

## Notice of Decision and Reasons for Decision

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Applicant:	'BV7'
Agency:	Department of Health and Human Services
Decision date:	31 July 2020
Exemption considered:	Section 30(1)
Citation:	'BV7' and Department of Health and Human Services ( <i>Freedom of Information</i> ) [2020] VICmr 208 (31 July 2020)

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FREEDOM OF INFORMATION – external consultant – report – primary care partnerships – internal working document – release not contrary to the public interest

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 as I am not satisfied the document is exempt under section 30(1).

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

My reasons for decision follow.

**Sven Bluemmel**  
Information Commissioner

31 July 2020

## Reasons for Decision

### Background to review

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

A copy of the [external consultant] review into the functions and impacts of the [Primary Care Partnerships] (PCP) Program model in Victoria.
2. In its decision, the Agency identified a document falling within the terms of the Applicant's request and refused access to the document in full relying on sections 30(1).
3. The Agency's decision letter sets out the reasons for its decision.

### Review

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. During the review, the Applicant excluded the review of the personal affairs information of other persons from the scope of the 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 Agency's submission dated [date]; and
  - (c) the Applicant'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.
9. In addition, it is Parliament's intention the FOI Act must be interpreted so as to further the object of the Act and that any discretions conferred by the FOI Act must be exercised, as far as possible, so as to facilitate the disclosure of information in a timely manner and at the lowest reasonable cost.

### *Primary Care Partnerships (PCP) Program*

10. The document is a report titled 'Review of the Primary Care Partnerships Program'. It was prepared by an external consultant company engaged by the Agency to conduct an independent review of the Primary Care Partnerships (PCP) Program.
11. The PCP Program is a platform that brings together local health and other agencies to share skills and resources to find solutions to local health and wellbeing challenges. The PCPs are funded by the Agency.
12. The purpose of the report was to conduct a review of the PCP program, highlight current strengths and weaknesses of the program and to provide options on how the program could be changed.

## Review of exemption

### Section 30(1)

13. 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
- (a) 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
- (b) disclosure of the matter would be contrary to the public interest.

14. The exemption does not apply to purely factual material in a document.<sup>1</sup>

15. 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 that person is one to whom the provisions of the *Public Administration Act 2004* (Vic) apply or not.

*Does the document disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister?*

16. The Agency engaged the service of external consultants to conduct an independent review of the PCP program. For the purpose of section 30(1), I am satisfied the consultants are 'officers' of the Agency in that they are either employed or engaged by the Agency.

17. While I consider the document includes factual information, which is not exempt by virtue of section 30(3), I accept it discloses matter in the nature of opinion, advice or recommendations prepared by an officer of the Agency, namely the external consultants engaged by the Agency to undertake a review of the PCP program and prepare a report setting out findings and recommendations arising from the review.

*Was the document made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government?*

18. I am satisfied the document was created in the course of the deliberative processes involved in the functions of the Agency, being a review of the PCP program.

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

19. Deciding if release would be contrary to the public interest requires a 'process of the weighing against each other conflicting merits and demerits'.<sup>2</sup> Accordingly, it is necessary not only for a decision maker to consider public interest considerations against disclosure, but rather to weigh competing public interest considerations both in favour and against disclosure.

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

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<sup>1</sup> Section 30(3).

<sup>2</sup> *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].

<sup>3</sup> *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

- (a) the right of every person to gain access to documents under the FOI Act;
- (a) the degree of sensitivity of the issues discussed in the documents and the broader context giving rise to the creation of the document;
- (b) the stage or a decision or status of policy development or a process being undertaken at the time the communications were made;
- (c) whether disclosure of the document would be likely to inhibit communications between Agency officers, essential for the Agency to make an informed and well-considered decision or participate fully and properly in a process in accordance with the Agency's functions and other statutory obligations;
- (d) whether disclosure of the document would give merely a part explanation, rather than a complete explanation for the taking of a particular decision or the outcome of a process, which the Agency would not otherwise be able to explain upon disclosure of the document;
- (e) the impact of disclosing a document in draft form or where disclosure not clearly or accurately representing a final position or decision reached by the Agency at the conclusion of a decision or process; and
- (f) 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.

21. The Agency submitted it would not be in the public interest to disclose the document for the following reasons:

... It is considered that the release of the material would be contrary to the public interest as the relationship between recommendations and final actions taken remains an ongoing process and as a result the release of the material could lead to ill-informed debate among the public.

...

The future direction of the PCP program is [a] very sensitive and contentious issue that currently remains unclear and undecided.

The report encompasses the decision making, consultation and deliberative process of the department and has not yet been fully considered by the department as part of its review process. PCPs were recently advised that the government has not had enough time to consider the report and the potential policy and funding directions this may take the program. PCPs are currently experiencing a period of funding uncertainty given the expiration of the current service agreement and the prevailing societal circumstances (COVID-19)...

...

There would be a significant impact on the decision making of the department should this report be released before a final decision has been made on the future direction of the PCP program.

22. In their submission, the Applicant stated as follows:

PCPs have traditionally received their funding for a three year period with a primary focus on the health needs of their local community.

... Over the past 2 year, that three year period has been uncertain, with the government funding for 6 months at a time.

The PCP program model is unique, because it focuses on the health needs of a local community rather than a state-wide approach.

