

## Notice of Decision and Reasons for Decision

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Applicant:	'EY3'
Agency:	Ambulance Victoria
Decision date:	22 December 2022
Exemptions and provisions considered:	Sections 30(1), 33(1), 35(1)(b) and 25
Citation:	'EY3' and Ambulance Victoria (Freedom of Information) [2022] VICmr 249 (22 December 2022)

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FREEDOM OF INFORMATION – workplace relations – termination of employment – personal affairs information – internal working documents – release not 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.

While I am satisfied certain information in the documents is exempt from release under section 33(1), I am not satisfied information in the documents is exempt from release under sections 30(1) and 35(1)(b).

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  
22 December 2022

## Reasons for Decision

### Background to review

1. The Applicant was an employee of the Agency prior to their employment being terminated.
2. The Applicant made a request to the Agency seeking access to the following documents:
  1. The information provided to the Chief Operating Officer by the [named Agency work areas] from [date range provided] in relation to allegations of poor performance and disciplinary proceedings leading to the termination of [Applicant's name] employment by Ambulance Victoria.
  2. The Information recorded by the Chief Operating Officer and the information of minutes taken at meetings involving the Chief Operating Officer in the decision to terminate [Applicant's name] [date range provided]
  3. The information provided to the Chief Operating Officer by [named Agency work areas] between [date range provided] regarding allegations of poor performance or misconduct leading to the decision to issue a notice to show cause.
  4. Any complaint made against [Applicant's name] to [named Agency work areas], investigation documents and outcome of the complaint [date range provided]
3. The Agency identified 11 documents falling within the terms of the Applicant's request and granted access in full to 8 documents and refused access in full to 3 documents under sections 30(1), 33(1) and 35(1)(b). The Agency's decision letter sets out the reasons for its decision.
4. During the review, OVIC staff made enquiries with the Agency in relation to whether documents responsive to Points 2 and 4 of the Applicant's FOI request had been searched for, as documents on these points were not located in the course of processing the Applicant's request.
5. Having considered the terms of the Applicant's request and information subsequently provided to OVIC by the Agency, there is no information before me to suggest the Agency conducted its document searches in a manner that would limit the discovery of relevant documents captured by the terms of the FOI Request. However, it is recommended the Agency be clearer in its decision letters as to any categories of documents in an FOI request in relation to which no documents exist so an applicant is provided with this relevant information consistent with the requirement in section 27 and the FOI Professional Standards.

### Review application

6. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
7. During the review, the Agency advised it no longer relies on section 33(1) to refuse access to a name in Document 1. Accordingly, this information is to be released.
8. I have examined a copy of the documents subject to review.
9. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
10. I have considered all communications and submissions received from the parties.
11. 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.

12. 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.
13. In conducting a review under section 49F, section 49P requires that I make a new or 'fresh decision'. Therefore, my review does not involve determining whether the Agency's decision is correct, but rather requires my fresh decision to be the 'correct or preferable decision'.<sup>1</sup> This involves ensuring my decision is correctly made under the FOI Act and any other applicable law in force at the time of my decision.

## **Review of exemptions**

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

14. 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.
15. The exemption does not apply to purely factual material in a document.<sup>2</sup>

*Do the documents 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?*

16. For the requirements of section 30(1) to be met, a document must contain matter in the nature of opinion, advice or recommendation prepared by an agency officer, or consultation or deliberation between agency officers.
17. It is not necessary for a document to be in the nature of opinion, advice or recommendation. Rather, the issue is whether release of the document would disclose matter of that nature.<sup>3</sup>
18. The Agency relied on section 30(1) to refuse access to Documents 1, 5h, 11, 11a, 14 and 15, 15f and 15h, being briefing notes, a business case, a timeline and draft letters that were prepared during the Agency's performance management of the Applicant, a process which led to the termination of their employment.
19. Documents 5c, 5d and 5e record incidents related to the Applicant's experiences in the workplace. These documents were prepared outside the performance management process, formed part of the documentation considered during that process.
20. All documents contain some information which is factual in nature, describing past events or recording information provided to or from the Applicant. A large proportion of the procedural and administrative information, which I consider to be factual in nature, has been duplicated in correspondence provided to the Applicant by the Agency.

