

## Notice of Decision and Reasons for Decision

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Applicant:	'EF4'
Agency:	Department of Education and Training
Decision date:	2 June 2022
Exemptions considered:	Sections 30(1), 32(1), 33(1), 35(1)(b), and 38 in conjunction with sections 41(1), 191(1) and 209(1) of the <i>Children Youth and Families Act 2005</i> (Vic)
Citation:	'EF4' and <i>Department of Education and Training</i> (Freedom of Information) [2022] VICmr 77 (2 June 2022)

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FREEDOM OF INFORMATION – school documents – incident involving a child – parent seeking access to information concerning incident involving their child – third party information – information obtained in confidence – Child Protection information – medical report – secrecy provision – confidentiality provision – *Children Youth and Families Act 2005* (Vic)

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 Applicants under the FOI Act.

My decision on the Applicants' request differs from the Agency's decision.

I am satisfied information in the documents is exempt from release under sections 32(1), 33(1), 35(1)(b), and 38 in conjunction with sections 41(1), 191(1) and 209(1) of the *Children Youth and Families Act 2005* (Vic). However, I am not satisfied the documents are exempt from release under section 30(1).

I have determined to release further information in certain documents where I am satisfied it is practicable to provide an edited copy of the document with exempt information deleted in accordance with section 25.

My decision in relation to each document is set out in the Schedule of Documents in **Annexure 1**.

My reasons for decision follow.

**Joanne Kummrow**  
Public Access Deputy Commissioner

2 June 2022

## Reasons for Decision

### Background to review

1. The Applicants made a request to the Agency seeking access to the following documents:
  1. We are the parents of [named person] [date of birth] who attended [named] School between [date] and [date] (Attendance Period).
  2. We write to apply for the following documents pursuant to the *Freedom of Information Act 1982* (Vic) (the Act):
    - 2.1 All documents held by the Department of Education and Training and/or [named] School in relation to [named person] [date of birth]; and
    - 2.2 All documents held by the Department of Education and Training and/or [named] School in relation to [named person], but only to the extent those documents contain any reference to [named person].
  3. The term 'documents' is defined in section 5 of the Act and includes but is not limited to the following categories in this application.
    - 3.1 A full copy of the student file of [named person];
    - 3.2 All correspondence passing between the Department of Education and Training and [named] School in relation to [named person];
    - 3.3 All reports passing between the Department of Education and Training and [named] School in relation to [named person];
    - 3.4 All file notes, records of conversations and/or internal meeting minutes of the Department of Education and Training and/or [named] School in relation to [named person];
    - 3.5 All medical records held on file by the Department of Education and Training and/or [named] School that in any way relate to [named person], including:
      - (a) A written emergency department report of [named] Hospital on or around [date] for [named person], with disclosure limited only to the personal information of [named person].
2. The Agency identified 23 documents falling within the terms of the Applicants' request and granted access to six documents in full and refused access to 14 documents in part under sections 30(1), 32(1), 33(1), 35(1)(b), and 38 in conjunction with the *Children, Youth and Families Act 2005* (Vic) (**CYF Act**). The Agency's decision letter sets out the reasons for its decision.

### Review application

3. The Applicants sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. In their application for review, the Applicants indicated they do not seek access to personal affairs information of third parties that appears in medical documents. However, it is necessary to consider the scope of personal affairs information broadly as it includes not only the names and locations of third parties, but also other information from which a third party may be identified. As this information is intertwined with information about the Applicants' child, I have considered whether such information is exempt under section 33(1).
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 38 – Documents to which secrecy provisions apply***

10. In its decision, the Agency relies on section 38 in conjunction with section 41(1) of CYF Act to refuse access to information in the documents.

11. Section 38 provides:

A document is an exempt document if there is in force an enactment applying specifically to information of a kind contained in the document and prohibiting persons referred to in the enactment from disclosing information of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.

12. Therefore, for a document to be exempt under section 38, three conditions must be satisfied:

- (a) there must be an enactment in force;
- (b) the enactment must be formulated with such precision that it specifies the actual information prohibited from disclosure in the document; and
- (c) the enactment must prohibit persons referred to in the enactment from disclosing the specific kind of information in the document (either absolutely or subject to exceptions or qualifications).

