

Notice of Decision and Reasons for Decision

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| Applicant: | 'ET8' |
| Agency: | Department of Jobs, Precincts and Regions |
| Decision date: | 29 August 2022 |
| Exemption considered: | Section 33(1) |
| Citation: | 'ET8' and Department of Jobs, Precincts and Regions (Freedom of Information) [2022] VICmr 208 (29 August 2022) |

FREEDOM OF INFORMATION – Game Management Authority – executive officers – members of agency's executive – conflict of interest forms – personal affairs information of third parties – disclosure not unreasonable

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

Notice of Decision

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

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

While I am satisfied certain information in the documents is exempt from release under section 33(1), I have granted access to additional information where I am satisfied it is not exempt information.

As I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with irrelevant and exempt information deleted in accordance with section 25, access to 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
29 August 2022

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to certain documents concerning conflict of interest information for staff of the Game Management Authority and the Agency.
2. Following consultation with the Agency, the Applicant clarified the terms of their request to:

Conflict of Interest (COI) forms submitted by staff, in particular all staff who currently work in the area(s) that are developing or implementing hunting policy.
3. The Agency identified 23 documents falling within the terms of the Applicant's request and refused access to the documents in full under sections 33(1) and 35(1)(b). 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. The Applicant advised they seek the names of executive Agency officers only in relation to their request.
6. I have examined a copy of the documents subject to review.
7. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
8. During the review the Agency advised it no longer seeks to rely on section 35(1)(b).
9. I have considered all communications and submissions received from the parties.
10. 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.
11. 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 section 33(1) – Personal affairs information of a third party

12. 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**);¹ and
 - (b) such disclosure would be 'unreasonable'.

¹ Sections 33(1) and 33(2).

Do the documents contain the personal affairs of any third party?

13. A document will disclose personal affairs information of a third party if it is capable, either directly or indirectly, of identifying a particular individual whose personal affairs information is disclosed.
14. As the nature of disclosure under the FOI Act is unrestricted and unconditional, this is to be interpreted by the capacity of any member of the public to potentially identify a third party.²
15. The documents are conflict of interest forms completed by Agency officers.
16. As the applicant does not seek access to the names of non-executive Agency officers, this information is irrelevant information for the purpose of section 25, which is discussed below.
17. In relation to forms that relate to non-executive Agency officers, once their names are removed from the documents, they do not contain any other information that would identify the relevant individuals. Therefore, I am satisfied those documents do not contain any personal affairs information.
18. The remaining personal affairs information subject to review is the names of the two executive Agency officers and a small amount of information recorded in a conflict of interest form.

Would disclosure of the personal affairs information be unreasonable?

19. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the interest in protecting a third party's personal privacy in the circumstances.
20. Whether the personal affairs information of agency officer, regardless of their level of seniority, is exempt from release under section 33(1) must be considered on a case by case basis and in the context of the particular circumstances of each matter.³
21. In *Victoria Police v Marke*,⁴ the Victorian Court of Appeal held there is 'no absolute bar to providing access to documents which relate to the personal affairs of others', and 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'. This involves having regard to any matter that may 'relevantly, logically, and probatively' bear upon whether disclosure of personal affairs information of any person would be unreasonable in its own context.⁵
22. Further, the Court of Appeal held, '[t]he protections 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 to a lesser or greater degree'.⁶
23. 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

As stated above, the personal affairs information in the documents are the names of two executive Agency officers and a small amount of information regarding a recruitment process.

² *Hanson v Department of Education & Training* [2007] VCAT 123.

³ *AOZ v JLV (Review and Regulation)* [2019] VCAT 31 at [101].

Coulson v Department of Premier and Cabinet (Review and Regulation) [2008] VCAT 229.

⁴ [2008] VSCA 1653 at [42].

⁵ *Ibid* at [98].

⁶ *Ibid* at [79].

In relation to the names of the executive Agency officers, subject to an agency demonstrating special circumstances apply, I consider it would not be unreasonable to disclose certain personal details of individuals such as their name or position title where the information appears in relation to their professional role and in the course of their daily duties.

