

## Notice of Decision and Reasons for Decision

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Applicant:	'ED6'
Agency:	University of Melbourne
Decision date:	8 March 2022
Exemptions considered:	Sections 30(1), 33(1)
Citation:	'ED6' and University of Melbourne (Freedom of Information) [2022] VICmr 59 (8 March 2022)

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FREEDOM OF INFORMATION – workplace documents – [redacted] – request for investigation – internal working documents – personal affairs information – emails – human resources – confidential communications

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 determined to release additional information where I am satisfied the information is not exempt information.

I am satisfied certain documents are exempt from release under sections 30(1) and 33(1).

Where I am satisfied it is practicable to provide the Applicant with an edited copy of document with exempt information deleted in accordance with section 25, access to the document is granted in part. Where it is not practicable to do so, access to the document is refused 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**

8 March 2022

## Reasons for Decision

### Background to review

1. [Redacted contextual information]
2. The Applicant made a request to the Agency seeking access to the following documents:
  1. emails sent or received by [name],[name],[name], or [name] (that could include additional recipients being cc-d or bcc-d). The full email chain associated with each relevant correspondence is requested as well as email header information and any attachments;  
the date range is [date] (inclusive of these start and end dates);
  2. emails sent between set A and B of people, wherein set A = [name], [name], [name]} and set B = {[name], [name],[name]} which could include additional recipients being cc-d or bcc-d. For example, if an A-->B correspondence occurs from [name] and [name], this would be included, as would any B-->A correspondence from [name] to [name]. Alternative, if an A-->A communication occurred from [name] to [name] then this would not be included. The full email chain associated with each relevant correspondence is requested as well as email header information and any attachments; the date range is [date] (inclusive of these start and end dates);
  3. limit the search to emails containing the following keywords in their subject or body, including any text contained in any forwarded messages: '[name]' or '[name]' or '[name]' or '[name]', and only documents related to the person [date].
  4. duplicate emails can be excluded
3. The Agency identified 28 documents falling within the terms of the Applicant's request and granted access to 16 documents in full and refused access to nine documents in part and three documents in full under sections 30(1) and 33(1). The Agency's decision letter sets out the reasons for its decision.

### Review application

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. I have examined a copy of the 12 documents subject to review. In summary, the documents are emails exchanged between Agency officers and include correspondence sent by the Applicant to the Agency.
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 and submissions received from the parties.
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. 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.
10. In their review application, the Applicant advises they complained to the Agency about what they consider is its 'unlawful treatment' of the Applicant following which the Agency, 'began an extended campaign of behaviour that may constitute victimization, bullying, discrimination and adverse action. The FOI request here was made in order to better understand the activities and motivations of the

University and its agents in relation to these possible violations of the law'. The Applicant indicates, should any unlawful conduct be exhibited in the documents, they intend to take legal action against the Agency.

## **Review of exemptions**

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

11. 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.
12. The exemption does not apply to purely factual material in a document.<sup>1</sup>
13. In determining if disclosure of a document 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.
14. In doing so, I have given weight to the following relevant factors in the context of this matter:<sup>2</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 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.

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

<sup>2</sup> *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

15. My decision regarding section 30(1) is set out in the Schedule of Documents at **Annexure 1**.

***Section 33(1) – Documents affecting a third party’s personal privacy***

16. 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**);<sup>3</sup> and
- (b) such disclosure would be ‘unreasonable’.

17. 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.<sup>4</sup>

18. The concept of ‘unreasonable disclosure’ involves balancing the public interest in the disclosure of official information with the interest in protecting the personal privacy of a third party in the particular circumstances of a matter.

19. In determining whether 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.<sup>5</sup> However, I do not consider this is a relevant factor in the circumstances.

