

## Notice of Decision and Reasons for Decision

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Applicant: 'EL7'  
Agency: University of Melbourne  
Decision date: 19 May 2022  
Exemption considered: Section 30(1)

Citation: 'EL7' and University of Melbourne (*Freedom of Information*) [2022]  
VICmr 134 (19 May 2022)

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FREEDOM OF INFORMATION – academic appointment process – university appointment and promotion committee – nomination – internal working documents – deliberation and decision making – draft documents – disclosure contrary to public interest

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 in that I have determined to release additional information where I am satisfied the information is not exempt.

I am satisfied certain information in the documents is exempt from release under section 30(1).

Where I am satisfied it is practicable to provide the Applicant with an edited copy of a document with exempt information deleted in accordance with section 25, access to the document 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  
19 May 2022

## **Reasons for Decision**

### **Background to review**

1. The Applicant made a request to the Agency seeking access to [documents relating to the academic appointment process for a specific role]. [Request specifics redacted]
2. The Agency identified 29 documents falling within the terms of the Applicant's request and granted access to 14 documents in full and refused access to 14 documents in part and one document in full under sections 30(1) and 33(1). The Agency's decision letter sets out the reasons for its decision.

### **Review application**

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. The Applicant advised in their review application that they do not seek access to names, contact details and other identifying information of third parties that Agency exempted from release under section 33(1). The Applicant also does not seek access to certain parts of Documents 2.1 and 2.2. Accordingly, this information is irrelevant information for the purposes of section 25, which is discussed below.
5. I have examined a copy of the documents subject to review.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered all communications and submissions received from the parties.
8. In undertaking my review, I have had regard to the object of the FOI Act, which is to create a general right of access to information in the possession of the Government or other public bodies, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.
9. I note Parliament's intention the FOI Act must be interpreted so as to further the object of the Act and any discretions conferred by the Act must be exercised, as far as possible, so as to facilitate and promote the disclosure of information in a timely manner and at the lowest reasonable cost.

### **Review of exemptions**

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

10. Section 30(1) has three requirements:
  - (a) the document must disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister;
  - (b) such matter must be made in the course of or for the purpose of the deliberative processes involved in the functions of an agency or minister or of the government; and
  - (c) disclosure of the matter would be contrary to the public interest.

11. The exemption does not apply to purely factual material in a document.<sup>1</sup>

12. The Agency submits:

The documents to which an exemption is claimed pursuant to s 30 of the FOI Act are internal working notes, confidential private discussions and deliberations or draft correspondence.

It is noted that the final reasoning of the [University Appointments and Promotions Committee] (UAPC) was clearly communicated to the Applicant. The documents to which an exemption is claimed pursuant to s 30 of the FOI Act relate only to opinions, recommendations or discussions about, or to assist, the deliberative process, but do not reflect the totality of the deliberative process itself.

13. The documents relate to a nomination made by a third party on behalf of the Applicant to be appointed to a senior academic role within the university. The Applicant was aware of the nomination and has access to the final draft nomination document submitted to the university's appointment and promotion committee.

14. The final and final draft nomination documents contain the same or similar information as previous draft documents the Agency exempted from release under section 30(1). The previous draft documents contain mark-ups and grammatical edits that, in my view, are not substantial or significant in nature.

15. As stated in the Agency's submission, the documents fall broadly into the following categories:

- (a) internal submissions from third parties regarding the Applicant's nomination;
- (b) committee meeting minutes;
- (c) internal correspondence and emails between Agency officers; and
- (d) draft and working documents.

16. In determining if disclosure of a document would be contrary to public interest, I must consider all relevant facts and circumstances remaining mindful of the object of the FOI Act is to facilitate and promote the disclosure of information.

17. In doing so, I have given weight to the following relevant factors in the context of this matter:<sup>2</sup>

- (a) the right of every person to gain access to documents under the FOI Act;
- (b) the degree of sensitivity of the issues discussed in the documents and the broader context giving rise to the creation of the documents;
- (c) the stage of a decision or status of policy development or a process being undertaken at the time the communications were made;
- (d) whether disclosure of the documents would be likely to inhibit communications between Agency officers, essential for the Agency to make an informed and well-considered decision or participate fully and properly in a process in accordance with the Agency's functions and other statutory obligations;
- (e) whether disclosure of the documents would give merely a part explanation, rather than a

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<sup>1</sup> Section 30(3).

