) and 35(1)(b).

39. Where I am satisfied it is practicable to delete irrelevant and exempt information from certain documents in accordance with section 25, I have decided to grant access to those documents in part. Where providing an edited copy of a document containing exempt information is not practicable, I have decided to refuse access to the document in full.

Review rights

40. 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.¹³

41. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁴

42. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁵

43. 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.

¹¹ *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].

¹² *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].

¹³ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁴ Section 52(5).

¹⁵ Section 52(9).

44. 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.¹⁶

Requirement to notify third parties of their review rights

45. If I decide to disclose a document the Agency claimed is exempt under section 33(1), if practicable, I must notify any third party, who has a right to apply to VCAT for a review of my decision, of their right to do so.¹⁷
46. In considering the meaning of 'practicable' in relation to other sections of the FOI Act, VCAT has stated the following:

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.¹⁸

47. VCAT also considers the possibility of an unnecessary intrusion into the lives of third parties is relevant when assessing the practicability of notifying them.¹⁹
48. While I am satisfied it is practicable to notify two third parties, whose personal affairs information appears in the documents, of their review rights, on balance, I am not satisfied it is practicable to notify another third party on grounds my notification would constitute an unnecessary intrusion.
49. The relevant third party will be notified of my decision and is entitled to apply to VCAT for a review within 60 days from the date they are given notice.

When this decision takes effect

50. 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.

¹⁶ Sections 50(3F) and (3FA).

¹⁷ Section 49P(5).

¹⁸ *Re Schubert and Department of Premier and Cabinet* (2001) 19 VAR 35 at [45].

¹⁹ *Coulston v Office of Public Prosecutions Victoria* [2010] VCAT 1234 at [42].

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1.	[date]	Letter from [name] to [legal adviser]	4	<p>Refused in full</p> <p>Sections 30(1), 32(1), 33(1)</p>	Release in full	<p>The Agency's submission to OVIC of [date] advised it no longer considers the document exempt under sections 30(1) or 32(1), however one of the names in the document remains exempt under section 33(1).</p> <p>Section 33(1): The Agency claimed the name of the addressee of the letter is exempt under section 33(1). I note the Agency has consulted with the person concerned who objects to the release of their name and email address. I have decided it would not be unreasonable to release this information because:</p> <ul style="list-style-type: none"> • while the person concerned objected to release of their information, this factor is not determinative; • it is not sensitive personal information; • the information relates only to that person's professional role, and in the course of their engagement by the Agency; • such engagement by the public sector is subject to additional

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						<p>scrutiny given the expenditure of public funds; and</p> <ul style="list-style-type: none"> the person's name, email address and role at the third party law firm is publicly available information.
2.	[date]	Complaint form	2	<p>Refused in full</p> <p>Sections 30(1), 33(1), 35(1)(b)</p>	<p>Refuse in full</p> <p>Sections 35(1)(b), 33(1)</p>	<p>This document contains the following information:</p> <ul style="list-style-type: none"> the details of a complaint made about the applicant including the name of the complainant and some clinical details of the complainant; and action taken by the agency in response to the complaint. <p>Section 35(1)(b): I consider such complaints are made with the expectation of confidentiality. I note there is additional information in the document that indicates the complainant would object to its release which supports the view the information was provided in confidence.</p> <p>I also consider disclosure of the complaint to be contrary to the public</p>

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						<p>interest. The complaints process is essential for health sector agencies to ensure their services are being provided appropriately. I consider the release of such information would deter patients from coming forward which could in turn affect the care provided to patients and public safety generally.</p> <p>I have considered whether this information could be edited so as to remove exempt information.</p> <p>My view is that the document cannot be edited as revealing the nature of the complaint, or the complainant's treatment history is likely to reveal the name of the complainant. As set out above, I consider this information to be exempt under section 35(1)(b).</p> <p>The remaining information contained in the document are brief notes about attempts to contact the complainant and what was discussed. As with the above, I do not consider these notes could be edited to remove exempt information and retain any meaning.</p> <p>While I note the name and some of the details about the complaint have been</p>