#### *Is there an enactment in force?*

13. I am satisfied the CYF Act is an enactment in force for the purposes of section 38.

#### *Does the enactment apply specifically to the kind of information in the documents?*

14. For section 38 to apply, the enactment must be formulated with such precision that it specifies the actual information sought to be withheld.

15. The Agency relies on section 41 of the CYF Act which provides:

#### **41 Identity of reporter or referrer confidential**

- (1) If a report is made to the Secretary under section 28 or 29, a person (other than the person who made it) must not disclose to any person other than the Secretary or a community-based child and family service –
  - (a) the name of the person who made the report; and
  - (b) any information that is likely to lead to the identification of the person who made the report.

Penalty: 60 penalty units.

- (1A) If a referral is made to a community-based child and family service under section 31 or 32, a person (other than the person who made it) must not disclose to any person other than the Secretary or a community-based child and family service –
  - (a) the name of the person who made the referral; and
  - (b) any information that is likely to lead to the identification of the person who made the referral.
 Penalty: 60 penalty units.
- (2) Subsections (1) and (1A) do not apply if the person who made the report or referral –
  - (a) gives written consent to the Secretary; or
  - (b) gives written or oral consent to the community based child and family service.
- (3) To avoid any doubt, the name of a person who made a report or who made a referral may shared between –
  - (a) the Secretary and any community-based child and family service; and
  - (b) a community-based child and family service and any other community-based child and family service.

16. I am satisfied the information exempted from release by the Agency is specified in the terms of section 41(1).

*Application of confidentiality provisions in the CYF Act*

17. Section 191 of the CYF Act provides:

**191 Confidentiality**

- (1) If a report referred to in section 190(1) is made, a person (other than the person who made it or a person acting with the written consent of the person who made it) must not disclose to any person other than a protective intervener or a community-based child and family service in accordance with subsection (4) –
  - (a) the name of the person who made the report; or
  - (b) any information that is likely to lead to the identification of the person who made the report.
 Penalty: 10 penalty units
- (2) Subsection (1) does not apply to a disclosure made to a court or tribunal in accordance with section 190.
- (3) Subsection (1) does not apply to a disclosure to the Therapeutic Treatment Board of the name or information leading to the identification of a police officer who made a report under section 185.
- (4) If a report is made to the Secretary under section 183 or 184, the information referred to in subsection (1) may be disclosed to a community-based child and family service if –
  - (a) the Secretary has made a determination under section 187(1)(c) in respect of the report; and
  - (b) the matter is referred to the community-based child and family service under section 30.
- (5) A community-based child and family service to which information referred to in subsection (1) is disclosed must not disclose that information to any other person except in accordance with this Part.

Penalty: 60 penalty units

18. Section 191(1) of the CYF Act refers to reports made under section 183 (a report to a ‘protective intervener’ on reasonable grounds a child is in need of protection); section 184 (a mandatory report to

the Secretary on reasonable grounds a child is in need of protection made by a person in the course of practising their profession or carrying out the duties their office, position or employment); reports determined to be a protective intervention report under section 34, and reports under section 185 that a child is in need of therapeutic treatment.

19. 'Protective intervener' is defined in section 181 of the CYF Act as, 'the Secretary' [of the Agency] and 'all police officers'.
20. Although the Agency does not seek to rely on section 209 of the CYF Act, I consider it relevant under the circumstances.
21. Section 209 of the CYF Act provides:

**209 Confidentiality**

- (1) A protective intervener must not disclose to any person, other than to another protective intervener or to a person in connection with a court proceeding or to a person in connection with a review by the [Victorian Civil and Administrative Tribunal] VCAT—
  - (a) the name of a person who gave information in confidence to a protective intervener during the course of the investigation of the subject-matter of a protective intervention report; or
  - (b) any information that is likely to lead to the identification of a person referred to in paragraph (a)—without the written consent of the person referred to in paragraph (a) authorisation by the Secretary.  
Penalty: 10 penalty units
- (2) The Secretary may only authorise the disclosure of information to a person under subsection (1) if the Secretary believes on reasonable grounds that the disclosure is necessary to ensure the safety and wellbeing of the child.
- (3) In this section ***court proceeding*** includes a proceeding in the Family Court of Australia.