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<sup>1</sup> *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577 at 591.

<sup>2</sup> Section 30(3).

<sup>3</sup> *Mildenhall v Department of Education* (1998) 14 VAR 87.

21. However, I consider certain information constitutes the opinion, advice and recommendations of Agency officers, including:
- (a) recommendations;
  - (b) classification details of incidents;
  - (c) risk assessments; and
  - (d) assessments of contributing factors and control measures.

*Were the documents 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?*

22. The term ‘deliberative process’ is interpreted broadly and includes any of the processes of deliberation or consideration involved in the functions of an agency, Minister or government.<sup>4</sup>
23. In *Re Waterford and Department of Treasury (No.2)*,<sup>5</sup> the former Victorian 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.

24. I am satisfied workplace performance management and incident reporting are deliberative processes within the functions of the Agency.

*Would disclosure of the documents be contrary to the public interest?*

25. Determining whether release of information would be contrary to the public interest involves a ‘process of the weighing against each other conflicting merits and demerits’.<sup>6</sup>
26. 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.
27. In doing so, I have given weight to the following relevant factors:<sup>7</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;

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<sup>4</sup> *Brog v Department of Premier and Cabinet* (1989) 3 VAR 201 at 208.

<sup>5</sup> [1984] AATA 67; (1984) 5 ALD 588; 1 AAR 1 at [58].

<sup>6</sup> *Sinclair v Maryborough Mining Warden* [1975] HCA 17; (1975) 132 CLR 473 at [485], adopted in *Department of Premier and Cabinet v Halls* [1999] VSCA 117 at [30].

<sup>7</sup> *Halls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

- (e) whether disclosure of the documents would give merely a part explanation, rather than a 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.
28. Having reviewed the documents and considered the Agency's submissions, I have determined that disclosure of the documents would not be contrary to the public interest for the following reasons:
- (a) Documents 1 and 11 record brief recommendations which were actioned and are now known to the Applicant.
  - (b) Documents 5c, 5d and 5e record the Agency's assessments and response to incidents involving the Applicant, providing details of how the incidents were classified and further resultant action taken. Disclosure of these documents contributes to transparency of how these incidents were managed by the Agency and relate directly to the applicant.
  - (c) Although I acknowledge the sensitivity of the circumstances surrounding the documents, I consider there is also a public interest in those who report incidents to be aware of how the Agency manages and responds to them.
  - (d) On the face of the documents, the incident descriptions and the Agency's responses are brief and responsive to pre-set categories which I consider are likely structured to ensure the Agency meets its obligations in relation to incident responses. Accordingly, I am not satisfied Agency officers would be less likely to complete these responses in the future if this information is released.
  - (e) Documents 11 and 15h are draft copies of letters that have since been provided to the Applicant. I do not consider there are substantive differences between the draft and the final versions of the document. As the content of the draft documents is sufficiently similar to avoid confusion resulting from substantial content changes, and the additional content would contribute to the Applicant's understanding of the Agency's handling of their employment matter, I consider it would not be contrary to the public interest to release the draft versions.
  - (f) I acknowledge the documents related to the performance management process were all prepared prior to the eventual termination of the Applicant's employment, and it could be argued that they are therefore preliminary in nature. However, I consider the various stages of the performance management process were accompanied by decisions which were actioned and have impacted the Applicant. Therefore, I am satisfied release of the documents to the Applicant would be unlikely to cause confusion to the Applicant.
29. As I am satisfied disclosure would not be contrary to the public interest, the information it is not exempt from release under section 30(1).
30. My decision in relation to section 30(1) is set out in the Schedule of Documents at **Annexure 1**.

