

Notice of Decision and Reasons for Decision

Applicant:	'ET6'
Agency:	Department of Families, Fairness and Housing
Decision date:	26 August 2022
Exemptions and provisions considered:	Sections 27(2)(a), 31(1)(c), 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:	'ET6' and Department of Families, Fairness and Housing (Freedom of Information) [2022] VICmr 206 (26 August 2022)

FREEDOM OF INFORMATION – Child Protection records – care leaver records – applicant seeks access to their Child Protection records – Child Protection intake records – *Children, Youth and Families Act 2005* (Vic) – secrecy provision

All references to legislation in this document are to the *Freedom of Information Act 1982* (Vic) (**FOI Act**) unless otherwise stated.

Notice of Decision

I have conducted a review under section 49F of the Agency's decision to refuse access to documents requested by the Applicant under the FOI Act.

I am satisfied information in the documents is exempt from release under sections 31(1)(c), 33(1) and 38 in conjunction with sections 41(1), 191(1) and 209(1) of the *Children, Youth and Families Act 2005* (Vic). I am also satisfied the provision under section 27(2)(a) of the FOI Act applies.

However, my decision on the Applicant's request differs from the Agency's decision as I have decided to release additional information in the documents where I am satisfied it is not exempt from release.

As I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with exempt information deleted in accordance with section 25, access to the documents is granted in part.

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

26 August 2022

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to their carer leaver records.
2. Following consultation with the Agency, the Applicant narrowed the scope of their FOI request to certain identified document types.
3. The Agency identified nine documents falling within the terms of the Applicant's request and refused access to the documents in part under sections 31(1)(c), 33(1), 35(1)(b) and 38 in conjunction with section 191(1) and 209(1) of the *Children, Youth and Families Act 2005* (Vic) (**CYF Act**).
4. The Agency also invoked section 27(2)(a) which provides that an agency does not have to include information to an applicant in a decision letter if disclosure of the information would disclose exempt information.
5. The Agency's decision letter sets out the reasons for its decision.

Review application

6. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
7. In their review application, the Applicant advised they seek review of [certain identified pages only].
8. I have examined a copy of the relevant documents subject to review.
9. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
10. I have considered all communications and submissions received from the parties.
11. 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.
12. 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.

Child Protection and Child Protection records

13. The Agency is responsible for enforcing and administering the law relating to Child Protection in Victoria under the CYF Act.
14. Child Protection files come into existence when the Agency is notified or becomes aware of a child that is at risk to harm, wellbeing or other safety concerns. The CYF Act provides for voluntary reports from a person and mandatory reporting by persons in certain professions specified under the CYF Act.
15. The main functions of Child Protection are to:
 - (a) investigate matters where it is alleged a child is at risk of harm;
 - (b) refer children and family appropriately to services in providing ongoing safety and wellbeing of children;
 - (c) escalate matters to the Children's Court if a child's safety cannot be ensured within the family; and
 - (d) supervise children on legal orders granted by the Children's Court.
16. The Agency publishes the *Child Protection Manual*, which is used by Child Protection practitioners and contains information for families. The manual is available at www.cpmanual.vic.gov.au.
17. The role and mandate of Child Protection is obviously an important and significant one. It is also comprehensively regulated under the CYF Act.
18. Parliament has determined strict parameters apply to what information can be released in relation to Child Protection matters, including a prohibition on identifying any person who notifies the Agency about any child protection concerns (**notifiers**) and any subsequent Agency investigations into or action taken to address any such concerns.
19. For example, the CYF Act prohibits disclosure of the names of notifiers, as well as any information likely to lead to the identification of a notifier, except in certain limited circumstances where disclosure is authorised. This reflects the strong need for confidentiality around Child Protection notifications and any subsequent inquiries or investigations conducted by the Agency to ensure the confidentiality of notifiers when making sensitive notifications to the Agency in the interests of protecting a child or children from harm or possible harm.
20. Therefore, when a person who has been involved with Child Protection or is the parent or guardian of such a child seeks access to a Child Protection file, the confidentiality provisions that apply to Child Protection information under the CYF Act are strictly applied.
21. Lastly, while Child Protection records are kept in the name of the relevant child, the manner in which the Agency collects and records information generally concerns a child's family unit. This means records will contain information regarding any protective interventions for sibling groups and information relating to a particular child will often be intertwined with information concerning other persons, such as their siblings or other family members.