22. In summary, sections 41(1), 191(1) and 209(1) of the CYF Act prohibit the disclosure of the name of a person who provided child protection information to the Agency, as well as any information likely to lead to their identification, except in certain limited authorised circumstances.
23. The unauthorised disclosure of such information is an offence subject to penalties under the CYF Act. The financial penalties associated with these confidentiality provisions highlight Parliament's intention this information be protected and should not be disclosed.
24. I am satisfied the relevant sections of the CYF Act prohibit disclosure of the identity, or any information likely to lead to the identification of a notifier/reporter or person who gives or has given information in confidence to the Agency for child protection purposes. This includes not only the report or record of confidential information itself, but also any subsequent documents created containing details of the report or associated confidential information.
25. Accordingly, I am satisfied:
  - (a) the CYF Act is an enactment in force, for the purposes of section 38;
  - (b) the documents sought by the Applicant contain specific information the disclosure of which is prohibited under sections 41(1), 191(1) and 209(1) of the CYF Act;

- (c) Agency officers are prohibited from disclosing documents that would fall within the terms of the Applicants' request; and
  - (c) none of the exceptions to the prohibition on disclosure under sections 41(1), 191(1) and 209(1) of the CYF Act apply in this case.
26. Accordingly, on the information before me and having considered the terms of the Applicants' request, I am satisfied the relevant documents contain information exempt from release under section 38 of the FOI Act in conjunction with sections 41(1), 191(1) and 209(1) of the CYF Act.
27. My decision in relation to section 38 is set out in the Schedule of Documents at **Annexure 1**.

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

28. 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.
29. The exemption does not apply to purely factual material in a document.<sup>1</sup>
30. The term 'officer of an Agency' is defined in section 5(1). It includes a member of the agency, a member of the agency's staff, and any person engaged 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.
31. I am satisfied the documents were prepared by Agency officers 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.
32. I must also be satisfied disclosure of the documents would not be contrary to the public interest. This requires a 'process of the weighing against each other conflicting merits and demerits'.<sup>2</sup>
33. In determining whether the information exempted from release by the Agency would be contrary to the public interest, I have given weight to the following relevant factors:<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 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

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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.

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

### ***Section 32(1) – Documents subject to legal privilege***

35. Section 32(1) provides a document is an exempt document 'if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege or client legal privilege' (**legal privilege**).

36. A document will be subject to legal privilege and exempt under section 32(1) where it contains a confidential communication:<sup>4</sup>

- (a) between the client (or the client's agent) and the client's professional legal advisers, that was made for the dominant purpose of obtaining or providing legal advice or is referable to pending or contemplated litigation;
- (b) between the client's professional legal advisers and third parties, that was made for the dominant purpose of pending or contemplated litigation; or
- (c) between the client (or the client's agent) and third parties that was made for the purpose of obtaining information to be submitted to the client's professional legal advisers for the dominant purpose of obtaining advice on pending or contemplated litigation.

37. The High Court of Australia has held legal privilege ensures a client can openly and candidly discuss legal matters with their legal representative and seek legal advice:

The rationale of this head of privilege, according to traditional doctrine, is that it promotes the public interest because it assists and enhances the administration of justice by facilitating the representation of clients by legal advisers, the law being a complex and complicated discipline. This it does by keeping secret their communications, thereby inducing the client to retain the solicitor and seek his advice, and encouraging the client to make a full and frank disclosure of the relevant circumstances to the solicitor.<sup>5</sup>

38. The Agency applied this exemption in part to seven email threads between Agency officers seeking advice from the Department legal team in response to the reported incident.

39. I am satisfied the information exempted from release by the Agency amounts to confidential communications between the Agency and its professional legal adviser made for the dominant purpose of providing legal advice in relation to the documents.

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<sup>4</sup> *Graze v Commissioner of State Revenue* [2013] VCAT 869 at [29]; *Elder v Worksafe Victoria* [2011] VCAT 1029 at [22]. See also *Evidence Act 2008* (Vic), section 119.

<sup>5</sup> *Grant v Downs* (1976) 135 CLR 674 at [19].

40. Accordingly, I am satisfied the relevant information in the documents is subject to legal privilege for the purpose of section 32(1).
41. My decision in relation to section 32(1) is set out in the Schedule of Documents at **Annexure 1**.

