

Notice of Decision and Reasons for Decision

Applicant:	'EG1'
Agency:	Department of Education and Training
Decision date:	13 July 2022
Provisions and exemptions considered:	Sections 27(2)(a), 30, 33(1), 35(1)(b), and 38 in conjunction with section 130(2) of the <i>Worker Screening Act 2020</i> (Vic)
Citation:	'EG1' and Department of Education and Training (Freedom of Information) [2022] VICmr 83 (13 July 2022)

FREEDOM OF INFORMATION – documents relating to incident with child at school – internal working documents – contrary to public interest – personal affairs information – unreasonable to disclose – information obtained in confidence – Working with Children Check scheme – *Worker Screening Act 2020* (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 fresh decision to refuse access to documents requested by the Applicant under the FOI Act.

I am satisfied information in the documents is exempt from release under sections 30(1), 33(1), 35(1)(b), and 38 in conjunction with section 130(2) of the *Worker Screening Act 2020* (Vic) (**Worker Screening Act**). However, I have granted access to additional information where I am satisfied it is not exempt information.

Where I am satisfied it is practicable to provide the Applicant with an edited copy of a document with irrelevant and 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 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

13 July 2022

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to documents concerning an alleged [incident involving] the Applicant's[child] that took place at a public school. The Applicant sought access to 'all documents, correspondence, notes, reports, plans and management responses'.
2. The Agency identified 35 documents falling within the terms of the Applicant's request and granted access to four documents in full and refused access to five documents in part and 26 documents in full under sections 30(1), 33(1) and 35(1)(b).
3. 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. Section 49M(1) permits an agency to make a fresh decision on an FOI request during a review.
6. On [date], the Agency made a fresh decision on the Applicant's request.
7. In its fresh decision, the Agency relied on an additional exemption under section 38 in conjunction with the Worker Screening Act and another unspecified secrecy provision. The Agency also invoked section 27(2)(a) that provides an agency does not have to include information in a decision letter provided to an applicant where disclosure of the information would disclose exempt information.
8. In this instance, the Agency was satisfied that specifying the secrecy provision in its reasons for its fresh decision would reveal exempt information.
9. The Applicant did not agree with the Agency's fresh decision and, as required by section 49MA(2), I proceeded with my review on the basis of the fresh decision.
10. I have examined a copy of the documents subject to review.
11. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
12. I have considered all communications and submissions received from the parties.
13. 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.
14. 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.

Applicant's concerns regarding the adequacy of the Agency's document searches

15. During the review, the Applicant raised concerns about the adequacy of the Agency's document searches as they believe additional documents should have been identified in response to their request.

16. In accordance with section 61B(3), these concerns were addressed as part of the review.
17. OVIC made further enquires with the Agency to address the Applicant's concerns. The outcome of those enquires was communicated to the Applicant, however, the Applicant was not satisfied with the outcome of those enquiries.
18. Having considered the terms of the Applicant's request and information provided by the Agency, I am satisfied the Applicant's concerns have been fully pursued and there are no grounds for making further inquiries with the Agency in relation to the concerns raised or the taking of further action.

Review of exemptions

Section 38 – Documents to which secrecy or confidentiality provisions apply

19. A document is exempt under section 38 if:
 - (a) there is an enactment in force;
 - (b) that applies specifically to the kind of information contained in the documents; and
 - (c) the enactment must prohibit persons, referred to in the enactment, from disclosing that specific kind of information (either absolutely or subject to exceptions or qualifications).
20. For section 38 to apply to an enactment, the enactment must be formulated with such precision that it specifies the actual information sought to be withheld. The relevant enactment in this matter is the Worker Screening Act which prescribes the requirements for obtaining a Working with Children Check (**WWCC**).
21. The WWCC scheme is a screening process for assessing or re-assessing people who are employed or volunteer to work with children in Victoria. Individuals are assessed for their suitability to hold a WWCC through a review of their criminal history and relevant professional conduct findings to ensure the protection of children from sexual or physical harm.¹
22. The Agency relies on the exemption under section 38 of the FOI Act in conjunction with section 130(2) of the Worker Screening Act.
23. Section 130 of the Worker Screening Act provides:

130 Confidentiality of information

...