***Section 32(1) – Documents subject to legal privilege***

31. Section 32(1) provides a document is an exempt document 'if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege or client legal privilege'.

#### *Legal professional privilege*

32. A document will be subject to legal professional privilege where it contains a confidential communication between: <sup>8</sup>
- (a) the client (or the client's agent) and the client's professional legal advisers, that was made for the dominant purpose of obtaining or providing legal advice or is referable to pending or contemplated litigation;
  - (b) the client's professional legal advisers and third parties, that was made for the dominant purpose of pending or contemplated litigation; or
  - (c) the client (or the client's agent) and third parties that was made for the purpose of obtaining information to be submitted to the client's professional legal advisers for the dominant purpose of obtaining advice on pending or contemplated litigation.

#### *Client legal privilege*

33. A document will be subject to client legal privilege where it contains a 'confidential communication' between:
- (a) the client (or the client's agent) and the client's professional legal advisers, that was made for the dominant purpose of obtaining or providing legal advice;<sup>9</sup> or
  - (b) the client and another person, which was made for the dominant purpose of the client being provided with professional legal services relating to a proceeding in which the client is or was a party.<sup>10</sup>
34. For convenience, I refer to 'legal professional privilege' and 'client legal privilege' as 'legal privilege' in this decision.
35. The privilege extends to communications between government agencies and its in-house lawyers provided those lawyers are sufficiently independent.<sup>11</sup>
36. My decision in relation to section 32(1) is set out in the Schedule of Documents at **Appendix 1**.

#### ***Section 33(1) – Documents affecting personal privacy of a third party***

37. A document is exempt from release 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**);<sup>12</sup> and
  - (b) such disclosure would be 'unreasonable'.

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

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<sup>8</sup> *Graze v Commissioner of State Revenue* [2013] VCAT 869 at [29]; *Elder v Worksafe Victoria* [2011] VCAT 1029 at [22]. See also section 119 of the *Evidence Act 2008* (Vic).

<sup>9</sup> Section 118 of the *Evidence Act 2008* (Vic).

<sup>10</sup> Section 119 of the *Evidence Act 2008* (Vic).

<sup>11</sup> *Waterford v The Commonwealth* [1987] HCA 25 at 4 (per Mason and Wilson JJ) and at 5 to 6 (per Brennan J).

<sup>12</sup> Sections 33(1) and 33(2).

38. 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.<sup>13</sup>
39. A document will disclose a third party's personal affairs information if it is capable, either directly or indirectly, of identifying that person. As the nature of disclosure under the FOI Act is unrestricted and unconditional, this is to be interpreted by reference to the capacity of any member of the public to identify a third party.<sup>14</sup>
40. I am satisfied the documents contain the personal affairs information of third parties, being the names of Agency officers.

*Would disclosure of the personal affairs information be unreasonable?*

41. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the personal interest in privacy in the particular circumstances of a matter.
42. In *Victoria Police v Marke*,<sup>15</sup> 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'.<sup>16</sup> 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'.<sup>17</sup>
43. 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 it was obtained by the Agency

The information exempted by the Agency is the names of Agency officers. This information was recorded by the Agency to note those officers' involvement with the Applicant.

The Victorian Civil and Administrative Tribunal (**VCAT**) has accepted there is nothing particularly sensitive about matters occurring or arising out of the course of one's official duties.<sup>18</sup> However, I must consider the specific circumstances of each matter.

In this matter, certain Agency officers were in direct contact with the Applicant, and others were involved in an indirect capacity, having contributed to internal administration related to their employment.

Further, I consider the Applicant will know the identity of Agency officers whose names were recorded during their direct interactions with the Applicant, which means that their names are less sensitive.

(b) The Applicant's interest in the information

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<sup>13</sup> Section 33(9).

<sup>14</sup> *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].

<sup>15</sup> [2008] VSCA 218 at [76].

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid* at [79].

<sup>18</sup> *Re Milthorpe v Mt Alexander Shire Council* (1997) 12 VAR 105.

