

Notice of Decision and Reasons for Decision

Applicant:	'BV4'
Agency:	Glen Eira City Council
Decision date:	28 July 2020
Exemptions and provisions considered:	Sections 30(1), 32(1), 33(1), 35(1)(b), 36(2)(b) and 38 in conjunction with section 595 of the <i>Workplace Injury Rehabilitation and Compensation Act 2013</i> (Vic)
Citation:	'BV4' and <i>Glen Eira City Council (Freedom of Information)</i> [2020] VICmr 205 (28 July 2020)

FREEDOM OF INFORMATION – emails – internal documents – draft documents – workplace complaint – investigation reports – information provided in confidence – legal professional privilege

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 release additional information in the documents.

I am satisfied the documents are exempt under sections 30(1), 32(1), 35(1)(b). However, I am not satisfied the documents are exempt under sections 36(2)(b) and 38.

Where I am satisfied it is practicable to delete exempt and irrelevant information from the documents in accordance with section 25, I have determined to release those documents in part. However, where the removal of such information would render a document meaningless, I have determined to refuse access to the document in full.

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

28 July 2020

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to the following documents:
 1. In relation to [named individual] Workcover claim:
 - a. Emails, handwritten notes and documents produced by [named individual] and [named individual];
 - b. Communications between Worksafe and [named individuals] (i.e. any communications from [named individuals] to Worksafe as well as any communications from Worksafe to [named individuals]); and
 - c. Communications from [named individuals] to [the Agency's] WorkCover consultant
...between [date] and [date].
 2. Any emails, handwritten notes and documents produced by [named individuals] between [date] and [date], which contain the phrase '[named individual]'...
2. The Applicant's request states they do not seek access to communications between themselves and the Agency, or communications between the Agency and their legal representative.
3. In its decision, the Agency identified 210 documents falling within the terms of the Applicant's request. It decided to grant access to 51 documents in full, 44 documents in part and refuse access to 76 documents in full. The remaining 39 documents were released to the Applicant in full, outside the FOI Act.
4. The Agency advised, to the extent it was practicable, communications between the Applicant and the Agency and communications between the Agency and the Applicant's legal representative were removed from the documents as irrelevant information under section 25.
5. The Agency relied on the exemptions in sections 30(1), 31(1)(a), 31(1)(c), 32(1), 33(1), 34(4)(a)(ii), 35(1)(a), 35(1)(b), 36(2)(b) and 38 in conjunction with section 595 of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) to refuse access to the documents. The Agency's decision letter sets out the reasons for its decision.

Review

6. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
 7. I have examined copies of the documents 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 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;
 - (c) the Agency's submission dated [date]; and
 - (d) all communications between this office and the Applicant and the Agency.
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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.
11. Further, in undertaking my review under section 49F, I am required by section 49P to make a fresh or new decision. This means my review does not involve determining whether the Agency's original decision is correct, but rather I am required to ensure my fresh decision is the 'correct or preferable decision'.¹ This involves ensuring my decision is correctly made under the FOI Act and any other relevant applicable law in force at the time of making my fresh decision.

Review of exemptions

Section 30(1) – internal working documents

12. 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.
13. The exemption does not apply to purely factual material in a document.²
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'.³
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 disclosure of information exempted by the Agency would be contrary to the public interest, I have given weight to the following factors:⁴
 - (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;
 - (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

¹ *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577 at [591].

² Section 30(3).

³ *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].

⁴ *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

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. The fact a document is a draft or earlier version may be relevant but is not determinative as to whether disclosure of a document would be contrary to the public interest. Each document must be examined within its own context, irrespective of whether it is a draft or incomplete version.⁵

18. The Agency submits the following with respect to its application of section 30(1) to draft documents:

...documents were created in the course of consultation and deliberation in relation to your matter, and contain the opinions, advice or recommendations of [Agency] officers. The matters disclosures in these documents are of a sensitive and important nature. Release of the documents would be contrary to the public interest for a number of reasons.

First, it would inhibit the frank and open discussions between [Agency] officers, to the detriment of the investigation and decision-making process.

Second, the documents necessarily [provide the Agency's] thought processes at a particular point in time, not further events and issues which affected [the Agency's] decision-making. As such, release of the documents would provide merely a part explanation rather than a complete explanation for [the Agency's] decisions, and cause confusion.

Third, to the extent that they are draft versions of communications to you, they are drafts which are preliminary in nature, and which are substantially different from the final version provided to you. I consider that disclosure in these circumstances would give these documents spurious standing and be misleading.

19. The Agency submits the following with respect to its application of section 30(1) to documents provided by witnesses or complainants:

...

- (a) in some instances, the documents contain opinions by [Agency] staff, which were not further considered or acted on. I consider that disclosure of this information may result in these opinions being given unnecessary credence and cause confusion;

20. The Agency submits the following with respect to its application of section 30(1) to notes, work lists and handover documents:

...

In some instances, the documents contain the staff members' opinions about due dates, priorities, and issues for consideration in the course of conducting your matter. I consider that disclosure of this

⁵ *Penhalluriack v Glen Eira City Council* [2012] VCAT 370 at [25].

information would be contrary to the public interest because this information preliminary in nature and could be misinterpreted if disclosed without context.

21. My decision in relation to each of the documents under review and the application of section 30(1) is set out in the Schedule of Documents in **Annexure 1**.

Section 32(1) – legal professional privilege

22. 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’.
23. A document will be subject to legal professional privilege and exempt under section 32(1) where it contains a confidential communication:⁶
- (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;
 - (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.
24. A document will be subject to client legal privilege where it contains a ‘confidential communication’⁷ between:
- (a) 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;⁸ or
 - (b) the client and another person, which was made for the dominant purpose of the client being provided with professional legal services relating to a proceeding in which the client is or was a party.⁹
25. The High Court of Australia has held the purpose of legal professional privilege, or client privilege ensures a client can openly and candidly discuss legal matters with their legal representative and seek legal advice:

The rationale of this head of privilege, according to traditional doctrine, is that it promotes the public interest because it assists and enhances the administration of justice by facilitating the representation of clients by legal advisers, the law being a complex and complicated discipline. This it does by keeping secret their communications, thereby inducing the client to retain the solicitor and seek his advice and encouraging the client to make a full and frank disclosure of the relevant circumstances to the solicitor.¹⁰

⁶ *Graze v Commissioner of State Revenue* [2013] VCAT 869 at [29]; *Elder v Worksafe Victoria* [2011] VCAT 1029 at [22]. See also section 119 of the *Evidence Act 2008* (Vic).

⁷ Defined in section 117 of the *Evidence Act 2008* (Vic) to mean communications made in circumstances where the Agency and its professional legal advisers were under an obligation not to disclose their contents.

⁸ Section 118 of the *Evidence Act 2008* (Vic).

⁹ Section 119 of the *Evidence Act 2008* (Vic).

¹⁰ *Grant v Downs* (1976) 135 CLR 674 at [19].

26. Legal professional privilege exists to protect the confidentiality of communications between a client and their lawyer. Privilege will be lost where the client acts in a way that is inconsistent with the maintenance of that confidentiality. For instance, where the substance of the legal advice is disclosed by the client or with their express or implied consent.¹¹
27. In relation to the application of section 32(1), the Agency submits the following:
- To the extent that the documents were created in the course of seeking and receiving legal advice, or contact discussions of legal advice, the documents are subject to legal professional privilege and exempt under section 32(1).
28. My decision in relation to each of the documents under review and the application of section 32(1) is set out in the Schedule of Documents in **Annexure 1**.