- (2) A person must not give to any other person, whether directly or indirectly, any information acquired by the person under section 70, 72(1), 91(5), 92, 113(3), 114(2), 115(2) or 127.
Penalty: Level 9 fine (60 penalty units maximum).
- (3) Subsections (1) and (2) do not apply to the giving of information in any of the following circumstances—
 - (a) in good faith for the prevention of a serious threat to a person's life, health or safety;
 - (b) with the written authority of the person to whom the information relates or, if the person to whom the information relates is a child or a person with a cognitive impairment or mental illness within the meaning of Subdivision (8E) of Division 1 of Part I of the **Crimes Act 1958**, with the written authority of a person authorised to act on that person's behalf;

¹ See Working With Children Check Victoria website at <https://www.workingwithchildren.vic.gov.au/>.

- (c) to a court or tribunal in the course of legal proceedings;
 - (d) pursuant to an order of a court or tribunal;
 - (e) to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or of a Territory or of the Commonwealth;
 - (f) to a person or body established under a law of the Commonwealth or another State or Territory with functions or powers that correspond with the functions or powers of the Chief Commissioner of Police under this Act;
 - (g) to an Australian legal practitioner for the purpose of obtaining legal advice or representation;
 - (h) as required or permitted by or under this Act or any other law;
 - (i) in the case of WWC information, in good faith—
 - (i) for the purposes of a reference check being carried out on an applicant for work that is child-related work; or
 - (ii) for the purposes of making employment-related decisions in respect of child-related work; or
 - (iii) to the Commission for Children and Young People (established by section 6 of the **Commission for Children and Young People Act 2012**) for the purposes of an investigation of a reportable allegation under Part 5A of the **Child Wellbeing and Safety Act 2005**; or
 - (iv) to the Victorian Institute of Teaching under Part 2.6 of the **Education and Training Reform Act 2006** for the purposes of any of that Institute's functions under Part 2.6 of that Act.
- (4) In this section—

WWC information means information acquired from, or in carrying out, a WWC check or under section 70, 72(1), 91(5), 92, 113(3), 114(2), 115(2) or 127.

Is there an enactment in force?

24. I am satisfied the Worker Screening Act is an enactment in force for the purpose of section 38.

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

25. The Worker Screening Act sets out the Agency's functions and powers in respect of the WWCC scheme. These include specific functions in relation to the assessment of worker screening applications (Chapter 3) and information sharing (Chapter 7).

26. Section 130(2) of the Worker Screening Act concerns information acquired by the Agency under sections 70, 72(1), 91(5), 92, 113(3), 114(2), 115(2) or 127 of that Act.

27. In summary, section 130(2) of the Worker Screening Act refers to various notification requirements in relation to a WWC clearance or exclusion:

- (a) a copy of a WWCC or negative notice for a WWCC is to be given to an employer or agency (section 70);
- (b) notification of a relevant change in circumstances (section 72(1));
- (c) notification of an expiry of a WWCC (section 91(5));
- (d) the Secretary is to give a copy of a negative notice for a WWCC to an employer or agency (section 92);

- (e) notification of a suspension or a cancellation of a person's registration as a teacher or an early childhood teacher (section 113(3));
 - (f) notification of a suspension or the dismissal of a police officer or protective service officer (section 114(2));
 - (g) notification in writing of the suspension or termination of the employment of a person as a member of the Australian Federal Police (section 115(2)); and
 - (h) notification requirements of holder of a negative notice for a WWCC or interim WWCC (section 127).
28. I am satisfied this class of information is specific enough to meet the requirements of a secrecy provision for the purpose of section 38.
29. I am also satisfied information in the documents contain information acquired by the Agency in relation to an employee's WWCC in accordance with notification requirements referred to in section 130(2) of the Worker Screening Act.
30. Accordingly, I am satisfied the enactment applies specifically to information in the documents subject to review.

