

Notice of Decision and Reasons for Decision

Applicant: 'CU1'
Agency: Victorian Institute of Forensic Mental Health (t/a Forensicare)
Decision Date: 17 March 2021
Exemptions considered: Sections 30(1), 33(1) and 35(1)(b)
Citation: 'CU1' and Victorian Institute of Forensic Mental Health (Forensicare) (Freedom of Information) [2021] VICmr 74 (17 March 2021)

FREEDOM OF INFORMATION – workplace investigation – workplace injury – internal working documents – emails – information communicated in confidence

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.

I am not satisfied certain information in the documents is exempt under sections 30(1), 33(1) or 35(1)(b).

As it is practicable to edit some of the documents to delete irrelevant and exempt information, I have determined to grant access to the documents 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

17 March 2021

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to the following documents:
 - ‘Documentation relating to the injury that I received during [type of training] training at [workplace] on the [date].
 - Documentation relating to the Work cover claim due to my injury
 - All documentation on information relayed to and from [third party organisation].
 - All information documented from staff at [workplace] relating to my injury/Work cover claim.
 - Documentation on the information relayed to [third party organisation], from a staff member at [workplace], stating [content redacted].that
 - [Description of employment], any documentation from the date of my injury (as above) to the date of my resignation on the [date] and any subsequent documentation in the time following, relating to my resignation.’
2. In its decision, the Agency identified certain documents falling within the terms of the Applicant’s request. It decided to grant access to certain documents in full and relied on sections 30(1), 33(1) and 35(1)(b) to refuse access to other documents in full.

Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency’s decision to refuse access.
4. During the course of the review, the Applicant indicated they did not seek review of third parties’ personal affairs information including names, email addresses, phone numbers and financial information of individuals. Accordingly, this information is irrelevant to the request and will not form part of the review.
5. The Agency has deemed certain documents were exempt in full under sections 30(1), 33(1) and 35(1)(b). The Agency was asked by OVIC staff to identify the relevant exemption for each piece of information. The Agency advised that the listed exemptions were applied to the entire documents.
6. During the review, the Agency agreed to release information contained in Documents 4, 5, 6, 7, 9, 10 and 13 that it previously considered exempt. Accordingly, these documents are not subject to review and are to be released to the Applicant with irrelevant personal affairs information deleted from the documents.
7. I have examined copies of the documents subject to review.
8. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
9. I have considered all communications and submissions received from the parties.
10. 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.
11. 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.

Section 30(1)

12. 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.

13. The exemption does not apply to purely factual material in a document.¹

Was the document prepared by an officer of the Agency?

14. The term 'officer of an Agency' is defined in section 5(1). It includes a member of an agency, a member of an agency's staff, and any person employed by or on behalf of an agency, whether or not that person is one to whom the provisions of the *Public Administration Act 2004* (Vic) apply.
15. I note certain documents contain emails exchanged between [third party organisation] employees and Agency officers as the [third party organisation] was tasked with carrying out an investigation on behalf of WorkSafe Victoria in relation to the Applicant's workplace injury.
16. In relation to the application of section 30(1) to [third party organisation] employees, the Agency submits:

Additionally, [third party organisation]. is an agent of WorkSafe Victoria, an agency within the meaning of the Act. It is our submission that the consultation reflected in the emails from [third party organisation]. to [the Agency] reflects a deliberative process on the part of [third party organisation], and that the consultation between agency officers that is required for the purposes of section 30(1) need not pass between officers of the same agency.

17. I accept the Agency's submission that a [third party organisation] employee is an 'officer of an Agency' as defined by section 5(1). Further, I am satisfied that a person engaged by [third party organisation] for the purposes of undertaking an investigation on behalf of [third party organisation]. is also an Agency officer for the purposes of the Act. Therefore, I am satisfied certain emails in the documents were prepared by an 'officer of an agency' for the purposes of section 30(1).

Does the document contain information in the nature of opinion, advice, recommendation, consultation or deliberation?