***Section 33(1) – Documents affecting personal privacy***

42. The Agency also relies on section 33(1) to refuse access to information in documents.
43. 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>6</sup> and
  - (b) such disclosure would be ‘unreasonable’.

*Do the documents contain the ‘personal affairs information’ of a third party?*

44. 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>7</sup>
45. Even where an applicant claims to know the identity of a third party, disclosure of their personal affairs information may still be unreasonable in the circumstances.<sup>8</sup>
46. 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>9</sup>
47. I am satisfied the documents contain personal information of third parties being names, initials, telephone numbers, email addresses, signatures, position titles and other information provided to the Agency by third parties.

*Would release of the personal affairs information be unreasonable in the circumstances?*

48. In relation to section 33(1), the concept of ‘unreasonable disclosure’ involves determining whether the public interest in disclosure of an individual’s ‘personal affairs information’ in an official document is outweighed by the interest in protecting the personal privacy of an individual in the circumstances.
49. The Victorian Court of Appeal has held there is ‘no absolute bar to providing access to documents which related to the personal affairs of others’.<sup>10</sup> 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’.
50. The Agency advises it consulted with one third party in relation to the disclosure of their name. Copies of the Agency’s consultation and third party responses have been provided for my consideration. I

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<sup>6</sup> Sections 33(1) and 33(2).

<sup>7</sup> Section 33(9).

<sup>8</sup> *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 at [58]; *Akers v Victoria Police* [2003] VCAT 397.

<sup>9</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].

<sup>10</sup> *Victoria Police v Marke* [2008] VSCA 218 at [76].

note the third party is an Agency officer and they objected to the disclosure of their name under the FOI Act.

51. Generally speaking, I consider there is nothing particularly sensitive about disclosing the identity of Victorian public sector employees where their personal affairs information concerns or arises in the context of them performing their ordinary duties, is already known to the applicant or is publicly available. However, it is necessary to look at the context within which the personal affairs information is recorded. In matters of a sensitive or confidential nature, particularly where the information remains current and concerns may arise for the health and wellbeing of an individual should the personal affairs information be released, whether or not disclosure would be unreasonable needs to be carefully considered in all of the circumstances.
52. While I acknowledge the Applicants' interest in obtaining access to documents which concern an incident involving their child, having considered the information before me, I am satisfied it would be unreasonable to release certain information in the documents for the following reasons:
  - (a) I consider the Applicants are able to interpret the substance of the documents without the inclusion of specific names, signatures, position titles and direct contact information of third parties. Further, the personal affairs information does not add any material value to the documents and would not aid the Applicants in understanding the documents any more clearly.
  - (b) I consider certain information provided to the Agency by third parties, which concerns their observations and experiences, is sensitive and personal.
  - (c) I am satisfied the personal affairs information is not available publicly or otherwise available to the Applicants.
  - (d) The Applicants indicated in their review application that personal affairs information of third parties is not sought.
  - (e) Given the FOI Act does not place any restrictions on an applicant's use or dissemination of documents obtained under FOI, given the context of this matter, is likely disclosure of certain personal affairs information would cause stress and anxiety and adversely impact the relevant third parties.
  - (f) Having carefully reviewed the documents, I am not satisfied there is a public interest that would be served through the disclosure of the relevant personal affairs information of third parties, for example, that the conduct of the relevant Agency officers requires public scrutiny.
  - (g) Finally, in relation to section 33(2A), which requires that I consider whether disclosure of the personal affairs information would, or would be reasonably likely to, endanger the life or physical safety of any person, I am satisfied no concerns of this nature arise based on the information before me.
53. Having weighed up the above factors, on balance, I have determined limited further personal affairs information can be released to the Applicants, however, the remaining personal affairs information is to remain exempt from release under section 33(1).
54. My decision in relation to section 33(1) is set out in the Schedule of Documents at **Annexure 1**.

***Section 35(1)(b) – Information provided in confidence to the Agency***

55. 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 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.

56. The Agency applied this exemption to three documents in part: one file note involving records of events and conversations held both within the school and with third parties, and two medical reports provided by persons outside the Agency.