Does the enactment prohibit persons, referred to in the enactment, from disclosing that specific kind of information (either absolutely or subject to exceptions or qualifications)?

31. Unauthorised disclosure of information acquired by a person or the Agency under the Worker Screening Act is an offence subject to a penalty, as set out above. The financial penalty associated with unauthorised disclosure of information acquired under the Worker Screening Act highlights Parliament's intention that such information be protected and not disclosed, except in limited circumstances outlined in section 130(3) of that Act.
32. I am satisfied none of the circumstances in section 130(3) apply and therefore, the Agency is prohibited from disclosing certain information in the documents under section 130(2).
33. Accordingly, I am satisfied information in the documents is exempt from release under section 38 of the FOI Act in conjunction with section 130(2) of the Worker Screening Act.
34. My decision in relation to section 38 is set out in the Schedule of Documents in **Annexure 1**.

Section 30(1) – internal working documents

35. 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.
36. The exemption does not apply to purely factual material in a document.²

² Section 30(3).

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?

37. 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 employed by or engaged on behalf of an agency, whether or not they are subject to *Public Administration Act 2004* (Vic).
38. The documents in this matter comprise emails, letters, file notes and statements prepared by Agency officers and third parties. I am satisfied certain information the Agency exempted from release under section 30(1) is in the nature of opinion, advice and deliberation between Agency officers created in response to an investigation into allegations concerning a teacher.

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?

39. I am satisfied the documents were provided in the course of, and for the purpose of, the Agency's deliberative process concerning its response to an alleged incident.

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

40. In determining if disclosure of the documents 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:³
- (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.
41. The context of this matter is sensitive, as it concerns an alleged incident involving the Applicant's [child] at their school.

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

42. For the Applicant, I acknowledge there is a strong personal interest in obtaining access to the documents.
43. In addition to this personal interest, I consider there is a broader public interest in the disclosure of certain information in the documents where it would provide appropriate transparency as to the way in which complaints about the alleged conduct of a teacher are managed by the Agency. This includes ensuring those who are responsible for the education and wellbeing of children in a school are responsive to complaints and parents, who make complaints regarding a child, are informed in general terms about the outcome of an investigation into a complaint.
44. I accept investigations into complaints regarding the alleged conduct of a teacher will contain information that is sensitive and personal, particularly in the context of a school community.
45. I acknowledge when allegations of misconduct are raised it is imperative the Agency conducts a thorough investigation and complies with all relevant complaint handling requirements and policies. Without an open flow of information to the Agency during an investigative process, an investigation may not be successful in obtaining complete, accurate and detailed information. This could reasonably result in incomplete, inaccurate or inconclusive findings and recommendations, which may have detrimental consequences. For example, an ineffective investigation may allow the alleged misconduct to continue or further escalate, which could pose a risk of harm or to the safety and wellbeing of students, teachers and staff to whom the Agency owes a duty of care.
46. Therefore, the 'essential public interests' that limit disclosure of information under the FOI Act, in my view, include confidentiality of the Agency's deliberations to maintain the integrity of investigative processes for these reasons.
47. In some instances, I consider confidentiality of deliberations may continue after an outcome is reached, as Agency officers may need to communicate information, opinions and seek advice from one another to discuss the implementation of any recommendations arising from an investigation outcome.
48. I also give weight to the overall content and context of the documents in this case. I am of the view the local school community setting increases the sensitivity of matters and that documents of this nature would likely remain sensitive for the relevant parties involved.
49. In summary, having balanced the Applicant's personal interest in accessing information with the broader public interest concerns set out above, I am satisfied it would be contrary to the public interest to disclose certain information in the documents.
50. Accordingly, I am satisfied certain information in the documents is exempt from release under section 30(1).
51. My decision in relation to section 30(1) is set out in the Schedule of Documents in **Annexure 1**.

