

## Notice of Decision and Reasons for Decision

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Applicant:	'EJ5'
Agency:	Department of Families, Fairness and Housing
Decision date:	13 April 2022
Exemptions and provisions considered:	Sections 25A(5), 31(1)(a), 31(1)(c), 33(1), 35(1)(b) and 38 of the <i>Freedom of Information Act 1982</i> (Vic) in conjunction with sections 41(1), 191(1) and 209(1) of the <i>Children Youth and Families Act 2005</i> (Vic)
Citation:	'EJ5' and Department of Families, Fairness and Housing (Freedom of Information) [2022] VICmr 114 (14 April 2022)

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FREEDOM OF INFORMATION – Child Protection documents – refusal to process an FOI request – prejudice proper administration of the law – prohibited disclosure of confidential information – 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 the requirements for the application of section 25A(5) are met in that all documents to which the Applicant seeks access, should any exist, would be exempt in full.

Accordingly, I have decided to refuse to grant access to the requested documents in accordance with the Applicant's request under section 25A(5).

My reasons for decision follow.

**Sven Bluemmel**  
Information Commissioner

13 April 2022

## Reasons for Decision

### Background to review

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

[year] until to current. Entire record held on my child. As well as the entire record I want all duplicates. As well as the entire record I want all the drafts.
2. The request was clarified to seek access to the child protection records of the Applicant's child.
3. The Agency refused to grant access to the documents in accordance with the Applicant's request under section 25A(5) on grounds all documents, should any exist, would be exempt under sections 31(1)(a), 31(1)(c), 33(1), 35(1)(b) and 38. In relation to section 38, the Agency relies upon sections 191(1) and 209(1) of the *Children Youth and Families Act 2005* (Vic) (**CYF Act**).
4. The Agency's decision letter sets out the reasons for its decision.

### Review application

5. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered all communications and submissions received from the parties.
8. In undertaking my review, I have had regard to the object of the FOI Act, which is to create a general right of access to information in the possession of the Government or other public bodies, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.
9. I note Parliament's intention the FOI Act must be interpreted so as to further the object of the Act and any discretions conferred by the Act must be exercised, as far as possible, so as to facilitate and promote the disclosure of information in a timely manner and at the lowest reasonable cost.

### Review of section 25A(5) – Refusal to grant access to documents

10. Section 25A(5) allows an agency to refuse to grant access to documents in accordance with an FOI request:
  - (a) if it is apparent from the nature of the request all documents sought would be exempt under the FOI Act; and
  - (b) where it is not possible to provide the applicant with an edited copy of the documents with exempt information deleted, or it is clear the applicant does not seek an edited copy of the documents.
11. Importantly, an agency is not required to identify any or all documents relevant to a request or to specify any relevant exemption under which a document would be exempt.
12. The refusal power under section 25A(5) is 'carefully circumscribed'.<sup>1</sup> Therefore, I must be satisfied the following three requirements are met, which limit its application:

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<sup>1</sup> *Knight v Corrections Victoria* [2010] VSC 338 at [37].

- (a) First, the exempt nature of the documents sought must be objectively apparent from the terms of the applicant's request. The 'nature' of documents refers to their inherent or essential quality or character.
- (b) Second, it must be apparent from the terms of the applicant's request that all documents relevant to the request would be exempt.
- (c) Third, it must be apparent from:
  - i. the nature of the documents, as described in the applicant's request, that no obligation would arise under section 25 for the agency to grant access to an edited copy of a document with exempt or irrelevant information deleted; or
  - ii. the applicant's request, or through consultation with the applicant, they do not seek access to an edited copy of a document.