In relation to the remaining information, while it could be considered sensitive in nature, I consider the circumstances described are not uncommon as part of a robust conflict of interest process in the interest of ensuring integrity and accountability of executive level and other GMA employees.

Considering a majority of the names have been deleted, and the nature of the remaining information, I do not consider the documents contain sensitive information.

(b) The circumstances in which the information was obtained

The information was obtained as part of a process in identifying and managing any actual or perceived conflicts of interest that may arise with respect to GMA employees.

The Agency advises '[t]he reasons employees complete COI forms include:

- Accepting a new role or position of employment within the department,
- Being a member of a recruitment selection panel,
- Being a panel member for a new procurement project,
- Being a panel member as part of a new grant process or funding program/round,
- Being a panel member for a project that does not fit within the recruitment/procurement/grant considerations; or
- To declare any additional employment outside of the VPS

I note the privacy statement on the forms, including the advice the information will be treated confidentially. While I have given weight to the Agency's privacy statement, it is not a determinative factor in my consideration of whether disclosure would be unreasonable under the FOI Act.

(c) The Applicant's interest in the information

The FOI Act provides a general right of access that can be exercised by any person, regardless of their motive or purpose for seeking access to a document. However, the reasons why an applicant seeks access to a document is a relevant consideration in determining whether disclosure would be unreasonable under section 33(1).⁷

The Applicant seeks access to information about Agency officers to confirm if any GMA executive officers are 'hunters or members of hunting clubs'. [redacted]

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

While the documents do not contain a significant amount of information, I consider there is a general public interest in disclosure of information regarding the way in which an agency manages conflicts of interest.

In my view, such transparency is important in building public trust that government agencies have effective processes to identify and appropriately manage any employee conflicts of interest.

⁷ *Victoria Police v Marke* [2008] VSCA 218 at [104].

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

The FOI Act does not place any restrictions on an applicant's use or dissemination of documents obtained under FOI.⁸

Accordingly, I have considered the likelihood of the personal affairs information in the document being further disseminated, if disclosed, and the effects broader disclosure of this information would have on the privacy of the relevant third parties.

There is no information before me as to whether the Applicant intends to further disseminate the documents. In any case, I consider the documents do not contain sufficient information such that its disclosure would have any negative impact on the two executive Agency officers named in the documents.

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

The Agency did not consult with the individuals concerned as required under section 33(2B).

Given the nature of the information in the documents, it is not apparent whether the individuals concerned would or would not object to disclosure.

In any case, the views on the disclosure of a third party's personal affairs information, while a relevant consideration, is not determinative.

(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 must consider whether the disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person.⁹ There is no information before me indicating this is a factor in this matter.

24. Having weighed up the above factors, on balance, I have determined certain personal affairs information of third parties named in the documents is not exempt from release under section 33(1).
25. My decision in relation to section 33(1) is set out in the schedule at **Annexure 1**.

Section 25 – Deletion of exempt or irrelevant information

26. 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.
27. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹⁰ and the effectiveness of the deletions. Where

⁸ Ibid at [68].

⁹ Section 33(2A).

¹⁰ *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].

deletions would render a document meaningless, they are not 'practicable' and release of the document is not required under section 25.¹¹

28. I have considered the effect of deleting irrelevant and exempt information from the documents. In my view, it is practicable for the Agency to delete the irrelevant and exempt information, because it would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

29. On the information before me, I am not satisfied certain information in the documents is exempt from release under section 33(1).
30. As I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with irrelevant and exempt information deleted in accordance with section 25, access is granted in part.
31. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

Review rights

32. 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.¹²
33. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹³
34. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁴
35. 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.
36. 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.¹⁵

Third party review rights

37. As I have determined to release documents that contain the personal affairs information of persons other than the Applicant, 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.¹⁶
38. In this case, I am satisfied it is practicable to notify the relevant third parties of their review rights and confirm they will be notified of my decision.

When this decision takes effect

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

¹¹ *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].

¹² The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹³ Section 52(5).

¹⁴ Section 52(9).

¹⁵ Sections 50(3F) and 50(3FA).