Section 35(1)(b) – information provided to an agency in confidence

29. Section 35(1)(b) requires:
- (a) the document, if disclosed, would divulge any 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 disclosure of the information would be contrary to the public interest by reason the disclosure would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.
30. Whether information communicated by an individual was communicated in confidence is a question of fact.¹²
31. When determining whether information was communicated in confidence, it is necessary to consider the position from the perspective of the communicator.¹³ Confidentiality can be express or implied from the circumstances of a matter.¹⁴
32. Generally, section 35(1)(b) only applies to information communicated to an agency from an outside source, rather than from an officer within an agency. However, in certain circumstances, section 35(1)(b) may apply to confidential information communicated to an agency by an agency officer. For example, in the context of internal complaints and investigations, or confidential communications between different parts of an agency.¹⁵
33. With respect to information provided by witnesses and complainants, the Agency submit this information would be exempt under section 35(1)(b) as:
- ...
- (c) disclosure in this instance would also inhibit individuals' ability to provide information to [the Agency] in a similarly frank and candid way in the future. This would, in turn, undermine [the Agency's] ability to receive, investigate and respond effectively to employment-related issues.
34. My decision in relation to each of the documents under review and the application of section 35(1)(b) is set out in the Schedule of Documents in **Annexure 1**.

¹¹ *Mann v Carnell* (1999) 201 CLR 1 at [28].

¹² *Ryder v Booth* [1985] VR 869 at 883; *XYZ v Victoria Police* [2010] VCAT 255 at [264].

¹³ *XYZ v Victoria Police* [2010] VCAT 255 at [265].

¹⁴ *Ibid*.

¹⁵ See *Sportsbet v Department of Justice* [2010] VCAT 8 at [71]-[78]; *XYZ v Victoria Police* [2010] VCAT 255 at [287]-[288]; *Birnbauer v Inner and Eastern Health Care Network* (1999) 16 VAR 9 at [17].

Section 38 – secrecy provision

35. Section 38 provides a document is an exempt document if there is in force an enactment applying specifically to information of a kind contained in the document and prohibiting persons referred to in the enactment from disclosing information of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.
36. The Agency relies on section 38 of the FOI Act in conjunction with section 595 of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic) (**WIRC Act**) to refuse access to information in the documents.
37. Section 595 of the WIRC Act provides:
- (1) This section applies to a person who is, or has at any time been—
 - (a) a member of the Board; or
 - (b) appointed for the purposes of this Act, other than Part 8; or
 - (c) engaged as a member of staff of the Authority; or
 - (d) authorised to perform or exercise any function or power of the Authority or any function or power on behalf of the Authority, other than a function or power under Part 8.
 - (2) A person to whom this section applies may—
 - (a) produce a document to a court in the course of a criminal proceeding or in the course of any proceeding under this Act, the Accident Compensation Act 1985 or the Workers Compensation Act 1958 ; and
 - (b) produce a document or divulge information to a Conciliation Officer, a Medical Panel, the Magistrates' Court, VCAT or the County Court with respect to a matter arising under this Act, the Accident Compensation Act 1985 or the Workers Compensation Act 1958 ; and
 - (c) divulge or communicate to a court in the course of a criminal proceeding referred to in paragraph (a) any matter or thing coming under the notice of the person in the performance of official duties or in the performance of a function or the exercise of a power referred to in that paragraph; and
 - (d) produce a document or divulge or communicate information to an entity specified in Schedule 8; and
 - (e) produce a document or divulge or communicate information as provided in section 92(1)(c), (e) and (vf) of the Taxation Administration Act 1997 ; and
 - (f) produce a document or disclose information which is required or permitted to be produced or disclosed by or under this Act or any other Act.
 - (3) A person to whom this section applies must not, either directly or indirectly, make a record of, or divulge or communicate to any person, any information that is or was acquired by the person by reason of being or having been appointed, engaged or authorised as specified in subsection (1), or make use of any such information, for any purpose except—
 - (a) to the extent necessary to perform official duties or to perform or exercise a function or power specified under subsection (1); or
 - (b) for a purpose specified in subsection (2)

38. In determining whether a document is exempt under section 38, the following three requirements must be met:
- (a) there is an enactment in force;
 - (b) the enactment applies specifically to the information of a kind contained in the document; and
 - (c) the enactment prohibits persons referred to in the enactment from disclosing such information.

Is there a relevant enactment in force?

39. I am satisfied section 595 of the WIRC Act is an enactment in force. Therefore, I am satisfied the first requirement is met.

Does the enactment apply specifically to the information contained in the documents?

40. To satisfy the second requirement, the enactment must be formulated with such precision that it refers with particularity to the information'.¹⁶ It is not sufficient for the enactment to be formulated in general terms that such it would encompass the information without expressly describing the information.
41. An enactment that prohibits the disclosure of information by reference to the capacity of the person who has received or is in possession of the information only, is insufficient to meet the second requirement. Section 38 must point to specific information in a document, 'rather than [identify information] on the more random basis of whether or not the document is or has fallen into the hands of an individual who may or may not be a person to whom such a provision applies'.¹⁷
42. In considering the application of section 38 in *Al-Hakim v Ombudsman*,¹⁸ the Victorian Civil and Administrative Tribunal held:
- ... the effect of s.20 of the Ombudsman Act is to prohibit all persons (other than the complainant) from disclosing information that it obtained or received pursuant to the Act. The section makes blanket reference to "information" in such a manner as to suggest that it applies to any and all information obtained or received in connection with the functions exercised under the Ombudsman Act. To my mind, the language of s.20 contains no reference to the "kind" of information obtained and is materially different in this regard to the phrases which have been held to attract the exemption under s.38 of the Act...¹⁹
43. For similar reasons, I am not satisfied section 595 of the WIRC Act is sufficiently specific to attract the operation of section 38 in the FOI Act as it does not refer with adequate precision to the kind, or quality of information prohibited from disclosure. Rather, section 595 of the WIRC Act applies generally to prohibit the disclosure of information obtained pursuant to the WIRC Act, in conjunction with imposing confidentiality requirements on Agency officers in relation to the performance of their functions under the WIRC Act. Consequently, I am not satisfied section 595 of the WIRC Act is formulated with sufficient precision to identify information in the documents.
44. Accordingly, I am not satisfied the documents are exempt under section 38.
45. My decision in relation to each of the documents under review and the application of section 38 is set out in the Schedule of Documents in **Annexure 1**.

¹⁶ *News Corp Ltd v National Competition & Securities Commission* (1984) 52 ALR 277 at 281.

¹⁷ *Department of Justice v Western Suburbs Legal Service Inc* [2009] VSC 68 at [21].

¹⁸ (*No 1*) (2001) 18 VAR 102; [2001] VCAT 1972.

¹⁹ *Al-Hakim v Ombudsman* [2001] VCAT 1972 at [37]. See also *Woodford v Ombudsman* (2001) 18 VAR 64; [2001] VCAT 721 and *Lapidos v Ombudsman (No 1)* (1987) 2 VAR 82.

Section 36(2)(b) – Disclosure contrary to the public interest

46. Section 36(2)(b) provides a document is exempt if:

- (b) in the case of a documents of a council, its disclosure under the Act would be contrary to the public interest by reason that it would disclose instructions issued to, or provided for the use of guidance of, officers of a council on the procedures to be followed or the criteria to be applied in negotiation, including financial, commercial and labour negotiations, in the execution of contracts, in the defence, prosecution and settlement of cases, and in similar activities relating to the financial property or personnel management and assessment interests of the council.