***What is the essential character of the documents requested?***

- 13. It is apparent from the terms of the Applicant's request that they seek access to Child Protection documents concerning their child.
- 14. Such documents come into existence when the Agency is notified, or otherwise becomes aware, of a child who is at risk of harm, or where there are concerns about a child's wellbeing or other safety concerns. The CYF Act provides for receipt by the Agency of voluntary information reports from any person and mandatory reporting by persons in certain professions specified in the CYF Act.
- 15. Parliament has determined strict parameters apply to what information can be disclosed in relation to Child Protection matters, including a prohibition on identifying a person who notifies the Agency about any child protection concerns (**a notifier**) and any subsequent Agency investigations into or action taken to address any concerns. The CYF Act also prohibits disclosure of any information likely to lead to the identification of a notifier, except in certain limited circumstances where disclosure is authorised.
- 16. I accept Child Protection documents are in the name of the client to whom they relate. In this case, that client is the Applicant's child. The involvement of Child Protection concerns the care provided to a child who is, has been or may become a client of the Agency. As such, the documents requested, should any exist, would pertain to Child Protection matters in relation to a child.
- 17. Accordingly, I am satisfied the essential quality of the documents, as described by the Applicant's request, should any exist, would be documents relating to the Applicant's child and any involvement with or by Child Protection.

***Would all the documents requested, as described by the Applicant in their request, be exempt?***

- 18. As detailed above, in refusing access to documents under section 25A(5), the Agency determined the documents, should any exist, would be exempt under sections 31(1)(a), 31(1)(c), 33(1), 35(1)(b) and 38. I will first consider the application of section 38 to the requested documents given the operation of the secrecy provisions under the CYF Act.

**Section 38 – Documents to which secrecy or confidentiality provisions apply**

- 20. 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 requested by an applicant; and

- (c) the enactment must prohibit persons, referred to in the enactment, from disclosing specific kinds of information whether absolutely or subject to exceptions or qualifications.
21. For section 38 to apply to an enactment, it must be formulated with such precision that it specifies the actual information sought to be withheld.
  22. The Agency relies on section 38 in conjunction with sections 41, 191(1) and 209(1) of the CYF Act and advises:

Sections 41, 191 and 209 of the CYF Act prohibit any individual from disclosing the identity, or any information likely to lead to the identification of a notifier/reporter, or person who gave information in confidence to the department during the investigation of the report. This includes not only the report or record of confidential information itself but also any subsequent documents created containing details of the report or confidential information. The substantial financial penalty associated with these provisions highlights the legislature's intention that this information should remain protected.

*Application of the confidentiality provisions in the CYF Act*

23. 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.

- (1A) If a referral is made to a community-based child and family service under section 31 or 32, a person (other than the person who made it) must not disclose to any person other than the Secretary or a community-based child and family service –
  - (a) the name of the person who made the referral; and
  - (b) any information that is likely to lead to the identification of the person who made the referral.

Penalty: 60 penalty units.

- (2) Subsections (1) and (1A) do not apply if the person who made the report or referral –
  - (a) gives written consent to the Secretary; or
  - (b) gives written or oral consent to the community based-child and family service.
- (3) To avoid doubt, the name of a person who made a report or who made a referral may shared between–
  - (a) the Secretary and any community-based child and family service; and
  - (b) a community-based child and family service and any other community-based child and family service.

24. Section 191 of the CYF Act provides:

**191 Confidentiality**

- (1) If a report referred to in section 190(1) is made, a person (other than the person who made it or a person acting with the written consent of the person who made it) must not disclose to any person other than a protective intervener or a community-based child and family service in accordance with subsection (4) –
  - (a) the name of the person who made the report; or
  - (b) any information that is likely to lead to the identification of the person who made the report.

Penalty: 10 penalty units

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

Penalty: 60 penalty units

25. Section 190(1) of the CYF Act refers to reports made under section 183 (a report to a ‘protective intervener’ on reasonable grounds a child is in need of protection); section 184 (a mandatory report to the Secretary on reasonable grounds a child is in need of protection made by a person in the course of practising their profession or carrying out the duties their office, position or employment); reports determined to be a protective intervention report under section 34, and reports under section 185 a child is in need of therapeutic treatment.
26. ‘Protective intervener’ is defined in section 181 of the CYF Act as, ‘the Secretary’ [of the Agency] and ‘all police officers’.
27. Section 209 of the CYF Act provides:

**209 Confidentiality**

- (1) A protective intervener must not disclose to any person, other than to another protective intervener or to a person in connection with a court proceeding or to a person in connection with a review by [the Victorian Civil and Administrative Tribunal] VCAT—
  - (a) the name of a person who gave information in confidence to a protective intervener during the course of the investigation of the subject-matter of a protective intervention report; or
  - (b) any information that is likely to lead to the identification of a person referred to in paragraph (a)—

without the written consent of the person referred to in paragraph (a) authorisation by the Secretary.