20. In addition, an agency must notify any relevant third party an FOI request has been received by the Agency seeking access to a document containing their personal affairs information and seek their view as to whether disclosure of the document should occur.<sup>6</sup> Exceptions to this requirement apply if:

- (a) the notification would be reasonably likely to endanger the life or physical safety of a person, or cause them undue distress, or is otherwise unreasonable in the circumstances;
- (b) the notification would be reasonably likely to increase the risk to the safety of a person experiencing family violence; or
- (c) it is not practicable to do so.<sup>7</sup>

21. In determining whether disclosure of third parties’ personal affairs information in the documents would be unreasonable, I have taken the following factors into consideration:

- (a) the nature of the personal affairs information and the circumstances in which it was obtained;
- (b) the Applicant’s interest in the personal affairs information and, if appropriate, whether their purpose for seeking access to the information is likely to be achieved through disclosure;
- (c) whether any public interest would be promoted by disclosure of the personal affairs information;
- (d) whether a third party to whom the personal affairs information relates objects, or would be likely to object to disclosure of the information; and

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<sup>3</sup> Sections 33(1) and 33(2).

<sup>4</sup> Section 33(9).

<sup>5</sup> Section 33(2A).

<sup>6</sup> Section 33(2B).

<sup>7</sup> Section 33(2C).

- (e) whether disclosure of their personal affairs information would cause a third party undue stress and anxiety.
- 22. The Agency consulted with third parties regarding their views on disclosure of their personal affairs information in the documents. The third parties objected to its disclosure under the FOI Act.
- 23. My decision regarding section 33(1) is set out in the Schedule of Documents at **Annexure 1**.

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

- 24. 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.
- 25. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’<sup>8</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>9</sup>
- 26. 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. Where I am satisfied deleting exempt information from a document would not require substantial time and effort, and the edited document would retain meaning, access to the document is granted in part. Where it is not practicable to do so, as the deletion of exempt information would render the document meaningless, access to the document is refused in full.

### **Conclusion**

- 27. My decision on the Applicant’s request differs from the Agency’s decision in that I have determined to release additional information where I am satisfied the information is not exempt information.
- 28. On the information before me, I am satisfied certain documents are exempt from release under sections 30(1) and 33(1).
- 29. Where I am satisfied it is practicable to provide the Applicant with an edited copy of document with exempt information deleted in accordance with section 25, access to the document is granted in part. Where it is not practicable to do so, access to the document is refused in full.
- 30. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

### **Review rights**

- 31. 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>10</sup>
- 32. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>11</sup>
- 33. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>12</sup>

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<sup>8</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>9</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>10</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>11</sup> Section 52(5).

<sup>12</sup> Section 52(9).

34. 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.
35. 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>13</sup>

***Third party review rights***

36. As I have determined to release documents that contain personal affairs information of third parties, if practicable, I am required to notify the relevant individuals of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.<sup>14</sup>
37. I am satisfied it would not be practicable to notify the relevant individuals of their rights of review in this case for the following reasons:
  - (a) the nature of the information to be disclosed; and
  - (b) the names and position titles of third parties have been released to the Applicant in other documents and in connection with a separate FOI request.
38. While I have determined it is not practicable for me to notify the relevant third parties, it is open for the Agency to notify its employees of my decision, should it wish to do so.

***When this decision takes effect***

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

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<sup>13</sup> Sections 50(3F) and 50(3FA).

<sup>14</sup> Sections 49P(5), 50(3) and 52(3).

**Annexure 1 – Schedule of Documents**

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.1	[date]	[email]	3	Released in full	Not subject to review	
1.2	[date]	[email]	14	Released in full	Not subject to review	
1.3.	[date]	[email]	12	Released in full	Not subject to review	
1.4	[date]	[email]	2	Released in full	Not subject to review	
1.5	[date]	[email]	9	Released in full	Not subject to review	
1.6	[date]	[email]	4	Released in full	Not subject to review	
1.7	[date]	[email]	11	Released in part  Section 30(1)	Release in part  Sections 30(1), 25  The document is to be released with information exempted by the Agency under section 30(1) to remain deleted in accordance with section 25.	<b>Section 30(1):</b> This document is an email chain, including emails sent by the Applicant to an Agency officer, and contains a draft email that was not sent to the Applicant.  I am satisfied the document contains matter in the nature of opinion, advice or recommendations prepared for the deliberative processes of the Agency. Having considered the

