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## Notice of Decision and Reasons for Decision

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Applicant:	'DA3'
Agency:	Deakin University
Decision date:	12 May 2021
Exemptions considered:	Sections 30(1), 33(1), 35(1)(a), 35(1)(b)
Citation:	'DA3' and Deakin University ( <i>Freedom of Information</i> ) [2021] VICmr 130 (12 May 2021)

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FREEDOM OF INFORMATION – student complaint – complaint investigation – witness interviews – interview planning notes – student welfare – varied decision

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 fresh 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.

While I am satisfied information in the documents is exempt under sections 30(1), 33(1) and 35(1)(b), I have decided to release information in the documents where I am satisfied the information is not exempt.

Where I am satisfied it is not practicable to provide the Applicant with an edited copy of a document with exempt information deleted in accordance with section 25, I have refused 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

12 May 2021

## Reasons for Decision

### Background to review

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

The documents I am requesting are in relation to a student complaint I submitted on [date] under my name as above and with the student ID [student ID number]. I received the outcome letter from the [named person], on [date]. The name of the officer who handled my complaint was [named person].

I am requesting all documents that include any responses, information and proof given by [number of] specific Deakin University staff members who I mentioned in the complaint and so were approached for their side of the story during the investigation by Student Complaints.

The staff members who were investigated and provided this information were [named persons].

2. The Agency identified documents falling within the terms of the Applicant's request and relied on the exemptions under sections 30(1) and 35(1)(b) to refuse access to information in the documents.

### Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.

### *Fresh decision made by Agency*

4. Section 49M(1) permits an agency to make a fresh decision on an FOI request during a review.
5. On [date], the Agency made a fresh decision on the Applicant's request.
6. In its fresh decision, the Agency identified 18 documents falling within the scope of the request, and granted access to three documents in full, three documents outside the FOI Act, and refused access to 11 documents in full and one document in part. The Agency relied on the exemptions under sections 30(1), 32(1), 33(1) and 35(1)(a) to refuse access to information in the documents. Its fresh decision letter sets out the reasons for its decision.
7. The Applicant did not agree with the Agency's fresh decision and, as required by section 49MA(2), I proceeded with my review on the basis of the fresh decision.
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.
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. 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.

### ***Adequacy of document search complaint made by the Applicant***

12. Following the Agency's fresh decision, the Applicant raised concerns regarding the Agency's document search.
13. In accordance with section 61B(3), OVIC determined to address these concerns as part of this review.
14. OVIC staff made inquiries with the Agency regarding the Applicant's complaint. I am satisfied the Applicant's concern have been addressed and resolved.

### **Review of exemptions**

#### ***Section 33(1) – Documents affecting an individual's personal privacy***

15. 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;<sup>1</sup> and
  - (b) such disclosure would be 'unreasonable'.

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

16. Section 33(1) is concerned to protect the unreasonable disclosure of the personal affairs information of a person other than an applicant who seeks access to documents under the FOI Act (a **third party**).
17. Information relating to a third party'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.<sup>2</sup>
18. 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.<sup>3</sup>
19. The documents subject to review concern the Agency's investigation into a complaint made by the Applicant concerning a decision made by the Agency. The documents contain personal affairs information of third parties, including persons involved in the management of the Applicant's complaint, persons involved in the subject matter of the complaint, and other third parties who are peripherally involved in the subject matter of the complaint.
20. The personal affairs information includes, names, email addresses, position titles, and the observations made by third parties in relation to matters to which the complaints relates.

#### *Would disclosure of the personal affairs information be unreasonable?*

21. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the interest in protecting an individual's right to personal privacy in the circumstances.

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<sup>1</sup> Sections 33(1) and (2).

<sup>2</sup> Section 33(9).

<sup>3</sup> *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].

22. In *Victoria Police v Marke*,<sup>4</sup> 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'. The Court further held, '[t]he protection of privacy, which lies at the heart of [section] 33(1), is an important right that the FOI Act properly protects. However, an individual's privacy can be invaded by a lesser or greater degree'.<sup>5</sup>

23. In determining whether disclosure of personal affairs information of third parties would be unreasonable in the circumstances, I have considered the following factors:

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

Generally, it is not unreasonable to release personal affairs information of Agency officers where they are carrying out their usual employment duties and responsibilities. However, in this matter, the personal affairs information was obtained or generated by the Agency in the context of responding to a complaint lodged by the Applicant.