Review of exemptions

Section 38 – Documents subject to a secrecy provision

22. A document will be exempt under section 38 if:
 - (a) there is an enactment in force;
 - (b) that applies specifically to the kind of information in the document; 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).
23. For section 38 to apply, an enactment must be formulated with such precision that it specifies the actual information sought to be withheld.
24. The Agency relies on the exemption in section 38 in conjunction with sections 191(1) and 209(1) of the CYF Act to refuse access to reports made to the Agency, as well as information that would identify a third party who made a report to the Agency regarding the wellbeing of the Applicant.
25. The Agency also invoked section 27(2)(a) in relation to the extent to which it is required to disclose information in its decision letter on grounds to do so would exempt information.
26. Accordingly, I will first consider the application of the confidentiality provisions in the CYF Act, followed by the application of section 27(2)(a).

Application of the confidentiality provisions in the CYF Act

27. Section 41 of the CYF Act 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.
...
- (2) Subsection (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.

28. Section 191 of the CYF 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.

...

29. 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 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) or 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.

30. In summary, sections 41(1), 191(1) and 209(1) of the CYF Act prohibit disclosure of the names of persons as well as any information likely to lead to the identification of any person who:

- (a) provided confidential Child Protection information to the Agency in the course of a protective intervention investigation; or
- (b) notified the Agency of their concerns for the wellbeing of a child.

31. Unauthorised disclosure of such information is an offence and carries penalties under the CYF Act, which demonstrates Parliament's intention that such information should remain protected.

32. I am satisfied the relevant sections of the CYF Act, as described above, prohibit the disclosure of the identity, or any information likely to lead to the identification of a notifier/reporter, or person who provides information in confidence to the Agency regarding the welfare or well-being of a child. This includes not only a report or record of confidential information, but the date on which the Agency received a Child Protection notification and any subsequent documents created containing details of the report or confidential information provided to the Agency.

33. Having reviewed the exempted information in the documents and information before me, in most instances, I am satisfied:

- (a) the CYF Act is an enactment in force, for the purposes of section 38;
- (b) the documents contain specific information prohibited from disclosure under sections 41(1), 191(1) and 209(1) of the CYF Act;

- (c) these provisions prohibit persons, in this case Agency officers, from disclosing the specific information sought by the Applicant; and
 - (d) the prohibition under sections 41(1), 191(1) and 209(1) of the CYF Act is absolute, in that disclosure of information is not subject to any exceptions or qualifications.
34. However, I am also satisfied certain information can be released without disclosing the identity of a notifier or allowing their identity to be inferred.
35. Accordingly, I am satisfied certain information in the documents is 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.

Application of section 27(2)(a)

36. I am unable to reveal an additional secrecy provision relied on by the Agency as I am satisfied to do so would reveal exempt information. However, I am satisfied the provision applied by the Agency is a secrecy provision because:
- (a) it is an enactment in force;
 - (b) it is formulated with such precision that it specifies the actual information sought to be withheld; and
 - (c) the enactment prohibits persons referred to in the enactment from disclosing the specific kind of information.
37. Accordingly, I must consider whether the enactment applies specifically to information contained in the documents.
38. Having carefully reviewed the documents, I am satisfied it contains a small amount of information to which the secrecy provision applies.
39. My decision in relation to section 38 is set out in the Schedule of Documents at **Annexure 1**.