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						<p>provided to the Applicant, I consider the document itself remains exempt under section 35(1)(b). In any case, I cannot be certain of what details were provided to the applicant and if any details were withheld on the basis they were provided confidentially, and their disclosure may affect the investigation of the complaint. Therefore, the document is exempt in full under section 35(1)(b).</p> <p>Section 33(1): I consider the document is also exempt in full under section 33(1). It contains the personal affairs information of a person other than the applicant. It would be unreasonable to disclose this information because it is sensitive, the person concerned is likely to object, and, similar to the reasoning above, I consider it likely disclosure would have a negative impact on the provision of important information to the Agency in the future.</p>
3.	[date]	Email between Agency staff	2	<p>Release in part</p> <p>Section 33(1)</p>	<p>Release in part</p> <p>Sections 33(1), 25</p> <p>The document is to be</p>	<p>Section 33(1): I note the Agency’s submission in relation to the patient names being known to the Applicant, but that it is not clear whether any documents were provided to them</p>

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					<p>released with the following information deleted in accordance with section 25:</p> <ul style="list-style-type: none"> • name at top left hand of page 1; • subject and name of attachments in email dated [date and time]; • fifteenth and sixteenth word on the fourth line of text of that email; • subject line of email dated [date and time]; and • subject line of email dated [date and time]. 	<p>containing these details.</p> <p>I also note that the letter at Document 13.1 provided to the Applicant about the complaints does not name the patients. Therefore, it is not clear to me whether the Applicant has obtained any formal documentation that lists the patients that have complained about [them].</p> <p>In my view, being aware of information provided verbally and having that information in documentary form are different. Information in documents carry more weight where that information is distributed or published. While I do not know whether this is likely in this matter, I must consider the sensitivity of the information in these documents, the nature of the patients involved, and the importance of patients being able to report concerns about the conduct of health professionals in ensuring public safety. I must also consider the impact on the patients involved should their details be provided outside the Agency.</p> <p>In these circumstances, and for the reasons set out in Document 2, I have decided the names of the complainants</p>

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						and other identifying information is exempt under section 33(1). Section 25: The name or position title at the top of the document appears to relate to the person who printed the document. I do not consider this is relevant to the request.
3.1	[date]	Complaint form	2	Refused in full Duplicate	Refuse in full Duplicate	I am satisfied this document is a duplicate of Document 2 and is exempt in full.
4.	[date]	Email between agency officers	2	Release in part Section 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"> • name at top left of page 1; • second and third word of subject line, and name of attachment to email dated [date]; • first named Agency 	Section 33(1): The information is exempt under these sections for the reasons set out in Document 2. In relation to the name of the copied Agency staff member, given this person does not appear to have had a role in this matter, I consider it unreasonable to release this name. Section 25: The name or position title at the top of the document appears to relate to the person or position title of who printed the document. I do not consider this is relevant to the request.

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					<p>staff member copied on the email dated [date];</p> <ul style="list-style-type: none"> • first and second word of the subject line of that email; • eighth and ninth words of the second line of that email; and • fourth and fifth words of the eleventh line of that email. 	
4.1	Undated	File note of complaint, investigation and recommendations	2	<p>Refused in full</p> <p>Sections 30(1), 33(1)</p>	<p>Release in part</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"> • name of complainant and patient as it appears throughout document; • italicised wording under section headed 'background'; 	<p>The Agency's submission to OVIC of [date] advised that it no longer sought to apply the exemptions in sections 30(1) or 33(1) to page 4 of the document.</p> <p>The remainder of the document is a report prepared by a specialist adviser following an investigation into a complaint about the Applicant.</p> <p>I note the report states that the complaint letter was provided to the applicant. I also note the advice from the author of the report that its contents should remain confidential.</p>

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					<ul style="list-style-type: none"> • number of visits and dates of those visits; and • patient’s clinical records on pages 2 and 3. 	<p>Section 30(1): I agree the document meets the first two limbs of section 30(1) as set out above. However, I have decided its disclosure would not be contrary to the public interest for the following reasons:</p> <ul style="list-style-type: none"> • the document appears to be complete, setting out the complaint, the way in which it was investigated, the information considered, and the outcome – including providing the complaint to the Applicant and their agreeing to the findings; • the document does not reveal confidential communications, rather, this is information that has been provided to the applicant, and in some cases information provided by the Applicant to the Agency; and • given the above, I cannot see how disclosure could affect the Agency’s decision making process, or the provision of internal advice among agency staff. <p>Therefore, the document is not exempt</p>