In such circumstances, I consider the personal affairs information of persons involved is somewhat sensitive, so far as it relates to information provided, and observations made, by Agency officers and external third parties during the Agency's investigation into the Applicant's complaint and the Agency's response to a student welfare issue, to which the Applicant's complaint relates.

I accept the identity of third parties is likely known to the Applicant, having considered the nature of the complaint. Nevertheless, even where a third party's identity may be known to an applicant, disclosure may still be unreasonable in the circumstances.<sup>6</sup>

(b) Whether any public interest would be promoted by release of the personal affairs information

There is a strong public interest in investigations of complaints being as transparent as possible, to ensure investigations undertaken are conducted in a fair and thorough manner.

Disclosure of the personal affairs information may serve the public interest as the persons involved may take greater care in ensuring the accuracy of the information they provide where the information may be scrutinised by the person subject to an investigation.

However, I consider there is a stronger public interest in ensuring third parties will not be deterred from participating in an investigation out of concern their identity or the information that may lead to disclosure of their identity under FOI, which provides for the unconditional and unrestricted release of documents.

(c) The Applicant's interest in the information and whether their purpose for seeking the information is likely to be achieved

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

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<sup>4</sup> [2008]VSCA 218 at [76].

<sup>5</sup> [2008] VSCA 218 at [79].

<sup>6</sup> *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 at [58]; *Akers v Victoria Police* [2003] VCAT 397.

applicant seeks access to a document is a relevant consideration in determining whether disclosure would be unreasonable under section 33(1).<sup>7</sup>

The Applicant provided confidential submissions in support of their application for review, which outlines their reasons for seeking access to the documents.

I acknowledge the Applicant's personal interest in obtaining access to this information. In my view, disclosure of the personal affairs information in the documents is not necessary for the Applicant to pursue their intended course of action. In the absence of any information to suggest the public interest would be promoted by the release of the personal affairs information of third parties in the document, I consider its disclosure would serve the Applicant's personal interests only.

(d) The likelihood of further disclosure of 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.<sup>8</sup>

Accordingly, I have considered the likelihood of the personal affairs information in the document being further disseminated, if disclosed, and the effects broader disclosure of this information would have on the privacy of the relevant third parties.

I have considered the Applicant's intended use for the documents, as outlined in the confidential submissions. In my view, there is no information before me to indicate the Applicant intends to broadly disseminate the documents.

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

The Agency consulted with most third parties whose information appears in the documents. It considered it was not practicable to consult with certain third parties on the basis it would cause undue anxiety to those third parties.

In relation to third parties who were not consulted with, I consider it likely, if consulted, they would object to the release of their personal affairs information to the Applicant given the nature of the information they provided and the circumstances in which the information was obtained by the Agency.

Of the third parties consulted, I have taken into account whether they objected to disclosure of their personal affairs information. I note, however, their view on disclosure of their personal affairs information is not determinative.

(f) Whether disclosure would, or would be reasonably likely to endanger the life or physical safety of any person<sup>9</sup>

There is no information before me to indicate this is relevant in the circumstances of this matter.

24. Having considered the above factors, I am satisfied it would be unreasonable to disclose information provided by third parties during the Agency's investigation into the Applicant's complaint and by external third parties in the course of the Agency's response to a student welfare issue.

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<sup>7</sup> *Victoria Police v Marke* [2008] VSCA 218 at [104].

<sup>8</sup> *Victoria Police v Marke* [2008] VSCA 218 at [68].

<sup>9</sup> Section 33(2A).

25. However, I am satisfied the names and email addresses of Agency officers in Document 2 are not exempt under section 33(1) as the nature of this information is not sensitive. For example, many of the email addresses are publicly available on staff profiles on the Agency's website, and many of the third parties hold senior positions in the Agency or had substantive involvement in the decision concerning the Applicant.
26. The Schedule of Documents in **Annexure 1** outlines my decision in relation to section 33(1).