*Was the information communicated in confidence?*

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

58. When determining whether information was communicated in confidence, it is necessary to consider the position from the perspective of the communicator.<sup>12</sup>

59. Confidentiality can be express or implied from the circumstances of a matter.<sup>13</sup>

60. The Victorian Civil and Administrative Tribunal (**VCAT**) considered this issue in *Birnbauer and Davies v Inner and Eastern Health Care Network*,<sup>14</sup> and concluded:

...in my view, where an officer of an agency records a matter and reports it to his superior or makes the information available through some established reporting channel within the agency, the information in question is properly to be regarded as “communicated” to the agency. ...

Section 35(1)(b) is capable of operating with respect to information communicated to an agency not only by outsiders but also by its own officers.<sup>15</sup>

61. I note a similar matter was recently heard by VCAT, involving documents prepared by the Agency in relation to an incident at a school, *NKY v Department of Education and Training (NKY decision)*.<sup>16</sup> That decision discusses whether information provided by students was provided in confidence for the purposes of 35(1)(b) and found that it was, citing *Hoskin v Department of Education and Training (Hoskin decision)*,<sup>17</sup> and *Baker v Department of Education and Training (Baker decision)*.<sup>18</sup>

62. The Baker decision also refers more broadly to the documents similar to the subject of this review (although in that matter the document related to more formal investigations), stating:

As I understand the regime in place for investigations of this kind, there is no statutory obligation on the interviewees to co-operate. The community places great reliance of the public school system, on its teachers and administrators and it is essential that those teachers and administrators are not hampered in the task of gaining a proper perspective of schoolyard and classroom incidents for the better management of the school system as a whole and for the imperative of student safety.<sup>19</sup>

63. I am satisfied certain information in Document 4 was obtained by the Agency in confidence where it relates to information provided by people, teachers, or students other than the Applicants. In my view such information provided during sensitive incidents would be provided with the expectation of confidentiality.

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

<sup>12</sup> *XYZ v Victoria Police* [2010] VCAT 255 at [265].

<sup>13</sup> *Ibid.*

<sup>14</sup> [1999] VCAT 1363.

<sup>15</sup> *Ibid* at [14]-[15].

<sup>16</sup> (Review and Regulation) [2022] VCAT 302.

<sup>17</sup> [2003] VCAT 946.

<sup>18</sup> [2005] VCAT 2263.

<sup>19</sup> *Ibid* at [31].

64. Document 6 is not as straightforward, as the letter, while addressed to the school from a third party, involves an assessment [redacted]. However, for the purposes of this decision and given the letter is directly between the third party and the school, I have decided the information was provided in confidence and will consider the document further below in the second limb of section 35(1)(b).
65. I consider that Document 17 was provided to the Agency in confidence given its sensitive nature.

*Would disclosure impair the ability of the Agency to obtain similar information in the future?*

66. Document 4 contains a series of events, both factual and the opinion of those teachers, students and parents involved.
67. The NKY decision referenced above observes the following regarding information relating to events at a school relating to the applicant's child in that proceeding:

While I can appreciate NKY's belief that, as a parent, he has a 'right to know' everything about incidents at school involving his child, the decision in both Hoskin and Baker make it clear that any such right is subject to the exception in section 35(1)(b) which, in this context, serves to ensure that schools are 'not hampered in the task of gaining a proper perspective of schoolyard and classroom incidents', as may be necessary 'for the better management of the school system as a whole and for the imperative of student safety'. In effect, the broader public interest relating to the proper functioning of the school system may trump the private interest of particular parents in this regard.<sup>20</sup>

68. I am satisfied disclosure of Document 4 would impair the Agency to obtain similar information in the future for the following reasons:
- (a) The information in the particular circumstances of this matter is sensitive in nature.
  - (b) I consider it is vitally important that this type of information is able to be recorded by school staff, in a fulsome manner without concern it will be released as a matter of course under the FOI Act.
  - (c) Such information needs to be able to be gathered by the school with the knowledge that all parties will be open in the provision of fulsome information in the interests of the safety of school children, their parents and school staff.
  - (d) I consider if the documents were disclosed, it would have a real and lasting impact on the trusting relationships that are required between students, their parents and school staff – this in turn would have a significant impact on receiving such information in the future.
69. Therefore, in balancing the competing interests, I am satisfied greater weight must be given to ensuring the confidence with which such information is provided to, and recorded by, the Agency in the interests of providing a safe place for students to learn and teaching staff to work. Accordingly, I am satisfied disclosure of this information in Document 4 would be contrary to the public interest as it would impair the ability of the Agency to obtain similar information in the future, and is exempt from release under section 35(1)(b).
70. However, I am not satisfied Document 6 is exempt from release under section 35(1)(b) where the information relates solely to the Applicants, their child, or their child's teacher. I note a majority of this information would be known to the Applicants. I also consider it would not impair the Agency's ability to collect similar information in the future where the community's expectation would be that such information could be released without affecting the privacy of other third parties. Therefore, I am satisfied such information is not exempt from release under section 35(1)(b).