47. The Agency’s submissions refer to the matter of *United Firefighters Union of Australia v Metropolitan Fire and Emergency Services Board (United Firefighters Union)*,²⁰ in which it was held documents need not evidence general practices and procedures, and section 36(1)(b) may apply to documents containing instructions with respect to a particular transaction.

48. The Agency states:

...sections 36(1)(b) and 36(2)(b) are substantially similar and have been held to be equivalent provisions [16], such that authority concerning once can be used in interpreting the other.

49. My decision in relation to each of the documents under review and the application of section 36(2)(b) is set out in the Schedule of Documents in **Annexure 1**.

Section 33(1) – personal affairs information

50. 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;²¹ and
- (b) such disclosure would be ‘unreasonable’.

51. Information relating to the ‘personal affairs’ of a person 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.²²

52. A third party’s opinion or observations about another person’s conduct can constitute information related to a third party’s personal affairs.²³

53. Considering whether disclosure would be unreasonable in the circumstances involves balancing the public interest in the disclosure of official documents with the protection of a person’s right to personal privacy. This involves having regard to any matter that may ‘relevantly, logically, and probatively’ bear upon whether disclosure of personal affairs information of any person would be unreasonable in its own context.²⁴

54. Whether the disclosure of a third party’s personal affairs information in a document would be unreasonable may not be apparent from the document itself, but needs to be considered in the

²⁰ [2018] VCAT 631.

²¹ Sections 33(1) and (2).

²² Section 33(9).

²³ *Richardson v Business Licensing Authority* [2003] VCAT 1053, cited in *Davis v Victoria Police (General)* [2008] VCAT 1343 at [43], *Pritchard v Victoria Police (General)* [2008] VCAT 913 at [24], *Mrs R v Ballarat Health Services (General)* [2007] VCAT 2397 at [13].

²⁴ *Ibid* at [98].

context of other information already be known to an applicant²⁵ or publicly available, and when considered in totality, would involve the unreasonable disclosure of personal affairs information.

55. The Agency applied section 33(1) to names, email addresses, telephone numbers, initials and position titles. The Agency also applied section 33(1) to information supplied to the Agency by third parties, as well as statements and observations made by Agency staff.
56. By email dated [date], the Applicant advised they do not seek access to certain personal affairs information, being names and contact information of third parties. They also do not seek access to health related information of a third party in the documents. Therefore, I am satisfied such information is not relevant to the review, and can be deleted in accordance with section 25.
57. With regard to the remaining personal affairs information, I consider certain personal affairs information in the documents is sensitive as it relates to information provided, and observations made, by third parties during a workplace investigation.
58. My decision in relation to each of the documents under review and the application of section 33(1) is set out in the Schedule of Documents in **Annexure 1**.

Section 25 – Deletion of exempt or irrelevant information

59. In summary section 25 provides, if it is practicable to do so and the applicant is agreeable, to release an edited copy of a document with any exempt or irrelevant information, which falls outside the scope of the applicant's request, be deleted from the document. If it is not practicable to provide an edited copy of the document, or the applicant is not agreeable to receiving an edited copy, access to the document may be refused in full.
60. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'²⁶ 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 25.²⁷
61. Section 49F provides my role is to 'review the decision that is the subject of the application for review', while section 49P provides I must make a 'fresh decision on the original application'.
62. I have considered the information the Agency determined as irrelevant and deleted from the documents. I agree it falls outside the scope of the Applicant's request because it is information that details a communication between the Applicant and the Agency, or communications between the Agency and the Applicant's legal representative.
63. However, having examined each document and carefully considered the terms of the Applicant's request, I am satisfied that certain information exempted by the Agency is better characterised as information that is irrelevant to the scope of the Applicant's request, because it does not relate to the Applicant, or their Workcover claim. Instead, the information concerns third parties and their matters, which are unrelated to the Applicant and the Applicant's Workcover matter.
64. Therefore, in certain instances I have decided the information is irrelevant to the Applicant's request and should be deleted in accordance with section 25.

²⁵ *Victoria Police v Marke* [2008] VSCA 218 at [94].

²⁶ *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].

²⁷ *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].

65. I have considered the effect of deleting irrelevant and exempt information from the documents. In my view, it is practicable for the Agency 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.
66. The Schedule of Documents in **Annexure 1** set out my decision in relation to each document and section 25.

Conclusion

67. On the information before me:
- (a) I am satisfied certain documents are exempt under sections 30(1), 32(1), 33(1) and 35(1)(b);
 - (b) I am satisfied certain information is excluded from the review and is irrelevant under section 25; and
 - (c) I am not satisfied the documents are exempt under sections 36(2)(b) or 38.
68. Where I am satisfied it is practicable to provide the Applicant with an edited copy of a document with exempt or irrelevant information deleted in accordance with section 25, I have granted access to the document in part. Where I am satisfied provision of an edited copy of a document is not practicable, I have refused access to the document in full.
69. Having determined the documents are exempt under section 30(1), 32(1), 33(1) and 35(1)(b), or is irrelevant information in accordance with section 25, it is not necessary for me to consider the Agency's application of sections 31(1)(a), 31(1)(c), 34(4)(a)(ii) and 35(1)(a) to the documents.
70. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

Review rights

71. 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.²⁸
72. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.²⁹
73. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.³⁰
74. 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.
75. 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.³¹

²⁸ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

²⁹ Section 52(5).

³⁰ Section 52(9).

³¹ Sections 50(3F) and (3FA).

Third party review rights

76. As I have determined to disclose a document the Agency claimed to be exempt under section 35(1), if practicable, I must notify any person, who has a right to make an application to VCAT for review of my decision under section 50(3AB), of the existence of that right.³²
77. Any application for review by a third party must be made to VCAT within 60 days from the day on which notice in writing of my decision to disclose the document is given to that person.³³
78. I have considered the practicability of notifying the third parties about my decision to information provided in confidence to the Agency.
79. In the circumstances, I do not consider it is practicable to notify the third parties as, in some instances, it is not clear whose information it is, and in other instances the exempted information is information provided by the Applicant. Therefore, I am not satisfied it is practicable to notify third parties of their review rights in the circumstances.

When this decision takes effect

80. My decision does not take effect until the Agency's 14 day review period expires.
81. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

³² Section 49P(5).

³³ Section 52(3).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
<p>Section 25:</p> <p>The Applicant advised they do not seek access to the personal affairs information of third party individuals. Therefore, the following personal affairs information is to be deleted from the documents, in accordance with section 25, prior to disclosure in accordance with the decision below: names; initials; email addresses; phone numbers. The Applicant advised health related matters regarding third parties is also not sought.</p> <p>In relation to other personal affairs information in the documents, the decision is described below, where relevant.</p>						
1.	[date]	Text messages	4	Released in full	Not subject to review	
2.	[date]	Email chain	5	Refused in full Sections 30(1), 33(1), 35(1)(b)	Release in full Section 25	<p>Section 30(1): I note the email chain was provided during the course of the Agency's internal workplace investigation, which is an inherently confidential and sensitive process. However, I am not satisfied the information contains opinion or advice regarding the handling of the matter or puts forward different options or considerations that it reflects consultation between officers of the Agency. Further, given the Agency's workplace investigation is concluded and noting this information is already in the possession of the Applicant, I am not satisfied disclosure would be contrary to the public interest, in that it would not impair the investigative or decision making processes of the Agency. Accordingly, I am not satisfied the document is exempt under section 30(1).</p> <p>Section 35(1)(b): I note this is information communicated by the Applicant to the Agency. On that basis, I am not satisfied disclosure to the Applicant would be likely to prevent the provision of such information in the future.</p>