Section 31(1)(c) – Law enforcement documents involving a confidential source of information

40. Subject to section 31, section 31(1)(c) provides a document is an exempt document if its disclosure under the FOI Act would or would be reasonably likely to disclose or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law.
41. The Agency submits:
- Information exempt under s 31(1)(c) includes details of child protection notifications and the date on which a notification was made, as well as information that would disclose the identity of third parties that have provided confidential information during a child protection investigation. This information would be reasonably likely to allow a person to ascertain the identity of a child protection notifier as notifications are commonly triggered by and occur on the same date as another event (such as [example]), which would make the identity of the notifier clear.
42. In light of my decision in relation to section 38, and my outline of information relating to the Child Protection scheme in Victoria, in the circumstances of this case I am satisfied certain information identifies various third parties who:
- (a) whether directly or indirectly provided information in confidence to the Agency regarding child safety and wellbeing concerns; and

(b) provided information in confidence to the Agency in relation to the enforcement or administration of the CYF Act.

43. Accordingly, I am satisfied certain information in the documents is exempt from release under section 31(1)(c).

44. My decision in relation to section 31(1)(c) for each document is set out in the Schedule of Documents at **Annexure 1**.

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

45. Section 33(1) provides a document is exempt if two conditions are satisfied:

(a) disclosure of a document would ‘involve’ the disclosure of information relating to the ‘personal affairs’ of a person other than the Applicant (a **third party**);¹ and

(b) such disclosure would be ‘unreasonable’.

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

46. 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.²

47. A document will disclose a third party’s personal affairs information if it is capable, either directly or indirectly, of identifying that person. As document disclosed under the FOI Act is not subject to restrictions or conditions on its further dissemination, this factor is to be interpreted by reference to the capacity of any member of the public to identify a third party.³

48. A third party’s opinion or observations about another person’s conduct can constitute information in relation to a third party’s personal affairs.⁴

49. As explained above, the manner in which the Agency collects and records information generally concerns a child’s family unit, and records will contain information regarding any protective interventions for sibling groups. While the Agency has disclosed some information concerning the Applicant’s family where it is intertwined with information concerning the Applicant, there is also exempted information that only concerns the Applicant’s family.

50. The documents disclose the personal affairs information relating to protective concerns, wellbeing and health information concerning the Applicant’s family members and the names of external professionals and staff who were involved with the Applicant’s family.

Would disclosure of the personal affairs information be unreasonable?

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

52. In *Victoria Police v Marke*,⁵ the Victorian Court of Appeal held there is ‘no absolute bar to providing access to documents which relate to the personal affairs of others’. Further, the exemption under section 33(1) ‘arises only in cases of unreasonable disclosure’ and ‘[w]hat amounts to an

¹ Sections 33(1) and 33(2).

² Section 33(9).

³ *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].

⁴ *Richardson v Business Licensing Authority* [2003] VCAT 1053, cited in *Davis v Victoria Police (General)* [2008] VCAT 1343 at [43], *Pritchard v Victoria Police (General)* [2008] VCAT 913 at [24], *Mrs R v Ballarat Health Services (General)* [2007] VCAT 2397 at [13].

⁵ [2008] VSCA 218 at [76].

unreasonable disclosure of someone's personal affairs will necessarily vary from case to case'.⁶ The Court further held, '[t]he protection of privacy, which lies at the heart of [section] 33(1), is an important right that the FOI Act properly protects. However, an individual's privacy can be invaded by a lesser or greater degree'.⁷

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

(a) The nature of the personal affairs information

The personal affairs information is highly sensitive and personal in nature to third parties involved as it concerns Child Protection matters.

(b) The circumstances in which the information was obtained

The Agency obtained the information from individuals in the context of carrying out its Child Protection functions under the CYF Act. I accept such information is ordinarily provided to the Agency on the understanding it will remain confidential unless limited exceptional circumstances require it to be disclosed. Further, individuals who provide information to the Agency in such circumstances would not expect information they provide to the Agency will be released under the FOI Act.

(c) The Applicant's interest in the information

The Applicant has a genuine and personal interest in obtaining access to documents that relate to their childhood that would provide them with further insight into the nature of Child Protection's involvement with them and their family.