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						<p>under section 30(1).</p> <p>Section 33(1): I note the document contains sensitive personal affairs information of a person other than the applicant. In my view, while it is likely the Applicant is aware of these details, I consider them exempt under section 33(1) for the reasons set out in Document 2 and 3.</p> <p>However, I do not agree that all the information the Agency considered exempt under section 33(1) would be unreasonable to release. I consider the summary of the complaints, as assessed by the report's author, is not exempt under section 33(1) as it their summary and I do not consider this information particularly sensitive where it does not name the person making the complaint.</p>
5	[date]	Email chain between the Agency staff and legal advisers	4	<p>Release in part</p> <p>Sections 30(1), 32(1), 33(1)</p>	<p>Release in part</p> <p>Sections 32(1), 25</p> <p>The document is to be released with the following information deleted in accordance with section 25:</p>	<p>Section 32(1): I agree the emails between the Agency and its legal advisers are confidential communications prepared for the purposes of obtaining or providing legal advice. The emails dated [date] and [date] are exempt under section 32(1).</p>

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					<ul style="list-style-type: none"> • emails dated [date] and [date]. 	<p>The remaining emails do not contain such information and are not exempt under section 32(1).</p> <p>Section 30(1): The emails dated [date] meet the first two criteria of section 30(1). I have decided their release would not be contrary to the public interest because:</p> <ul style="list-style-type: none"> • they are brief and administrative in nature; • while the documents disclosure deliberations between staff, as described above, given their brevity I do not consider there would be any impact from their disclosure; and • there is a public interest in the disclosure of communications among agency staff, in that it demonstrates to the community how it carries out its functions. <p>Section 33(1): I note most of the people mentioned in the documents do not object to the release of their personal affairs information in this document. Therefore, I consider it</p>

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						<p>would not be unreasonable to release their names, position titles or business contact details.</p> <p>I note however that the one of the Agency staff did object to the release of their personal affairs information. I have decided it would not be unreasonable to release this information for similar reasons set out in Document 1.</p>
5.1	[date]	Draft letter to the Applicant attached to the emails in document 5	4	<p>Refuse in full</p> <p>Sections 30(1), 32(1), 33(1)</p>	<p>Refuse in full</p> <p>Section 32(1)</p>	<p>Section 32(1): The document is a draft letter provided by the agency to its legal advisers to obtain legal advice. It is a confidential communication between a client (the Agency) and the client's professional legal advisers, that was made for the dominant purpose of obtaining or providing legal advice and is exempt under section 32(1).</p>
6	[date]	Emails between the agency and its legal advisers	5	<p>Refuse in full, duplicates</p> <p>Sections 30(1), 32(1), 33(1)</p>	<p>Release in part</p> <p>Section 32(1)</p> <p>A majority of the document is exempt under section 32(1) except for the last three lines of text (except for the name) and the</p>	<p>Section 32(1): A majority of the document is a series of emails between the Agency and its legal advisers. It is a confidential communication between a client (the Agency) and the client's professional legal advisers, that was made for the dominant purpose of obtaining or providing legal advice and</p>

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					name and contact details of the sender of the email dated [date and time], as this information has been released to the Applicant in document 9. This remaining information therefore is to be released to the Applicant.	is exempt under section 32(1).
6.1	[date]	Document headed 'Clinical assessment and clinical mentoring: [the applicant]'	2	Refuse in full Section 30(1)	Release in full	The Agency's submission to OVIC of [date] advised that it no longer sought to apply the exemption in section 30(1) to the document.
6.2	[date]	Draft letter to the applicant dated [date]	4	Refuse in full Section 30(1)	Refused in full Section 30(1)	The document is a letter in draft form that is substantially the same as document 5.1. It appears to have been edited by two different people, one of which is an Agency Officer. Section 30(1): I consider the document meets the first two limbs of section 30(1). I also consider its disclosure would be contrary to the public interest because:

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						<ul style="list-style-type: none"> the document contains sensitive information relating to the management of complaints about the applicant; the letter is carefully worded to ensure it captures an accurate view of the Agency's concerns; while this letter was not subject to section 32(1), as a previous version was subject to section 32(1) I consider it deals with sensitive legal matters; and the final version of the document was provided to the Applicant (at Document 13.1).
6.3	[date]	Dental Record Keeping Audit Result	12	Refuse in full Section 30(1)	Release in full	The Agency's submission to OVIC of [date] advised that it no longer sought to apply the exemption in sections 30(1) or 33(1) to the document.
7	[date]	Email between the Applicant and the Agency	1	Release in full	Release in part Section 25 The document is to be released with the following irrelevant information	Section 25: The name or position title at the top of the document appears to relate to the person or position title of who printed the document. I do not consider this is relevant to the request.

