

Notice of Decision and Reasons for Decision

Applicant: 'EN8'
Agency: Bendigo Health Care Group
Decision date: 7 June 2022
Exemption considered: Section 33(1)
Citation: 'EN8' and Bendigo Health Care Group (Freedom of Information) [2022]
VICmr 153 (7 June 2022)

FREEDOM OF INFORMATION – medical records – health records – personal affairs information – disclosure 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 a document requested by the Applicant under the FOI Act.

My decision on the Applicant's request is the same as the Agency's decision.

On the information before me, I am satisfied the personal affairs information of third parties in the document is exempt from release under section 33(1).

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

7 June 2022

Reasons for Decision

Background to review

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

All my medical records relating to my stay from [date] to [date] in the [location] under [named individual]
2. The Agency identified two documents comprising 10 pages falling within the terms of the Applicant's request.
3. The Agency relied on the exemption in section 33(1) to refuse access to parts of one document. 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 to exempt information in the documents.
5. I have examined a copy of the document subject to review (**Document 1**) and considered all relevant communications and submissions received from the parties.
6. 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.
7. I note Parliament's intention the FOI Act must be interpreted so as to further the object of the Act and that 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 33(1) – Personal affairs information

8. 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'.
9. Information relating to an individual's 'personal affairs' includes, but is not limited to, 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
10. A third party's opinion or observations about another person's conduct can constitute information in relation to the personal affairs of a third party.³
11. A document will disclose a third party's personal affairs information if it is capable of, either directly or indirectly, identifying the particular individual. As the FOI Act does not place any restrictions on an

¹ Sections 33(1) and 33(2).

² Section 33(9).

³ *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].

applicant's use or dissemination of a document obtained under FOI, this is to be interpreted by reference to the capacity of any member of the public to identify a third party.⁴

Does the document contain the 'personal affairs information' of a third party?

12. I am satisfied Document 1 contains the personal affairs information of persons other than the Applicant, being the mobile telephone numbers of an Agency officer and a third party who provided contextual information to the Agency.

Would disclosure of the personal affairs information in the document be unreasonable?

13. The concept of 'unreasonable disclosure' involves balancing the public interest in disclosure of official information with the protection of an individual's right to personal privacy in the particular circumstances.
14. The Supreme Court of Victoria Court of Appeal has 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'.⁵
15. 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 comprises the mobile telephone numbers of two third parties. While these contact numbers were provided to the Agency in a professional context, I consider it is likely they are also used for personal purposes and would provide direct access to the relevant individuals outside of usual business hours.

(b) The extent to which the information is available to the public

The information is not publicly available.

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

The information was obtained by the Agency in the course of providing medical treatment to the Applicant. In this case the vast majority of the information provided by relevant third parties was released by the Agency to the Applicant. What remains exempt is their mobile telephone numbers only.

I am satisfied the third parties who provided their mobile telephone numbers would have done so with the reasonable expectation the information would be treated in confidence and not disclosed under the FOI Act.

(d) The Applicant's interest in the information

I acknowledge the Applicant's strong personal interest in obtaining access to their full medical record. However, I must also give consideration to the personal privacy of the relevant third parties.

⁴ Ibid.

⁵ [2008] VSCA 218 at [76].

In my view, disclosure of the personal affairs information would not aid the Applicant's understanding about the medical treatment they received from the Agency or any other aspect of their medical record.

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

There is no information before me, nor given the nature of the remaining personal affairs information in the document, to suggest that any public interest would be promoted by its disclosure in this case.

(f) Whether the third parties object, or would be likely to object, to the release of the information

I am satisfied it is not practicable to seek the views of third parties in relation to the disclosure of their personal information in these circumstances. Having considered the nature of the information, as described above, I am satisfied the individuals would object to its disclosure under the FOI Act.

(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 release of the personal affairs information would be unreasonable, I am required to take into account whether or not disclosure of the information would be reasonably likely to endanger the life or physical safety of any person.⁶

There is no information before me to determine this is a relevant consideration in this matter.

16. Having weighed up the above factors, on balance, I am satisfied disclosure of the personal affairs information of the third parties in the document would be unreasonable in the circumstances. In doing so, I note the only information not released to the Applicant in Document 1 are two mobile telephone numbers of two third parties.

Section 25 – Deletion of exempt or irrelevant information

17. 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.
18. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁷ 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 25.⁸
19. Given my decision is the same as the Agency's decision and it granted access to the document in part in accordance with section 25, I consider it remains practicable to provide the Applicant with an edited copy of the document with exempt information deleted.

Conclusion

20. On the information available, I am satisfied the personal affairs information of two third parties in Document 1 is exempt from release under section 33(1).

⁶ Section 33(2A).

⁷ *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].

⁸ *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].

21. As 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, access is granted in part.

Review rights

22. If the Applicant is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.⁹
23. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁰
24. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹¹
25. 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.
26. 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.¹²

⁹ Section 50(1)(b).

¹⁰ Section 52(5).

¹¹ Section 52(9).

¹² 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.	Various	Documents	6	Released in part Section 33(1)	Release in part Sections 33(1), 25 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: • The mobile telephone numbers of two third parties as identified by the Agency.	Section 33(1): I am satisfied disclosure of the personal affairs information would be unreasonable in the circumstances for the reasons outlined in the Notice of Decision above. Section 25: 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.	Various	Documents	4	Release in full	Not subject to review	