18. For section 30(1) to be satisfied, a document must also contain matter in the nature of opinion, advice or recommendation prepared by an officer of an agency, or consultation or deliberation between officers.
19. It is not necessary for a document to be in the nature of opinion, advice or recommendation. Rather, it is enough that release of the document would disclose matter of that nature.²
20. I am satisfied the documents contain opinion and recommendations prepared by an Agency officer and consultation between Agency officers. Accordingly, I am satisfied the first limb of section 30(1) has been met.

¹ Section 30(3).

² *Mildenhall v Department of Education* (1998) 14 VAR 87.

Was the opinion, advice, recommendation, consultation or deliberation disclosed in the documents provided in the course of, or for the purpose of, the deliberative processes of the Agency?

21. The term ‘deliberative process’ is interpreted widely and includes any of the processes of deliberation or consideration involved in the functions of an agency, Minister or government.³

22. In *Re Waterford and Department of Treasury (No.2)*,⁴ the Administrative Appeals Tribunal held:

... “deliberative processes” [is] wide enough to include any of the processes of deliberation or consideration involved in the functions of an agency... In short, ...its thinking processes — the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

23. I am satisfied information was provided in the course of, or for the purpose of, the deliberative processes of the Agency relating to its management of workplace injuries and subsequent Worksafe investigations.

Would it be contrary to the public interest for this information to be released?

24. Determining whether disclosure of this information would be contrary to the public interest requires a ‘process of the weighing against each other conflicting merits and demerits’.⁵

25. I must consider all relevant facts and circumstances remaining mindful the object of the FOI Act is to facilitate and promote the disclosure of information. In doing so, I have taken the following factors into consideration:⁶

- (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 complete explanation for the making 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.

26. The Agency submits:

³ *Brog v Department of Premier and Cabinet* (1989) 3 VAR 201 at 208.

⁴ (1981) 1 AAR 1.

⁵ *Sinclair v Maryborough Mining Warden* [1975] HCA 17; (1975) 132 CLR 473 at [485], adopted in *Department of Premier and Cabinet v Hulls* [1999] VSCA 117 at [30].

⁶ *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

The documents are sensitive in nature because they relate to an injury accepted by [third party organisation] as having occurred in the workplace involving [the applicant] in circumstances where [the applicant] is aggrieved. The emails record confidential discussions between staff of Forensicare, and between staff of Forensicare and an agent of Worksafe. The emails are created at a stage of the claims management process when it was not yet determined by [third party organisation] whether the claim would be accepted.

Disclosure of information in the documents may have an adverse effect by undermining the robustness of the management of future matters in similar circumstances in that officers may provide information in a less candid way.

While public sector employees are generally professionally obliged to record and provide opinions and comments in a full and frank way, Forensicare submits there is a public interest in them being able to have discussions over email without concern such information will be disclosed. Furthermore, where opinion is provided as part of an externally managed legislative process such as has occurred in this case, we consider that information to form part of the investigation.

27. I acknowledge the communications took place during a workplace injury investigation prior to a determination being made regarding the Applicant's workplace injury claim. However, I note the claim was subsequently accepted by WorkSafe and therefore a final decision has been reached on the matter. Therefore, I consider the circumstances of this matter to be less sensitive, where the Applicant's minor injury occurred during a regular work training session, the subsequent [third party organisation] investigation was brief and the Applicant's claim was eventually accepted.
28. I accept there is a public interest in ensuring Worksafe consultants and Agency officers involved in a workplace injury investigation are able to discuss, deliberate and record relevant issues and information in a thorough and considered manner.
29. However, the majority of the information in the documents relates to the administrative and procedural aspects of the investigation. As such I consider the disclosure of this information would not be reasonably likely to inhibit communications between officers from different Agencies, who engage in these communications as part of their regular work duties.
30. I acknowledge certain documents contain more sensitive information about an investigator's conduct during witness interviews and [third party organisation]'s advice regarding the Agency's liability. However, I am not satisfied it would be reasonably likely to inhibit communications between officers from different agencies where they are professionally obliged, as public servants, to provide their opinions and comments in a frank and full way.
31. Further, I consider release of the information will serve the public interest by promoting public sector transparency and accountability regarding the investigation conducted by the agencies.
32. Further, I note certain information in the Documents relate to the Applicant's own claim or recollection of events. I am not satisfied it would be contrary to the public interest to release this information.
33. Accordingly, I am not satisfied certain information in the documents is exempt under section 30(1).
34. My decision in relation to section 30(1) is outlined in the Schedule of Documents in **Annexure 1**.