Section 33(1) – Personal affairs information of third parties

52. 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**);⁴ and
 - (b) such disclosure would be 'unreasonable'.

⁴ Sections 33(1) and 33(2).

Do the documents contain the 'personal affairs Information' of individuals other than the Applicant?

53. 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 this may be reasonably determined.⁵
54. 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.⁶
55. 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.⁷
56. The information subject to review is the names, initials, position titles, email addresses, phone numbers and views of Agency officers involved in the investigation.
57. Having reviewed the documents, I am satisfied the documents contain the personal affairs information of Agency officers.

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

58. 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.
59. 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'.⁸ 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'.⁹
60. 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.
61. While I acknowledge the Applicants' interest in obtaining access to documents that concern an incident involving their [child], having considered the information before me, I am satisfied disclosure of certain information would be unreasonable for the following reasons:
 - (a) I consider the Applicant is able to interpret the substance of the documents without the inclusion of specific names, position titles and direct contact information of third parties. Further, the personal affairs information does not add any material meaning to the documents and would not aid the Applicant in gaining a clearer understanding of the documents.

⁵ Section 33(9).

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

⁷ *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].

⁸ *Victoria Police v Marke* [2008] VSCA 218 at [76].

⁹ *Ibid.*

- (b) I consider certain information provided to the Agency by third parties, which concerns their personal observations and experiences, is sensitive and personal in nature.
 - (c) Given the FOI Act does not place restrictions on an applicant's use or dissemination of documents obtained under FOI, in the context of this matter, I consider it is likely disclosure of certain personal affairs information would cause stress and anxiety and adversely impact the relevant third parties.
 - (d) 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.
 - (e) 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.
62. Having weighed up the above factors, on balance, I have determined limited further personal affairs information can be released to the Applicant, however, the remaining personal affairs information is to remain exempt from release under section 33(1).

63. My decision in relation to section 33(1) is set out in the Schedule of Documents at **Annexure 1**.

Section 35(1)(b) – Information obtained in confidence

64. A document is exempt from release under section 35(1)(b) if two conditions are satisfied disclosure:
- (a) would divulge information or matter communicated in confidence by or on behalf of a person or a government to an agency or a Minister; and
 - (b) 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.

65. Whether an individual communicated information in confidence is a question of fact.¹⁰

66. When determining whether information was communicated in confidence, it is necessary to consider the position from the perspective of the communicator.¹¹

67. Confidentiality can be express or implied from the circumstances of a matter.¹²

68. The Victorian Civil and Administrative Tribunal (**VCAT**) considered this issue in *Birnbauer and Davies v Inner and Eastern Health Care Network*,¹³ 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.¹⁴

69. I note a similar matter was recently determined by VCAT, involving documents prepared by the Agency in relation to a school incident in the matter of *NKY v Department of Education and Training*

¹⁰ *Ryder v Booth* [1985] VR 869 at 883; *XYZ v Victoria Police* [2010] VCAT 255 at [264].

¹¹ *XYZ v Victoria Police* [2010] VCAT 255 at [265].

¹² *Ibid.*

¹³ [1999] VCAT 1363.

¹⁴ *Ibid* at [14]-[15].

(NKY decision).¹⁵ This decision discusses whether information provided by students was provided in confidence for the purpose of 35(1)(b). VCAT accepted the information was provided in confidence, citing *Hoskin v Department of Education and Training (Hoskin decision)*,¹⁶ and *Baker v Department of Education and Training (Baker decision)*.¹⁷

70. The Baker decision also refers more broadly to documents similar to those the subject of this review:

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.¹⁸

71. I am satisfied certain information in the documents was obtained by the Agency in confidence where it relates to information provided by third parties, including teachers. In my view, when such information is provided in relation to a sensitive school incident, it is provided with the expectation of confidentiality.