***Section 35(1)(a) – information communicated in confidence that would be exempt if it were generated by an agency***

27. A document is exempt under section 35(1)(a) if two conditions are satisfied:
- (a) disclosure would divulge information or matter communicated in confidence by or on behalf of a persons or a government to an agency or a Minister; and
  - (b) the information would be exempt if it were generated by an agency or Minister.
28. The Agency's decision letter sets out its reasons for applying the exemption under section 35(1)(a) to information in the documents.
29. Having carefully reviewed the Agency's decision letter, the Agency has addressed each limb of section 35(1)(b) rather than section 35(1)(a).
30. In my view, the Agency intended to apply section 35(1)(b) rather than section 35(1)(a).
31. In conducting a review under section 49F, section 49P requires that I make a new or 'fresh decision'. Therefore, my review does not involve determining whether the Agency's decision is correct, but rather requires my fresh decision to be the 'correct or preferable decision'.<sup>10</sup> This involves ensuring my decision is correctly made under the FOI Act and any other applicable law in force at the time of my decision.
32. Accordingly, I will not consider the application of section 35(1)(a) to the documents and I will consider the application of section 35(1)(b) instead.

***Section 35(1)(b) – Disclosure of information communicated in confidence would impair an agency's ability to obtain information in future***

33. A document is exempt under section 35(1)(b) if two conditions are satisfied:
- (a) disclosure would divulge information or matter communicated in confidence by or on behalf of a person or a government to an agency or a Minister; and
  - (b) disclosure would be contrary to the public interest as it would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.

*Was information in the documents obtained by the Agency in confidence?*

34. Whether information communicated by an individual was communicated in confidence is a question of fact.<sup>11</sup>

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<sup>10</sup> *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577 at 591.

<sup>11</sup> *Ryder v Booth* [1985] VR 869 at [883]; *XYZ v Victoria Police* [2010] VCAT 255 at [264].

35. When determining whether information was communicated in confidence, it is necessary to consider the position from the perspective of the communicator.<sup>12</sup>
36. Generally, section 35(1)(b) exempts from release information communicated to an agency from a person outside the agency and does not apply to internal communications between agency staff carrying out their usual duties and responsibilities. However, in certain circumstances, section 35(1)(b) may apply to information communicated in confidence between officers within an agency.
37. In this matter, the information was communicated by internal and external third parties in the context of an investigation into the Applicant's complaint. Certain information was also communicated to the Agency prior to Applicant lodging their complaint, at a point in time in which it was deliberating a welfare issue concerning the Applicant, to which the complaint relates.
38. The Agency consulted with certain third parties to obtain their views as to whether they provided information in confidence to the Agency.
39. The Agency also considered it was not practicable to consult with particular third parties on the basis it would cause those persons unnecessary anxiety.
40. In the circumstances of this matter, I accept the relevant third parties provided information to the Agency with the expectation it would be used for the purpose of the Agency's investigation only. I consider it is reasonably likely the third parties would not expect this information, or their identity, to be disclosed under the FOI Act.
41. Accordingly, I am satisfied the nature of their communication with the Agency falls within the scope of 'information communicated in confidence by a person to the Agency' for the purposes of section 35(1)(b).

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

42. The exemption also requires I consider whether the Agency would be impaired from obtaining similar information in the future if the information is disclosed under the FOI Act.
43. This involves considering whether others in the position of the communicator would be reasonably likely to be inhibited or deterred from providing similar information to the Agency in the future should the information be disclosed.
44. I accept there is a public interest in investigations being subject to scrutiny to ensure they are properly and fairly conducted. However, the public interest test in section 35(1)(b) is narrow. It is directed towards the impact release would have on an agency's ability to obtain the same type of information in the future. The provision does not permit me to have regard to other matters, such as any public interest in favour of release, or the extent to which the Applicant's personal interest in the documents would be served by granting access to the information.
45. I consider the process of investigating complaints and student welfare issues are inherently sensitive and confidential processes. Whenever a complaint is raised, or concerns regarding student welfare arise, it is imperative an agency can thoroughly investigate the matter. Such investigations rely on the free and fulsome flow of information to an investigator by all persons involved to ensure as much relevant, accurate and detailed information is obtained as possible.
46. I accept witnesses are generally encouraged to voluntarily cooperate with an investigation or response to an incident, and their participation in or provision of information is not mandatory nor compellable. As such, it is important for third parties to feel confident the information they provide,