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p>Therefore, I am not satisfied the information is exempt under section 35(1)(b).</p> <p>Section 25: The Applicant excluded personal affairs information from this review. Therefore, this information is to be deleted under section 25 and the instructions at the beginning of this schedule.</p>
3.	[date]	Email chain	15	Refused in part Sections 30(1), 33(1), 35(1)(b)	Release in part Sections 30(1), 35(1)(b), 25	<p>Section 30(1): I am satisfied the document contains matter in the nature of advice, opinion and recommendation prepared by an Agency officer as part of the Agency's deliberative processes in undertaking a workplace investigation.</p> <p>I am satisfied disclosure of the relevant information would be contrary to the public interest as:</p> <ul style="list-style-type: none"> • it is preliminary in nature, given it is a document prepared in order to be placed before a decision making forum; • it relates to a sensitive matter involving the investigation undertaken by the Agency into [details of circumstances]; • while I note such information in certain circumstances could and should be provided to affected parties, in relation to this document, it relates to an early stage of the process, where decisions have yet to be made on how to proceed; and • therefore, the public interest in relation to this document, weighs against disclosure.

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						<p>Accordingly, I am satisfied information exempted by the Agency is exempt under section 30(1).</p> <p>Section 35(1)(b): I am also satisfied information in the document relates to information communicated to the Agency by a third party in confidence. Further, I am satisfied the routine disclosure of such information would be reasonably likely to impair the ability of the Agency to obtain such information in the future. Accordingly, I am satisfied information in the document is exempt under section 35(1)(b).</p> <p>Section 25: In regard to personal affairs information see comments in Document 2.</p>
4.	[date]	Emails	16	Released in part Sections 30(1), 33(1), 35(1)(b)	Release in part Sections 30(1), 35(1)(b), 25	<p>Sections 30(1) and 35(1)(b): See comments in Document 3.</p> <p>Section 25: In regard to personal affairs information see comments in Document 2.</p>
5.	[date]	Draft letter	2	Refused in full Section 30(1)	Refuse in full Section 30(1)	<p>Section 30(1): I am satisfied the document is a draft, submitted for advice, opinion and comment as part of the consultative processes of the Agency, being the investigation into a workplace complaint made [details of circumstances]. I am satisfied its disclosure would be contrary to the public interest as:</p> <ul style="list-style-type: none"> • it is preliminary advice; • it is desirable for Agency officers to seek and exchange opinions in an open and candid way before providing an official

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p>response on such matters;</p> <ul style="list-style-type: none"> I am satisfied release of an earlier version would not clearly represent the final outcome or position reached by the Agency; and the Applicant would be aware of the Agency's final position in the matter. <p>Accordingly, I am satisfied the document is exempt under section 30(1).</p>
6.	[date]	Email	1	Refused in part Sections 30(1), 33(1)	Release in full Section 25	<p>Section 30(1): I am satisfied information in the document meets the requirements of the first and second limb of section 30(1). However, I am not satisfied its disclosure would be contrary to the public interest as the document does not contain information of a substantive nature. Accordingly, I am not satisfied the document is exempt under section 30(1).</p> <p>Section 25: In regard to personal affairs information see comments in Document 2.</p>
7.	[date]	Draft letter	2	Refused in full Section 30(1)	Refuse in full Section 30(1)	<p>Section 30(1): See comments in Document 5.</p>
8.	[date]	Email chain	14	Refused in part Sections 30(1), 33(1), 35(1)(b)	Release in part Sections 30(1), 35(1)(b), 25	<p>Sections 30(1) and 35(1)(b): See comments in Document 3.</p> <p>Section 25: In regard to personal affairs information see comments in Document 2.</p>
9.	[date]	Email chain	14	Refused in full Sections 30(1), 33(1), 35(1)(b)	Refuse in full Sections 30(1), 35(1)(b)	<p>Sections 30(1) and 35(1)(b): See comments in Document 3.</p>

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10.	[date]	Email chain	9	Refused in full Sections 30(1), 33(1), 35(1)(b)	Refuse in full Sections 30(1), 35(1)(b)	Sections 30(1) and 35(1)(b): See comments in Document 3.
11.	[date]	Email chain	10	Refused in part Sections 30(1), 33(1), 35(1)(b)	Release in part Sections 30(1), 35(1)(b), 25	Sections 30(1) and 35(1)(b): See comments in Document 3. Section 25: In regard to personal affairs information see comments in Document 2.
12.	[date]	Email chain	9	Refused in full Sections 30(1), 33(1), 35(1)(b)	Refuse in full Sections 30(1), 35(1)(b)	Sections 30(1) and 35(1)(b): See comments in Document 3.
13.	[date]	Email chain	10	Refused in part Sections 30(1), 33(1), 35(1)(b)	Release in part Sections 30(1), 35(1)(b), 25	Sections 30(1) and 35(1)(b): See comments in Document 3. Section 25: In regard to personal affairs information see comments in Document 2.
14.	[date]	Email	2	Refused in part Sections 33(1), 35(1)(b)	Release in part Sections 33(1), 25 The document is to be released except for the second sentence and third party name, which are irrelevant and are to be deleted in accordance with under section 25. All other information is to be released.	Section 35(1)(b): While I acknowledge the information is somewhat sensitive, I am not satisfied the Agency would be impaired from receiving similar information of a nature in the future if disclosed. Accordingly, I am not satisfied the document is exempt under section 35(1)(b). Section 33(1): I am satisfied certain information relating generally to the workplace complaint would not be unreasonable to disclose, given similar information in the documents has been released to the Applicant. Accordingly, I am not satisfied this information is exempt under section 33(1). Section 25: In relation to personal affair

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						information see comments in Document 2.
15.	[date]	Email	4	Refused in full Sections 33(1), 35(1)(b)	Refuse in full Section 35(1)(b)	Section 35(1)(b): See comments in Document 3.
16.	[date]	Emails	4	Refused in full Sections 30(1), 33(1)	Release in full Section 25	Section 35(1)(b): See comments in Document 2. Section 25: In regard to personal affairs information see comments in Document 2.
17.	[date]	Email	1	Refused in part Sections 30(1), 33(1)	Release in full Section 25	Section 30(1): I am satisfied information in the document meets the requirements of the first two limbs of section 30(1). However, I do not consider the document contains information of a substantive nature, and therefore its disclosure would not be contrary to the public interest. Accordingly, I am not satisfied the document is exempt under section 30(1). Section 25: In regard to personal affairs information see comments in Document 2.
18.	[date]	Typed notes	12	Refused in full Sections 30(1), 33(1), 35(1)(b)	Release in full Section 25	Section 35(1)(b): See comments in Document 2. Section 25: In relation to personal affairs information see comments in Document 2.
19.	[date]	Chronology	2	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 3.
20.	[date]	OH&S Manual	6	Released in full	Not subject to review	
21.		Code of Conduct	10	Released in full	Not subject to review	
22.	[date]	[specific	2	Released in full	Not subject to review	