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

72. The NKY decision observes the following regarding information relating to a school incident involving an applicant's child:

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.¹⁹

73. Having carefully reviewed the documents, and considered the circumstances in which the information was obtained by the Agency, I am satisfied disclosure of information in this instance will be reasonably likely to impair the Agency to obtain similar information in the future for the following reasons:

- (a) In the circumstances of this matter, the information is sensitive in nature.
- (b) It is important that information of this type is able to be recorded by Agency officers in a fulsome and comprehensive manner without concern it will be released as a matter of course under the FOI Act.
- (c) Such information needs to be gathered by the school with the knowledge that all parties will be open and fulsome in the provision of information in the interests of ensuring the safety and wellbeing of students, parents, teachers and other school staff.
- (d) If the documents were to be disclosed under the FOI Act, it would undermine the necessary trust that is required between students, parents, teachers and school staff to ensure positive school community and individual relationships and would have a significant impact on the Agency's ability to obtain similar information in the future.

¹⁵ (Review and Regulation) [2022] VCAT 302.

¹⁶ [2003] VCAT 946.

¹⁷ [2005] VCAT 2263.

¹⁸ *Baker v Department of Education and Training (General)* [2005] VCAT 2263 at [24]; *NKY v Department of Education and Training (Review and Regulation)* [2022] VCAT 302 at [31].

¹⁹ *NKY v Department of Education and Training (Review and Regulation)* [2022] VCAT 302 at [39].

74. 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.
75. Accordingly, I am satisfied disclosure of this information 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).
76. 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

77. 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.
78. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’²⁰ 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 25.²¹
79. I have considered the information the Agency determined is irrelevant information and that it deleted in accordance with section 25. I agree certain information is irrelevant information as it relates to matters not related to the Applicant’s child, or is the name of an Agency officer who printed the email for the purpose of processing the Applicant’s request. I am satisfied this information is outside scope of the Applicant’s FOI request.
80. I have considered the effect of deleting exempt and irrelevant information from the documents. I am satisfied it is practicable to delete such information from certain documents where to do so would not require substantial time and effort, and the edited documents would retain meaning. Where I am satisfied it is not practicable to do so, access to the document is refused in full.

Conclusion

81. On the information before me, I am satisfied certain information in the documents is exempt from release under sections 30(1), 33(1), 35(1)(b), and 38 in conjunction with section 130(2) of the Worker Screening Act. However, I have granted access to additional information where I am satisfied it is not exempt information.
82. Where I am satisfied it is practicable to provide the Applicant with an edited copy of a document with irrelevant and 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 is refused in full.
83. In its fresh decision, the Agency also relied on section 27(2)(a) under which it is not required to include any information in its reasons for decision that would cause a document to be an exempt document. Given my decision in this matter, it is not necessary for me to consider the application of this provision in the provision of my reasons.
84. My decision on each document is set out in the Schedule of Documents in **Annexure 1**.

²⁰ *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].

²¹ *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].

Review rights

85. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.²²
86. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.²³
87. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.²⁴
88. Information about how to apply to VCAT is available online at www.vcat.vic.gov.au. Alternatively, VCAT may be contacted by email at admin@vcat.vic.gov.au or by telephone on 1300 018 228.
89. The Agency is required to notify the Information Commissioner in writing as soon as practicable if either party applies to VCAT for a review of my decision.²⁵

Third party review rights

90. As I have determined to release documents that contain information the Agency exempted from release under sections 33(1), if practicable, I am required to notify any relevant third party of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.²⁶
91. In this case, I am satisfied it is not practicable to notify the relevant third party of their review rights as it would be an unreasonable intrusion.

When this decision takes effect

92. My decision does not take effect until the Agency's 14 day review period expires.
93. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

²² The Applicant in section 50(1)(b) and the Agency in section 50(3D).

²³ Section 52(5).

²⁴ Section 52(9).

²⁵ Sections 50(3F) and 50(3FA).