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<sup>12</sup> Ibid.

including their identity, is held in confidence, and will be used for the purpose of the investigation and any subsequent legal process only, unless disclosure is otherwise required under law.

47. I consider unrestricted and unconditional release of information of this nature has the potential to deter third parties from providing relevant and fulsome information. I consider this would be a significant and detrimental outcome that would impede the free flow of information provided to the Agency, which could reasonably result in flawed or incomplete investigation into a student's complaint or response to a student welfare issue.
48. On balance, I am satisfied section 35(1)(b) applies to certain information in the documents.
49. The Schedule of Documents in **Annexure 1** outlines my decision in relation to section 35(1)(b).

### ***Section 30(1) – Internal working documents***

50. 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.
51. The exemption does not apply to purely factual material in a document.<sup>13</sup>

#### *Were the documents prepared by an officer of the Agency?*

52. The term 'officer of an Agency' is defined in section 5(1). It includes a member of an agency, a member of an agency's staff, and any person employed by or on behalf of an agency, whether or not that person is one to whom the provisions of the *Public Administration Act 2004* (Vic) apply.
53. I am satisfied the documents were prepared by Agency officers.

#### *Do the documents contain information in the nature of opinion, advice, recommendation, consultation or deliberation?*

54. For section 30(1) to be satisfied, a document must also contain matter in the nature of opinion, advice or recommendation prepared by an officer of an agency, or consultation or deliberation between officers.
55. It is not necessary for a document to be in the nature of opinion, advice or recommendation. Rather, it is enough that release of the document would disclose matter of that nature.<sup>14</sup>
56. I am satisfied Documents 2 and 3, which are internal email chains between Agency officers, contain information in the nature of opinion and recommendation, and Documents 13, 14, 16 and 17, which contain planning notes for interviews with third parties, contain information in the nature of deliberation.

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<sup>13</sup> Section 30(3).

<sup>14</sup> *Mildenhall v Department of Education* (1998) 14 VAR 87.

57. Section 30(3) provides purely factual information will not be exempt under section 30(1). This provision must be considered in conjunction with section 25, which allows for an edited copy of a document to be released with exempt or irrelevant material deleted.
58. Documents 2 also contains factual information that is not exempt under section 30(1).

*Was the opinion, advice, recommendation, consultation or deliberation provided in the course of, or for the purpose of, the deliberative processes of the Agency?*

59. I am satisfied the documents were provided in the course of, and for the purpose of, the Agency's deliberative process involved in the functions of the Agency in handling and conducting an investigation into the Applicant's complaint and in responding to a perceived student welfare issue.

*Would it be contrary to the public interest for this information to be released?*

60. Determining whether disclosure of information would be contrary to the public interest requires a 'process of the weighing against each other conflicting merits and demerits'.<sup>15</sup>
61. Where information is already known to the Applicant, it is more likely its disclosure would not be contrary to the public interest. If the information is sensitive, tentatively expressed or unclear, it is more likely its disclosure would be contrary to the public interest.<sup>16</sup>
62. In *Howard v Treasurer*,<sup>17</sup> the Commonwealth Administrative Appeals Tribunal held the more sensitive the issues discussed in a communication, the more likely the communication should not be disclosed.
63. 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. In doing so, I have taken the following factors into consideration:<sup>18</sup>
- (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 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 making 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

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<sup>15</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>16</sup> *Thomas v Department of Natural Resources and Environment* [2002] VCAT 533 at [27].

<sup>17</sup> (Cth) (1985) 7 ALD 626; 3 AAR 169.

<sup>18</sup> *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

- (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.