¹⁶ 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] | Conflict of Interest (COI) Declaration – [name] | 3 | Refused in full Sections 33(1), 35(1)(b) | Release in part Section 25 The document is to be released except for the following information which is irrelevant and is to be deleted in accordance with section 25: <ul style="list-style-type: none"> the second name that appears at the end of page 3. | Section 33(1): I am satisfied it would be not unreasonable to disclose certain personal affairs information in this document for the reasons outlined in the Notice of Decision. Section 25: The names of non-executive agency officers are irrelevant to the request. I am satisfied it is practicable to provide the Applicant with an edited copy of this document with exempt information deleted in accordance with section 25. |
| 2. | [Date] | COI Declaration – [Named Person [number]] – [third-party] | 3 | Refused in full Section 33(1) | Release in part Section 25 The document is to be released except for the following information which is irrelevant and is to be deleted in accordance with section 25: <ul style="list-style-type: none"> the name on page 1 and the first name on page 3. | Section 33(1): See comments for Document 1. Section 25: See comments for Document 1. |
| 3. | [Date] | COI Declaration – [Named Person | 3 | Refused in full Section 33(1) | Release in part Section 25 | Section 33(1): See comments for Document 1. |

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| | | [number] – [third-party] | | | <p>The document is to be released except for the following information which is irrelevant and is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the name on page 1 and the first name on page 3. | Section 25: See comments for Document 1. |
| 4. | [Date] | COI Declaration – [Named Person [number]] – [third-party] | 3 | Refused in full Section 33(1) | <p>Release in part Section 25</p> <p>The document is to be released except for the following information which is irrelevant and is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the name on page 1 and the first name on page 3. | <p>Section 33(1): See comments for Document 1.</p> <p>Section 25: See comments for Document 1.</p> |
| 5. | [Date] | COI Declaration – [Named Person [number]] – [third-party] | 3 | Refused in full Section 33(1) | <p>Release in part Sections 25</p> <p>The document is to be released except for the following information which is irrelevant and is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the name on page 1 and the first name on page 3. | <p>Section 33(1): See comments for Document 1.</p> <p>Section 25: See comments for Document 1.</p> |

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| 6. | [Date] | COI Declaration – [Named Person [number]] – [third-party] | 3 | Refused in full Section 33(1) | Release in part Section 25 The document is to be released except for the following information which is irrelevant and is to be deleted in accordance with section 25: <ul style="list-style-type: none"> the name on page 1 and the first name on page 3. | Section 33(1): See comments for Document 1. Section 25: See comments for Document 1. |
| 7. | [Date] | COI Declaration – [Named Person [number]] – [third-party] | 3 | Refused in full Section 33(1) | Release in part Sections 33(1), 25 The document is to be released except for the following information which is irrelevant and is to be deleted in accordance with section 25: <ul style="list-style-type: none"> the name on page 1 and the first name on page 3. | Section 33(1): See comments for Document 1. Section 25: See comments for Document 1. |
| 8. | [Date] | COI Declaration – [Named Person [number]] – [third-party] | 3 | Refused in full Section 33(1) | Release in part Section 25 The document is to be released except for the following information which is irrelevant | Section 33(1): See comments for Document 1. Section 25: See comments for Document 1. |

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| | | | | | <p>and is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the names throughout the document. | |
| 9. | [Date] | COI Declaration – [Named Person [number]] – [third-party] | 3 | Refused in full Section 33(1) | <p>Release in part Section 25</p> <p>The document is to be released except for the following information which is irrelevant and is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the names throughout the document. | <p>Section 33(1): See comments for Document 1.</p> <p>Section 25: See comments for Document 1.</p> |
| 10. | [Date] | COI Declaration – [Named Person [number]] – [third-party] | 3 | Refused in full Section 33(1) | <p>Release in part Section 25</p> <p>The document is to be released except for the following information which is irrelevant and is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the name on page 1 and the first name on page 3. | <p>Section 33(1): See comments for Document 1.</p> <p>Section 25: See comments for Document 1.</p> |
| 11. | [Date] | COI Declaration – [name] | 3 | Refused in full Section 33(1) | <p>Release in part Section 25</p> | <p>Section 33(1): See comments for Document 1.</p> |