Section 35(1)(b)

35. A document is exempt under section 35(1)(b) if two conditions are satisfied:
 - (a) disclosure would divulge information or matter communicated in confidence by or on behalf of a person or a government to an agency or a Minister; and

- (b) disclosure would be contrary to the public interest as it would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.

36. The documents subject to review are emails concerning inquiries into a workplace injury.

Was the information obtained in confidence?

37. Whether information communicated by an individual was communicated in confidence is a question of fact.⁷
38. When determining whether information was communicated in confidence, it is necessary to consider the position from the perspective of the communicator.⁸
39. Generally, the exemption in section 35(1)(b) applies to information communicated to an agency from an outside source, not to internal communications between agency staff carrying out their usual duties and responsibilities. However, in certain circumstances, section 35(1)(b) may apply to information communicated in confidence between agency officers. For example, where an agency officer provides confidential information to their agency to assist in the investigation of a workplace incident or dispute.⁹
40. In such circumstances, I accept third parties would have provided information to the Agency with the expectation it would be used for the purpose of the Agency's investigation. I consider it is reasonably likely the third parties would not expect the information they provided, or their identity, to be disclosed under the FOI Act, which provides for unconditional and unrestricted use of a document once disclosed.
41. In this matter, certain information was communicated to Agency officers assisting with the investigation of the workplace injury by Agency officers, in their capacity as witnesses. The information also includes information provided by an independent medical examiner and the Applicant's general practitioner in relation to the Applicant's injury. Accordingly, I am satisfied the information was communicated in confidence to the Agency under section 35(1)(b).
42. However, I note certain Agency officers assisted [third party organisation] during the investigation that were not witnesses. As such, I do not consider their correspondence to be information communicated in confidence, given they are Agency officers, providing information they would be required to provide in accordance with their professional roles.
43. For the same reasons, I am not satisfied emails from [third party organisation] officers to Agency officers contain information communicated in confidence to the Agency for the purposes of section 35(1), where officers from [third party organisation] were providing information they would be required to provide in their roles as WorkSafe consultants. Accordingly, I am not satisfied information of this nature is exempt under section 35(1)(b).

Would disclosure of the information be contrary to the public interest?

44. The exemption also requires I consider whether the Agency would be impaired from obtaining similar information in the future if the information is disclosed under the FOI Act. This involves considering whether others in the position of the communicator would be reasonably likely to be inhibited or deterred from providing similar information to the Agency in the future should the information be disclosed.

⁷ *Ryder v Booth* [1985] VR 869 at [883]; *XYZ v Victoria Police* [2010] VCAT 255 at [264].

⁸ *Ibid.*

⁹ See *Sportsbet v Department of Justice* [2010] VCAT 8 at [71]-[78]; *XYZ v Victoria Police* [2010] VCAT 255 at [287]-[288]; and *Birnbaumer v Inner and Eastern Health Care Network* [1999] VCAT 1363 at [14]-[15].