#### Interview planning notes (Documents 13, 14, 16 and 17)

- 64. I accept there is a public interest in the Agency's investigative processes into student complaints being as transparent as possible to ensure compliance with its statutory and other legal obligations, and its internal policies and procedures.
- 65. The deliberative information in the documents was recorded during the Agency's investigation at a point at which Agency officers were being informed about, overseeing and deliberating on potential steps and actions to be taken in response to the Applicant's complaint.
- 66. There is a public interest in ensuring agency officers involved in responding to complaints of this nature can deliberate, plan and record relevant issues and information in a thorough and considered manner. This includes agency officers being able to make a written record of the planning and deliberations undertaken with sufficient rigour without concern the inner workings of an agency's investigation will be released under the FOI Act.
- 67. Having considered the documents, and the context of the investigation, I am not persuaded the public interest would be served by the community being better informed about the way in which the Agency carried out its investigation and the underlying issues in this matter require greater public scrutiny.
- 68. On balance, I am satisfied disclosure of the interview planning notes would be contrary to the public interest. Accordingly, these documents are exempt under section 30(1).

#### Documents 2 and 3

- 69. Documents 2 and 3 contain recommendations and deliberations between Agency officers concerning a student welfare issue, that took place at a time in which the Agency officers were deliberating on the potential steps and actions to be taken. These documents form part of the evidence gathered by the Agency in responding to the Applicant's complaint.
- 70. There is a public interest in agency officers not being inhibited or constrained in their deliberations concerning student welfare issues. In general, if deliberations concerning student welfare were routinely released, agency officers may feel constrained in the way in which they raise and communicate such concerns in the future.
- 71. With respect to Document 3, the recommendations of the Agency officer are intertwined with personal affairs information of third parties and information communicated by those third parties in confidence. In my view, the information is sensitive in nature, so far that it concerns third parties, and is exempt under sections 33(1) and 35(1)(b) for the reasons outlined above.
- 72. With respect to the information in the document, which is not otherwise exempt under sections 33(1) and 35(1)(b), disclosure of this information would give an incomplete representation of the Agency officer's deliberation and recommendation.
- 73. While I acknowledge there is a public interest in transparency of decision making processes, I do not consider there is a public interest in disclosing information that would provide the Applicant with a partial understanding of how the Agency's decision was made, as this could mislead the Applicant.
- 74. In contract, most of the information in Document 2 is factual information concerning the Applicant that is separable from the deliberative information in the document. The remaining information is

not sensitive in the circumstances of this matter, and disclosure of this information is unlikely to have any adverse impact on the Agency communicating similar information in the future, should a similar situation arise. Accordingly, Document 2 is not exempt under section 30(1).

75. The Schedule of Documents in **Annexure 1** outlines my decision in relation to section 30(1).

### **Section 25 – Deletion of exempt or irrelevant information**

76. 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.

77. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>19</sup> 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.<sup>20</sup>

78. I have considered whether it is practicable to provide the Applicant with an edited copy of the documents with exempt information deleted in accordance with section 25. I am satisfied it is practicable to delete exempt information in Documents 1 and 2 as to do so would not require substantial time and effort, and the edited document would retain meaning.

79. With respect to the remaining documents, I am satisfied it is not practicable to delete exempt information in accordance with section 25, the documents would be rendered meaningless.

### **Conclusion**

80. On the information before me, I am satisfied the documents contain information that is exempt under sections 30(1), 33(1) and 35(1)(b).

81. However, I have decided to release additional information in the documents to the Applicant where I am not satisfied the information is exempt.

82. Where I am satisfied it is not practicable to provide an edited copy of a document with exempt information deleted in accordance with section 25, I have refused access to a document in full.

83. Given my decision on the application of the above exemptions, it is not necessary for me to consider the additional exemptions relied upon by the Agency.

84. The Schedule of Documents in **Annexure 1** outlines my decision in relation to each document.

### **Review rights**

85. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.<sup>21</sup>

86. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>22</sup>

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<sup>19</sup> *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].

<sup>20</sup> *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].

<sup>21</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>22</sup> Section 52(5).

87. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>23</sup>
88. 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.
89. 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>24</sup>

### ***Third party review rights***

90. I have decided to release information relating to the personal affairs of third parties.
91. Section 49P(5) states that if I decide to disclose a document claimed to be exempt under section 33(1) I must, if practicable, notify any person who has a right to apply to VCAT for a review of my decision of their right to do so.
92. In considering the meaning of 'practicable' in relation to other sections of the FOI Act, VCAT has stated the following:

The use of the word 'practicable' in the legislation to my mind connotes a legislative intention to apply common sense principles. 'Practicable' is not a term of art or a term of precise meaning.

.... The use of the word indicates there should be imported into the process the exercise of judgment by the agency concerned. It does not allow for the conclusion that because a task is possible, it must, ergo, be undertaken.<sup>25</sup>

93. VCAT also considers the possibility of an unnecessary intrusion into the lives of third parties is relevant when assessing the practicability of notifying them.<sup>26</sup>
94. I am satisfied it is practicable to notify those individuals of their right of review. The relevant third parties will be notified of my decision and is entitled to apply to VCAT for a review within 60 days from the date they are given notice.
95. Individuals who consented to disclosure of their personal affairs information will not be notified of a right to seek review by VCAT.

### ***When this decision takes effect***

96. My decision does not take effect until the 60 day review period for third parties expires.
97. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

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<sup>23</sup> Section 52(9).

<sup>24</sup> Sections 50(3F) and (3FA).

<sup>25</sup> *Re Schubert and Department of Premier and Cabinet* (2001) 19 VAR 35 at [45].

<sup>26</sup> *Coulston v Office of Public Prosecutions Victoria* [2010] VCAT 1234 at [42].

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
1.	[Date]	Internal SOS Client Update	1	<b>Refused in full</b> Sections 33(1), 35(1)(a)	<b>Release in part</b> Sections 33(1), 25  The document is to be released except for the following information, which is exempt under section 33(1), and is to be deleted in accordance with section 25:  <ul style="list-style-type: none"> <li>the names of third parties next to 'update written by' and 'additional information'.</li> </ul>	During the review, the Agency advised the document could be released to the Applicant with personal affairs information exempted. Accordingly, I have considered the application of section 33(1) to the document only.  <b>Section 33(1):</b> I am of the view it would be unreasonable to disclose the personal affairs information of third parties who are peripheral to the Agency's investigation into the Applicant's complaint. Disclosure of the personal affairs information is unlikely to assist the Applicant in understanding the document. As such, the privacy of the third parties outweighs the Applicant's interest in the information. I am therefore satisfied some of the personal affairs information in this document is exempt under section 33(1).  <b>Section 25:</b> I am satisfied it is practicable to edit this document to delete exempt information in accordance with section 25.
2.	[Date]	Email chain	3	<b>Refused in full</b>	<b>Release in part</b>	<b>Section 30(1):</b> I am not satisfied the document is exempt under section

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				Sections 30(1), 33(1), 35(1)(a)	<p>Sections 33(1), 25</p> <p>This document is to be released, except for the following information, which is exempt under section 33(1), and is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> <li>the last six words in the first sentence of the fifth dot point in the email dated [date].</li> </ul>	<p>30(1) for the reasons outlined above in the Notice of Decision.</p> <p><b>Section 33(1):</b> I am satisfied most of the personal affairs information in this document is not exempt, for the reasons outlined above in the Notice of Decision.</p> <p><b>Section 35(1)(b):</b> This is an email chain obtained by the Agency from an Agency officer during the Agency’s investigation into the Applicant’s complaint. While I am satisfied it was communicated in confidence, I am not satisfied disclosure would inhibit the Agency from obtaining similar information in the future. As such, it is not exempt under section 35(1)(b).</p> <p><b>Section 25:</b> See comments for Document 1.</p>
3.	[Date]	Email	4	<p><b>Refused in full</b></p> <p>Sections 30(1), 33(1), 35(1)(a)</p>	<p><b>Refused in full</b></p> <p>Sections 30(1), 33(1), 35(1)(b)</p>	<p><b>Section 30(1):</b> I am satisfied this document is exempt under section 30(1) for the reasons outlined in the Notice of Decision above.</p> <p><b>Section 35(1)(b):</b> This document, and its attachments, contain information that was communicated to the Agency from external third parties in</p>