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		workplace] Policy				
23.	[date]	[specific workplace] Policy	2	Released in full	Not subject to review	
24.	[date]	Emails	2	Released in full	Not subject to review	
25.	[date]	Emails	2	Released in full	Not subject to review	
26.	[date]	Email	3	Released in part Sections 30(1), 33(1), 34(4)(a)(ii), 35(1)(b)	Release in full Section 25	The document is an email providing relevant case updates regarding a number of matters involving the Agency. Section 25: I am satisfied the majority of the information exempted by the Agency is not relevant to the Applicant's FOI request as it relates to workplace matters involving third parties and not the Applicant. Accordingly, the information is to be deleted under section 25. Section 33(1): In relation to personal affairs information, see comments for Document 2. Section 35(1)(b): In regard to information relevant to the Applicant's request, see comments in Document 14.
27.	[date]	Draft letter	4	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
28.	[date]	Draft letter	4	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
29.	[date]	Copy of Draft letter with handwritten notes	3	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
30.	[date]	Email	1	Refused in full	Release in full	Section 30(1): The email does not contain

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
				Section 30(1)	Section 25	sufficient information to be exempt under section 30(1). Further, it is open to the Agency to provide additional information to assist a better understanding of the document to the Applicant. Accordingly, I am not satisfied the document is exempt under section 30(1). Section 25: In relation to personal affairs information, see comments for Document 2.
31.	[date]	Draft letter	4	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
32.	[date]	Emails	2	Released in full	Not subject to review	
33.	[date]	Email	1	Refused in full Section 30(1)	Release in full Section 25	Section 30(1): See comments in Document 30. Section 25: In relation to personal affairs information see comments for Document 2.
34.	[date]	Draft letter	4	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
35.	[date]	Email	1	Released in full	Not subject to review	
36.	[date]	Email	1	Refused in full Section 30(1)	Release in full Section 25	Section 30(1): I am satisfied the document discloses matter in the nature of opinion and advice. However, I am not satisfied its disclosure would be contrary to the public interest as: <ul style="list-style-type: none"> the email lacks information of a substantive nature and I am not satisfied disclosure would have any detrimental impact on the Agency; and while I note the Agency may consider its

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p>contents sensitive, I am not satisfied the document discloses any information about the methods with which it manages workplace investigations such that it would detrimentally affect its abilities to manage such matters in the future.</p> <p>Accordingly, I am not satisfied the document is exempt under section 30(1).</p> <p>Section 25: In relation to personal affairs information, see comments for Document 2.</p>
37.	[date]	Draft letter	4	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
38.	[date]	Email	1	Released in full	Not subject to review	
39.	[date]	Letter (unsigned)	3	Administrative release	Not subject to review	
40.	[date]	Email	1	Refused in full Section 30(1)	Release in full Section 25	<p>Section 30(1): See comments in Document 30.</p> <p>Section 25: In relation to personal affairs information see comments in Document 2.</p>
41.	[date]	Letter (unsigned)	4	Refused in full Section 30(1)	Release in full Section 25	<p>Section 30(1): The document is an earlier version of Document 39, released to the Applicant. I am satisfied the submission of a draft for opinion and comment forms part of the consultative process of the Agency. However, having carefully reviewed the document I am not satisfied it would be contrary to the public interest to release given the two versions are not substantially different, therefore I do not consider release would raise contentious issues that it would be confusing</p>

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						or misleading to release. Accordingly, I am not satisfied the document is exempt under section 30(1). Section 25: In relation to personal affairs information see comments in Document 2.
42.	[date]	Emails	2	Released in full	Not subject to review	
43.	[date]	Email	1	Refused in full Section 30(1)	Release in full	Section 30(1): See comments in Document 36. Section 25: In relation to personal affairs information see comments in Document 2.
44.	[date]	Email	2	Released in part Sections 30(1), 33(1)	Release in part Section 25	Section 30(1): I am satisfied the exempted information concerns matters involving third parties and not the Applicant. The information exempted by the Agency is irrelevant to the Applicant's request and is to remain deleted under section 25. Section 25: In relation to personal affairs information see comments in Document 2.
45.	[date]	Emails	1	Released in part Sections 30(1), 33(1), 34(4)(a)(ii)	Release in part Section 25	Section 30(1): See comments in Document 44. Section 25: In relation to personal affairs information see comments in Document 2.
46.	[date]	Emails	2	Released in part Sections 30(1), 33(1), 34(4)(a)(ii)	Release in part Section 25	Section 30(1): See comments in Document 44. Section 25: In relation to personal affairs information see comments in Document 2.
47.	[date]	Screen shots	1	Released in full	Not subject to review	
48.	[date]	Email	2	Released in part Sections 30(1), 33(1), 35(1)(b)	Release in part Section 25	Section 30(1): See comments in Document 26. Section 25: In relation to personal affairs information see comments in Document 2.

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49.	[date]	Emails	6	Refused in full Sections 30(1), 33(1)	Release in full Section 25	Section 30(1): See comments in Document 2. Section 25: In relation to personal affairs information see comments in Document 2.
50.	[date]	Email	1	Released in full	Not subject to review	
51.	[date]	Meeting notes	2	Administrative release	Not subject to review	
52.	[date]	Email	1	Released in full	Not subject to review	
53.	[date]	Email	1	Released in part Section 33(1), 35(1)(b)	Release in full Section 25	Section 35(1)(b): I am not satisfied the information was communicated with the quality of confidence, as contemplated by this exemption. Accordingly, I am not satisfied the document is exempt under section 35(1)(b). Section 25: In regard to personal affairs information, see comments in Document 2.
54.	[date]	Email	1	Released in part Sections 33(1), 35(1)(b)	Release in full Section 25	Section 35(1)(b): See comments in Document 53. Section 25: In relation to personal affairs information see comments in Document 2.
55.	[date]	Emails	2	Released in part Sections 33(1), 35(1)(b)	Release in full Section 25	Section 35(1)(b): See comments in Document 53. Section 25: In relation to personal affairs information see comments in Document 2.
56.	[date]	Emails	2	Released in part Sections 33(1), 35(1)(b)	Release in full Section 25	Section 35(1)(b): See comments in Document 53. Section 25: In relation to personal affairs information see comments in Document 2.
57.	[date]	Email	2	Released in part	Release in full	Section 30(1): The document contains

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
				Sections 30(1), 36(2)(b)	Section 25	<p>information about how the Agency intends to deal with enquiries from the Applicant. I am satisfied the information in the document meets the requirements of the first two limbs of section 30(1) as it demonstrates the deliberative processes of the Agency. I understand there is some sensitivity to this matter, however I do not consider it would be contrary to the public interest to disclose, as it simply sets out what would be a reasonable response to such enquiries. I also note the Agency's submission regarding the importance of its officers to have the freedom to exchange advice, opinions and recommendations. However, I consider greater transparency can improve the provision of such advice. Accordingly, I am not satisfied the document is exempt under section 30(1).</p> <p>Section 36(2)(b): Having reviewed the information exempted by the Agency, in this case, which concerns a workplace investigation into discrete issues relating to [details of circumstances], I am not satisfied the relevant information falls within the scope of this exemption, nor is it information of the nature contemplated by this exemption. The document can be distinguished from those reviewed by VCAT in the <i>United Firefighters Union</i> decision, as they do not involve labour negotiations intended to apply to a class of persons. Nor am I satisfied disclosure of the</p>

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						document would be likely to weaken the bargaining position of the Agency in future labour and personnel management negotiations. Accordingly, I am not satisfied the document is exempt under section 36(2)(b). Section 25: In relation to personal affairs information see comments in Document 2.
58.	[date]	Email chain	3	Released in part Sections 30(1), 36(2)(b), 33(1)	Release in full Section 25	Sections 30(1) and 36(2)(b): See comments in Document 57. Section 25: In relation to personal affairs information see comments in Document 2.
59.	[date]	Emails	1	Released in full	Not subject to review	
60.	[date]	Letter	2	Released administratively	Not subject to review	
61.	[date]	Emails	2	Released in part Sections 30(1), 36(2)(b)	Release in full Section 25	Sections 30(1) and 36(2)(b): See comments in Document 57. Section 25: In relation to personal affairs information see comments in Document 2.
62.	[date]	Emails	3	Released in part Sections 30(1), 36(2)(b)	Release in full Section 25	Sections 30(1) and 36(2)(b): See comments in Document 57. Section 25: In relation to personal affairs information see comments in Document 2.
63.	[date]	Draft letter	3	Refused in full Section 30(1)	Refuse in full Section 30(1)	Sections 30(1): See comments in Document 5.
64.	[date]	Draft letter	3	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.