... There have been announcements made in relation to extension of PCP funding in 2020, but we are unsure if that is from the [external consultant] review or because of the need to continue health services during the bushfires and COVID.

23. In relation to the public interest factors set out in paragraph 20 above, I have concluded the following:
- (a) I do not consider the information in the document to be particularly sensitive. Rather, the information relates to the current PCP framework that is widely known and provides options for future directions that may or may not be implemented.
  - (b) Information in the document relates to local community partnerships dedicated to improving population health and well-being that directly affects members of the community. I consider the public has a substantial interest in the review of the PCP program, particularly where this is the first review of the partnerships network since its establishment in 2000. I note such considerations are reflected in the Victorian Primary Care Partnerships media release, welcoming the review and highlighting the importance of PCP involvement and consultation in the review.<sup>4</sup> Accordingly, I consider disclosure of this information is in the public interest, as the community has a right to be informed about assessments of this nature upon which decisions may be informed or made.
  - (c) While I acknowledge the Agency submits disclosure of the document would lead to ill-informed debate around options or recommendations not yet considered or adopted, I consider the Applicant, who is a Member of Parliament, along with members of the public, are capable of understanding the document was produced at a particular point in time and may not represent the Agency's final position. Further, it is clear the options and recommendations in the document are not binding on any decision made or to be made by the Agency, Minister or government.
  - (d) Consequently, I do not accept disclosure of the document would cause unnecessary debate. In my view, such arguments underestimate the capacity of the public to be informed about advice received and decisions made by agencies and government. It also minimises the importance of public engagement and participation in government policy making and decision making. In any case, it is open to the Agency to disclose the document with any necessary additional information to eliminate or minimise any confusion or misunderstanding the Agency considers may arise from disclosure of the document.
  - (e) During the review, the Agency provided information about the document that it requested remain confidential. I acknowledge that as a result of this information, the premature release of this document may be considered sensitive by the Agency and could weigh against disclosure in order to allow the proper decision making processes of the Agency to run their course. However, in the circumstances of this matter, I consider there are factors that weigh in favour of disclosure.
  - (f) I note that the review of the PCP platform was announced in October 2019 and the document was provided to the Agency in February 2020. This has afforded the Agency five months to consider the findings and recommendations in the document and determine if any actions or what further steps should be taken in relation to the PCP framework.

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<sup>4</sup> See media release, Victorian Primary Care Partnerships, 16 October 2019, *Review welcomed as Primary Care Partnerships win temporary reprieve* <[http://vicpcp.org.au/wp-content/uploads/2019/10/16\\_10\\_19-media-release\\_Victorian-Primary-Care-Partnerships.pdf](http://vicpcp.org.au/wp-content/uploads/2019/10/16_10_19-media-release_Victorian-Primary-Care-Partnerships.pdf)>.

(g) Disclosure of the document serves the public interest by promoting public sector transparency and accountability, including in the performance of the Agency's functions and oversight of the expenditure of public funds on PCP programs. This is particularly important, in circumstances where the PCP framework is currently in a state of uncertainty and disclosure of the report can assist the community to participate in any future decisions made about PCPs

24. Having taken into consideration the submission of both the Applicant and the Agency and in weighing up the above factors, I am satisfied the public interest weighs in favour of disclosure.

25. Accordingly, I am satisfied disclosure of the document would not be contrary to the public interest, and the document is not exempt under section 30(1).

### ***Deletion of exempt or irrelevant information***

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

27. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>5</sup> and the effectiveness of the deletions. Where deletions would render the document meaningless they are not 'practicable' and release of the document is not required under section 25.<sup>6</sup>

28. The document contains the personal affairs information of third parties on page 105, such as personal names, telephone numbers and email addresses. The Applicant excluded the personal affairs information of other persons from the scope of the review. Therefore, such information is irrelevant to the review.

29. I have considered whether it is practicable to provide the Applicant with an edited copy of the document with irrelevant information deleted in accordance with section 25. I am satisfied it is practicable to delete irrelevant information from the document as to do so would not require substantial time and effort, and the edited document would retain meaning.

### **Conclusion**

30. On the information available, I am not satisfied the document is exempt under section 30(1).

31. As I am satisfied it is practicable to provide an edited copy of the document with irrelevant information deleted in accordance with section 25, I have determined to grant access to the document in part with personal affairs information identified in paragraph 28 deleted.

### **Review rights**

32. If either party to this review is not satisfied with my decision, they are entitled to apply to the Victorian Civil and Administrative Tribunal (**VCAT**) for it to be reviewed.<sup>7</sup>

33. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>8</sup>

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<sup>5</sup> *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

<sup>6</sup> *Honeywood v Department of Human Services* [2006] VCAT 2048 [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140], [155].

<sup>7</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>8</sup> Section 52(5).

34. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>9</sup>
35. Information about how to apply to VCAT is available online at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au). Alternatively, VCAT may be contacted by email at [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au) or by telephone on 1300 018 228.
36. The Agency is required to notify the Information Commissioner in writing as soon as practicable if either party applies to VCAT for a review of my decision.<sup>10</sup>

**When this decision takes effect**

37. My decision does not take effect until the Agency's 14 day review period expires.

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<sup>9</sup> Section 52(9).

<sup>10</sup> Sections 50(3F) and (3FA).