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>circumstances in which the document was created, I am satisfied its disclosure would be contrary to the public interest for the following reasons:</p> <ul style="list-style-type: none"> <li>the information exchanged between Agency officers is sensitive in nature in that it concerns internal deliberations exchanged between Agency officers arising from an email sent by the Applicant to the Agency requesting a response in relation to [description of] issues;</li> <li>while parts of the document relate to the Applicant, I consider the internal deliberation between Agency officers is confidential in nature given it was conducted prior to the Agency officers reaching a final position on providing a response to the Applicant;</li> <li>disclosure of the document would be likely to inhibit the recording of proper communications between Agency officers which are</li> </ul>



Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>essential for the Agency in making informed and well-considered decisions or participating fully and properly in a process in accordance with the Agency's functions and other statutory obligations;</p> <ul style="list-style-type: none"> <li>the public interest in the Agency being able to carry out its functions, including its deliberative, consultative and decision making processes in relation to sensitive [description of] matters, outweighs the Applicant's personal interest in obtaining full access to the document; and</li> <li>from my review of the document, I am satisfied the underlying issues do not require greater public scrutiny.</li> </ul> <p><b>Section 25:</b> I am satisfied it is practicable to provide the Applicant with an edited copy of the document given my decision is the same as the Agency's and it provided access to the document in part in accordance with section 25.</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.8	[date]	[email]	4	Released in full	Not subject to review	
1.9	[date]	[email]	3	Released in part Section 30(1)	Release in part Sections 30(1), 25  The document is to be released with information exempted by the Agency under section 30(1) to remain deleted in accordance with section 25.	Section 30(1): See comments for Document 1.7.  Section 25: See comments for Document 1.7.
1.10	[date]	[email]	1	Released in part Section 33(1)	Release in part Section 33(1), 25  The document is to be released with information exempted by the Agency under section 33(1) to remain deleted in accordance with section 25.	Section 33(1): I am satisfied the document contains the personal affairs information of an Agency officer, being their name.  I am satisfied disclosure of this information would be unreasonable given the sensitive circumstances of this matter. While I acknowledge the Agency officer was performing their regular work duties, I have considered the Agency's submission and the third party's views on disclosure. I do not consider the public interest would be served by

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>disclosure of the third party's name. Nor do I consider disclosure of the third party's name will inform the Applicant's understanding of this document, which has been released except for the third party's name. Accordingly, I am satisfied the information is exempt under section 33(1).</p> <p><b>Section 25:</b> See comments for Document 1.7.</p>
1.11	[date]	[email]	6	<p><b>Refused in full</b></p> <p>Sections 30(1), 33(1)</p>	<p><b>Refuse in full</b></p> <p>Section 30(1)</p>	<p><b>Section 30(1):</b> See comments for Document 1.7. In addition, I consider disclosure of this document would be contrary to the public interest as:</p> <ul style="list-style-type: none"> <li>the information is sensitive as it relates to the Agency's financial position and human resourcing matters; and</li> <li>the document also records sensitive internal deliberations between Agency officers in relation to decisions required to be made in response to the COVID-19 pandemic.</li> </ul>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<b>Section 25:</b> I am not satisfied it is practicable to release an edited copy of this document with exempt information deleted in accordance with section 25.
1.12	[date]	[email]	5	Released in full	Not subject to review	
1.13	[date]	[email]	4	Released in part  Section 30(1)	Released in part  Sections 30(1), 33(1), 25  The document is to be released with the following information, which is exempt under section 30(1), deleted in accordance with section 25: <ul style="list-style-type: none"> <li>• first two lines in the body of the email dated [date] at [time].</li> <li>• email dated [date] at [time]; and</li> <li>• email dated [date] at [time];</li> </ul>	<b>Section 30(1):</b> This document contains two draft versions of an email that was ultimately sent to the Applicant.  One draft version of an email is different to the final version sent to the Applicant. In the circumstances of this matter, I am satisfied its disclosure would be contrary to the public interest. I am also satisfied it would be contrary to the public interest to release an email where Agency officers are discussing changes to be made to the email of this nature prior to a final decision being made.  However, the other draft email is similar to the final email sent to the Applicant, and I am satisfied its disclosure would not be contrary to