²⁶ 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.	[Date]	Email chain	3	Released in part Sections 30(1), 33(1), 38	Release in part Sections 33(1), 25 No further information is to be released.	<p>Section 33(1): I am satisfied it would be unreasonable to disclose the personal affairs information in this document for the reasons provided in the Notice of Decision above.</p> <p>Section 30(1): As I am satisfied the information exempted by the Agency under section 30(1) is exempt under section 33(1), it is not necessary to consider the application of section 30(1) to the same information.</p> <p>Section 38: As I am satisfied the information that the Agency exempted under this provision is exempt under section 33(1), I have not considered the application of section 38 to the same information.</p> <p>Section 25: I am satisfied it is practicable to provide the Applicant with an edited copy of this document with irrelevant and exempt information deleted in accordance with section 25.</p>
2.	[Date]	Email chain	3	Released in part Sections 30(1), 33(1)	Release in part Sections 33(1), 25 No further information is to be released.	<p>Section 33(1): See comments for Document 1.</p> <p>Section 30(1): See comments for Document 1.</p> <p>Section 25: See comments for Document 1.</p>
3.	[Date]	Email chain	10	Released in part	Release in part	<p>Section 30(1): I am satisfied the document contains information that is exempt under this</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
				Sections 30(1), 33(1), 38, 25	Sections 30(1), 33(1), 25 The document is to be released in accordance with the marked-up copy of the document provided to the Agency enclosed with this decision.	provision for the reasons provided in the Notice of Decision, above. Section 33(1): See comments for Document 1. However, I consider a small amount of information can be released where I am not satisfied it is personal affairs information. Section 38: I am not satisfied the information that the Agency exempted in the email dated [date] is exempt under section 38, however, I am satisfied it is exempt under section 30(1). As I am satisfied the remaining information exempted under section 38, which appears in the email dated [date] is exempt under section 33(1), I have not considered the application of section 38 to the same information. Section 25: See comments for Document 1.
4.	[Date]	Email	1	Released in part Sections 33(1), 25	Release in part Sections 33(1), 25 No further information is to be released.	Section 33(1): See comments in Document 1. Section 25: See comments for Document 1.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
5.	[Date]	Email thread with attachments	15	Release in part Sections 30(1), 33(1), 38, 25	Release in part Sections 30(1), 33(1), 38, 25 This document is to be released in accordance with the marked-up copy of Document 3, provided to the Agency with this decision.	This email thread contains part of the email thread in Document 3. Section 30(1): See comments for Document 3. Section 33(1): See comments in Document 3. Section 38: See comments in Document 3. Section 25: See comments for Document 1.
6.	[Date]	Email chain	2	Release in part Sections 30(1), 33(1)	Release in part Sections 33(1), 25 No further information is to be released.	Section 33(1): See comments in Document 1. Section 30(1): See comments in Document 1. Section 25: See comments for Document 1.
7.	[Date]	Handwritten Note	1	Release in part Sections 30(1), 33(1)	Release in part Sections 30(1), 33(1) No further information is to be released.	Section 30(1): See comments for Document 3. Section 33(1): See comments in Document 1. Section 25: I am satisfied it is practicable to provide the Applicant with an edited copy of this document with exempt information deleted.
8.	[Date]	Letter	3	Refused in full Sections 30(1), 33(1)	Refuse in full Section 33(1)	Section 33(1): See comments for Document 1. Section 30(1): See comments for Document 1.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						Section 25: I am satisfied it is not practicable to provide the Applicant with an edited copy of this document as it is exempt in its entirety.
9.	[Date]	File note of telephone call	1	Refused in full Sections 30(1), 33(1), 35(1)(b)	Refuse in full Sections 33(1), 35(1)(b)	Section 33(1): See comments for Document 1. Section 35(1)(b): For the reasons provided in the Notice of Decision, above, I am satisfied the document is exempt under section 35(1)(b). Section 30(1): As I am satisfied the document is exempt under sections 33(1) and 35(1)(b), I have not considered the application of section 30(1). Section 25: See comments for Document 8.
10.	[Date]	File note of telephone call	1	Refused in full Sections 30(1), 33(1), 35(1)(b)	Refuse in full Sections 33(1), 35(1)(b)	Section 33(1): See comments for Document 1. Section 35(1)(b): See comments for Document 9. Section 30(1): See comments for Document 9. Section 25: See comments for Document 8.
11.	[Date]	Letter	1	Refused in full Sections 30(1), 33(1), 35(1)(b)	Refuse in full Sections 33(1), 35(1)(b)	Section 33(1): See comments for Document 1. Section 35(1)(b): See comments for Document 9. Section 30(1): See comments for Document 9. Section 25: See comments for Document 8.
12.	[Date]	Letter	2	Refused in full Sections 33(1), 38	Refuse in full Section 33(1)	Section 33(1): See comments for Document 1.