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65.	[date]	Email	1	Refused in full Sections 30(1), 32(1)	Refuse in full Section 32(1)	Section 32(1): The document is a communication between the Agency staff member and its external legal adviser. I am satisfied it was created for the dominant purpose of obtaining legal advice and services. Accordingly, I am satisfied the document is exempt in full under section 32(1).
66.	[date]	Draft letter	2	Refused in full Sections 30(1), 32(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
67.	[date]	Letter	3	Refused in full Sections 30(1), 32(1)	Release in full Section 25	Section 32(1): The document is a letter to the Agency from the Applicant's solicitor. Therefore, I am not satisfied the document is exempt under section 32(1). Section 30(1): The document is not an internal communication between officers of the Agency. Therefore, I am not satisfied the document is exempt under section 30(1). Section 25: In regard to personal affairs information see comments in Document 2.
68.	[date]	Email chain	3	Refused in full Sections 30(1), 32(1), 34(4)(a)(ii)	Refuse in full Section 32(1)	Section 32(1): See comments in Document 65.
69.	[date]	Email	1	Released in full	Not subject to review	
70.	[date]	Email	1	Released in full	Not subject to review	
71.	[date]	Email	1	Released in part Sections 33(1), 38	Release in full Section 25	Section 38: For the reasons set out in the Notice of Decision, I am not satisfied the document is exempt under section 38. Section 25: In regard to personal affairs

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						information see comments in Document 2.
72.	[date]	Email	1	Released in full	Not subject to review	
73.	[date]	Draft letter	3	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
74.	[date]	Email	1	Released in part Section 30(1)	Release in full Section 25	Section 30(1): I am not satisfied the exempted information meets the first two limbs of the exemption. In any case, I do not consider the document contains information of a substantive nature, and therefore its disclosure would not be contrary to the public interest. Accordingly, I am not satisfied the document is exempt under section 30(1). Section 25: In regard to personal affairs information see comments in Document 2.
75.	[date]	Draft letter	3	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
76.	[date]	Letter	2	Released administratively	Not subject to review	
77.	[date]	Email	1	Released in full	Not subject to review	
78.	[date]	Email	1	Released in part Section 30(1)	Release in full Section 25	Section 30(1): See comments in Document 74. Section 25: In regard to personal affairs information see comments in Document 2.
79.	[date]	Draft letter	3	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
80.	[date]	Letter	4	Released administratively	Not subject to review	

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
81.	[date]	Email chain	3	Refused in full Sections 30(1), 32(1)	Refuse in full Section 32(1)	Section 32(1): See comments in Document 65.
82.	[date]	Emails	2	Released in full	Not subject to review	
83.	[date]	Offer of employment	8	Released administratively	Not subject to review	
84.	[date]	Change of employee condition form	6	Released administratively	Not subject to review	
85.	[date]	Email	2	Released in full	Not subject to review	
86.	[date]	Offer of employment	6	Released administratively	Not subject to review	
87.	[date]	Change of employee condition form	6	Released administratively	Not subject to review	
88.	[date]	Email	2	Released in full	Not subject to review	
89.	[date]	Letter with handwritten notes	8	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 3.
90.	[date]	Email	1	Released in full	Not subject to review	
91.	[date]	Letter	2	Released administratively	Not subject to review	
92.	[date]	Email	2	Released in part Sections 33(1), 35(1)(b)	Release in part Sections 33(1), 25	Section 33(1): See comments in Document 14. Section 25: In regard to personal affairs information see comments in Document 2.
93.	[date]	Email	4	Refused in full Sections 33(1),	Refuse in full Section 35(1)(b)	Section 35(1)(b): See comments in Document 3.

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				35(1)(b)		
94.	Various	Emails	4	Refused in full Sections 30(1), 33(1), 35(1)(b)	Release in full Section 25	Sections 30(1) and 35(1)(b): See comments in Document 2. Section 25: In regard to personal affairs information see comments in Document 2.
95.	[date]	Email	1	Released in part Sections 30(1), 33(1)	Release in full Section 25	Section 30(1): See comments in Document 17. Section 25: In regard to personal affairs information see comments in Document 2.
96.	Undated	Typed notes	12	Refused in full Sections 30(1), 33(1), 35(1)(b)	Release in full Section 25	Sections 30(1) and 35(1)(b): See comments in Document 2. Section 25: In regard to personal affairs information see comments in Document 2.
97.	[date]	Chronology	2	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 3.
98.	[date]	[specific workplace] Policy	6	Released in full	Not subject to review	
99.	Undated	Code of Conduct	10	Released in full	Not subject to review	
100.	[date]	[specific workplace] Policy	2	Released in full	Not subject to review	
101.	[date]	[specific workplace] Policy	2	Released in full	Not subject to review	
102.	[date]	Draft letter	2	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
103.	[date]	Emails	4	Refused in full Sections 30(1), 32(1)	Release in part Sections 32(1), 25	Section 30(1): I am satisfied the information in the document meets the requirements of the first two limbs of section 30(1). However, I do

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						not consider the document contains information of a substantive nature, and therefore its disclosure would not be contrary to the public interest. Accordingly, I am not satisfied the document is exempt under section 30(1). Section 32(1): See comments in Document 65. Section 25: In regard to personal affairs information see comments in Document 2.
104.	[date]	Draft letter	3	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
105.	[date]	Draft letter	3	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
106.	[date]	Emails	4	Refused in full Sections 30(1), 32(1)	Release in part Sections 32(1), 25	Section 30(1): See comments in Document 103. Section 25: In regard to personal affairs information see comments in Document 2.
107.	[date]	Draft letter	3	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
108.	[date]	Draft letter	3	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
109.	[date]	Email	1	Released in full	Not subject to review	
110.	[date]	Letter	3	Released administratively	Not subject to review	
111.	[date]	Letter	2	Released administratively	Not subject to review	
112.	[date]	Email	3	Refused in full	Refuse in full	Section 32(1): See comments in Document 65.