(d) Whether any public interest would be promoted by the release of the information

I consider the Applicant's interest in obtaining access to the documents would serve a private interest. However, I consider there is an interest, shared by the wider community, in those who have had involvement with Child Protection to be able to obtain access to as much information as possible in relation to their personal family history and the involvement of the State in decisions made about their care, welfare and upbringing.

While the public interest in transparency and accountability of official action is a matter to which I give significant weight, in the context of seeking personal and sensitive information under the FOI Act, which relates to not only to the Applicant, but also to other individuals whose personal affairs information appear in documents, I must balance the public interest providing access to official information with the interest in protecting the personal privacy of those third parties.

For these reasons, I consider the public interest in the Agency preserving the confidentiality of information it receives from third parties, and any information that could identify the providers of this information, outweighs the Applicant's personal interest in seeking full access of all information held by the Agency regarding their involvement with Child Protection.

While I acknowledge the Applicant will understandably consider they have a right to know about all information the Agency holds that relates to them in respect to their involvement with Child Protection, the public interest in the Agency being able to continue to receive important information regarding child safety and wellbeing concerns remains paramount.

⁶ Ibid.

⁷ Ibid at [79].

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

In determining whether disclosure of a document would involve the unreasonable disclosure of a third party's personal affairs information, an agency must notify that person an FOI request has been received for documents containing their personal information and seek their view as to whether disclosure of a document should occur.⁸ However, this obligation does not arise in certain circumstances, including where it not practicable to do so.⁹

There is no information before me concerning the views of the third parties in relation to the potential release of their personal affairs information. Given the sensitive and personal nature of this matter, I accept consulting with third parties is not practicable.

Having considered the nature of the documents, I consider it would be reasonably likely that certain third parties would object to the release of their personal affairs information under the FOI Act given the sensitive and personal nature of the information.

(f) The likelihood of disclosure of information, if released

An applicant is free to disseminate or use a document as they choose once it is released.¹⁰ Accordingly, I have considered the likelihood of the personal affairs information in the documents being further disseminated, if disclosed, and the effects broader disclosure of this information would have on the privacy of third parties.

Given the highly sensitive and personal nature of the information that concerns third parties, I am satisfied dissemination of the documents would have a significant impact on their privacy.

(g) Whether disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person

In determining whether the disclosure of a document would involve the unreasonable disclosure of information relating to the personal affairs of any person, I am required to consider whether the disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person.¹¹

There is no information before me to suggest this is a relevant factor in this matter.

(h) Whether the disclosure would increase the risk to a primary person's safety from family violence¹²

In determining whether disclosure of information relating to the personal affairs of any person in a document would be unreasonable, section 33(2AB) requires if:

- (a) the request is made to an agency that is an information sharing entity or an authorised Hub entity, or to a Minister for access to an official document of an agency that is an information sharing entity or an authorised Hub entity; and
- (b) the document contains information relating to the personal affairs of the person making the request; and
- (c) the person making the request is a person of concern, or a person who is alleged to pose a risk of committing family violence—

⁸ Section 33(2B).

⁹ Section 33(2C).

¹⁰ *Victoria Police v Marke* [2008] VSCA 218 at [68].

¹¹ Section 33(2A).

¹² Section 33(2AB).

in deciding whether the disclosure would involve the unreasonable disclosure of information relating to the personal affairs of any person, the agency or Minister must also take into account whether the disclosure would increase the risk to a primary person's safety from family violence.

Accordingly, I must consider whether disclosure of information relating to the personal affairs of any person would increase the risk to a 'primary person's' safety¹³ from family violence.

I am satisfied the Agency is an 'information sharing entity' for the purpose of section 33(2AB).¹⁴

Having considered the circumstances of this matter, I am not satisfied disclosure of personal affairs information would increase the risk to a primary person's safety from family violence.