Penalty: 10 penalty units

(2) The Secretary may only authorise the disclosure of information to a person under subsection (1) if the Secretary believes on reasonable grounds that the disclosure is necessary to ensure the safety and wellbeing of the child.

(3) In this section ***court proceeding*** includes a proceeding in the Family Court of Australia.

28. In summary, sections 41(1), 191(1) and 209(1) of the CYF Act prohibit the disclosure of the name of a person who provided child protection information to the Agency, as well as any information likely to lead to their identification, except in certain authorised circumstances.
29. The unauthorised disclosure of such information is an offence subject to penalties under the CYF Act. The financial penalties associated with these confidentiality provisions highlight Parliament's intention this information be protected and should not be disclosed.
30. I am satisfied the relevant sections of the CYF Act prohibit disclosure of the identity, or any information likely to lead to the identification of a notifier/reporter or person who gives or has given information in confidence to the Agency for child protection purposes.
31. I acknowledge the Applicant states they have obtained access to documents via subpoena, and it is their view that information concerning a notifier is minimal and that removal information about the notifier would not render the documents meaningless.
32. However, sections 41(1), 191(1) and 209(1) of the CYF Act includes not only the report or record of confidential information itself, but also any subsequent documents created containing details of the report or associated confidential information.
33. On the information before me, I am satisfied:
- (a) the CYF Act is an enactment in force, for the purposes of section 38 of the FOI Act;
  - (b) the documents sought by the Applicant, should any exist, would contain specific information the disclosure of which is prohibited under sections 41(1), 191(1) and 209(1) of the CYF Act;
  - (c) Agency officers are prohibited from disclosing documents that would fall within the terms of the Applicant's request; and
  - (d) none of the authorised exceptions for disclosure referred to in sections 41, 191 and 209 of the CYF Act apply in this case.
34. Accordingly, on the information before me and having considered the terms of the Applicant's request, I am satisfied the requested documents, should any exist, would contain information exempt under section 38 of the FOI Act in conjunction with sections 41(1), 191(1) and 209(1) of the CYF Act.

*Section 31(a) – Disclosure of documents that would prejudice the enforcement or proper administration of the law*

35. Sections 31(1)(a) provides:

- (1) Subject to this section, a document is an exempt document if its disclosure under this Act would, or would be reasonably likely to –
- (a) prejudice the investigation of a breach or possible breach of the law or prejudice the proper administration of the law in a particular instance;

36. ‘Reasonably likely’ means there is a real chance of an event occurring; it is not fanciful or remote.<sup>2</sup>
37. ‘Prejudice’ means to hinder, impair or undermine and includes actual prejudice as well as impending prejudice.<sup>3</sup>
38. ‘In a particular instance’ does not require a single specific investigation. This phrase can encompass specific, identified aspects of the law, the administration of the law or an investigation of a breach or potential breach of the law.<sup>4</sup>
39. Section 31(1)(a) may apply in relation to either a particular investigation, or the enforcement or proper administration of the law more generally.
40. The Agency’s decision letter states:

Release of certain information about a child protection matter is likely to prejudice the investigation or enforcement of the law, specifically in relation to the *Children, Youth and Families Act 2005 (Vic)*. Releasing information about child protection investigative processes would likely prejudice any follow up or investigation conducted by the department in relation to a concern about a child’s wellbeing.

41. In relation to whether disclosure would be reasonably likely to prejudice the investigation of a breach or possible breach of the law, the Agency submits:

Disclosure of the documents to the applicant would therefore be reasonably likely to prejudice Child Protection’s investigation of any current or future breaches of the CYF Act relating to the child. If notification or investigation information became known to a person who was responsible for the care of a child, committed a crime against a child, or was in breach of a Child Protection Order or Intervention Order, that person would know the information that the department has obtained. It would make clear what was known to the department and also what evidence may lead to future investigation, or what evidence, if any, has not yet been uncovered or provided to the department. A person could use that information to avoid further child protection involvement. Even seemingly innocuous information could be extremely useful to any person wanting to modify his or her behaviour to prepare an explanation in the event they were investigated due to protective concerns.