45. The public interest test in section 35(1)(b) is narrow. It is directed towards the impact release would have on an agency's ability to obtain the same type of information in the future. The provision does not permit me to have regard to other matters, such as any public interest in favour of release, or the extent to which the Applicant's personal interest in the documents would be served by granting access.
46. I accept the Agency relies on information provided by employees voluntarily, in order to deal with and investigate workplace injuries. Such information will, by its very nature, generally be personal, sensitive and confidential to all parties involved. Where an investigation contains sensitive material provided by Agency officers, I consider it would be reasonably likely to impair the Agency's ability to obtain similar information in the future.
47. However, as noted above, I do not consider the circumstances of this matter to be overly sensitive, where Agency officers were being asked to provide information about a minor workplace injury that occurred during a regular training event.
48. Further, I note that certain emails between Agency officers are administrative in nature and discuss the procedural aspects of the investigation including organising meetings with potential witnesses. As the Applicant has agreed to personal affairs information being removed from the Document, I am satisfied that witnesses could not be identified from certain administrative emails.
49. Further, I am not satisfied disclosure of administrative and procedural information would be reasonably likely to impair the Agency's ability to obtain similar information in the future, particularly where the communications do not disclose witness statements.
50. I acknowledge it is in the public interest to ensure that witness statements provided during an investigation into a workplace injury are communicated freely and are adequately documented by Agency staff. However, where the personal affairs information of the witnesses has been removed, the circumstances of the matter are not sensitive and the claim has already been accepted, I consider it is unlikely that certain Agency officers would be deterred from providing similar information to the Agency in the future.
51. In relation to the information provided by medical professionals, I am not satisfied the disclosure of this information would be reasonably likely to impair the Agency's ability to obtain similar information in the future. These individuals have a professional obligation to provide thorough and diligent medical advice to patients and WorkSafe consultants who are conducting workplace injury investigations.
52. Accordingly, I am not satisfied the documents are exempt under section 35(1)(b).
53. My decision in relation to section 35(1)(b) is outlined in the Schedule of Documents in **Annexure 1**.

Section 33(1)

54. As stated above, the Applicant has indicated they do not seek review of third parties' personal affairs information including names, emails, phone numbers and financial information of individuals.
55. However as personal affairs information can refer to additional information, and as I have determined certain information deleted by the Agency under sections 30(1) and 35(1)(b) is not exempt, I have considered the application of section 33(1) to the documents.
56. 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';¹⁰ and
- (b) such disclosure would be 'unreasonable'.

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

- 57. 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.¹¹
- 58. A third party's opinion or observations about another person's conduct can constitute information related to the third party's personal affairs.¹²
- 59. The personal affairs information in the documents includes the position titles of Agency officers and [third party organisation] staff members.
- 60. I am satisfied this information constitutes the personal affairs information of third parties for the purposes of section 33(1).
- 61. The documents also include personal pronouns of Agency officers who participated in the investigation as witnesses. Where the release of those pronouns has the potential to identify a witness, I am satisfied this information is personal affairs information.
- 62. I note the Agency has also deemed witness statements provided by Agency officers to be personal affairs information. However, I am of the view that once the other personal affairs information has been removed from the documents, the individuals who provided these statements could not be identified. Therefore, I am not satisfied this information amounts to 'personal affairs information' for the purposes of section 33(1).

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

- 63. The concept of unreasonable disclosure involves weighing the public interest in disclosure of official information with the protection of a person's right to privacy in the particular circumstances.
- 64. The Victorian Court of Appeal has held,¹³ 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'.
- 65. I also note *Coulson v Department of Premier and Cabinet*,¹⁴ in which the Victorian Civil and Administrative Tribunal (VCAT) held whether or not an agency staff member's personal affairs information is exempt under section 33(1) must be considered in the context of the particular circumstances of each matter.
- 66. Therefore, 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'.¹⁵

¹⁰ Sections 33(1) and (2).

¹¹ Section 33(9).

¹² *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].

¹³ [2008] VSCA 218 at [76].

¹⁴ *(Review and Regulation)* [2018] VCAT 229.

¹⁵ [2008] VSCA 218 at [104].