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					<p>The document is to be released with the following information, which is exempt under section 33(1), deleted in accordance with section 25:</p> <ul style="list-style-type: none"> <li>the mobile telephone number in the email signature at the top of page two of the document.</li> </ul>	<p>the public interest. Accordingly, I am satisfied this part of the document is not exempt under section 30(1).</p> <p>Also see comments for Document 1.7.</p> <p><b>Section 33(1):</b> The document contains the names of Agency officers. I consider the names would be known to the Applicant [contextual information redacted] and the documents do not contain sensitive personal affairs information. Accordingly, based on the information before me, I am satisfied disclosure of this information would not be unreasonable in the circumstance and is not exempt under section 33(1).</p> <p>However, I am satisfied disclosure of the mobile telephone number of an Agency officer would be unreasonable given the potential for the person to be contacted outside their professional duties which would intrude on their personal privacy.</p> <p><b>Section 25:</b> See comments for</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						Document 1.7.
1.14	[date]	[email]	4	Refused in full Sections 30(1), 33(1)	Release in full	<p><b>Section 30(1):</b> I am satisfied the document contains matter in the nature of opinion, advice or recommendations prepared for the deliberative processes of the Agency.</p> <p>However, I am not satisfied it would be contrary to the public interest to disclose the document where the information has been released to the Applicant in response to a separate FOI request that is currently subject to review by OVIC.</p> <p><b>Section 33(1):</b> I am not satisfied disclosure of the personal affairs information of third parties would be unreasonable, where the information was released to the Applicant in response to a separate FOI request that is currently subject to review by OVIC.</p>
1.15	[date]	[email]	10	Released in part Section 30(1)	Release in part Sections 30(1), 25	<b>Section 30(1):</b> See comments for Document 1.7.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					The document is to be released with information exempted by the Agency to remain deleted in accordance with section 25.	<b>Section 25:</b> See comments for Document 1.7.
1.16	[date]	[email]	4	Released in part Section 30(1)	Release in part Sections 30(1), 25  The document is to be released with information exempted by the Agency to remain deleted in accordance with section 25.	<b>Section 30(1):</b> See comments for Document 1.7.  <b>Section 25:</b> See comments for Document 1.7.
1.17	[date]	[email]	6	Released in full	Not subject to review	
1.18	[date]	[email]	3	Released in full	Not subject to review	
1.19	[date]	[email]	12	Released in full	Not subject to review	
1.20	[date]	[email]	1	Refused in full	Refuse in full	<b>Section 30:</b> See comments for document 1.7.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
				Section 30(1)	Section 30(1)	<b>Section 25:</b> See comments for Document 1.11.
1.21	[date]	[email]	3	Released in part Section 30(1)	Release in part Sections 30(1), 25  The document is to be released with information exempted by the Agency to remain deleted in accordance with section 25.	<b>Section 30(1):</b> See comments for Document 1.7.  <b>Section 25:</b> See comments for Document 1.7
1.22	[date]	[email]	5	Released in part Section 30(1)	Released in part Sections 30(1), 33(1), 25  The following information is exempt under section 30(1) and is to be deleted in accordance with section 25:  <ul style="list-style-type: none"> <li>• first two lines in the body of the email dated [date] at [time];</li> </ul>	<b>Section 30(1):</b> See comments for Document 1.13.  <b>Section 33(1):</b> See comments for Document 1.13.  <b>Section 25:</b> See comments for Document 1.7



Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					<ul style="list-style-type: none"> <li>• email dated [date] at [time]; and</li> <li>• email dated [date] at [time].</li> </ul> <p>The following information is exempt under section 33(1) and is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> <li>• mobile telephone number in the email signature at the top of page two.</li> </ul>	
1.23	[date]	[email]	4	Released in full	Not subject to review	
2.2	[date]	[email]	4	Released in part Section 30(1)	<p>Release in part Sections 30(1), 25</p> <p>The document is to be released with information exempted by the Agency to remain deleted in accordance with section 25.</p>	<p><b>Section 30(1):</b> See comments for Document 1.7.</p> <p><b>Section 25:</b> See comments for Document 1.7</p>