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<sup>20</sup> NKY v Department of Education and Training (Review and Regulation) [2022] VCAT 302 at [20].

71. In relation to Document 17, as noted above, given its sensitive nature, I consider its disclosure would impair the ability of the Agency to obtain such information in the future, and is also exempt from release under section 35(1)(b).
72. The Schedule of Documents in **Annexure 1** sets out my decision in relation to section 35(1)(b).

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

73. 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.
74. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’<sup>21</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>22</sup>
75. I have considered the effect of deleting exempt information from certain documents. I am satisfied it is practicable to do so as it would not require substantial time and effort, and the edited documents would retain meaning. However, I have refused access to documents where I do not consider it practicable to delete exempt information where it would render the documents meaningless.
76. My decision in relation to section 25 is set out in the Schedule of Documents at **Annexure 1**.

### **Conclusion**

77. On the information before me, I am satisfied information in the documents is exempt from release under sections 32(1), 33(1), 35(1)(b) and 38 in conjunction with sections 41(1), 191(1) and 209(1) of the CYF Act. However, I am not satisfied the documents are exempt from release under section 30(1).
78. However, I have decided to release further information in certain documents where I am satisfied it is practicable to provide an edited copy of the document with exempt information deleted in accordance with section 25.
79. My decision in relation to each document is set out in the Schedule of Documents in **Annexure 1**.

### **Review rights**

80. If either party to this review is not satisfied with my decision, they are entitled to apply to the VCAT for it to be reviewed.<sup>23</sup>
81. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>24</sup>
82. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>25</sup>
83. 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.

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<sup>21</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>22</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>23</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>24</sup> Section 52(5).

<sup>25</sup> Section 52(9).

84. 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>26</sup>

***Third party review rights***

85. As I have determined to release documents that contain information the Agency exempted from release under sections 33(1) and 35(1)(b), if practicable, I am required to notify the relevant third parties of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.<sup>27</sup>
86. In this case, I am satisfied it is practicable to notify the third parties of their review rights and confirm they will be notified of my decision on the date of decision.

***When this decision takes effect***

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

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<sup>26</sup> Sections 50(3F) and 50(3FA).

