



Office of the Victorian
Information Commissioner

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Notice of Decision and Reasons for Decision

Applicant:	'DE8'
Agency:	Country Fire Authority
Decision date:	11 June 2021
Exemption considered:	Section 33(1)
Citation:	'DE8' and Country Fire Authority (Freedom of Information) [2021] VICmr 171 (11 June 2021)

FREEDOM OF INFORMATION – complaint regarding social media comment – email address of complainant – investigation of complaint

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 is the same as the Agency's decision in that I am satisfied the email address of any complainant in the documents is exempt under section 33(1).

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

11 June 2021

Reasons for Decision

Background to review

1. The Applicant made an FOI request to the Agency [seeking access to unredacted copies of communications received by the Agency from a third party or parties who made a complaint relating to the Applicant, as well as any responses made by the Agency to the complainant/s and any internal correspondence regarding the matter].

[Verbatim FOI request terms redacted]

2. In its decision, the Agency identified 41 pages falling within the terms of the Applicant's request and granted access to 8 pages in full and 33 in pages in part.
3. The Agency relied on the exemption under section 33(1) to refuse access to information the documents.
4. The Agency's decision letter sets out the reasons for its decision.

Review

5. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
6. I have examined copies of the documents subject to review.
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 advised they seek access to the email address of a complainant or complainants only.
9. Accordingly, my review concerns the email address of any complainant only and the remaining personal affairs information in the documents is irrelevant information for the purpose of my review.
10. I have considered all communications and submissions received from the parties.
11. 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.
12. 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) – Documents affecting an individual's personal privacy

13. 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 (a **third party**);¹ and

(b) such disclosure would be 'unreasonable'.

Do the documents contain personal affairs information of any individuals other than the Applicant?

14. Information relating to an individual'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
15. A document will disclose a third party's personal affairs information if it is capable, either directly or indirectly, of identifying that person. As the nature of disclosure under the FOI Act is unrestricted and unconditional, this is to be interpreted by reference to the capacity of any member of the public to identify a third party.³
16. As noted above, the Applicant only seeks review of the email address of the complainant or complainants.
17. The Applicant submits the email address does not amount to 'personal affairs information' in accordance with section 33(1), 'given that, by the Agency's own words the complaint/s was/were made anonymously'.
18. Section 33(1) extends to the disclosure of information that would 'involve' the disclosure of personal affairs information. Namely, information that does not specifically relate to the personal affairs of a person but enables a person to be identified will involve the disclosure of a person's personal affairs information.
19. While an email address in isolation may not explicitly identify an individual, I consider the identity of the owner of the email address can be reasonably determined.
20. Accordingly, I am satisfied disclosure of the email address of any complainant would enable them to be identified and, therefore, is 'personal affairs information' for the purposes of section 33(1).

Would disclosure of the personal affairs information be unreasonable?

21. Determining whether disclosure of a third party's personal affairs information would be unreasonable involves balancing the public interest in the disclosure of official information with the protection of a third party's personal privacy in the circumstances.
22. In *Victoria Police v Marke*,⁴ the Victorian Court of Appeal held there is 'no absolute bar to providing access to documents which relate to the personal affairs of others'. Further, the exemption under section 33(1) 'arises only in cases of unreasonable disclosure' and '[w]hat amounts to an unreasonable disclosure of someone's personal affairs will necessarily vary from case to case'.
23. In determining whether disclosure of personal affairs information would be unreasonable in these circumstances, I have considered the following factors:

(a) The nature of the information in the document and the circumstances in which the information was obtained by the Agency

The email address of any complainant was obtained by the Agency in the context of receiving a

¹ Sections 33(1) and (2).

² Section 33(9).

³ *O'Sullivan v Department of Health and Community Services (No 2)* [1995] 9 VAR 1 at [14]; *Beauchamp v Department of Education* [2006] VCAT 1653 at [42].

⁴ [2008] VSCA 218 at [76].

complaint.

Where members of the public lodge complaints to an agency about an agency officer, it is more often than not the very nature of providing information or making a complaint about an agency officer that is confidential in nature.