... the department must be able to properly investigate breaches or possible breaches of the law and administer and enforce the law in regards to child protection cases. Therefore, it is in the best interests of children that the department is able to carry out these obligations.

42. In relation to whether disclosure would be reasonably likely to prejudice the Agency’s enforcement and administration of the CYF Act, the Agency submits:

... the entire child protection process should be viewed as part of the enforcement and administration of the CYF Act, and that release of child protection documents would be reasonably likely to prejudice the department’s enforcement or proper administration of the CYF Act in relation to the child.

The child protection process is largely initiated by notifications, without which the department could not fulfill its duty to protect children. Notifications are essential to ensure children at risk are protected and are a fundamental source of information to facilitate the proper administration of the CYF Act. If notification

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<sup>2</sup> *Bergman v Department of Justice Freedom of Information Officer* [2012] VCAT 363 at [65], quoting *Binnie v Department of Agriculture and Rural Affairs* [1989] VR 836.

<sup>3</sup> *Ibid*, *Bergman* at [66], referring to *Sobh v Police Force of Victoria* [1994] VicRp 2; [1994] 1 VR 41 (Nathan J) at [55].

<sup>4</sup> *Cichello v Department of Justice (Review and Regulation)* [2014] VCAT 340 at [24].

details were disclosed, particularly to the person about whom the notification was made, it is highly likely that people would be reluctant to make notifications in the future.

Disclosure of notifier details would impact the department's ability to obtain similar information in future, which would seriously prejudice the department's ability to enforce and administer the CYF Act. As noted above, notification details would be contained throughout the documents sought by the applicant.

Once a notification is made, it triggers a number of processes that are administered and enforced under the CYF Act, such as investigations, assessments, and in some cases, court proceedings to place children at risk of harm in more suitable accommodation. The department submits that it is consistent with the authorities to find that those activities do form part of the administration or enforcement of the law for the purposes of section 31(1)(a) of the Act. For example, the decision of *Anderson v Community Services Victoria*<sup>5</sup> found that the *Children and Young Person's Act 1989* constitutes part of the administration of the law and as such, documents disclosing the identity of a confidential source could not be disclosed. The CYF Act replaced the *Children and Young Person's Act 1989* in 2005. In addition, in *RFJ v Victoria Police FOI Division*<sup>6</sup> the Tribunal held that disclosure of a collection of investigation documents would be reasonably likely to prejudice both an investigation and the enforcement of the law in respect of the matters subject to investigation.

Should certain information be released there is also a risk that methods and processes employed by the department during child protection investigations would be exposed. This would impede the department's ability to properly administer the various obligations and duties imposed pursuant to the CYF Act.

The department submits that the best interests of children outweigh the applicant's interest in obtaining the documents in this instance.

43. I am satisfied any documents falling within the terms of the Applicant's request, should any exist, would have been prepared in the course of and for the purpose of the Agency carrying out its Child Protection functions under the CYF Act. This role includes the type of monitoring and enforcement activities with which section 31(1)(a) is concerned.
44. Accordingly, on the information before me and given the nature of the requested documents, I am satisfied, should any documents exist, they would be exempt under section 31(1)(a).

Section 31(1)(c) – Disclosure of documents that would disclose a confidential source of information in relation to the administration of the law

45. Section 31(1)(c) provides (subject to this section) a document is exempt if its disclosure 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.
46. The exemption under section 31(1)(c) is concerned with protecting the identity of confidential sources of information and their provision of information to an agency.
47. The Agency's decision letter states:

Child protection investigations are sensitive and confidential. During an investigation the department relies upon information gathered from various sources within the community, including children and their immediate families. The department has an obligation to protect the identity of a person who has made a report, regardless of whether any concerns are substantiated.

Examples of exempt information under this section include dates on which reports were made as well as identifying information regarding any person providing information during the investigation of a child protection matter.

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<sup>5</sup> (1993) 47 FOI Review 66.

<sup>6</sup> [2013] VCAT 1267.