67. In determining whether disclosure of the personal affairs information is unreasonable in the particular circumstances of this matter, I have given weight to the following factors:¹⁶
- (a) the nature of the personal affairs information;
 - (b) the circumstances in which information was obtained by the Agency;
 - (c) the Applicant's interest in the information and whether their purpose for seeking the information is likely to be achieved;
 - (d) whether any public interest would be promoted by the release of the information;
 - (e) whether any individuals to whom the information relates object, or would be likely to object to the release of the information;
 - (f) the likelihood of further disclosure of the information if released; and
 - (g) whether disclosure of the information or would be reasonably likely to endanger the life or physical safety of any person.
68. The Agency has advised it did not consult with third parties.
69. The nature of the personal affairs information is the position titles and personal pronouns of Agency staff and the position titles of [third party organisation] officers. Firstly, I note this information was acquired by the Agency in the course of these individuals work duties and responsibilities. As such, I consider the personal information in the documents concerns these individuals' professional roles rather than their personal or private lives in most circumstances.
70. I note it is likely the identity of many of the persons whose personal affairs information appears in the document is known to the Applicant, who is a former employee of the Agency. However, even where an FOI applicant knows the identity of a person, disclosure of personal affairs information may still be unreasonable in the circumstances.¹⁷
71. I am also required under section 33(2A) to consider whether disclosure of the personal affairs information would, or would be reasonably likely, to endanger the life or physical safety of any person. The term 'any person' is broad and extends to any relevant endangerment involving the safety of an applicant, a related third party or any other person. However, I do not consider this to be a relevant factor in this matter.
72. I consider the position titles and personal pronouns of Agency officers who were witnesses or potential witnesses to be more sensitive. I am of the view there is a public interest in information provided voluntarily during an investigation into a workplace injury is communicated freely, is adequately documented by Agency staff, and is treated with the necessary degree of confidentiality.
73. Accordingly, I am satisfied the position titles and personal pronouns of Agency officers who were witnesses or potential witnesses are exempt under section 33(1).
74. However, I note certain position titles have already been released to the Applicant and therefore, I do not consider this information to be sensitive and it would not be unreasonable to disclose this information. Further, I do not consider the position title of one Agency officer who assisted with the investigation to be sensitive, where they were not participating as a witness and their identity is likely already known by the Applicant.

¹⁶ Ibid.

¹⁷ *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 at [58]; *Akers v Victoria Police* [2003] VCAT 397.

75. I also do not consider the position titles of [third party organisation] officers who were conducting the investigation and determining the eligibility of the Applicant's claim to be sensitive as this information concerns their professional roles.
76. Accordingly, I am not satisfied certain personal affairs information discussed above is exempt under section 33(1).

Deletion of exempt or irrelevant information

77. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable for the agency or Minister to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
78. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹⁸ and the effectiveness of the deletions. Where deletions would render the document meaningless they are not 'practicable' and release of the document is not required under section 25.¹⁹
79. As noted above, the Applicant advised they did not seek review of certain personal affairs information including names, email addresses, phone numbers and the financial information of third parties. Therefore, this information is irrelevant and is not subject to review.
80. I have considered the effect of deleting exempt and irrelevant information from the documents. In my view, it is practicable to delete the exempt and irrelevant information as to do so would not require substantial time and effort and the documents would retain meaning.

Conclusion

81. On the information available, I am satisfied certain information in the documents is exempt under section 33(1).
82. However, I am not satisfied other information is exempt under sections 30(1), 33(1) and 35(1)(b).
83. As it practicable to edit some of the documents to delete irrelevant and exempt information, I have determined to grant access to certain documents in part and refuse access to certain documents in full.

Review rights

84. 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.²⁰
85. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.²¹
86. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.²²

¹⁸ *Mickelburgh 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].

¹⁹ *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].

²⁰ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

²¹ Section 52(5).

²² Section 52(9).

87. 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 (international callers dial +61 3 8685 1462).
88. 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.²³

Third party review rights

89. As I have determined to release documents that contain information the Agency determined as exempt under sections 33(1) and 35(1)(b), if practicable, I am required to notify the relevant individuals, whose information is to be disclosed of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.²⁴
90. I am satisfied it would not be practicable to notify the relevant individuals of their rights of review in this case for the following reasons:
- (a) the nature of the documents,
 - (b) the nature of the information to be disclosed;
 - (c) the passage of time since the documents were created; and
 - (d) the position titles of certain Agency officers have been released to the Applicant as part of the FOI request.
91. While I have determined it is not practicable for me to notify the relevant third parties, it is open for the Agency to notify its employees of my decision, should it wish to do so.