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).<sup>19</sup>

I refer to the Applicant's submission and understand their FOI request was made to verify the accuracy of information provided by the Agency to an external body in relation to the process around the termination of their employment. I note the Applicant would be aware of the majority of information in the documents as they were subject to the performance management process. Therefore, I consider the release of the names of certain Agency officers is unlikely to assist the Applicant in the purpose for which they seek access to documents.

I also note the Applicant referred to seeking the name of a complainant in relation to a complaint made against them. As no documents were located by the Agency recording such a complaint, I do not consider release of the names in the documents would assist them in this purpose.

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

While I acknowledge the Applicant's personal interest in obtaining access to the requested documents, I must also take into account the public interest in protecting the personal privacy of certain third parties named in the document.

(d) 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.<sup>20</sup>

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

However, there is no information before me indicating the Applicant intends to provide the documents to external Agencies and bodies if they contain inaccurate or misleading information.

(e) 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.<sup>21</sup> However, this obligation does not arise in certain circumstances including where it is not practicable to do so.<sup>22</sup>

The Agency submits that consultation was undertaken with a certain area of the Agency in relation to the release of Agency officers' names. Having considered this information, I am satisfied the Agency officers whose names the Agency refused access would be likely to object to the release of their information to the Applicant. While not determinative, I have given weight to this factor in the circumstances of this matter.

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<sup>19</sup> *Victoria Police v Marke* [2008] VSCA 218 at [104].

<sup>20</sup> *Ibid* at [68].

<sup>21</sup> Section 33(2B).

<sup>22</sup> Section 33(2C).



- (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.<sup>23</sup> Given the context of the documents and their relationship to the Applicant, I have taken this factor into account in my decision.

44. Therefore, I have concluded that:

- (a) Where the Agency has not applied section 33(1) to the names of Agency officers, I am satisfied disclosure of this information to the Applicant would not be unreasonable.
- (b) Where the Agency has applied section 33(1) to the names of Agency officers, on balance, I am satisfied disclosure of this information would not be unreasonable where the officers were acting in a managerial or decision making capacity.
- (c) Where the Agency has applied section 33(1) to the names of Agency officers and they were not acting in a decision making capacity, I am satisfied disclosure of this information would be unreasonable.

45. My decision in relation to section 33(1) is set out in the Schedule of Documents at **Annexure 1**.

***Section 35(1)(b) – Information obtained in confidence by the Agency***

46. A document is exempt from release 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.

*Was the information obtained in confidence?*

47. Whether information communicated by an individual to an agency was communicated in confidence is a question of fact.<sup>24</sup>
48. In deciding whether information was provided in confidence, it is necessary to consider the position from the perspective of the communicator, noting confidentiality can be expressed or implied from the circumstances of a matter.<sup>25</sup>
49. I note the content of the documents predominantly restates factual information gathered from areas within the Agency or directly from the Applicant.
50. While I acknowledge the writers of the documents would have been aware of the sensitive circumstances of the matter in preparing these documents, I consider their involvement in the matter was professional rather than personal in nature.
51. Further, I note the documents and actions taken indicate the writers intended for the information in the documents be communicated to the Applicant in future given it relates to their conduct or

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<sup>23</sup> Section 33(2A).

<sup>24</sup> *Ryder v Booth* [1985] VR 869 at [883]; *XYZ v Victoria Police* [2010] VCAT 255 at [264].

<sup>25</sup> *XYZ v Victoria Police* [2010] VCAT 255 at [265].

performance in the workplace.

52. Accordingly, I am not satisfied the information was communicated in confidence and the first requirement of section 35(1)(b) is not met.