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						<p>circumstances where confidentiality can be implied. I am satisfied this information is exempt under section 35(1)(b) for the reasons outlined above in the Notice of Decision.</p> <p><b>Section 33(1):</b> Most of the information in this document concerns the personal affairs of third parties. I am satisfied disclosure of the information in this document would be unreasonable for the reasons outlined above in the Notice of Decision.</p> <p><b>Section 25:</b> I am not satisfied it would be practicable to edit this document to delete exempt information in accordance with section 25 as it would render the document meaningless.</p>
4.	[Year]	Assessment Task Guide	9	Released in full	Not subject to review	
5.	[Year]	Assessment Tasks Guide [year]	7	Released in full	Not subject to review	
6.	[Date]	Deakin [redacted] Student Agreement	4	Released outside the FOI Act	Not subject to review	

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7.	[Date]	Email chain	2	Released outside the FOI Act	Not subject to review	
8.	[Date]	Application screen shot	2	Released in part Section 33(1)	Not subject to review	During the review, the Applicant advised they do not seek review of the name exempted in this document. Accordingly, this document is not subject to review.
9.	[Date]	Letter	2	Released outside the FOI Act	Not subject to review	
10.	[Date]	Interview notes	2	Refused in full Sections 30(1), 32(1), 33(1), 35(1)(a)	Refuse in full Sections 33(1), 35(1)(b)	<p><b>Section 33(1):</b> I am satisfied this document contains personal affairs information of third parties, which would be unreasonable to disclose for the reasons outlined in the Notice of Decision above.</p> <p><b>Section 35(1)(b):</b> This is a transcript of an interview with a third party. I am satisfied the document is exempt under section 35(1)(b) for the reasons outlined in the Notice of Decision above.</p> <p><b>Sections 30(1) and 32(1):</b> As I am satisfied the document is exempt under sections 33(1) and 35(1)(b), it is not necessary for me to consider the</p>

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						application of the additional exemptions relied on by the Agency.  <b>Section 25:</b> See comments for Document 3.
11.	[Date]	Interview notes	1	<b>Refused in full</b>  Sections 30(1), 33(1), 35(1)(a)	<b>Refuse in full</b>  Sections 33(1), 35(1)(b)	See comments for Document 10.
12.	[Date]	Interview notes	4	<b>Refused in full</b>  Sections 30(1), 32(1), 33(1), 35(1)(a)	<b>Refuse in full</b>  Sections 33(1), 35(1)(b)	See comments for Document 10.
13.	Undated	Interview questions	6	<b>Refused in full</b>  Sections 30(1), 33(1), 35(1)(a)	<b>Refuse in full</b>  Section 30(1)	<b>Section 30(1):</b> See comments for Document 3.  <b>Sections 33(1) and 35(1)(b):</b> As I am satisfied the document is exempt under section 30(1) in full, it is not necessary for me to consider the application of the additional exemptions relied on by the Agency.  <b>Section 25:</b> See comments for Document 3.
14.	[Date]	Interview questions	4	<b>Refused in full</b>	<b>Refused in full</b>	See comments for Document 13.

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15.	[Date]	Interview questions	21	Sections 30(1), 33(1), 35(1)(a)  <b>Refused in full</b>  Sections 30(1), 33(1), 35(1)(a)	Section 30(1)  <b>Refused in full</b>  Sections 33(1), 35(1)(b)	See comments for Document 10.
16.	[Date]	Interview questions	12	<b>Refused in full</b>  Sections 30(1), 33(1), 35(1)(a)	<b>Refused in full</b>  Section 30(1)	See comments for Document 13.
17.	[Date]	Interview questions	17	<b>Refused in full</b>  Sections 30(1), 33(1), 35(1)(a)	<b>Refused in full</b>  Section 30(1)	See comments for Document 13.
18.	Undated	[Deakin document title]	33	<b>Released in full</b>	<b>Not subject to review</b>	