When this decision takes effect

92. My decision does not take effect until the relevant review period (stated above) expires. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

²³ Sections 50(3F) and (3FA).

²⁴ Sections 49P(5), 50(3B) and 52(3).

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1.	[date]	Email chain	6	<p>Refused in full</p> <p>Sections 30(1), 35(1)(b)</p>	<p>Release in part</p> <p>Sections 33(1), 25</p> <p>The document is to be released to the applicant with exempt and irrelevant information deleted in accordance with section 25.</p> <p>The following information is exempt under section 33(1):</p> <ul style="list-style-type: none"> - personal pronoun at the start of the second paragraph under the heading [heading]" on page one; - position title on the first line of the fifth paragraph on page five; - personal pronoun after the date on the second line of the fifth paragraph on page five; - position title at the start of the sixth paragraph on page five; 	<p>Section 30(1): I am satisfied emails sent between Agency officers and Worksafe consultants contain matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between Agency officers.</p> <p>Further, I am satisfied the information was provided in the course of, or for the purpose of, the deliberative processes of the Agency relating to its management of workplace injuries and subsequent Worksafe investigations.</p> <p>However, I am not satisfied it would be contrary to the public interest to release that information, for the reasons set out in the Notice of Decision above.</p> <p>Section 35(1)(b): I am satisfied the document contains information communicated to the Agency in confidence by an Agency staff member participating as a witness in an investigation into a workplace injury.</p> <p>However, I am not satisfied it would be contrary to the public interest to disclose information provided to the Agency for the reasons outlined above</p>

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					<ul style="list-style-type: none"> - personal pronoun in the same paragraph as the one above. 	<p>in the Notice of Decision.</p> <p>Section 33(1)</p> <p><u>Witness statements</u></p> <p>I am not satisfied the witness statements in the document are personal affairs information, as with the name of the person removed, I do not consider the document would identify any third party. In my view the witness statements are general in nature and therefore the person who provided the statement could not be identified from it.</p> <p><u>Position titles and personal pronouns</u></p> <p>I am satisfied it would be unreasonable to release the position title and personal pronouns of the Agency officer who participated in the investigation as a witness.</p> <p>However, I am not satisfied it would be unreasonable to release the position titles of third parties who were assisting Worksafe with the investigation and whose position titles have been released to the Applicant.</p>

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p>Section 25: By email dated [date]the Applicant agreed for all names, email addresses and phone numbers of third parties to be deleted from the document.</p> <p>I am satisfied this information is irrelevant and it is practicable to release an edited copy of the document with the irrelevant information deleted in accordance with section 25.</p>
2.	[date]	Email chain	15	<p>Refused in full</p> <p>Sections 30(1), 33(1) and 35(1)(b)</p>	<p>Release in part</p> <p>Sections 33(1), 25</p> <p>The document is to be released to the applicant with exempt and irrelevant information deleted in accordance with section 25.</p> <p>The following information is exempt under section 33(1):</p> <ul style="list-style-type: none"> - position title and work hours of the individual on the second line and fourth at the top of page three of the document; - position title and work 	<p>Section 35(1)(b): I am not satisfied the emails sent from Agency's officers assisting with the workplace injury investigation contain information communicated to the Agency in confidence for reasons outlined in the Notice of Decision.</p> <p>I am satisfied the emails sent from Agency officers who were witnesses or potential witness in the workplace injury investigation contain information communicated in confidence to the Agency. However, I am not satisfied the disclosure of this information would be contrary to the public interest as it would not be reasonably likely to impair the Agency's ability to receive similar information in the future. I consider</p>

