

Notice of Decision and Reasons for Decision

Applicant:	'CT8'
Agency:	Monash Health
Decision date:	17 March 2021
Exemption and provision considered:	Sections 33(1), 25
Citation:	'CT8' and Monash Health (<i>Freedom of Information</i>) [2021] VICmr 72 (17 March 2021)

FREEDOM OF INFORMATION – CCTV footage – footage from workplace – public hospital – patient – birth of child – personal affairs information of agency officers – practical to edit document

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 to refuse access to a document requested by the Applicant under the FOI Act.

My decision on the Applicant's request differs from the Agency's decision as I have determined to grant access to the document, being CCTV footage, in part.

I consider it is practical for the Agency to prepare an edited version of the document with irrelevant information, in form of third parties' personal affairs information, removed.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
17 March 2021

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to CCTV footage capturing the birth of their child in [location] of a public hospital.
2. [Redacted – personal details of Applicant’s reason for seeking access].
3. The Agency identified one document, being CCTV footage (the **footage**) for the requested time period within the hospital [location], which captures the Applicant entering the [location] up until after the birth of their child, after which the Applicant proceeds out of view of the camera.
4. The Agency relies on section 33(1) to refuse access to the footage in full, claiming release would constitute an unreasonable disclosure of material relating to the personal affairs of agency staff. The Agency determined it was not practicable to consult with the third parties captured in the footage.
5. The Agency’s decision letter sets out the reasons for its decision and advised the Applicant:

Although we are unable to release this information to you we understand the sentimental significance of this footage and we are prepared to allow yourself and your [partner] to view the footage under supervision here at the Freedom of Information Department at [Agency premises].

Review

6. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency’s decision to refuse access to the footage.
7. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
8. During the review, the Applicant confirmed they would accept an edited copy of the footage that focused on them and their child only with the personal affairs information of third parties removed.
9. I have examined a copy of the footage and considered all communications and submissions received from the parties.
10. I acknowledge the Agency’s attempts to informally resolve this request with the Applicant by way of offering an opportunity for them to view the footage at the Agency’s premise. However, I also appreciate the Applicant’s desire to watch this footage privately with their partner, given the circumstances of the birth and its highly personal and significant content.
11. During the review, the Agency was provided with a preliminary view by OVIC staff on the likely outcome of my decision and information about available editing software for CCTV footage.
12. 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.
13. I note Parliament’s intention the FOI Act must be interpreted so as to further the object of the Act and any discretions conferred by the Act must be exercised, as far as possible, so as to facilitate and promote the disclosure of information in a timely manner and at the lowest reasonable cost.

Review of exemptions

Section 33(1) – Personal affairs information

14. A document is exempt under section 33(1) if two conditions are satisfied:
 - (a) disclosure of the document under the FOI Act would ‘involve’ the disclosure of information relating to the ‘personal affairs’ of a person other than the Applicant;¹ and
 - (b) such disclosure would be ‘unreasonable’.
15. Information relating to a person’s ‘personal affairs’ includes information that identifies any person, or discloses their address or location. It also includes any information from which such information may be reasonably determined.²

Does the document contain the ‘personal affairs information’ of individuals other than the Applicant?

16. The footage is 5 minutes and 2 seconds (0:05:02) in length and is captured from one camera, located in a public hospital [location]. The static camera captured footage showing activity and movement [in the location].
17. The footage captures images of the Applicant and their newborn child, including the moment the child was born, as well as several Agency staff members (**third parties**).
18. The Applicant’s first appearance is at approximately [timestamp] minutes into the footage. There is no movement in the [location] captured in the footage prior to [specified] timestamp. The Applicant and their child exit the footage at approximately [timestamp] minutes and are not captured further beyond this point.
19. I consider the footage is sufficiently clear to identify the third parties through their appearance, movements and/or attire; despite noting the central Agency officers assisting the Applicant in the footage are wearing face masks and face shields due to COVID-19 health directions. I am satisfied the footage contains the personal affairs information of persons other than the Applicant.
20. I note the Applicant does not seek access to the images of third parties in the footage and seeks access to footage of themselves and their child only. Accordingly, I consider the personal affairs information of third parties in the footage is irrelevant for the purposes of my review.
21. As such, it is not necessary to consider whether it would be unreasonable to release the personal affairs information of the third parties. Rather, I will focus on whether it is practicable for an edited version of the footage to be prepared that would satisfy the Applicant’s primary reason for seeking access.

Section 25 – Deletion of irrelevant information

22. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
23. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’³ and the effectiveness of the deletions. Where

¹ Sections 33(1) and (2).

² Section 33(9).

³ *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].

deletions would render a document meaningless, they are not 'practicable', and release of the document is not required under section 25.⁴

24. I have considered the effect of deleting the irrelevant information in the footage. In my view, it is practicable to do so by way of cropping, pixilation or blurring the footage. I consider this task would not require substantial or unreasonable time and effort, and the edited footage would retain meaning for the Applicant and satisfy the purpose of their FOI request.
25. I acknowledge the Agency's advice it has not previously had the capability to undertake this editing of footage but is seeking to remedy this. To assist, I note OVIC staff provided advice to the Agency on the types of editing software routinely use by agencies to perform this type of editing task.

Conclusion

26. On the information before me, I am satisfied it is practicable for the Agency to prepare and provide the Applicant with an edited copy of the footage, which shows the Applicant and their child and removes third parties' personal affairs information.
27. As detailed above, the period of time that captures the Applicant and the lead up to the birth of their child is between approximately [timestamp] and [timestamp] minutes in the footage.
28. As such, I have determined to grant access to the footage in part with irrelevant information deleted in accordance with section 25.

Review rights

29. 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.⁵
30. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁶
31. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision⁷ and my decision takes effect after this review period expires.
32. 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.
33. 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.⁸
34. My decision does not take effect until the Agency's review period expires. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

⁴ *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].

⁵ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁶ Section 52(5).

⁷ Section 52(9).

⁸ Sections 50(3F) and (3FA).