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						<p>Section 38(1): As I am satisfied the entirety of the document is exempt under section 33(1), it is not necessary to consider section 38.</p> <p>Section 25: See comments for Document 8.</p>
13.	[Date]	Chronology	2	<p>Release in part Sections 30(1), 33(1)</p>	<p>Release in part Sections 30(1), 33(1), 25</p> <p>The name of the Agency officer that appears in lines 20 to 22 of page 1 is to be released.</p>	<p>Section 33(1): I am satisfied it would not be unreasonable to disclose the name of an Agency officer in part of the chronology that concerns the Applicant having direct contact with that staff member.</p> <p>I am satisfied it would be unreasonable to disclose the remaining personal affairs information in this document for the reasons provided in the Notice of Decision, above.</p> <p>Section 30(1): See comments for Document 3.</p> <p>Section 25: I am satisfied the information that the Agency deleted under section 25 at the end of the document is irrelevant information, as it does not concern the subject matter of the Applicant's FOI request.</p> <p>I am satisfied it is practicable to provide the Applicant with an edited copy of this document with exempt and irrelevant information deleted.</p>
14.	[Date]	File note	1	<p>Refused in full Sections 30(1), 33(1), 35(1)(b)</p>	<p>Release in part Sections 30(1), 33(1), 35(1)(b), 25</p>	<p>Section 33(1): See comments for Document 1. However, it would not be unreasonable to disclose information concerning the Applicant and their [child], where it can be severed from the personal affairs information of third parties.</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					<p>The following information is to be released:</p> <p>(a) lines 2 to 6, except for the names of third parties (position titles to be released); and</p> <p>(b) the last three lines, with exception to the name of the Agency officer in the last sentence.</p>	<p>Section 35(1)(b): I am satisfied a majority of the information in this document is exempt under section 35(1)(b) for the reasons provided in the Notice of decision, above.</p> <p>Section 30(1): I have considered whether lines 2 to 6 and the last three lines of this document are exempt under section 30(1). I am not satisfied disclosure would be contrary to the public interest as it is not sensitive information, it concerns the Applicant's [child] and also contains information about a meeting that the Applicant was present at.</p> <p>Section 25: See comments for Document 1.</p>
15.	[Date]	File note	1	Refused in full Sections 30(1), 33(1)	Refuse in full Section 30(1), 33(1)	<p>Section 30(1): See comments for Document 3.</p> <p>Section 33(1): See comments for Document 1.</p> <p>Section 25: See comments for Document 8.</p>
16.	[Date]1	Letter	2	Released in full	Not subject to review	
17.	[Date]	Letter	2	Refused in full Sections 30(1), 33(1)	Refuse in full Section 33(1)	<p>Section 33(1): See comments for Document 1.</p> <p>Section 30(1): See comments for Document 1.</p> <p>Section 25: See comments for Document 8.</p>
18.	[Date]	Diary Note	1	Refused in full	Refuse in full	<p>Section 30(1): See comments for Document 3.</p> <p>Section 33(1): See comments for Document 1.</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
				Sections 30(1), 33(1), 35(1)(b)	Sections 30(1), 33(1), 35(1)(b)	Section 35(1)(b): See comments for Document 9. Section 25: See comments for Document 8.
