

Notice of Decision and Reasons for Decision

Applicant: 'EM8'
Agency: Ambulance Victoria
Decision date: 31 May 2022
Exemption considered: Section 33(1)
Citation: 'EM8' and Ambulance Victoria (Freedom of Information) [2022]
VICmr 144 (31 May 2022)

FREEDOM OF INFORMATION – personal affairs information – personal affairs of agency officers – disclosure unreasonable – medical records – health records – ambulance records – patient care records

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 is the same as the Agency's decision in that I am satisfied information in the documents is exempt from release under section 33(1).

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

The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

31 May 2022

Reasons for Decision

Background to review

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

All documentation concerning calls made by [Applicant] from [date] to [date].

All documentation plus video footage from ambulance cameras for [date] (for [Applicant])
2. The Agency identified 13 documents falling within the terms of the Applicant's request and granted access to nine documents in full and refused access to four documents in part under section 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. I have examined a copy of the documents subject to review.
5. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
6. I have considered all communications and submissions received from the parties.
7. 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.
8. 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.

Applicant's concerns regarding adequacy of document searches and missing documents

9. Alongside their review application, the Applicant made a complaint to OVIC under section 61A(1)(a) on grounds the Agency failed to conduct a thorough and diligent search for documents.
10. In accordance with section 61B(3), OVIC determined to address these concerns as part of this review.
11. OVIC made inquiries with the Agency regarding the Applicant's concerns. The Agency's response was provided to the Applicant for their consideration.
12. In the circumstances, I am satisfied the Agency conducted a thorough and diligent search for relevant documents based on the terms of the Applicant's request.

Review of exemption

13. The Agency refused access to the signatures and initials of Agency officers who filled out the various forms relevant to the Applicant's FOI request under section 33(1). All other information in the documents was released to the Applicant.

Section 33(1) – Personal affairs information

14. 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’.

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

- 15. Information relating to a person’s ‘personal affairs’ includes information that identifies any person or discloses their address or location. It includes any information from which such information may be reasonably determined.²
- 16. A third party’s opinion or observations about another person’s conduct can constitute information related to the third party’s personal affairs.³
- 17. I also note that 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.⁴
- 18. The information exempted under section 33(1) are names, signatures, identification numbers, qualification level and initials of third parties. I am satisfied this information amounts to ‘personal affairs information’ for the purposes of section 33(1).

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 an individual’s personal privacy in the particular circumstances.
- 20. In determining whether the release of the personal affairs information would be unreasonable, I have given weight to the following factors:

- (a) The nature of the personal affairs information

The personal affairs information in the documents was obtained by the Agency in the course of the Agency officers’ carrying out their usual work duties and responsibilities as paramedics.

Determining whether the personal affairs information of an agency officer is exempt under section 33(1) must be considered in the context of the particular circumstances of each matter.⁵

Subject to special circumstances, there is nothing particularly sensitive about matters occurring or arising out of the course of an agency officer’s professional duties or work responsibilities as a public sector employee.⁶

¹ Sections 33(1) and (2).

² Section 33(9).

³ *Richardson v Business Licensing Authority* [2003] VCAT 1053, cited in *Davis v Victoria Police* [2008] VCAT 1343 at [43]; *Pritchard v Victoria Police* [2008] VCAT 913 at [24]; *Mrs R v Ballarat Health Services* [2007] VCAT 2397 at [13].

⁴ *Re F and Health Department* (1988) 2 VAR 458 as quoted in *RFJ v Victoria Police FOI Division* [2013] VCAT 1267 at [103].

⁵ *Coulson v Department of Premier and Cabinet* (Review and Regulation) [2008] VCAT 229.

⁶ *Re Milthorpe v Mt Alexander Shire Council* (1997) 12 VAR 105.

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

The information provided to the Agency is not publicly available.

(c) The circumstances in which the information was obtained

The information was obtained by the Agency in the course of providing medical treatment and health services to the Applicant.

In most instances, information provided by Agency officers, who are registered health practitioners in the course of their duties, would not be exempt from release under section 33(1) as medical professionals are required to give and record their identity, observations and actions taken while treating patients.

However, the specific circumstances as to how an agency obtains and the purpose for which it records information in the course of carrying out its functions must be considered.