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					<p>deleted in accordance with section 25:</p> <ul style="list-style-type: none"> name or position title in the top left hand corner of the page. 	
8	[date]	Emails between Agency staff	1	Release in full	<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"> name or position title in top left hand corner of page. 	Section 25: The name or position title at the top of the document appears to relate to the person or position title of who printed the document. I do not consider this is relevant to the request.
8.1	[date]	Record of meeting held with Applicant	2	Release in full	Not subject to review	
9	[date]	Emails between Agency and legal advisers		<p>Release in part</p> <p>Sections 30(1), 32(1), 33(1)</p>	<p>Release in part</p> <p>Sections 32(1), 25</p> <p>The majority of document is exempt under section 32(1) except for the last three lines of text and the</p>	Section 32(1): The majority of the document is a series of emails between the Agency and its legal advisers. It is a confidential communication between a client (the Agency) and the client's professional legal advisers, that was made for the dominant purpose of obtaining or providing legal advice and

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					name and contact details of the sender in the email dated [date and time], which are not exempt and to be released in accordance with section 25.	<p>is exempt under section 32(1).</p> <p>I note the Agency considers three lines of text and the contact details in the email dated [date and time] addressed to another Agency officer is not subject to section 32(1). I agree this is not exempt under section 32(1) as it is communications between Agency staff of an administrative nature.</p> <p>Section 33(1): I note one of the people named in the document objects to the release of their personal affairs information. I have decided it would not be unreasonable to release this information for the reasons set out in Document 1.</p>
9.1	[date]	Draft letter to Applicant	4	<p>Refused in full</p> <p>Section 30(1)</p>	<p>Refused in full</p> <p>Section 30(1)</p>	<p>Section 30(1): See comments for Document 6.2 above.</p>
10	[date]	Emails between the Applicant and the Agency and between Agency officers	3	<p>Release in part</p> <p>Sections 30(1), 33(1), 35(1)(b)</p>	<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>	<p>Section 30(1): See comments for Document 5 above.</p> <p>Section 33(1): Most of the names are not exempt under section 33(1). See Document 1.</p> <p>However, I do consider it would be</p>

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					<ul style="list-style-type: none"> irrelevant information removed, being the name or position title in top left-hand corner of the page; and name and all details relating to sender of email dated [date and time]. 	<p>unreasonable to release the name of the person who sent the email dated [date and time] for the following reasons:</p> <ul style="list-style-type: none"> the staff member is not senior; that person is not responsible for the investigation of, or response to, complaints made about the Applicant; I consider it likely this email was provided in confidence; and disclosure may inhibit such communications in the future. <p>Section 35(1)(b): The only substantive information in the document was provided by the Applicant to the Agency. In these circumstances section 35(1)(b) does not apply.</p>
11	[date]	Emails from the Applicant to the Agency between the Agency and its legal advisers, and between Agency officers	4	Release in part Sections 30(1), 33(1)	Release in part Sections 32(1), 25 The document is to be released with the following information deleted in	Section 32(1): The majority of the document is a series of emails between the agency and its legal advisers. It is a confidential communication between a client (the Agency) and the client's professional legal advisers, that was made for the dominant purpose of

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					<p>accordance with section 25:</p> <ul style="list-style-type: none"> • email dated [date and time]; • email dated [date and time]; • email dated [date and time]; and • email dated [date and time]. 	obtaining or providing legal advice and is exempt under section 32(1).
12	[date]			<p>Release in part Sections 30(1), 33(1)</p>	<p>Release in part 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"> • name or position title in top left-hand corner of page. 	<p>Section 30(1): See comments for Document 5 above.</p> <p>Section 33(1): See comments for Document 1 above.</p> <p>Section 25: The name or position title at the top of the document appears to relate to the person or position title of who printed the document. I do not consider this is relevant to the request.</p>
13	[date]	<p>Emails between Agency officers and between Agency officers and their</p>	4	<p>Release in full (duplicate removed)</p>	<p>Release in part Sections 32(1), 25</p>	<p>Section 32(1): The majority of the document is a series of emails between the Agency and its legal advisers. It is a confidential communication between a</p>

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		legal advisers			<p>The document is to be released with the following information deleted in accordance with section 25:</p> <ul style="list-style-type: none"> • email dated [date and time]; • email dated [date and time]; • email dated [date and time]; and • email dated [date and time]. 	client (the Agency) and the client's professional legal advisers, that was made for the dominant purpose of obtaining or providing legal advice and is exempt under section 32(1).
13.1	[date]	Letter to Applicant	4	Release in full	Not subject to review	I note the Agency is unable to locate the attachments to this letter. However, it has advised they were provided to the Applicant with the letter.
14	[date]	Emails between Agency officers, with the Agency's legal advisers and from the Applicant	4	Release in full (duplicate removed)	<p>Release in part</p> <p>Section 32(1), 25</p> <p>The document is to be released except for the following exempt emails</p>	Section 32(1): The document is a series of emails between the Agency and its legal advisers. I consider a majority of these to be confidential communications between a client (the Agency) and the client's professional legal advisers, that was made for the