54. In balancing the above factors, I am satisfied it would be unreasonable to disclose the personal affairs information relating to any protective concerns, wellbeing and health information concerning the Applicant's family members as well as other third parties whose information appear in the documents.
55. However, there is a small amount of information I have determined can be released where similar information has been disclosed elsewhere in the documents.
56. My decision in relation to section 33(1) is set out in the Schedule of Documents at **Annexure 1**.

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

57. Where I am satisfied the exemptions discussed above apply, I have not considered the application of section 35(1)(b). I have only considered it in relation to a small amount of information in the documents.
58. A document is exempt under section 35(1)(b) if two conditions are satisfied:
 - (a) disclosure would divulge information or matter communicated in confidence by or on behalf of a person or a government to an agency or a Minister; and
 - (b) disclosure would be contrary to the public interest as it would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.
59. Whether information communicated by an individual to an agency was communicated in confidence is a question of fact.¹⁵
60. In doing so, it is necessary to consider the position from the perspective of the communicator, noting confidentiality can be expressed or implied from the circumstances of a matter.¹⁶
61. Section 35(1)(b) requires I also consider whether the Agency would be impaired from obtaining similar information in the future if the information were to be disclosed under the FOI Act. This involves considering whether others in the position of the communicator would be reasonably likely to be inhibited or deterred from providing similar information to the Agency in the future should the information be disclosed.

¹³ Section 33(9) provides 'primary person' has the meaning given in section 144E of the *Family Violence Protection Act 2008* (Vic). Section 144E of the *Family Violence Protection Act 2008* (Vic) provides that 'a person is a *primary person* if an information sharing entity reasonably believes that the person may be subjected to family violence'.

¹⁴ Section 33(9) provides 'information sharing entity' has the meaning given in section 144D of the *Family Violence Protection Act 2008* (Vic). Section 144D of the *Family Violence Protection Act 2008* (Vic) provides an 'information sharing entity' means 'a person or body prescribed, or a class of person or body prescribed, to be an information sharing entity for the purposes of [Part 5A]'.

¹⁵ *Ryder v Booth* [1985] VR 869 at [883]; *XYZ v Victoria Police* [2010] VCAT 255 at [264].

¹⁶ *XYZ v Victoria Police* [2010] VCAT 255 at [265].

62. The public interest test in section 35(1)(b) is narrow, in that it is directed toward the impact release would have on the Agency's ability to obtain the same type of information in the future. The exemption will not be made out if an agency's impairment goes no further than showing potential communicators of the information may be less candid than they would otherwise have been.¹⁷
63. My decision on section 35(1)(b) is set out in the Schedule of Documents in **Annexure 1**.

Section 25 – Deletion of exempt or irrelevant information

64. 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.
65. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹⁸ 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 25.¹⁹
66. I have considered the effect of deleting exempt information from the documents. In my view, it is practicable to delete the exempt information as to do so would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

67. On the information before me, I am satisfied information in the documents is exempt from release under sections 31(1)(c), 33(1) and 38 in conjunction with sections 41(1), 191(1) and 209(1) of the CYF Act. Further, I am satisfied another secrecy provision applies in relation to which I am satisfied no further information can be disclosed in accordance with section 27(2)(a) on grounds to do so would disclose exempt information.
68. However, my decision on the Applicant's request differs from the Agency's decision as I have decided to release additional information where I am satisfied it is not exempt from release.
69. As I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with exempt information deleted in accordance with section 25, access to documents is granted in part.
70. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

Review rights

71. If either party to this review is not satisfied with my decision, they are entitled to apply to the Victorian Civil and Administrative Tribunal (**VCAT**) for it to be reviewed.²⁰
72. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.²¹

¹⁷ *Smeaton v Victorian WorkCover Authority* [2012] VCAT 1549 at [69], approving *Birnbauer v Inner and Eastern Health Care Network* [1999] 16 VAR 9.

¹⁸ *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].

¹⁹ *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].

²⁰ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

²¹ Section 52(5).

73. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.²²
74. 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.
75. 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.²³

Third party review rights

76. As I have determined to release documents that contain information the Agency exempted under sections 33(1) and 35(1)(b), if practicable, I am required to notify those persons of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.²⁴
77. I am satisfied it is not practicable to notify the relevant third parties of their review rights due to the nature of the documents and the passage of time since they were created. In doing so, I have also given consideration to the privacy of the Applicant in being able to make their FOI request without having to disclose this fact to the relevant third parties.

When this decision takes effect

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

²² Section 52(9).

²³ Sections 50(3F) and 30(3FA).

²⁴ Sections 49P(5), 50(3), 50(3AB) and 52(3).

Annexure 1 – Schedule of Documents

No.	Date of Document	Description of document	Agency decision	OVIC decision	OVIC comments
1	[Date]	[Document title]	<p>Released in part Sections 31(1)(c), 33(1), 35(1)(b), 38</p>	<p>Release in part Sections 31(1)(c), 33(1), 38, 25</p> <p>No further information in the document is to be released.</p>	<p>The Applicant seeks review of [specified pages] only.</p> <p>Section 38: I am satisfied the document contains information that is exempt from release under section 38 in conjunction with sections 41(1), 191(1) and 209(1) of the CYF Act. I am also satisfied another secrecy provision applies in relation to which I am satisfied no further information can be disclosed in accordance with section 27(2)(a) on grounds to do so would disclose exempt information.</p> <p>Section 31(1)(c): I am satisfied the document contains information that is exempt from release under section 31(1)(c).</p> <p>Section 33(1): I am satisfied the document contains information that is exempt from release under section 33(1).</p> <p>Section 35(1)(b): Given my decision on the exemptions listed above, I have not considered the application of section 35(1)(b) to the same information.</p> <p>Section 25: The Agency provided the Applicant with an edited copy of the document with exempt information deleted in accordance with section 25. Accordingly, I am satisfied it remains practicable to provide the Applicant with an edited copy of the document.</p>

2	[Date]	Confidential Court Report	Released in part Section 33(1)	Not subject to review	
3	[Date]	[Document title]	Released in part Sections 31(1)(c), 33(1), 35(1)(b), 38	Release in part Sections 31(1)(c), 33(1), 38, 25 The information the Agency exempted is to remain deleted as it is exempt information, except for the fifth dot point on page 16 which is to be released.	<p>The Applicant seeks review of [specified pages] only.</p> <p>Section 38: See comments for Document 1. However, I am satisfied certain information can be released without disclosing the identity of a notifier or allowing their identity to be inferred from the subject matter of the notification.</p> <p>Section 31(1)(c): See comments for Document 1. However, I am satisfied certain information to which the Agency refused access can be disclosed without identifying a confidential source information or allowing their identity to be ascertained.</p> <p>Section 33(1): See comments for Document 1.</p> <p>Section 35(1)(b): I have considered the application of section 35(1)(b) to the fifth dot point on page [number] only. I am not satisfied the first limb of the exemption under section 35(1)(b) is met, as the information was not communicated to the Agency. Rather, it is an opinion provided by Child Protection staff. Accordingly, the first limb of section 35(1)(b) is not met, and the</p>

					document is not exempt from release under section 35(1)(b). Section 25: I am satisfied it is practicable to provide the Applicant with an edited copy of the document with exempt information deleted in accordance with section 25.
4	[Date]	[Document title]	Released in part Sections 31(1)(c), 33(1), 35(1)(b), 38	Release in part Sections 31(1)(c), 33(1), 38, 25 No further information in the document is to be released.	The Applicant only seeks review of [specified pages]. Section 38: I am satisfied the document contains information that is exempt under section 38 in conjunction with the CYF Act. Section 31(1)(c): See comments for Document 1. Section 33(1): See comments for Document 1. Section 25: See comments for Document 1.
5	[Date]	[Document title]	Released in part Sections 31(1)(c), 33(1), 35(1)(b), 38	Release in part Sections 31(1)(c), 33(1), 38, 25 The information the Agency exempted is to remain deleted as it is exempt information, except for: (a) on page 3, the second dot point; (b) on page 10, line 5 from word 8, line 6,	The Applicant seeks review of [specified pages] only. Section 38: See comments for Document 3. Section 31(1)(c): See comments for Document 3. Section 33(1): See comments for Document 1. In addition, information in the seventh paragraph of page 5, and the last exemption on the bottom of page 6, which the Agency exempted under section 33(1), is exempt from release under sections 31(1)(c) and 38 rather than 33(1).