<sup>27</sup> Sections 49P(5), 50(3), 50(3AB) 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.	[date]	Named Primary School – [date] Report	6	Released in full	Not subject to review	
2.	[date]	Named Primary School – [date] Report	5	Released in full	Not subject to review	
3.	[date]	Email correspondence between named person, named person and named Primary school	4	Released in full	Not subject to review	
4.	[date]	File note	3	Refused in full  Sections 30(1), 33(1), 35(1)(b)	Refuse in full  Sections 33(1), 35(1)(b)	<p><b>Section 33(1):</b> I am satisfied the document is exempt under section 33(1) for the reasons described above in my Notice of Decision.</p> <p><b>Section 35(1)(b):</b> I am satisfied the document is exempt under section 35(1)(b) for the reasons described above in my Notice of Decision.</p> <p><b>Section 25:</b> I am satisfied it is not practicable to provide the Applicant with an edited copy of the document as deleting the</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						exempt material would render the document meaningless.
5.	[date]	Incident Reporting and Investigation School (IRIS) incident report	2	Released in part  Sections 30(1), 33(1), 38	Release in part  Sections 33(1), 38, 25  The document is to be released with information exempt from release under sections 33(1) and 38 deleted in accordance with section 25.	<p><b>Section 38:</b> As described above, I am satisfied the information identified by the Agency is information to which the secrecy provisions in the CYF Act apply. Therefore, I am satisfied the relevant information is exempt from release under section 38.</p> <p><b>Section 30(1):</b> As I have determined the information identified by the Agency is exempt information under section 38, it is not necessary for me to consider the application of section 30(1) to the same information.</p> <p><b>Section 33(1):</b> I am satisfied the disclosure of the information identified by the Agency as personal affairs information would be unreasonable to disclose (a telephone number) as it would not add to an understanding of the document and would be an unreasonable intrusion on the personal privacy of the relevant third party. Therefore, I am</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>satisfied this information is exempt from release under section 33(1).</p> <p><b>Section 25:</b> I am satisfied it would be practicable to release the document in part.</p>
6.	[date]	[Redacted] School Visit Report	3	<p><b>Released in part</b></p> <p>Sections 30(1), 33(1), 35(1)(b)</p>	<p><b>Release in part</b></p> <p>Sections 33(1), 25</p> <p>The document is to be released with information exempt from release under section 33(1) deleted in accordance with section 25.</p>	<p><b>Section 30(1):</b> This document is a report by [a third party] in relation to the Applicants' child. It was not prepared by the Agency, or another government Agency. As such, I am not satisfied it is exempt from release under section 30(1).</p> <p><b>Section 35(1)(b):</b> I do not consider the document is exempt under section 35(1)(b) for the reasons described above in the Notice of Decision.</p> <p><b>Section 33(1):</b> The document contains the names of Agency officers, the names and contact details of third parties and a signature. This amounts to personal affairs information. I have determined the disclosure of most of this information would not be unreasonable as it is either known</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>to the applicant or is publicly available.</p> <p>However, I am satisfied where information is more personal in nature or would not aid in understanding the document, its disclosure would be unreasonable and is exempt from release under section 33(1). The relevant information is:</p> <ul style="list-style-type: none"> <li>• mobile telephone numbers of third parties;</li> <li>• email addresses of third parties; and</li> <li>• signature of a third party.</li> </ul> <p><b>Section 25:</b> See comments for Document 5.</p>
7.	N/A	Named person note	1	Released in part  Section 33(1)	Release in part  Sections 33(1), 25  The document is to be released with information exempt under section 33(1) deleted in accordance with section 25.	<b>Section 33(1):</b> The document contains personal affairs information. In my view it would be unreasonable to disclose it as it would not add to an understanding of the document, given the vast majority has already been released to the Applicants.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						Section 25: See comments for Document 5.
8.	[date]	Named Primary School – Named person – Student Exit Form	1	Released in part Section 33(1)	Release in part Sections 33(1), 25  The document is to be released with information exempt under section 33(1) deleted in accordance with section 25.	Section 33(1): The document contains a signature that is personal affairs information. See comments for Document 5.  Section 25: See comments for Document 5.
9.	[date]	Named Children’s Clinic referral	1	Released in full	Not subject to review	
10.	[date]	Psychological Assessment Report	7	Released in part Sections 30(1), 33(1)	Release in part Sections 33(1), 25  The document is to be released with information exempt from release under section 33(1) deleted in accordance with section 25.	Section 30(1): See comments for Document 6.  Section 33(1): The document contains personal affairs information of Agency officers, being names, telephone numbers and email addresses of third parties. The information appears in the context of the individuals’ professional roles only. As such, I consider disclosure of the third

