

## Notice of Decision and Reasons for Decision

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Applicant: 'ED7'  
Agency: Department of Justice and Community Safety  
Decision date: 21 January 2022  
Exemption considered: Section 30(1)  
Citation: 'ED7' and Department of Justice and Community Safety (Freedom of Information) [2022] VICmr 60 (21 January 2022)

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FREEDOM OF INFORMATION – legislation – legislative change – consultation with courts

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 is the same as the Agency's decision, subject to being satisfied certain information the Agency determined is not relevant, I am satisfied it falls within the terms of the Applicant's request.

I am satisfied the documents are exempt in part under section 30(1).

Where I am satisfied it is practicable to delete exempt and irrelevant information from the documents in accordance with section 25, access to the documents is granted in part. Where it is not practicable to do so, access 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  
21 January 2022

## Reasons for Decision

### Background to review

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

All Correspondence (Originating and received) relating to the following:

Section 44 of the Family Violence Protection Order Act,

- Amendments to the Family Violence Protection Order Act contained within the Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018 (33/2018),
- Amendments to the Personal Safety Intervention Order Act contained within the Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018 (33/2018)?

Between the Department of Justice (or preceding or succeeding agency names) and the following: -

- The Victorian Magistrates Court,
- Court Services Victoria.

I narrow the date range for the request to between the [date] to the Date of the Application ([date])

2. The Agency identified certain documents falling within the terms of the Applicant's request and granted access to certain documents in part and refused access to other documents in full under sections 28(1)(d), 30(1) and 33(1). The Agency's decision letter sets out the reasons for its decision.

### Review application

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. During the review, the Applicant stated he does not seek access to the names, email addresses, street addresses or telephone numbers of Victorian public sector employees.
5. I have examined a copy of the documents subject to review.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered all communications 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.

### Review of exemptions

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

10. Section 30(1) has three requirements:

- (a) the document must disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister; and
- (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.

11. The exemption does not apply to purely factual material in a document.<sup>1</sup>
12. 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 an agency, whether or not they are subject to the *Public Administration Act 2004* (Vic).
13. I must also be satisfied disclosure of such information is not contrary to the public interest. This requires a 'process of the weighing against each other conflicting merits and demerits'.<sup>2</sup>

*Do the documents 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?*

14. The documents disclose matter in the nature of opinion, advice and recommendation prepared by officers of the Agency and another Agency.

*Were the documents 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?*

15. The documents were created for the purpose of the deliberative processes of both Agencies, that of consultation regarding proposed changes or amendments to legislation.

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

16. 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. In doing so, I have given weight to the following relevant factors in the context of this matter:<sup>3</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 or 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

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

<sup>2</sup> *Sinclair v Maryborough Mining Warden* [1975] HCA 17; (1975) 132 CLR 473 at [485], adopted in *Department of Premier and Cabinet v Hulls* [1999] VSCA 117 at [30].

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

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.

17. I am satisfied disclosure of the documents would be contrary to the public interest for the following reasons:

- (a) The documents are sensitive as they relate to changes to legislation regarding family violence.
- (b) The documents reveal internal court processes regarding family violence matters; in my view disclosure of this information may affect such court processes; given the sensitivity of this information I have taken a cautious approach given any such affect could be significant.
- (c) The outcome of these consultations are apparent in that the amendments have now passed into law and are therefore publicly available; in these circumstances I do not consider non-disclosure would affect the ability of a member of the public to understand the law as it relates to family violence.
- (d) I consider the communications between the two Agencies about these matters to be sensitive; I consider the integrity of such consultations is vital to the drafting of such sensitive legislation.
- (e) In this instance, for the above reasons, I consider the public interest weighs against disclosure.

18. The information identified by the Agency is therefore exempt under section 30(1). As I have decided the information is exempt under section 30(1), I have not further considered section 28(1)(d) in this matter.

19. My decision in relation to section 30(1) is set out in the Schedule of Documents in **Annexure 1**.

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

20. 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.

21. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>4</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>5</sup>

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<sup>4</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>5</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].