19.	[Date]	Handwritten note	1	Released in part Section 33(1)	Release in part Sections 33(1), 25 No further information is to be released	Section 33(1): Although this is a file note of a meeting between the Applicant and an Agency officer, I am satisfied the document contains information that is exempt under section 33(1) for the reasons provided in the Notice of Decision above. Section 25: See comments for Document 1.
20.	[Date]	Handwritten note	1	Released in part Section 33(1)	Release in part Section 33(1) No further information is to be released	Section 33(1): See comments for Document 19. Section 25: See comments for Document 1.
21.	[Date]	Email	1	Refused in full Sections 30(1), 33(1), 35(1)(b)	Refuse in full Sections 33(1), 35(1)(b)	Section 33(1): See comments for Document 1. Section 35(1)(b): See comments for Document 9. Section 30(1): See comments for Document 9. Section 25: See comments for Document 8.
22.	[Date]	Initial Assessment	2	Release in part Section 33(1)	Release in part Sections 33(1), 25 No further information is to be released.	Section 33(1): See comments for Document 19. Section 25: See comments for Document 1.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
23.	[Date]	Handwritten Note	1	Refused in full Sections 30(1), 33(1), 35(1)(b)	Refuse in full Sections 33(1), 35(1)(b)	Section 33(1): See comments for Document 1. Section 35(1)(b): See comments for Document 9. Section 30(1): See comments for Document 9. Section 25: See comments for Document 8.
24.	[Date]	Handwritten Note	1	Release in part Section 33(1)	Release in part Sections 33(1), 25 No further information is to be released.	Section 33(1): See comments for Document 19. Section 25: See comments for Document 1.
25.	[Date]	Typed Notes	3	Released in part Sections 30(1), 33(1), 35(1)(b)	Release in part Sections 30(1), 33(1), 35(1)(b), 25 No further information is to be released.	Section 30(1): See comments for Document 3. Section 33(1): See comments for Document 1. Section 35(1)(b): See comments for Document 9. Section 25: See comments for Document 1.
26.	[Date]	Letter	2	Refused in full Sections 30(1), 33(1)	Refuse in full Section 33(1)	Section 33(1): See comments for Document 1. Section 30(1): See comments for Document 1. Section 25: See comments for Document 8.
27.	[Date]	Letter (with attachment)	2	Refused in full Sections 33(1), 38	Refuse in full Sections 33(1), 38	Section 33(1): See comments for Document 1. Section 38: I am satisfied this document is exempt under section 38 in conjunction with section 130(2) of the Worker Screening Act, for

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						the reasons provided in the Notice of Decision, above. Section 25: See comments for Document 8.
28.	[Date]	File note	1	Refused in full Sections 30(1), 33(1), 35(1)(b)	Refuse in full Sections 33(1), 35(1)(b)	Section 33(1): See comments for Document 1. Section 35(1)(b): See comments for Document 9. Section 30(1): See comments for Document 9. Section 25: See comments for Document 8.
29.	[Date]	File note	1	Refused in full Sections 30(1), 33(1), 35(1)(b)	Refuse in full Sections 33(1), 35(1)(b)	Section 33(1): See comments for Document 1. Section 35(1)(b): See comments for Document 9. Section 30(1): See comments for Document 9. Section 25: See comments for Document 8.
30.	[Date]	Name: [Applicant's child] [Date]	1	Released in full	Not subject to review	
31.	Undated	Communication Profile	1	Released in full	Not subject to review	
32.	Undated	Trauma Informed Practice Strategies to support students at [school]	1	Released in full	Not subject to review	

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
33.	[Date]	Student Support Group Meeting Record	3	Release in full	Not subject to review	This document was located during the review and released to the Applicant in full outside of the FOI Act.