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					<p>dated:</p> <ul style="list-style-type: none"> • [date and time]; • [date and time]; • [date and time]; and • [date and time]. <p>The document is to be released with the irrelevant information removed, being the name or position title appearing in the top left hand corner of the page.</p>	<p>dominant purpose of obtaining or providing legal advice and is exempt under section 32(1). However, I consider some of them, being documents that were not claimed by the Agency as exempt under section 32(1) in documents 11 and 13, are not exempt from release. I note the document also includes an email from the applicant to the agency that is not exempt under this section.</p> <p>Section 33(1): See Document 1.</p> <p>Section 25: The name or position title at the top of the document appears to relate to the individual or position title of the individual who printed the document. I do not consider this is relevant to the request and it should be removed under section 25.</p>
15	[date]	Workplace Investigation Report	28	<p>Refuse in full</p> <p>Sections 30(1), 32(1), 33(1), 35(1)(b)</p>	<p>Refuse in full</p> <p>Section 32(1)</p>	<p>Section 32(1): I note the Agency’s submission that it engaged a law firm to provide legal advice relating to the allegations made about the Applicant, who in turn engaged [company name] to conduct an investigation.</p> <p>I note also the advice provided by that law firm that the document amounts</p>

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						<p>to legal advice provided in confidence to the Agency.</p> <p>I have decided to accept the Agency's submission, that the document amounts to a confidential communication between the Agency's legal advisers and the Agency for the purpose of providing legal advice. Therefore, the document is exempt in full under section 32(1).</p> <p>I note the Agency is unable to locate the attachments to this report following a request by this office.</p> <p>Sections 33(1): I also consider the information provided by people other than the applicant to the investigator is exempt under section 33(1).</p> <p>This is because it is unreasonable to release such personal affairs information where it is sensitive, relates not only to a person's professional life, but also their personal life as an employee, and where the information was provided in confidence.</p> <p>Section 35(1)(b): I note also that the information collected during the</p>

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						<p>conduct of a workplace investigation from people other than the Applicant is exempt from release under section 35(1)(b). The information is provided to the Agency in confidence, and its disclosure is likely to inhibit its ability to collect such information in future investigations as employees would be less likely to trust their information would be kept in confidence. This in turn could affect the ability of the Agency to provide a safe workplace where employees to not consider they can provide sensitive workplace conduct matters to it in confidence.</p> <p>I would also note that the Applicant has been provided with the outcome of the investigation in writing, thereby serving the Applicant’s interest in the document and the Agency’s obligations to be as transparent as it can about such matters.</p>
16	[date]	Letter between an Agency officer and [specified type of dental health] adviser	2	<p>Refuse in full</p> <p>Sections 30(1), 33(1)</p>	<p>Release in part</p> <p>Sections 33(1), 25</p> <p>The document is to be released with the following information deleted in</p>	<p>The document records the findings of the [specified type of dental health] adviser into a complaint about the Applicant.</p> <p>Section 33(1): I consider the name of the patient is exempt under section</p>

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					<p>accordance with section 25:</p> <ul style="list-style-type: none"> • name of patient as it appears throughout document; • date of appointment; • paragraph beginning with word ‘following’ on page 1 to end of page 1; and • paragraphs on page 2 labelled a, b, c, and d. 	<p>33(1) for the reasons set out in Documents 2 and 3.</p> <p>I have also decided that the additional information supplied by the complainant during the phone interview is unreasonable to release. I have made this decision because:</p> <ul style="list-style-type: none"> • the additional detail is sensitive; • it is likely to have been provided in confidence; • the ability of the Agency to receive such information is vital to its ability to monitor the clinical services provided by its employees and I consider the disclosure of such information could reduce its ability to obtain such information in the future. <p>Section 30(1): I consider the remaining information in the document meets the first two criteria of section 30(1). I do not consider that disclosure would be contrary to the public interest because:</p> <ul style="list-style-type: none"> • it is not a draft, rather it outlines

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						<p>the finalised views of its author;</p> <ul style="list-style-type: none"> • while the information is sensitive, it is information known to the applicant; and • the information is the professional view of a dental specialist. In my view disclosure would not inhibit the provision of such advice where such views are required to be provided with honesty and professionalism.