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>parties' names would not be unreasonable in the circumstances.</p> <p>However, for the reasons described in Document 8, I am satisfied disclosure of the following information would be unreasonable and is exempt from release under section 33(1):</p> <ul style="list-style-type: none"> <li>• email addresses of third parties;</li> <li>• telephone and facsimile numbers of third parties; and</li> <li>• signature of a third party.</li> </ul> <p>Section 25: See comments for Document 5.</p>
11.	[date]	Named Primary School – Parent/Teacher Interview	1	Released in full	Not subject to review	
12.	[date]	Recording form: Oral Reading and Comprehension Conversation	2	Released in part Section 33(1)	Release in full	Section 33(1): I have determined information in the document is not exempt for the reasons described in the comments for Document 6.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
13.	[date]	Responding to incident report	13	Refused in full Sections 33(1), 38	Refuse in full Section 38	<p><b>Section 38:</b> See comments for Document 5.</p> <p><b>Section 25:</b> I am satisfied it is not practicable to provide the Applicant with an edited copy of the document as deleting the exempt material would render the document meaningless.</p>
14.	[date]	Email to named person	1	Released in part Sections 32(1), 33(1)	<p>Release in part Sections 32(1), 33(1), 25</p> <p>The document is to be released with information exempt from release under sections 32(1) and 33(1) deleted in accordance with section 25.</p>	<p><b>Section 32(1):</b> The information identified by the Agency contains communications between an Agency officer and the Agency's legal adviser. I am satisfied it was prepared for the dominant purpose of obtaining or providing legal advice and is therefore exempt from release under section 32(1).</p> <p><b>Section 33(1):</b> The document contains personal affairs information, being the names, telephone numbers and email addresses of Agency officers. I consider it is unreasonable to release the names of the Agency officers as they did not have direct contact with the Applicant. It is</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						therefore exempt under section 33(1).  Section 25: See comments for Document 5.
15.	[date]	[date] Transition	2	Released in part  Sections 30(1), 33(1)	Release in full	Section 30(1): The information identified by the Agency records the opinion of an Agency officer. Given that opinion is not inconsistent with the remainder of the document, I am satisfied its disclosure would not be contrary to the public interest in these circumstances, and is not exempt from release under section 30(1).  Section 33(1): I have determined information in the document is not exempt for the reasons described in the comments for Document 6.
16.	[date]	School work	8	Released in full	Not subject to review	
17.	[date]	Medical report	1	Refused in full  Sections 33(1), 35(1)(b)	Refuse in full  Sections 33(1), 35(1)(b)	Section 33(1): I note this document is specifically requested by the Applicant with information about the third party deleted.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>I have carefully considered whether the document could be released with such information deleted. However, I consider the whole of the document is sensitive in nature given it includes the health information of a third party. Accordingly, I am satisfied disclosure would be unreasonable. In my view it is not practicable to provide the Applicant with an edited copy of the document as to do so would render it meaningless given the amount of information that is exempt from release. Accordingly, access to the document is refused in full.</p> <p><b>Section 35(1)(b):</b> I am satisfied the document is exempt under section 35(1)(b) for the reasons described above in my Notice of Decision.</p> <p><b>Section 25:</b> See comments for Document 13.</p>
18.	[date]	Emails with attachments	9	Released in part  Sections 30(1), 32(1), 33(1), 38	Refuse in full  Section 32(1)	<p><b>Section 32(1):</b> See comments for Document 14.</p> <p>I note the Agency released this document in part. However, I am</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>satisfied the document is one email chain that was provided to the Agency's legal representative for the purposes of obtaining legal advice. Therefore, I am satisfied it is exempt in full under section 32(1).</p> <p><b>Section 25:</b> See comments for Document 13.</p>
19.	[date]	Emails with attachments	8	<p><b>Released in part</b></p> <p>Sections 30(1), 32(1), 33(1), 38</p>	<p><b>Refuse in full</b></p> <p>Section 32(1)</p>	<p><b>Section 32(1):</b> See comments for Document 18.</p> <p><b>Section 25:</b> See comments for Document 13.</p>
20.	[date]	Emails with attachments	93	<p><b>Released in part</b></p> <p>Sections 30(1), 32(1), 33(1), 38</p>	<p><b>Refuse in full</b></p> <p>Section 32(1)</p>	<p><b>Section 32(1):</b> See comments for Document 18.</p> <p><b>Section 25:</b> See comments for Document 13.</p>
21.	[date]	Emails with attachments	22	<p><b>Released in part</b></p> <p>Sections 30(1), 32(1), 33(1), 38</p>	<p><b>Refuse in full</b></p> <p>Section 32(1)</p>	<p><b>Section 32(1):</b> See comments for Document 18.</p> <p><b>Section 25:</b> See comments for Document 13.</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
22.	[date]	Emails with attachments	92	Released in part  Sections 30(1), 32(1), 33(1), 38	Refuse in full  Section 32(1)	Section 32(1): See comments for Document 18.  Section 25: See comments for Document 13.
23.	[date]	Emails with attachments	79	Released in part  Sections 30(1), 32(1), 33(1)	Refuse in full  Section 32(1)	Section 32(1): See comments for Document 18.  Section 25: See comments for Document 13.