(b) The Applicant's interest in the information

The FOI Act provides a general right of access that can be exercised by any person, regardless of their motive or purpose for seeking access to a document. However, the reasons why an applicant seeks access to a document is a relevant consideration in determining whether disclosure would be unreasonable.⁵

The Applicant is of the view the complaint(s) in question are motivated by malice and with a view to damaging the Applicant's professional standing. Accordingly, the Applicant seeks access to the email address of any complainant to protect the Applicant's communication from review by any such person, by removing or blocking them from the Applicant's social media and/or networking platforms.

The Applicant submits not being able to take steps to prevent their communications on social media from being monitored is having an impact on the Applicant's mental health, feeling of safety, and on the way they engage on social media platforms, including professional networking sites.

As such, the Applicant submits disclosure of any complainant's email address to assist the Applicant to protect their communications would not be unreasonable.

(c) Whether any public interest would be promoted by the release of the information

There is a strong public interest in the Agency's internal processes in response to complaints concerning Agency officers being as transparent as possible, to ensure the Agency appropriately investigates any complaints.

However, there is also a competing interest in maintaining the confidentiality of complaints and complainants, as it is essential the Agency can continue to receive and act upon such information. I am of the view, if details of a complainant's email address (or other contact details) were released under FOI, individuals would be deterred from making a complaint or providing complaint related information to the Agency.

I appreciate the Applicant feels aggrieved they were the subject of complaints made to Agency and seek to protect their communications from further review by any complainant. However, in my view, there is an essential public interest in ensuring the identity or contact details for a complainant remain confidential.

In the absence of any information to suggest the public interest would be promoted by the release of the email address of any complainant in the documents, I consider disclosure of such information would serve the Applicant's personal interests only.

⁵ *Victoria Police v Marke* [2008] VSCA 218 at [104].

- (d) Whether individuals to whom the information relates would object, or would be reasonably likely to object to the release of the information

There is no information before me concerning the views of any complainant(s) as to the release of their personal affairs information in the document, as the Agency determined it was not practicable to consult with them.

In the circumstances, I am satisfied it likely, if consulted, the complainant(s) would object to the release of their personal affairs information on grounds the complaints were made to the Agency with an expectation of confidentiality.

- (e) The likelihood of further disclosure of the information, if released

The nature of disclosure under the FOI Act is unconditional and unrestricted, which means an applicant is free to disseminate widely or use a document as they choose once it is released.⁶

Accordingly, I have considered the likelihood of the personal affairs information in the documents being further disseminated, if disclosed, and the effects broader disclosure of this information would have on the privacy of any complainant.

In this case, there is no information before me to suggest the Applicant would publicly disseminate the document.

- (f) Whether disclosure of the information would or would be reasonably likely to endanger the life or physical safety of any person⁷

In determining whether the disclosure of a document would involve the unreasonable disclosure of information relating to the personal affairs of any person, I must take into account whether the disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person.⁸

There is no information before me to determine this is a relevant consideration in this matter.

24. Having considered the above factors, on balance, I am satisfied disclosure of the email address of any complainant in the documents would be unreasonable and is exempt from release under section 33(1).

Section 25 – Deletion of exempt or irrelevant information

25. Section 25 requires an agency to grant access to an edited copy of a document where it is practicable to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
26. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’⁹ 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 25.¹⁰
27. As the Agency provided the Applicant with edited copies of the documents with irrelevant and exempt information deleted in accordance with section 25, I am satisfied it is practicable to provide the Applicant with an edited copy of the documents.

⁶ *Victoria Police v Marke* [2008] VSCA 218 at [68].

⁷ Section 33(2A).

⁸ Section 33(2A).

⁹ *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].

¹⁰ *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].

Conclusion

28. On the information before me, I am satisfied the email address of any complainant in the documents is exempt under section 33(1).
29. Accordingly, I have decided not to release additional information in the documents.

Review rights

30. 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.¹¹
31. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹²
32. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹³
33. 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.
34. 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.¹⁴

¹¹ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹² Section 52(5).

¹³ Section 52(9).

¹⁴ Sections 50(3F) and (3FA).