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				Sections 30(1), 32(1), 33(1)	Section 32(1)	
113.	[date]	Letter (attachment to Document 112)	2	Refused in full Sections 30(1). 32(1). 33(1)	Refused in full Section 32(1)	Section 32(1): The document was created by the Agency's legal adviser. I am satisfied it was created for the dominant purpose of providing legal advice to the Agency and is exempt under section 32(1).
114.	[date]	Emails	2	Refused in part Sections 30(1), 33(1). 35(1)(b)	Release in part Sections 33(1), 30(1), 25	<p>Section 30(1): I am satisfied the document contains matter in the nature of advice, opinion and recommendation prepared by an Agency officer as part of the Agency's deliberative processes. I am also satisfied disclosure would be contrary to the public interest as it relates to sensitive matters that I consider would impact the Agency's functions in relation to workplace investigation and complaint handling. Accordingly, I am satisfied the information in the document is exempt under section 30(1).</p> <p>Section 33(1): Information in the document contains comments and observations regarding a third party. I am satisfied this information is personal affairs information and would be unreasonable to release given its sensitivity and that the third party would most likely object to its release. Accordingly, I am satisfied the information in the document is exempt under section 33(1).</p> <p>Section 25: In regard to personal affairs information see comments in Document 2.</p>

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115.	[date]	Emails	2	Refused in part Sections 30(1), 33(1), 35(1)(b)	Release in part Sections 33(1), 30(1), 25	Sections 30(1) and 33(1): See comments in Document 114. Section 25: In regard to personal affairs information see comments in Document 2.
116.	[date]	Emails	1	Released in full	Not subject to review	
117.		Handwritten notes	16	Refused in full Sections 30(1), 33(1), 34(4)(a)(ii), 32(1), 38	Release in part Sections 35(1)(b), 32(1), 25	Section 30(1): See comments in Document 103. Section 32(1): I am satisfied the information the Agency exempted under section 32(1) is exempt as it records legal advice received from the Agency's external legal advisers. Section 35(1)(b): I am satisfied the document records information communicated by a third party in confidence. In this instance, I have decided to apply this exemption broadly as I consider routine disclosure of such information would be reasonably likely to impair the ability of the Agency to obtain such information in the future. Accordingly, I am satisfied it is exempt under section 35(1)(b). Section 25: I am satisfied the document contains information that pertains to third parties only that is not relevant to the Applicant's FOI request or matters with the Agency. This information is to remain deleted under section 25. Further, consistent with my view of the remaining personal affairs information, it is irrelevant to the request and is to be deleted in accordance with the comments set out in Document 2.

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118.	[date]	Email	6	Released in full	Not subject to review	
119.	[date]	Email	7	Released in full	Not subject to review	
120.	[date]	Email	10	Released in full	Not subject to review	
121.	[date]	Email	7	Released in full	Not subject to review	
122.	[date]	Email chain	7	Release in part Section 30(1)	Release in full Section 25	Section 30(1): See comments in Document 36. Section 25: In regard to personal affairs information see comments in Document 2.
123.	[date]	Email chain	8	Released in part Section 30(1)	Release in full	Section 30(1): See comments in Document 36.
124.	[date]	Email chain	2	Released in part Sections 30(1), 33(1)	Release in full Section 25	Section 30(1): See comments in Document 36. Section 25: In regard to personal affairs information see comments in Document 2.
125.	[date]	Emails	1	Released in part Sections 30(1), 33(1)	Release in full Section 25	Section 30(1): See comments in Document 36. Section 25: In regard to personal affairs information see comments in Document 2.
126.	[date]	Emails	2	Released in part Sections 30(1), 33(1)	Release in full Section 25	Section 30(1): See comments in Document 36. Section 25: In regard to personal affairs information see comments in Document 2.
127.	[date]	Email	2	Released in full	Not subject to review	
128.	[date]	Letter	9	Released administratively	Not subject to review	
129.	[date]	Email chain	8	Released in part Section 30(1)	Release in full Section 25	Section 30(1): See comments in Document 36. Section 25: In regard to personal affairs information see comments in Document 2.
130.	[date]	Letter	9	Released	Not subject to review	

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
				administratively		
131.	[date]	Email chain	9	Released in part Sections 30(1)	Release in full Section 25	Section 30(1): See comments in Document 36. Section 25: In regard to personal affairs information see comments in Document 2.
132.	[date]	Email chain	9	Released in full	Not subject to review	
133.	[date]	Emails	3	Released in full	Not subject to review	
134.	[date]	Emails	9	Released in full	Not subject to review	
135.	[date]	Emails	4	Released in full	Not subject to review	
136.	[date]	Emails	4	Released in full	Not subject to review	
137.	[date]	Emails	9	Released in full	Not subject to review	
138.	[date]	Emails	2	Released in part Sections 30(1)	Release in full Section 25	Section 30(1): See comments in Document 36. Section 25: In regard to personal affairs information see comments in Document 2.
139.	[date]	Emails	1	Released in part Sections 30(1)	Release in full Section 25	Section 30(1): See comments in Document 36. Section 25: In regard to personal affairs information see comments in Document 2.
140.	[date]	Worksafe application	16	Released administratively	Not subject to review	
141.	[date]	Email	1	Released in part Sections 30(1)	Release in full Section 25	Sections 30(1): The email is purely administrative in nature and does not contain sufficient detail to be exempt under section 30(1). Accordingly, I am not satisfied the document is exempt under section 30(1). Section 25: In regard to personal affairs information see comments in Document 2.

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
142.	[date]	Draft letter	2	Refused in full Sections 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
143.	[date]	Email	1	Refused in full Sections 30(1), 32(1)	Refuse in full Section 32(1)	Section 32(1): See comments in Document 65.
144.	[date]	Draft letter	2	Refused in full Sections 30(1), 32(1)	Refuse in full Section 32(1)	Section 32(1): See comments in Document 113.
145.	[date]	Emails	1	Released in part Sections 30(1), 33(1)	Release in full Section 25	Section 30(1): See comments in Document 36. Section 25: In regard to personal affairs information see comments in Document 2.
146.	[date]	Worksafe application	16	Released administratively	Not subject to review	
147.	[date]	Email	1	Released in part Sections 30(1), 32(1)	Release in part Sections 32(1), 25	Section 32(1): See comments in Document 117. Section 25: In regard to personal affairs information see comments in Document 2.
148.	[date]	Attachment 1	2	Released administratively	Not subject to review	
149.	[date]	Letter	2	Released administratively	Not subject to review	
150.	[date]	Email	1	Released in part Sections 30(1), 32(1)	Release in part Sections 32(1), 25	Section 32(1): See comments in Document 117. Section 25: In regard to personal affairs information see comments in Document 2.
151.	[date]	Attachment 1	2	Released administratively	Not subject to review	
152.	[date]	Letter	2	Released administratively	Not subject to review	

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
153.	[date]	Emails	2	Released in part Sections 30(1), 32(1), 33(1)	Release in part Sections 32(1), 25	Section 32(1): See comments in Document 117. Section 25: In regard to personal affairs information see comments in Document 2.
154.	[date]	Emails	2	Released in part Sections 30(1), 32(1), 33(1)	Release in part Sections 32(1), 25	Section 32(1): See comments in Document 117. Section 25: In regard to personal affairs information see comments in Document 2.
155.	[date]	Emails	2	Released in part Sections 30(1), 32(1), 33(1)	Release in part Sections 32(1), 25	Section 32(1): See comments in Document 117. Section 25: In regard to personal affairs information see comments in Document 2.
156.	[date]	Attachment 1	2	Released administratively	Not subject to review	
157.	[date]	Letter	2	Released administratively	Not subject to review	
158.	[date]	Email	1	Released in full	Not subject to review	
159.	[date]	Letter	2	Released administratively	Not subject to review	
160.	[date]	Attachment 1	2	Released administratively	Not subject to review	
161.	[date]	Emails	2	Released in full	Not subject to review	
162.	[date]	Email	1	Released in full	Not subject to review	
163.	[date]	Email	1	Released in full	Not subject to review	
164.	[date]	Email	1	Released in full	Not subject to review	
165.	[date]	Email	1	Released in full	Not subject to review	
166.	[date]	Email	2	Refused in full Sections 30(1),	Refuse in full Section 35(1)(b)	The document is an email attaching a witness statement of a third party.