48. I am satisfied any information obtained by the Agency from third parties during a Child Protection investigation would have been provided with an expectation of confidentiality.
49. Further, I am of the view any documents falling in the scope of the Applicant's request would contain information that would identify various individuals who, either directly or indirectly, provided information to Child Protection in confidential circumstances and in relation to the Agency's enforcement and administration of the CYF Act.
50. The disclosure of such information would, in my view, impair the effectiveness of the Agency's ability to administer Child Protection services in the future. This includes the disclosure of any notifier named in a Child Protection document, any information provided in confidence by a notifier or other person and any information about the assessments and decisions made by Agency officers.
51. I acknowledge the Applicant's personal interest in obtaining access to the requested documents, should any exist, as detailed in the supporting submission provided. However, the nature and purpose of the Child Protection scheme is of such importance to the protection and welfare of children that Parliament has determined strict parameters apply to what information can be released in relation to Child Protection matters. This includes the names and identities of any person who notifies the Agency about child protection concerns and any subsequent Agency investigation into or action taken to address any such concerns. Such parameters are set out in, and comprehensively regulated under the CYF Act.
52. Accordingly, I am satisfied such information would be exempt from release under section 31(1)(c). In my view, as discussed above, this information would also be exempt under section 38.

Section 33(1) – Personal affairs information of a third party

53. The Agency determined the documents sought by the Applicant, if they existed, would also be exempt in full under section 33(1).
54. A document is exempt under section 33(1) if two conditions are satisfied:
  - (a) disclosure of a document under the FOI Act would involve the disclosure of information relating to the 'personal affairs' of a person other than an applicant (**a third party**);<sup>7</sup> and
  - (b) such disclosure would be 'unreasonable'.

Would the documents contain personal affairs information?

55. Information relating to a person's 'personal affairs' includes information that identifies any person or discloses their address or location. It also includes any information from which such information may be reasonably determined.<sup>8</sup>
56. Personal affairs information that relates to an individual 'concerns or affects that person as an individual'.<sup>9</sup>
57. A third party's opinion or observations about another person's conduct can constitute information related to the third party's personal affairs.<sup>10</sup>

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<sup>7</sup> Sections 33(1) and (2).

<sup>8</sup> Section 33(9).

<sup>9</sup> *Hanson v Department of Education & Training* [2007] VCAT 123 at [9].

<sup>10</sup> *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].

58. I also note, the Victorian Civil and Administrative Tribunal (**VCAT**) has interpreted the scope of 'personal affairs information' broadly to include matters relating to health, private behaviour, home life or personal or family relationships of individuals.<sup>11</sup>
59. Based on the terms of the Applicant's request, I am satisfied the nature of the requested documents, should any exist, means they would contain the personal affairs information of third parties, including in relation to any Child Protection investigation.

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

60. The concept of 'unreasonable disclosure' involves determining whether the public interest in disclosure of official information is outweighed by the interest in protecting a person's right to privacy in the circumstances.
61. The proper application of section 33(1) involves consideration of 'all matters relevant, logical and probative to the existence of conditions upon which the section is made to depend'.<sup>12</sup>
62. I have given weight to the following factors in determining whether disclosure of the personal affairs information would be unreasonable in the circumstances:

(a) The nature of the personal affairs information

The documents, as described in the Applicant's request, should any exist, would be Child Protection documents and would contain confidential and sensitive personal affairs information regarding the Applicant's child, other third parties and the Agency's administration and enforcement of the CYF Act.

(b) The circumstances in which information was obtained by the Agency

The requested documents, should any exist, would have been obtained by the Agency during its administration and enforcement of the CYF Act.

I am of the view any third party who provided personal affairs information to the Agency would have done so on the understanding the information was collected for the primary purpose of the Agency carrying out its Child Protection functions under the CYF Act.

In this regard, I have also taken into account the nature of disclosure under the FOI Act which does not place any restrictions on an applicant's use or dissemination of documents obtained under FOI.<sup>13</sup> This is in contrast to documents to which a party to a court or tribunal proceeding is granted access by the court or tribunal, which will have the power to place restrictions as to what and how sensitive information may be disclosed to non-parties to the proceeding.