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

53. For completeness I have considered whether disclosure of the information to which the Agency refused access under section 35(1)(b) would be contrary to the public interest.
54. Section 35(1)(b) requires I consider whether the Agency would be impaired from obtaining similar information in the future if the information were to be 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 should the information be disclosed.
55. The public interest test in section 35(1)(b) is narrow, in that it is directed toward the impact release would have on an agency's ability to obtain the same type of information in the future. I note the exemption will not be made out if an agency's impairment goes no further than showing potential communicators of the information may be less candid than they would otherwise have been.<sup>26</sup>
56. I am not satisfied the Agency would be impaired from obtaining similar information in the future where the information was provided by the Applicant, provided on behalf of the Applicant regarding their circumstances, or was prepared under circumstances where it was intended to be communicated to the Applicant.
57. As such, I am not satisfied information in the documents is exempt from release under section 35(1)(b).
58. The Schedule of Documents in **Annexure 1** outlines my decision in relation to section 35(1)(b).

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

59. 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.
60. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>27</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>28</sup>
61. I have considered the effect of deleting exempt information from the documents. I am satisfied it is practicable to do so as it would not require substantial time and effort, and the edited documents would retain meaning.

### **Conclusion**

62. On the information before me, I am satisfied certain information in the documents is exempt from release under section 33(1). However, I am not satisfied information in the documents is exempt from release under sections 30(1) and 35(1)(b).

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<sup>26</sup> *Smeaton v Victorian WorkCover Authority* [2012] VCAT 1549 at [69], approving *Birnbauer v Inner and Eastern Health Care Network* [1999] 16 VAR 9.

<sup>27</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>28</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].

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

### **Review rights**

64. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.<sup>29</sup>

65. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>30</sup>

66. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>31</sup>

67. 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.

68. 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>32</sup>

### **Third party review rights**

69. As I have determined to release documents that contain the personal affairs information of persons other than the Applicant and documents claimed exempt from release under section 35(1)(b), if practicable, I am required to notify those persons of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.<sup>33</sup>

70. In this case, I am satisfied it is practicable to notify certain third parties of their review rights and confirm they will be notified of my decision.

71. In the circumstances, I have decided to notify the parties the Agency determined are the author and source of the documents it exempted from release under section 35(1)(b), where they are identified. In the case of Documents 5h and 11a, there is no such party identified in the documents, as such it is not practicable to notify the relevant persons associated with these documents.

72. Finally, I have decided notifying certain other third parties of their review rights is not practicable as I am of the view this would constitute an unnecessary intrusion for the following reasons:

(a) the Agency did not claim this personal affairs information was exempt from release;

(b) on the face of the documents, it appears the Applicant is aware of the name of these third parties; and

(c) there is a significant number of third parties named in the documents.

### **When this decision takes effect**

73. My decision does not take effect until the third parties' 60 day review period expires.

74. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

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<sup>29</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>30</sup> Section 52(5).

<sup>31</sup> Section 52(9).

<sup>32</sup> Sections 50(3F) and 50(3FA).

<sup>33</sup> Sections 49P(5), 50(3) and 50(3AB)

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.	[date]	Briefing note	6	Refused in full Sections 30(1), 33(1), 35(1)(b)	Refuse in full Section 32(1)	<b>Section 32(1):</b> While not claimed exempt from release under section 32(1), as described above, when conducting a review I must make the correct and preferable decision. In this instance I am satisfied the document is a confidential communication between the Agency and its legal advisers prepared for the purpose of providing legal advice. It is therefore exempt from release under section 32(1).
2.	[date]	Performance improvement procedure <i>Attachment 1 to Document 1</i>	12	Release in full <sup>34</sup>	Not subject to review	
3.	[date]	Letter <i>Attachment 2 to Document 1</i>	3	Release in full	Not subject to review	
4.	[date]	Letter <i>Attachment 3 to Document 1</i>	3	Release in full	Not subject to review	
5a.	[date]	Letter <i>Forms part of Attachment 4 to Document 1</i>	2	Release in full	Not subject to review	
5b.	[date]	Letter	3	Release in full	Not subject to review	