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
				31(1)(a), 32(1), 33(1), 35(1)(b), 38		<p>Section 35(1)(b): I am satisfied the document contains information communicated by a third party to the Agency. I am also satisfied the information was provided in circumstances in which confidentiality could reasonably be implied. For the following reasons, I am satisfied it would be contrary to the public interest to release the information, because:</p> <ul style="list-style-type: none"> • in the circumstances, I accept the Agency would rely on the information of third parties to effectively perform its investigative functions in relation to workplace disputes; • I consider individuals need to feel confident that the information they provide, including their identity, will be held in confidence by the Agency; • I consider release of the information has the potential to dissuade individuals from raising concerns of a similar nature given release of information under FOI is unrestricted and unconditional; and • I am satisfied this to be a significant and detrimental outcome that would impede the free flow of information provided to the Agency. <p>Accordingly, I am satisfied the document is exempt under section 35(1)(b).</p>
167.	[date]	Witness Statement	3	Refused in full Sections 30(1),	Refuse in full Section 35(1)(b)	Section 35(1)(b): See comments in Document 166.

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
				31(1)(a), 32(1), 33(1), 35(1)(b), 38		
168.	[date]	Email	1	Released in full	Not subject to review	
169.	[date]	Letter received from [external agency]	2	Released administratively	Not subject to review	
170.	[date]	Guide [number]	6	Released administratively	Not subject to review	
171.	[date]	Guide [number]	7	Released administratively	Not subject to review	
172.	[date]	[number and type of] Form	9	Released administratively	Not subject to review	
173.	[date]	Notice	2	Released administratively	Not subject to review	
174.	[date]	Emails	1	Released in full	Not subject to review	
175.	[date]	Emails	1	Released in full	Not subject to review	
176.	[date]	Scanned documents	183	Released in part Sections 30(1), 32(1), 33(1), 35(1)(b)	Release in part Sections 30(1), 32(1), 25 The information deleted on pages [specified page numbers] is exempt under section 30(1). On page [number], the email dated [date] at [time] is	Section 30(1): I am satisfied the information in the document meets the requirements of the first two limbs of section 30(1), and it would be contrary to the public interest to disclose this information, because: <ul style="list-style-type: none"> • it is preliminary advice; • it relates to sensitive matters; and • the Applicant would be aware of the Agency's final position in the matter. However, certain information, which I have determined is not exempt under section 30(1),

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					<p>exempt under section 30(1).</p> <p>The information on pages [specified page numbers] and [page number] is exempt under section 32(1).</p> <p>All other information is to be released.</p>	<p>is to be released.</p> <p>Section 32(1): The document contains a communication between an Agency staff member and a legal representative. I am satisfied the dominant purpose of the communication was to seek legal advice. Accordingly, I am satisfied this information is exempt under section 32(1).</p> <p>Section 25: In regard to personal affairs information see comments in Document 2.</p>
177.	[date]	Email	2	Refused in full Sections 30(1), 31(1)(a), 32(1), 33(1), 35(1)(b), 38	Refuse in full Section 35(1)(b)	Section 35(1)(b): See comments in Document 166.
178.	[date]	Witness Statement	2	Refused in full Sections 30(1), 31(1)(a), 32(1), 33(1), 35(1)(b), 38	Refuse in full Section 35(1)(b)	Section 35(1)(b): See comments in Document 166.
179.	Various	Typed notes	3	Refused in full Sections 30(1), 31(1)(a), 32(1), 33(1), 35(1)(b), 38	Refuse in full Section 30(1)	Section 30(1): See comments in Document 3.
180.	[date]	Letter	2	Refused in full Section 30(1)	Release in full Section 25	Section 30(1): I note the document is an earlier version of Document 111, released to the Applicant. I am satisfied the submission of a draft for opinion and comment forms part of the consultative process of the Agency. However, having carefully reviewed the document, I am not satisfied it would be

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						contrary to the public interest to release given the two versions are not substantially different. Accordingly, I am not satisfied the document is exempt under section 30(1). Section 25: In regard to personal affairs information see comments in Document 2.
181.	[date]	Draft letter	2	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
182.	[date]	Draft letter	2	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
183.	Undated	Draft letter	2	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
184.	[date]	Draft letter	2	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
185.	[date]	Draft Letter	2	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
186.	[date]	Letter	2	Released administratively	Not subject to review	
187.	[date]	Draft letter	2	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
188.	[date]	Attachment 1	2	Released administratively	Not subject to review	
189.	Undated	Draft letter	2	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
190.	[date]	Attachment 1	2	Released	Not subject to review	

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
				administratively		
191.	[date]	Draft letter	2	Released administratively	Not subject to review	
192.	[date]	Email	4	Released in part Section 30(1), 33(1), 34(4)(a)(ii), 35(1)(b), 36(2)(b), 38	Release in part Sections 30(1), 25	Section 30(1): See comments in Document 3. Section 25: I am satisfied the remaining Information exempted by the Agency is not relevant to the Applicant's FOI request as it relates to workplace matters involving third parties and not the Applicant. Accordingly, the information is to be deleted under section 25.
193.	[date]	Letter	3	Refused in full Section 30(1)	Release in full Section 25	Section 30(1): See comment in Document 180. Section 25: In regard to personal affairs information see comments in Document 2.
194.	[date]	Draft letter	3	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
195.	[date]	Draft letter	3	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
196.	[date]	Letter	3	Released administratively	Not subject to review	
197.	[date]	Draft letter	3	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
198.	[date]	Email	1	Released in part Section 25	Release in part Section 25	Section 25: I am satisfied the deleted information is irrelevant to the Applicant's FOI request. Accordingly, the information is to be deleted under section 25.
199.	Undated	Text messages	1	Released	Not subject to review	

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
				administratively		
200.	Undated	Summary of allegations	1	Released administratively	Not subject to review	
201.	[date]	Letter	3	Released administratively	Not subject to review	
202.	[date]	Emails	3	Refuse in full Section 30(1), 33(1), 35(1)(b)	Refuse in full Section 30(1)	Section 30(1): I am satisfied the document contains matter in the nature of advice, opinion and recommendation prepared as part of the Agency's deliberative processes in responding to workplace compliance functions. I am also satisfied disclosure of the document would be contrary to the public interest it relates to a sensitive matter involving the investigation undertaken by the Agency into a workplace complaint and the evidence it decided to rely upon at that particular point in time (noting that this would be subject to change). I also consider it contains information provided by third parties that could be used to identify parties if disclosed to the Applicant. Accordingly, the public interest in relation to this document weighs against disclosure and I am satisfied the document is exempt in full under section 30(1).
203.	[date]	Emails	2	Refuse in full Section 30(1), 33(1), 35(1)(b)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 202.
204.	[date]	Email	2	Refused in full Section 30(1)	Release in full Section 25	Section 30(1): See comments in Document 30. Section 25: In relation to the personal affairs

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						information see comment in Document 2.
205.	[date]	Email	1	Refused in full Section 30(1)	Release in full Section 25	Section 30(1): See comments in Document 30. Section 25: In relation to the personal affairs information see comment in Document 2.
206.	[date]	Draft letter	4	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
207.	[date]	Email	1	Refused in full Section 30(1)	Release in full Section 25	Section 30(1): See comments in Document 30. Section 25: In relation to the personal affairs information see comment in Document 2.
208.	[date]	Draft letter	4	Refused in full Section 30(1)	Refuse in full Section 30(1)	Section 30(1): See comments in Document 5.
209.	[date]	Email	1	Refused in full Section 30(1)	Release in full Section 25	Section 30(1): See comments in Document 30. Section 25: In relation to the personal affairs information see comment in Document 2.
210.	[date]	Letter	3	Released administratively	Not subject to review	