<sup>2</sup> *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

complete explanation for the taking of a particular decision or the outcome of a process, which the Agency would not otherwise be able to explain upon disclosure of the documents;

- (f) the impact of disclosing documents in draft form, including disclosure not clearly or accurately representing a final position or decision reached by the Agency at the conclusion of a decision or process; and
- (g) the public interest in the community being better informed about the way in which the Agency carries out its functions, including its deliberative, consultative and decision making processes and whether the underlying issues require greater public scrutiny.

18. My decision regarding section 30(1) is set out in the Schedule of Documents at **Annexure 1**.

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

- 19. 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.
- 20. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’<sup>3</sup> and the effectiveness of the deletions. Where deletions would render a document meaningless, they are not ‘practicable’, and release of the document is not required under section 25.<sup>4</sup>
- 21. As stated above, the Applicant does not seek access to the names, contact details and other identifying information of third parties, or certain information in Documents 2.1 and 2.2. Accordingly, I am satisfied this information is irrelevant and is to remain deleted in accordance with section 25.
- 22. 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**

- 23. On the information before me, I am satisfied certain documents are exempt from release under section 30(1).
- 24. Where I am satisfied it is practicable to provide the Applicant with an edited copy of a document with irrelevant and exempt information deleted in accordance with section 25, access to the document is granted in part.
- 25. Marked-up copies of Documents 2.1 and 2.2 showing additional information to be released and exempt and irrelevant information to be deleted has been provided to the Agency with this decision.
- 26. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

### **Review rights**

- 27. 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.<sup>5</sup>

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<sup>3</sup> *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 at [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

<sup>4</sup> *Honeywood v Department of Human Services* [2006] VCAT 2048 at [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140] and [155].

<sup>5</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

28. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>6</sup>
29. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>7</sup>
30. 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.
31. 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>8</sup>

***When this decision takes effect***

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

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<sup>6</sup> Section 52(5).

<sup>7</sup> Section 52(9).

<sup>8</sup> Sections 50(3F) and 50(3FA).

## Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.1	[Date]	Nomination application	23	Released in part Section 30(1)	Release in full	<p><b>Section 30(1):</b> This document is a nomination application in relation to the Applicant and includes their curriculum vitae. I am satisfied certain information in the document contains matter in the nature of opinion, advice or recommendations prepared for the deliberative processes of the Agency. However, other parts of the document contain purely factual information, such as the Applicant's background and employment history.</p> <p>I am not satisfied it would be contrary to the public interest to disclose the document where the information has been released to the Applicant in full and the Applicant is aware of the nomination.</p>
2.1	[Date]	A02 – Minutes from the Previous Meeting – [Date]	8	Released in part Sections 30(1), 33(1)	<p>Release in part</p> <p>Sections 30(1), 25</p> <p>The document is to be released with irrelevant information and information exempt from release under sections 30(1) and 33(1) deleted in accordance with</p>	<p><b>Section 30(1):</b> The document is meeting minutes from the University Appointments and Promotions Committee (UAPC) that contains information relating to the Applicant and third parties.</p> <p>The Applicant advised in their submission that they seek access to the outcomes of the cases considered</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					<p>section 25.</p> <p>A marked-up copy of the document showing additional information to be released and exempt and irrelevant information to be deleted has been provided to the Agency with this decision.</p>	<p>at the meeting. Accordingly, I am satisfied information that relates to cases that were not considered is irrelevant information for the purpose of section 25.</p> <p>I am satisfied certain information constitutes matter in the nature of opinion, advice or recommendations prepared for the deliberative processes of the Agency.</p> <p>Having considered the circumstances in which the document was created, I am satisfied its disclosure would be contrary to the public interest for the following reasons:</p> <ul style="list-style-type: none"> <li>information exchanged between Agency officers is sensitive in nature in that it concerns internal deliberations exchanged between Agency officers during a meeting in response to multiple applications from third parties other than the Applicant;</li> <li>while parts of the document relate to the Applicant and were released in part, internal deliberations between Agency officers about other third parties</li> </ul>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>is confidential in nature given it was conducted prior to the Agency officers providing a response to those third parties;</p> <ul style="list-style-type: none"> <li>disclosure of the document would be likely to inhibit the recording of proper communications between Agency officers which are essential for the Agency making informed and well-considered decisions or participating fully and properly in a process in accordance with the Agency's functions; and</li> <li>the public interest in the Agency being able to carry out its functions, including its deliberative, consultative and decision making processes in relation to appeals, promotions and nominations, outweighs the Applicant's personal interest in obtaining full access to the document.</li> </ul> <p>However, I am of the view the column recording the final outcome represents the Agency's final decision in relation to the nominations. This information does not record the</p>



Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>Agency's deliberative processes and I do not consider its disclosure would inhibit Agency officers from making future decisions of this nature. Accordingly, I am satisfied the disclosure of this information would not be contrary to the public interest as it represents the committee's final decision. Accordingly, I am satisfied this information is not exempt from release under section 30(1).</p> <p><b>Section 25:</b> I am satisfied it is practicable to provide the Applicant with an edited copy of the document with irrelevant and exempt information deleted in accordance with section 25.</p>
2.2.	[Date]	A02 – Minutes from the Previous Meeting – [Date]	7	Released in part Section 30(1), 33(1)	<p><b>Release in part</b></p> <p>Sections 30(1), 25</p> <p>The document is to be released with irrelevant information and information exempt from release under sections 30(1) and 33(1) deleted in accordance with section 25.</p>	<p><b>Section 30(1):</b> See comments for Document 2.1.</p> <p><b>Section 25:</b> See comments for Document 2.1.</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					A marked-up copy of the document showing additional information to be released and exempt and irrelevant information to be deleted has been provided to the Agency with this decision.	
4.1	[Date]	Email	3	Released in full	Not subject to review	Not subject to review
4.2.	[Date]	Email	3	Released in part Sections 30(1), 33(1)	Release in part Sections 30(1), 25  The document is to be released with irrelevant information and information exempt from release under sections 30(1) and 33(1) deleted in accordance with section 25.	Section 30(1): The document is an email chain, including emails sent by the Applicant to an Agency officer, and contains internal emails that were not sent to the Applicant.  I am satisfied the document contains matter in the nature of opinion, advice or recommendations prepared for the deliberative processes of the Agency. Having considered the circumstances in which the document was created, I am satisfied its disclosure would be contrary to the public interest for the following reasons:  <ul style="list-style-type: none"> <li>the information exchanged</li> </ul>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>between Agency officers is sensitive in nature in that it concerns internal deliberations exchanged between Agency officers arising from an email sent by the Applicant to the Agency requesting a response in relation to their nomination;</p> <ul style="list-style-type: none"> <li>• while parts of the document relate to the Applicant, I consider the internal deliberation between Agency officers is confidential in nature given it was conducted prior to the Agency officers reaching a final position on providing a response to the Applicant;</li> <li>• disclosure of certain information in the document would be likely to inhibit the recording of proper communications between Agency officers that are essential for the Agency in making informed and well-considered decisions or participating fully and properly in a decision making process in accordance with the Agency's functions;</li> <li>• the public interest in the Agency</li> </ul>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>being able to carry out its functions, including its deliberative, consultative and decision making processes in relation to appeals, promotions and nominations, outweighs the Applicant's personal interest in obtaining full access to the document; and</p> <ul style="list-style-type: none"> <li>from my review of the document, I am satisfied the underlying issues do not require greater public scrutiny.</li> </ul> <p><b>Section 25:</b> See comments for Document 2.1.</p>
4.3.	[Date]	Email	3	<p><b>Released in part</b></p> <p>Sections 30(1), 33(1)</p>	<p><b>Release in part</b></p> <p><b>Section 25</b></p> <p>The document is to be released with the following irrelevant information deleted in accordance with section 25:</p> <ul style="list-style-type: none"> <li>the first name of the individuals in the third line of the email dated [date and time].</li> </ul>	<p><b>Section 30(1):</b> This document is an email chain between Agency officers discussing a draft email to be sent to the Applicant.</p> <p>The draft version of the covering letter is the same as to the final letter sent to the Applicant. Given the Applicant has access to the full document, I have determined the information is not sensitive and its disclosure would not be contrary to the public interest.</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						Section 25: See comments for Document 2.1.
