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Information Commissioner

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Notice of Decision and Reasons for Decision

Applicant: 'EW9'
Agency: University of Melbourne
Decision date: 17 November 2022
Exemption considered: Section 33(1)

Citation: 'EW9' and University of Melbourne (Freedom of Information)
[2022] VICmr 237 (17 November 2022)

FREEDOM OF INFORMATION – university veterinarian clinic – treatment records – letters addressed to applicant – documents created approximately [number] years ago – personal affairs information

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 differs from the Agency's decision.

I am not satisfied the information in the document is exempt from release under section 33(1) and access to the document is granted in full.

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

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

17 November 2022

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to certain documents.
2. Following consultation with the Agency, the Applicant clarified the terms of their request and sought access to:

... accounts and / or invoices on the [Applicant's animals], relating to Veterinary [clinic] such as examinations and treatments that either [the Applicant] and/or [third party business], requested the services of the University of Melbourne.

Time frame: [date] to [date].
3. The Agency identified three documents falling within the terms of the Applicant's request and granted access to two documents in full and one document in part under section 33(1). 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. I have examined a copy of the document 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 33(1) – Documents affecting personal privacy of third parties

10. 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).

Does the document contain personal affairs information of individuals other than the Applicant?

11. 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.²
12. A document will disclose a third party's personal affairs information if it is capable, either directly or indirectly, of identifying that person. This is to be interpreted by reference to the capacity of any member of the public to identify a third party.³
13. The document concerns [animals] owned by the Applicant that were evaluated by Agency clinicians over a period of time. The document contains invoices addressed to the Applicant for clinical pathology services and contains amounts payable and owed to the Agency by the Applicant.
14. The personal affairs information to which the Agency refused access is the name of an Agency clinician.
15. I am satisfied the information described above is 'personal affairs information' for the purposes of section 33(1).

Would disclosure of the personal affairs information be unreasonable?

16. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the interest in protecting the personal privacy of a third party in the particular circumstances of a matter.
17. 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'. Further, 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 The Court further held, '[t]he protection 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 by a lesser or greater degree'.⁶
18. 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 and the circumstances in which the information was obtained

Generally speaking, I consider there is nothing particularly sensitive about disclosing the identity of Victorian public sector employees where their personal affairs information concerns or arises in the context of them performing their ordinary duties, is already known to the applicant or is publicly available. However, it is necessary to look at the context within which the personal affairs information is recorded.

In this matter, the personal affairs information was recorded in the context of evaluating the Applicant's [animals] and communicating with the Applicant.

² Section 33(9).

³ *O'Sullivan v Department of Health and Community Services (No 2)* [1995] 9 VAR 1 at [14]; *Beauchamp v Department of Education* [2006] VCAT 1653 at [42].

⁴ [2008] VSCA 218 at [76].

⁵ *Ibid.*

⁶ *Ibid* at [79].

All of the invoices within the document are addressed to the Applicant. They include details of the treatment provided and costs payable by the Applicant. I am satisfied most, if not all, of the pages in the document would have been issued or provided to the Applicant shortly after their creation following the provision of [type of treatment] treatment services to the Applicant's [animals] in [date] – [date].

(b) 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 Agency released almost all information in the document to the Applicant. There is no information before me concerning the reasons why the Applicant seeks access to the redacted information. However, I assume it is to confirm the details of all the clinicians that evaluated or treated their [animals].

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

I am not satisfied a public interest would be promoted through release of the personal affairs information. Rather, it will serve the Applicant's private interest only.

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

In deciding whether disclosure of a document would involve the unreasonable disclosure of a third party's personal affairs information, an agency must notify that person an FOI request has been received for documents containing their personal information and seek their view as to whether disclosure of the document should occur.⁸ However, this obligation does not arise in certain limited circumstances.⁹

The Agency conducted consultation with two individuals whose personal affairs information appears in the document. One individual objected to the release of their personal affairs information and the other did not respond. The Agency refused access to the name of the individual who objected to the release of their personal affairs information, which is their name and professional title.

While I have considered the reasons provided by the third party and acknowledge their personal concerns, given the nature of the document in which their name appears, that the services were provided to the Applicant a number of years ago and the senior position occupied by the relevant third party whose professional profile is publicly known, I have given limited weight to this factor.

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

As the FOI Act does not place any restrictions on an applicant's use or dissemination of documents obtained under FOI, this is to be interpreted by reference to the capacity of any member of the public to identify a third party.¹⁰

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

⁸ Section 33(2B).

⁹ Section 33(2C).

¹⁰ *Ibid* at [68].

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

While there is a potential for the Applicant to disseminate the document, there is no evidence they intend to do so. Nor is there evidence the Applicant intends to contact the Agency officers named in the document. In this regard, I also note the equine treatment services were provided more than 14 years ago in [date] – [date].

Having considered the circumstances in which the invoices were created and the strong likelihood the Applicant received a copy of the invoices around the time they were created, I consider there is minimal risk of the disclosure of the remaining personal affairs having a detrimental impact on the third party.

(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.¹¹

While I acknowledge the objection of a third party to the release of their personal affairs information in the document, there is no information before me to indicate disclosure would be likely to endanger the life or physical safety of any person.

19. Having weighed up the above factors, on balance, I am not satisfied disclosure of the remaining personal affairs information contained in the invoices would be unreasonable in the circumstances. Accordingly, I am satisfied the personal affairs information is not exempt from release under section 33(1).

Conclusion

20. On the information before me, I am satisfied the document does not contain exempt information under section 33(1). Accordingly, access to the document is granted in full.
21. The Schedule of Documents in **Annexure 1** sets out my decision.

Review rights

22. 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
23. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹³
24. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁴
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.

¹¹ Section 33(2A).

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

¹³ Section 52(5).

¹⁴ Section 52(9).

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.¹⁵

Third party review rights

27. As I have determined to release a document that contains the personal affairs information of a person other than the Applicant, if practicable, I am required to notify that person of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.¹⁶
28. In this case, I am satisfied it is practicable to notify the relevant third party of their review rights and confirm they will be notified of my decision.

When this decision takes effect

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

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.	Multiple dates	Doc. 1 – [reference] Invoice Multiple [reference]	20	Released in part Section 33(1)	Release in full	Section 33(1): I am not satisfied the personal affairs information in this document is exempt from release for the reasons provided in the Notice of Decision above.
2.	Multiple dates	Doc 2. [reference]Statements [reference]	16	Released in full	Not subject to review	
3.	Multiple dates	Doc 3. [reference]Transaction Summary [reference]	3	Released in full	Not subject to review	