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					<p>hours of the individual at the top of page four of the document;</p> <ul style="list-style-type: none"> - position title of the individual at the bottom of page six of the document; - position title and work hours of the sender of the email dated [date and time] on page seven of the document; - position title and work hours of the sender of the email dated [date and time] on page 10 of the document; - position title and work days of the sender of the email dated [date and time] on page 13 of the document; - position title and work days of the sender of the email dated [date and time] on page 15 of the 	<p>these emails relate to the administrative part of the investigation. Further, I am satisfied that once the personal affairs information has been deleted from the document, the emails do not identify any witnesses.</p> <p>Section 30(1): See Comments for Document 1.</p> <p>Section 33(1): I am satisfied the document contains the personal affairs information of third parties.</p> <p>Further, I am satisfied it would be unreasonable to disclose the position titles of third-party individuals who were involved in the investigation as witnesses or potential witnesses.</p> <p>However, I am not satisfied it would be unreasonable to release the position titles of third parties who were assisting Worksafe with the investigation and whose position titles have already been released to the Applicant previously.</p> <p>Section 25: See comments for Document 1.</p>

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					document. -	
3.	[date]	Email chain	2	Refused in full Sections 30(1), 33(1)	<p>Release in part Sections 33(1), 25</p> <p>The document is to be released to the applicant with exempt and irrelevant information deleted in accordance with section 25.</p> <p>The following information is exempt under section 33(1):</p> <ul style="list-style-type: none"> - 16th word on the first line of the fourth paragraph in the email dated [date and time] on page two; - 10th and 16th word on the second line of the paragraph mentioned above; - 13th and 16th word on the third line of the paragraph mentioned above. 	<p>Section 30(1): I am satisfied the document contains consultation and deliberation between Agency officers for the purposes of section 30(1).</p> <p>However, I am not satisfied it would be contrary to the public interest to release that information for the reasons outlined in the Notice of Decision above.</p> <p>Section 33(1): I am satisfied the document contains the personal affairs information of third parties.</p> <p>Further, I am satisfied it would be unreasonable to disclose the position titles of third-party individuals who were involved in the investigation as witnesses or potential witnesses.</p> <p>However, I am not satisfied it would be unreasonable to release the position titles of third parties of [third party organisation] staff and Agency staff who were assisting with the investigation and whose position titles have already been released to the Applicant</p>

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					-	previously. Section 25: See comments for Document 1.
4.	[date]	Email	1	Released in part Sections 33(1)	Release in part Section 25 The document is to be released to the applicant with irrelevant information deleted in accordance with section 25.	Section 35(1)(b): By email dated [date], the Agency agreed to release further information in the document it previously determined was exempt under section 35(1)(b). Section 25: See comments for Document 1.
5.	[date]	Email	4	Release in full	Not subject to review	On [date], the Agency advised that a duplicate of this document had already been released to the Applicant and chose to release this document in full.
6.	[date]	Email chain	3	Release in part Section 33(1)	Release in part Section 25 The document is to be released to the applicant with irrelevant information deleted in accordance with section 25.	Section 30(1): By email dated [date], the Agency agreed to release further information in the document it previously determined was exempt under section 30(1). Section 25: See comments for

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						Document 1.
7.	[date]	Email chain	3	Released in part Sections 33(1)	Release in part Section 25 The document is to be released to the applicant with irrelevant information deleted in accordance with section 25.	Section 35(1)(b): By email dated [date], the Agency agreed to release further information in the document it previously determined was exempt under section 35(1)(b). Section 25: See comments for Document 1.
8.	[date]	Email	1	Refused in full Sections 33(1), 35(1)(b)	Release in part Section 25 The document is to be released to the applicant with irrelevant information deleted in accordance with section 25.	Section 35(1)(b): I am not satisfied the document contains information communicated to the Agency in confidence, where the information is being communicated by an Agency officer assisting with the investigation. Section 30(1): I am satisfied the document contains information 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. However, I am not satisfied it would be contrary to the public interest to release