22. I am satisfied it is practicable to delete exempt and irrelevant information from certain documents, as do to so would not require substantial time and effort, and the edited documents would retain meaning. Accordingly, I have determined to grant access to certain documents in part and refused access to other documents in full where it is not practicable to provide access to an edited copy of a document, including where the remaining information in a document is brief, administrative in nature or would no longer be substantive in nature given the terms of the Applicant's request. As such, I do not consider it would be practicable to delete the remaining information in the document.
23. My decision in relation to section 25 is set out in the Schedule of Documents in **Annexure 1**.

### **Conclusion**

24. On the information before me, I am satisfied the documents are exempt in part under section 30(1).
25. As such, my decision on the Applicant's request is the same as the Agency's decision, subject to being satisfied certain information the Agency determined is not relevant, I am satisfied it falls within the terms of the Applicant's request.
26. Where I am satisfied it is practicable to delete exempt and irrelevant information from the documents in accordance with section 25, access to the documents is granted in part. Where it is not practicable to do so, access is refused in full.
27. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

### **Review rights**

28. 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>6</sup>
29. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>7</sup>
30. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>8</sup>
31. 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.
32. 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>9</sup>

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<sup>6</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>7</sup> Section 52(5).

<sup>8</sup> Section 52(9).

<sup>9</sup> Sections 50(3F) and (3FA).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No of pages	Agency Decision	OVIC Decision	OVIC Comments
1	[date]	[Redacted]	4	Refused in full Sections 28(1)(d), 30(1), 33(1)	Refuse in full Section 30(1)	<p><b>Section 30(1):</b> I am satisfied the document is exempt under section 30(1) for the reasons described in the Notice of Decision above.</p> <p><b>Section 25:</b> I am satisfied it is not practicable to provide the Applicant with an edited copy of the document with exempt information deleted in accordance with section 25, as to do so would render the document meaningless.</p>
2	[date]	[Redacted]	3	Refused in full Sections 28(1)(d), 30(1), 33(1)	Refuse in full Section 30(1)	<p><b>Section 30(1):</b> See comments for Document 1.</p> <p><b>Section 25:</b> See comments for Document 1.</p>
3	N/A	[Redacted]	3	Refused in full Sections 28(1)(d), 30(1), 33(1)	Refuse in full Section 30(1)	<p><b>Section 30(1):</b> See comments for Document 1.</p> <p><b>Section 25:</b> See comments for Document 1.</p>
4	[date] back to [date]	Emails	4	Refused in full	Refused in full Section 30(1)	<p><b>Section 30(1):</b> See comments for Document 1.</p>

Document No.	Date of Document	Document Description	No of pages	Agency Decision	OVIC Decision	OVIC Comments
				Sections 28(1)(d), 30(1), 33(1)		<b>Section 25:</b> See comments for Document 1.
5	[date] back to [date]	Emails	11	Released in part  Sections 28(1)(d), 30(1), 33(1)	<b>Release in part</b>  Sections 30(1), 33(1), 25  The document is to be released with the following irrelevant and exempt information deleted in accordance with section 25:  <ul style="list-style-type: none"> <li>• irrelevant information, being the information identified by the Agency under section 33(1); and</li> <li>• the information exempted by the Agency under section 30(1).</li> </ul>	<b>Section 30(1):</b> See comments for Document 1.  <b>Section 25:</b> I am satisfied it is practicable to provide the Applicant with an edited copy of the document with irrelevant and exempt information deleted in accordance with section 25.
6	[date]	Agenda – Courts Policy & Dispute Resolution	1	Released in part  Sections 28(1)(d), 30(1), 33(1)	<b>Release in part</b>  Sections 30(1), 25  The document is to be released with the following irrelevant and exempt	<b>Section 30(1):</b> See comments for Document 1.  <b>Section 25:</b> See comments for Document 5.