(c) The Applicant's interest in the information and whether their purpose for seeking the information is likely to be achieved

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.<sup>14</sup>

I appreciate the Applicant seeks access to all information concerning their child.

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<sup>11</sup> *Re F and Health Department* (1988) 2 VAR 458 as quoted in *RFJ v Victoria Police FOI Division* [2013] VCAT 1267 at [103].

<sup>12</sup> *Victoria Police v Marke* [2008] VSCA 218 at [104].

<sup>13</sup> *Ibid* at [68].

<sup>14</sup> *Ibid* at [104].

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

I acknowledge the Applicant's personal interest in seeking access to the requested documents. However, I am not satisfied any public interest would be promoted by disclosure of the third parties' personal affairs information to the Applicant.

Rather, I am of the view the public interest lies in ensuring the protection and wellbeing of children, through ensuring the Agency can receive information and conduct investigations under the CYF Act in connection with its Child Protection functions.

If information concerning Child Protection notifications and investigations conducted by the Agency were to be routinely disclosed through the FOI process, I am satisfied this would be likely to jeopardize the Agency's ability to conduct Child Protection investigations and ensure the safety and wellbeing of children and others in accordance with its statutory functions under the CYF Act.

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

As the Agency refused to grant access to documents in accordance with the Applicant's FOI request under section 25A(5), there is no information before me to suggest whether any individuals to whom the requested documents, should any exist, object or would be likely object to the release of the information.

Given the nature of the requested documents and the sensitive and personal affairs information in such documents, I am satisfied certain third parties named or identifiable from such documents would be reasonably likely to object to the release of their personal affairs information.

(f) 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.<sup>15</sup>

There is insufficient information before me to determine if this is a relevant consideration in this matter.

63. On balance, I am satisfied it would be unreasonable to disclose the personal affairs information of third parties in the circumstances of this matter, if any documents falling within the terms of the Applicant's request exist.

64. Accordingly, on the information before me, and given the nature of the requested documents, I am satisfied the documents, should any exist, would be exempt under section 33(1).

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

65. 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.

66. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>16</sup> and the effectiveness of the deletions. Where deletions

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<sup>15</sup> Section 33(2A).

<sup>16</sup> *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

would render the document meaningless, they are not 'practicable' and release of the document is not required under section 25.<sup>17</sup>

67. I have considered the effect of deleting exempt information from the documents. In my view, it would not be practicable for the Agency to delete the exempt information, because it would be likely to render the documents meaningless.

**Other exemption – section 35(1)(b)**

68. The Agency also relies on the exemption under section 35(1)(b). However, as I am satisfied the requested documents, should any exist, would be exempt under sections 31(1)(a), 31(1)(c), 33(1) and 38, it is not necessary for me to consider the application of section 35(1)(b).

**Conclusion**

69. On the information before me, I am satisfied the following requirements for the application of section 25A(5) are met:
- (a) the essential quality or character of the documents, as described in the Applicant's original request, should any exist, would be Child Protection documents, including, documents relating to a Child Protection notification and/or investigation;
  - (b) given the nature of the requested documents, I am satisfied the requested documents, should any exist, would be exempt under sections 31(1)(a), 31(1)(c), 33(1) and 38 of the FOI Act in conjunction with sections 41(1), 191(1) and 209(1) of the CYF Act; and
  - (c) it is not practicable to delete exempt information in the requested documents in accordance with section 25, as to do so would render them meaningless.
70. Accordingly, I have determined to refuse to grant access to the requested documents, should any exist, in accordance with the Applicant's request under section 25A(5).

**Review rights**

71. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.<sup>18</sup>
72. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>19</sup>
73. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>20</sup>
74. Information about how to apply to VCAT is available online at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au). Alternatively, VCAT may be contacted by email at [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au) or by telephone on 1300 018 228.
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.<sup>21</sup>

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<sup>17</sup> *Honeywood v Department of Human Services* [2006] VCAT 2048 [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140], [155].

<sup>18</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>19</sup> Section 52(5).

<sup>20</sup> Section 52(9).

<sup>21</sup> Sections 50(3F) and (3FA).

***When this decision takes effect***

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