				<p>line 7 from words 1-9, lines 10 and 11;</p> <p>(c) on page 10, the first two lines exempted by the Agency under part 7.2 is to be released (the last two lines of that section are to remain deleted);</p> <p>(d) on page 10, the information exempted under part 7.3 is to be released; and</p> <p>(e) on page 21, the sentence that starts in line 9 (inclusive of headings) is to be released.</p>	<p>Section 35(1)(b): I have considered the application of section 35(1)(b) to information that I am not satisfied is exempt from release under sections 31(1)(c) or 38 only.</p> <p>For certain information, I am not satisfied the first limb of the exemption is met, as it is not information that was communicated to the Agency. With respect to the remaining information that satisfies the first limb of the exemption, having considered the information that was released to the Applicant by the Agency, the time that has passed since the document was created, and the nature of the information when considered in the context of this matter, I am not satisfied the Agency would be impaired from obtaining similar information in the future. Accordingly, I am not satisfied disclosure of this information would be contrary to the public interest and it is not exempt from release under section 35(1)(b).</p> <p>Section 25: See comments for Document 3.</p>
6	[Date]	Confidential Court Report	Released in part Sections 31(1)(c), 33(1), 38	Not subject to review	
7	[Date]	[Document title]	Released in part Sections 31(1)(c), 33(1), 35(1)(b), 38	Release in part Sections 31(1)(c), 33(1), 38, 25	<p>The Applicant seeks review of [specified pages] only.</p> <p>Section 31(1)(c): See comments for Document 3.</p>

				<p>The information the Agency exempted is to remain deleted as it is exempt information, except for the sentence in line 19 on page 14, which is to be released.</p>	<p>Section 38: See comments for Document 3.</p> <p>Section 33(1): See comments for Document 1. In addition, I am satisfied some of the information to which the Agency refused access under section 33(1) is exempt from release under sections 31(1)(c) and 38, rather than section 33(1).</p> <p>Section 35(1)(b): See comments for Document 5.</p> <p>Section 25: See comments for Document 3.</p>
8	[Date]	[Document title]	<p>Released in part Sections 31(1)(c), 33(1), 35(1)(b), 38</p>	<p>Release in part Sections 31(1)(c), 33(1), 38, 25</p> <p>The information the Agency exempted is to remain deleted as it is exempt information, except for:</p> <p>(a) on page 11, the fourth sentence only in the paragraph under first heading; and</p> <p>(b) on page 18, the second sentence, in the second last paragraph, with exception of the name an Agency officer.</p>	<p>The Applicant seeks review of [specified pages] only.</p> <p>Section 38: See comments for Document 3.</p> <p>Section 31(1)(c): See comments for Document 3.</p> <p>Section 33(1): See comments for Document 1.</p> <p>Section 35(1)(b): See comments for Document 5.</p> <p>Section 25: See comments for Document 3.</p>

9	[Date]	[Document title]	<p>Released in part Sections 31(1)(c), 33(1), 35(1)(b), 38</p>	<p>Release in part Sections 31(1)(c), 33(1), 38, 25</p> <p>The information the Agency exempted is to remain deleted as it is exempt information, except for, on page 11, the fourth sentence only in the paragraph under the second heading, which is to be released.</p>	<p>The Applicant seeks review of [specified pages] only.</p> <p>Section 31(1)(c): See comments for Document 3.</p> <p>Section 38: See comments for Document 3.</p> <p>Section 33(1): See comments for Document 1.</p> <p>Section 35(1)(b): See comments for Document 5.</p> <p>Section 25: See comments for Document 3.</p>
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