<sup>34</sup> During the course of the review, the Agency advised this document had not been assessed during the original FOI request, but was subsequently provided to the Applicant in full.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
		<i>Forms part of Attachment 4 to Document 1</i>				
5c.	Undated	Incident summary report <i>Forms part of Attachment 4 to Document 1</i>	3	Refused in full Sections 30(1), 33(1)	Release in part Sections 33(1), 25 The document is to be released except for the following information which is exempt from release under section 33(1) and is to be deleted in accordance with section 25: <ul style="list-style-type: none"><li>the redactions made by the Agency under section 33(1).</li></ul>	Section 30(1): I am not satisfied the document is exempt from release under section 30(1) for the reasons set out above in the Notice of Decision. Section 33(1): I am satisfied the document contains the personal affairs information of third parties, and that disclosure of this information would be unreasonable for the reasons outlined in my Notice of Decision above. Section 25: I am satisfied it is practicable to delete exempt information from the document.
5d.	Undated	Incident Summary Report <i>Forms part of Attachment 4 to Document 1</i>	3	Refused in full Sections 30(1), 33(1)	Release in full	Section 30(1): See comments for Document 5c. Section 33(1): The Agency exempted two names in the document under section 33(1). As both names have been released to the Applicant elsewhere in the documents and the document is factual in nature, I consider it would not be unreasonable to release these names. They are not therefore exempt from release under section 33(1).

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
5e.	Undated	Action Plan <i>Forms part of Attachment 4 to Document 1</i>	5	Refused in full Sections 30(1), 33(1)	Release in part Sections 33(1), 25  The document is to be released except for the following information which is exempt from release under section 33(1) which is to be deleted in accordance with section 25:  <ul style="list-style-type: none"> <li>the first three sentences and the fifth sentence under the heading 'immediate action taken after being notified'.</li> </ul>	Section 30(1): See comments for Document 5c.  Section 33(1): See comments for Document 5d. Certain names in the document have been released to the Applicant elsewhere in the documents and I do not consider the documents are factual in nature. Those names are therefore not unreasonable to release and are not exempt from release under section 33(1).  However, there are also the names of Agency officers where their involvement is more personal and where I consider disclosure would unreasonably intrude on their privacy. This information is therefore exempt from release under section 33(1).  Section 25: See comments for Document 5c.
5f.	Undated	Submission <i>Forms part of Attachment 4 to Document 1</i>	3	Release in full	Not subject to review	
5g.	Undated	Injury Hotspots factsheet <i>Forms part of Attachment 4 to Document 1</i>	3	Release in full	Not subject to review	

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
5h.	Undated	<p>Performance Management Timeline</p> <p><i>Forms part of Attachment 4 to Document 1</i></p>	5	<p><b>Refuse in full</b></p> <p>Sections 30(1), 35(1)(b)</p>	<p><b>Release in full</b></p>	<p><b>Section 30(1):</b> See comments for Document 1.</p> <p><b>Section 35(1)(b):</b> The document contains a timeline of events during the Applicant's employment with the Agency. While the document may include information provided by various Agency officers, it is not clear the information was provided in confidence. In any case, even if it were, I consider such information was provided in the course of those officer's professional duties and which they are required to provide as part of their employment. Therefore, I do not consider disclosure would impair the ability for the Agency to obtain similar information in the future and it is not exempt from release under section 35(1)(b).</p> <p><b>Section 33(1):</b> The document contains various names of Agency officers and other third parties. I do not consider disclosure of this information would be unreasonable as they had direct contacts with the Applicant, and would therefore be known by them. I also consider the document does not contain sensitive personal information about those individuals. These names</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						are therefore not exempt from release under section 33(1).
5i.	Undated	Progression Map <i>Forms part of Attachment 4 to Document 1</i>	1	Release in full	Not subject to review	
6.	[date]	Letter <i>Attachment 5 to Document 1</i>	2	Release in full	Not subject to review	
7.	[date]	Letter <i>Attachment 6 to Document 1</i>	3	Release in full	Not subject to review	
8.	[date]	Letter <i>Attachment 7 to Document 1</i>	3	Release in full	Not subject to review	
9.	[date]	Letter <i>Attachment 8 to Document 1</i>	5	Release in full	Not subject to review	
10.	[date]	Letter <i>Attachment 9 to Document 1</i>	2	Release in full	Not subject to review	
11.	[date]	Business case	4	Refused in full Sections 30(1), 33(1), 35(1)(b)	Release in part Sections 33(1), 25 The document is to be released except for the following information which is exempt from release under section 33(1) and is to be	Section 30(1): See comments for Document 1. Section 35(1)(b): See comments for Document 5h. Section 33(1): See comments for Document 5e.



Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					<p>deleted in accordance with section 25:</p> <ul style="list-style-type: none"> <li>the names in the third and fourth line of the document;</li> <li>the signature at the bottom of the document; and</li> <li>the names in the last two dot points in the document.</li> </ul>	Section 25: See comments for Document 5c.
11a.	Undated	<p>Performance Management Timeline</p> <p><i>Appendix 1 to Document 11</i></p>	5	Refuse in full Sections 30(1), 35(1)(b)	Release in full	Duplicate of Document 5h.
11b.	Undated	<p>Progression Map</p> <p><i>Appendix 2 to Document 11</i></p>	1	Release in full	Not subject to review	Duplicate of Document 5i.
11c.	[date]	<p>Letter</p> <p><i>Appendix 3 to Document 11</i></p>	5	Release in full	Not subject to review	Duplicate of Document 10.
11d.	Undated	<p>Submission</p> <p><i>Appendix 4 to Document 11</i></p>	3	Release in full	Not subject to review	Duplicate of Document 5f.
12.	[date]	<p>[type of] progress report</p> <p><i>Attachment 11 to Document 1</i></p>	19	Released in full	Not subject to review	
13.	[date]	Letter	5	Released in full	Not subject to review	

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
		<i>Attachment 12 to Document 1</i>				
14.	[year]	Draft letter	3	Refused in full Section 30(1)	Release in full	Section 30(1): See comments for Document 1.
15.	[date]	Briefing note	4	Refused in full Sections 30(1), 33(1), 35(1)(b)	Refuse in full Section 32(1)	Section 32(1): See comments for Document 1.
15a.	[date]	Letter <i>Attachment 1 to Document 15</i>	2	Release in full	Not subject to review	Duplicate of Document 5a.
15b.	[date]	Letter <i>Attachment 2 to Document 15</i>	3	Release in full	Not subject to review	Duplicate of Document 5b.
15c.	[date]	Letter <i>Attachment 3 to Document 15</i>	3	Release in full	Not subject to review	Duplicate of Document 8.
15d.	[date]	Letter <i>Attachment 4 to Document 15</i>	5	Release in full	Not subject to review	Duplicate of Document 9.
15e.	[date]	Letter <i>Attachment 5 to Document 15</i>	2	Release in full	Not subject to review	Duplicate of Document 10.
15f.	[date]	Business case <i>Attachment 6 to Document 15</i>	4	Refused in full Sections 30(1), 33(1), 35(1)(b)	Release in part Sections 33(1), 25 The document is to be released except for the following information	Duplicate of Document 11. Section 30(1): See comments for Document 1. Section 35(1)(b): See comments for Document 5h.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					<p>which is exempt from release under section 33(1) and is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> <li>• the names in the third and fourth line of the document;</li> <li>• the signature at the bottom of the document; and</li> <li>• the names in the last two dot points in the document.</li> </ul>	<p><b>Section 33(1):</b> See comments for Document 5e.</p> <p><b>Section 25:</b> See comments for Document 5c.</p>
15g.	[date]	[type of] progress report <i>Attachment 7 to Document 15</i>	19	Released in full	Not subject to review	Duplicate of Document 12.
15h.	[year]	Draft letter – show cause <i>Attachment to Document 15</i>	3	Refused in full Section 30(1)	Release in full	<b>Section 30(1):</b> See comments for Document 1.