Document No.	Date of Document	Document Description	No of pages	Agency Decision	OVIC Decision	OVIC Comments
					<p>information deleted in accordance with section 25:</p> <ul style="list-style-type: none"> <li>irrelevant information, being the information identified by the Agency under section 33(1); and</li> <li>the information exempted by the Agency under section 30(1).</li> </ul>	
7	N/A	[Redacted]	7	<p>Refused in full</p> <p>Sections 28(1)(d), 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.</p> <p><b>Section 25:</b> See comments for Document 1.</p>
8	[date]	Emails	2	<p>Released in part</p> <p>Sections 28(1)(d), 30(1), 33(1)</p>	<p><b>Release in part</b></p> <p>Sections 30(1), 25</p> <p>The document is to be released with the following irrelevant and exempt information deleted in accordance with section 25:</p> <ul style="list-style-type: none"> <li>irrelevant information, being the information</li> </ul>	<p><b>Section 30(1):</b> See comments for Document 1.</p> <p><b>Section 25:</b> See comments for Document 5.</p>

Document No.	Date of Document	Document Description	No of pages	Agency Decision	OVIC Decision	OVIC Comments
					<p>identified by the Agency under section 33(1); and</p> <ul style="list-style-type: none"> <li>the information exempted by the Agency under section 30(1).</li> </ul>	
9	N/A	[Redacted]	19	<p>Refused in full</p> <p>Sections 28(1)(d), 30(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.</p> <p><b>Section 25:</b> See comments for Document 1.</p>
10	[date] back to [date]	Emails	8	<p>Not relevant</p> <p>Section 25</p>	<p><b>Refuse in full</b></p> <p>Section 30(1)</p>	<p><b>Section 30(1):</b> I am satisfied a majority of the information in the email chains is exempt from release under section 30(1).</p> <p><b>Section 25:</b> I am not satisfied the document is irrelevant in full.</p> <p>I note the Agency's distinction between documents relating to the named legislation and its commencement. In my view the Applicant's request does not preclude these documents being captured within the terms of their request.</p>

Document No.	Date of Document	Document Description	No of pages	Agency Decision	OVIC Decision	OVIC Comments
						As I am satisfied a majority of the information is exempt under section 30(1), I do not consider it is practicable to delete the exempt information from the document in accordance with section 25, as to do so would render it meaningless.
11	[date] back to [date]	Emails	3	Released in part Sections 28(1)(d), 30(1), 33(1)	<b>Release in part</b>  Sections 30(1), 25  The document is to be released with the following irrelevant and exempt information deleted in accordance with section 25:  <ul style="list-style-type: none"> <li>irrelevant information, being the information identified by the Agency under section 33(1); and</li> <li>the information exempted by the Agency under section 30(1).</li> </ul>	<b>Section 30(1):</b> See comments for Document 1.  <b>Section 25:</b> See comments for Document 5.
12	[date] back to [date]	Emails	6	Not relevant  Section 25	<b>Refuse in full</b>  Section 30(1)	<b>Section 30(1):</b> See comments for Document 10.

Document No.	Date of Document	Document Description	No of pages	Agency Decision	OVIC Decision	OVIC Comments
						Section 25: See comments for Document 10.
13	[date] back to [date]	Emails	4	Not relevant Section 25	Not relevant	Section 25: I am satisfied this document is not relevant to the terms of the Applicant's request as it is internal communications.
14	[date] back to [date]	Emails	6	Released in part Sections 28(1)(d), 30(1), 33(1), 25	Release in part Sections 30(1), 25  The document is to be released with the following irrelevant and exempt information deleted in accordance with section 25:  <ul style="list-style-type: none"> <li>irrelevant information, being the information identified by the Agency under section 33(1); and</li> <li>the information exempted by the Agency under section 30(1).</li> </ul>	Section 30(1): See comments for Document 1.  Section 25: See comments for Document 5.
15	[date] back to [date]	Emails	4	Released in part	Release in part	Section 30(1): See comments for Document 1.

Document No.	Date of Document	Document Description	No of pages	Agency Decision	OVIC Decision	OVIC Comments
				Sections 28(1)(d), 30(1), 33(1), 25	Sections 30(1), 25  The document is to be released with the following irrelevant and exempt information deleted: <ul style="list-style-type: none"> <li>• irrelevant information, being the information identified by the Agency under section 33(1); and</li> <li>• the information exempted by the Agency under section 30(1).</li> </ul>	Section 25: See comments for Document 5.