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| | | | | | <p>The document is to be released except for the following information which is exempt under section 33(1) and is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the name on page 1 and the second name on page 3. | Section 25: See comments for Document 1. |
| 12. | [Date] | COI Declaration – [Named Person [number]] – [third-party] | 3 | Refused in full Section 33(1) | <p>Release in part Section 25</p> <p>The document is to be released except for the following information which is irrelevant and is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the names throughout the document. | <p>Section 33(1): See comments for Document 1.</p> <p>Section 25: See comments for Document 1.</p> |
| 13. | [Date] | COI Declaration – [Named Person [number]] – [third-party] | 3 | Refused in full Section 33(1) | <p>Release in part Section 25</p> <p>The document is to be released except for the following information which is irrelevant and is to be deleted in accordance with section 25:</p> | <p>Section 33(1): See comments for Document 1.</p> <p>Section 25: See comments for Document 1.</p> |

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| | | | | | <ul style="list-style-type: none"> the names throughout the document. | |
| 14. | [Date] | COI Declaration – [Named Person [number]] – [third-party] | 3 | Refused in full Section 33(1) | <p>Release in part Sections 33(1), 25</p> <p>The document is to be released except for the following information which is irrelevant and is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the name on page 1 and the first name on page 3. | <p>Section 33(1): See comments for Document 1.</p> <p>Section 25: See comments for Document 1.</p> |
| 15. | [Date] | COI Declaration – [Named Person [number]] – [third-party] | 3 | Refused in full Section 33(1) | <p>Release in part Section 25</p> <p>The document is to be released except for the following information which is irrelevant and is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the name on page 1 and the first name on page 3. | <p>Section 33(1): See comments for Document 1.</p> <p>Section 25: See comments for Document 1.</p> |
| 16. | [Date] | COI Declaration – [Named Person [number]] – [third-party] | 3 | Refused in full Section 33(1) | <p>Release in part Section 25</p> <p>The document is to be released except for the following</p> | <p>Section 33(1): See comments for Document 1.</p> <p>Section 25: See comments for Document 1.</p> |

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| | | | | | <p>information which is irrelevant and is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the names throughout the document. | |
| 17. | [Date] | COI Declaration – [name] | 3 | Refused in full Section 33(1) | <p>Release in part Section 25</p> <p>The document is to be released except for the following information which is exempt under section 33(1) and is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the name on the first page. | <p>Section 33(1): See comments for Document 1.</p> <p>Section 25: See comments for Document 1.</p> |
| 18. | [Date] | COI Declaration – [Named Person [number]] – [third-party] | 3 | Refused in full Section 33(1) | <p>Release in part Section 25</p> <p>The document is to be released except for the following information which is irrelevant and is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the name on page 1 and the first name on page 3. | <p>Section 33(1): See comments for Document 1.</p> <p>Section 25: See comments for Document 1.</p> |

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| 20. | [Date] | COI Declaration – [Named Person [number]] – [third-party] | 3 | Refused in full Section 33(1) | Release in part Section 25 The document is to be released except for the following information which is irrelevant and is to be deleted in accordance with section 25: <ul style="list-style-type: none"> the name on page 1 and the first name on page 3. | Section 33(1): See comments for Document 1. Section 25: See comments for Document 1. |
| 21. | [Date] | COI Declaration – [Named Person [number]] – [third-party] | 3 | Refused in full Section 33(1) | Release in part Section 25 The document is to be released except for the following information which is irrelevant | Section 33(1): See comments for Document 1. Section 25: See comments for Document 1. |

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| 22. | [Date] | COI Declaration – [Named Person [number]] – [third-party] | 3 | Refused in full Section 33(1) | <p>Release in part Section 25</p> <p>The document is to be released except for the following information which is irrelevant and is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the name on page 1 and the first name on page 3. | <p>Section 33(1): See comments for Document 1.</p> <p>Section 25: See comments for Document 1.</p> |
| 23. | [Date] | COI Declaration – [Named Person [number]] – [third-party] | 3 | Refused in full Section 33(1) | <p>Release in part Section 25</p> <p>The document is to be released except for the following information which is irrelevant and is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the names throughout the document. | <p>Section 33(1): See comments for Document 1.</p> <p>Section 25: See comments for Document 1.</p> |