(d) The Applicant's interest in the information including their purpose or motive for seeking access to the document

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.⁷

I acknowledge the Applicant seeks access to the documents for the purpose of making a complaint or taking action against the Agency. In these circumstances, I am not persuaded disclosure of the signatures and initials of the paramedics who attended upon the Applicant would further this purpose given the substance of the documents concerning the actions taken and notes made by attending paramedics has already been released the Applicant.

(e) Whether any public interest would be promoted by disclosure

The Applicant's interest in obtaining this information is a matter of private interest. I do not consider a public interest would be promoted by the release of the personal affairs information contained in the documents.

(f) Whether individuals to whom the information relates consent or object to the disclosure

Having considered the circumstances in which it was obtained by the Agency, I am satisfied the information was provided to the Agency with an expectation of privacy.

There is no information before me concerning the views of third parties in relation to the disclosure of their personal information. Having considered the nature of the information and the Applicant's reasons for seeking access to the personal affairs information, I am satisfied certain individuals would likely object to its disclosure under the FOI Act.

(g) Whether disclosure of the information relating to the personal affairs or any person would or would likely to, endanger the life or physical safety of any person

In determining if release of the personal affairs information would be unreasonable, I am required to take into account whether or not its disclosure would be reasonably likely to

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

endanger the life or physical safety of any person.⁸ There is no information before me to suggest this is a relevant factor in this instance.

21. Having considered the factors set out above, on balance, I am satisfied disclosure of the third parties' personal affairs information would be unreasonable in the circumstances. Accordingly, I am satisfied this information is exempt from release under section 33(1).
22. My decision on section 33(1) is set out in the Schedule of Documents in **Annexure 1**.

Section 25 – Deletion of exempt or irrelevant information

23. 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.
24. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁹ 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 25.¹⁰
25. I have considered the effect of deleting exempt information from the documents. I am satisfied it is practicable to delete the exempt information as to do so would not require substantial time and effort, and the edited documents would retain meaning.
26. My decision on section 25 is set out in the Schedule of Documents in **Annexure 1**.

Conclusion

27. On the information before me, I am satisfied information in the documents is exempt from release under section 33(1).
28. As I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with exempt information deleted in accordance with section 25, access to the documents is granted in part.
29. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

Review rights

30. If the Applicant is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.¹¹
31. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹²
32. The Agency may also apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹³
33. 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.

⁸ Section 33(2A).

⁹ *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].

¹⁰ *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].

¹¹ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹² Section 52(5).

¹³ Section 52(9).

34. 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.¹⁴

¹⁴ 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.	[date]	Electronic Patient Care Record	5	Released in full	Not Subject to Review	
2.	[date]	Electronic Patient Care Record	4	Released in full	Not Subject to Review	
3.	[date]	Electronic Patient Care Record	3	Released in full	Not Subject to Review	
4.	[date]	Electronic Patient Care Record	3	Released in full	Not Subject to Review	
5.	[date]	Electronic Patient Care Record	3	Released in full	Not Subject to Review	
6.	[date]	Electronic Patient Care Record	4	Released in full	Not Subject to Review	
7.	[date]	Electronic Patient Care Record	5	Released in full	Not Subject to Review	
8.	[date]	Electronic Patient Care Record	3	Released in full	Not Subject to Review	

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
9.	[date]	Electronic Patient Care Record	5	Released in full	Not Subject to Review	
10.	[date]	Hard Copy Patient Care Record	1	Released in part Section 33(1)	Release in part Sections 33(1), 25 The information exempted by the Agency is to remain deleted.	Section 33(1): I am satisfied it would be unreasonable to disclose the personal affairs information in this document 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.
11.	[date]	Hard Copy Patient Care Record	1	Released in part Section 33(1)	Release in part Sections 33(1), 25 The information exempted by the Agency is to remain deleted.	Sections 33(1) and 25: See comments for Document 10.
12.	[date]	Hard Copy Patient Care Record	1	Released in part Section 33(1)	Release in part Sections 33(1), 25	Sections 33(1) and 25: See comments for Document 10.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					The information exempted by the Agency is to remain deleted.	
13.	[date]	Hard Copy Patient Care Record	1	Released in part Section 33(1)	Release in part Sections 33(1), 25 The information exempted by the Agency is to remain deleted.	Sections 33(1) and 25: See comments for Document 10.