4.4.	[Date]	Email	8	Released in part  Section 30(1)	<p>Release in part</p> <p>Sections 30(1), 25</p> <p>The document is to be released except for the following information which is to be deleted in accordance with section 25:</p> <p>(a) same as the Agency's decision, email dated [date and time], page 2 of document;</p> <p>(b) email dated [date and time], page 3, second line in the body of the email, fourth line in second paragraph starting at "unfortunately" ending at "follows:"; and</p> <p>(c) same as the Agency's decision, email dated [date and time], page 4</p>	<p>Section 30(1): This document contains a draft version of the nomination that was ultimately given to the Applicant. It is similar to the final nomination, specifically the differences between the draft and final versions are grammatical in nature and disclose minor track changes made to the draft document only. Given the Applicant has access to the full document, I have determined the grammatical amendments are not sensitive and their disclosure would not be contrary to the public interest.</p> <p>However, I am satisfied disclosure of certain information in the document would be contrary to the public interest where Agency officers are discussing changes to be made to the nomination prior to making a final decision on the matter. Accordingly, I am satisfied this information is exempt from release under section 30(1).</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					of document.	Section 25: See comments for Document 2.1.
4.5.	[Date]	Email	3	Released in part  Section 30(1)	Release in part  Sections 30(1), 25  The document is to be released with information exempted from release by the Agency under section 30(1) to remain deleted in accordance with section 25.	Section 30(1): See comments for Document 4.2.  Section 25: See comments for Document 2.1.
4.6.	[Date]	Email	2	Released in full	Not subject to review	Not subject to review
4.7.	[Date]	Email	2	Released in full	Not subject to review	Not subject to review
4.8.	[Date]	Email	5	Released in part  Section 30(1)	Release in part  Sections 30(1), 25  The document is to be released with information exempted from release by the Agency under section 30(1) to remain deleted in	Section 30(1): See comments for Document 4.2.  Section 25: See comments for Document 2.1.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					accordance with section 25.	
4.9.	[Date]	Email	4	Released in full	Not subject to review	Not subject to review
4.10.	[Date]	Email	1	Released in full	Not subject to review	Not subject to review
4.11.	[Date]	Email	2	Released in full	Not subject to review	Not subject to review
4.12.	[Date]	Draft recommendation to UAPC	25	Released in part Section 30(1)	Release in full	Section 30(1): See comments for Document 4.4.
4.13.	[Date]	Email	3	Released in full	Not subject to review	Not subject to review
4.14.	[Date]	Final	4	Refused in full Section 30(1)	Release in part Sections 30(1), 25  The document is to be released except for the irrelevant personal affairs information of third parties on page 1 of the document, which is to be deleted in accordance with section 25.	Section 30(1): See comments for Document 4.4.  Section 25: See comments for Document 2.1.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
4.15.	[Date]	Email	2	Released in full	Not subject to review	Not subject to review
4.16.	[Date]	Email	9	Released in part  Sections 30(1), 33(1)	Release in part  Sections 30(1), 25  The document is to be released with irrelevant information and information exempt from release under sections 30(1) and 33(1) deleted in accordance with section 25.	Section 30(1): See comments for Document 4.2.  Section 25: See comments for Document 2.1.
4.17.	[Date]	Email	46	Released in part  Sections 30(1), 33(1)	Release in part  Sections 30(1), 25  The document is to be released with irrelevant information and information exempt from release under sections 30(1) and 33(1) deleted in accordance with section 25.	Section 30(1): See comments for Document 4.2.  Section 25: See comments for Document 2.1.



Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
4.18.	[Date]	Email	4	Released in part Section 30(1)	Release in full	Section 30(1): See comments for Document 1.1.
4.19.	[Date]	Email	1	Released in full	Not subject to review	Not subject to review
4.20.	[Date]	Email	3	Released in part Section 30(1)	Release in part Sections 30(1), 25  The document is to be released with information exempted from release by the Agency under section 30(1) to remain deleted in accordance with section 25.	Section 30(1): See comments for Document 4.2.  Section 25: See comments for Document 2.1.
4.21.	[Date]	Email	22	Released in full	Not subject to review	Not subject to review
4.22.	[Date]	Nomination document	24	Released in part Section 30(1)	Release in full	Section 30(1): See comments for Document 1.1.
4.23.	[Date]	Email	2	Released in full	Not subject to review	Not subject to review

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
4.24.	[Date]	Email	2	Released in full	Not subject to review	Not subject to review
4.25.	[Date]	Email	2	Released in full	Not subject to review	Not subject to review
4.26.	[Date]	Email	2	Released in full	Not subject to review	Not subject to review