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						<p>the information where it relates to the procedural and administrative part of the investigation. Further, I am satisfied no witnesses could be identified from the release of this document.</p> <p>Section 25: See comments for Document 1.</p>
9.	[date]	Email	1	<p>Released in part</p> <p>Section 33(1)</p>	<p>Release in part</p> <p>Section 25</p> <p>The document is to be released to the applicant with irrelevant information deleted in accordance with section 25.</p>	<p>Section 33(1): By email dated [date], the Agency agreed to release further information in the document it previously determined was exempt under section 33(1).</p> <p>Section 25: By email dated [date], the Applicant agreed for all information relating to third parties Workcover payments to be deleted from the document.</p> <p>See also my comments for Document 1.</p> <p>I am satisfied this information is irrelevant and it is practicable to release an edited copy of the document with the irrelevant information deleted in accordance with section 25.</p>
10.	[date]	Email chain	1	Released in part	Release in part	Section 33(1): By email dated [date], the Agency agreed to release further

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				Section 33(1)	<p>Section 25</p> <p>The document is to be released to the applicant with irrelevant information deleted in accordance with section 25.</p>	<p>information in the document it previously determined was exempt under section 33(1).</p> <p>Section 25: See comments for Document 1.</p>
11.	[date range]	Email chain	1	<p>Refused in full</p> <p>Section 33(1)</p>	<p>Release in part</p> <p>Sections 33(1), 25</p> <p>The document is to be released to the applicant with exempt and irrelevant information deleted in accordance with section 25.</p> <p>The following information is exempt under section 33(1):</p> <ul style="list-style-type: none"> - the seventh word in the second line of the email dated [date and time]. 	<p>The email on page 2 of this document is a duplicate of the email on page 1 of the document and therefore was not reviewed.</p> <p>Section 35(1)(b): I am satisfied the email dated [date] contains information communicated to the Agency in confidence by an Agency staff member participating as a witness in an investigation into a workplace injury.</p> <p>However, I am not satisfied it would be contrary to the public interest to disclose information provided to the Agency for the reasons outlined above in the Notice of Decision.</p> <p>Section 30(1): I am satisfied the email dated [date] contains consultation and deliberation between two Agency officers for the purposes of section</p>

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						<p>30(1).</p> <p>However, I am not satisfied the disclosure of this information would be contrary to the public interest as it would not impair the Agency's ability to receive similar information in the future.</p> <p>Further, I am satisfied that no witness could be identified from the document once the personal affairs information has been deleted from the document.</p> <p>Section 33(1): I am satisfied the document contains the personal affairs information of third parties.</p> <p>Further, I am satisfied it would be unreasonable to disclose the position titles of third-party individuals who were involved in the investigation as witnesses or potential witnesses.</p> <p>However, I am not satisfied it would be unreasonable to release the position titles of third parties who were assisting Worksafe with the investigation and whose position titles have already been released to the Applicant previously.</p> <p>Section 25: See comments for Document 1.</p>

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12.	[date]	Email	1	<p>Refused in full</p> <p>Section 35(1)(b)</p>	<p>Release in part</p> <p>Sections 33(1), 25</p> <p>The document is to be released to the applicant with exempt and irrelevant information deleted in accordance with section 25.</p> <p>The following information is exempt under section 33(1):</p> <ul style="list-style-type: none"> - sixth, seventh and 11th words on the second line of the email; - 12th word on the fifth line of the email; - eighth and 17th word on the ninth line of the email. 	<p>Section 35(1)(b): See comments for Document 11.</p> <p>Section 30(1): See comments for Document 11.</p> <p>Section 33(1): I am not satisfied the witness statements in the document are personal affairs information, where the release of that information would not identify any third party.</p> <p>I am satisfied the document also contains the personal affairs information of third parties.</p> <p>I am satisfied it would be unreasonable to release the position title and personal pronouns of the Agency officer who participated in the investigation as a witness.</p> <p>However, I am not satisfied it would be unreasonable to release the position titles of third parties who were assisting Worksafe with the investigation and whose position titles have already been released to the Applicant previously.</p> <p>Section 25: See comments for Document 1.</p>

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13.	[date]	Email	1	Released in part Section 33(1)	Release in part Section 25 The document is to be released to the applicant with irrelevant information deleted in accordance with section 25.	Section 33(1): See comments for Document 9. Section 25: See comments for Documents 1 and 9.