

Notice of Decision and Reasons for Decision

Applicant:	'FA6'
Agency:	Department of Energy, Environment and Climate Action (formerly known as the Department of Environment, Land, Water and Planning (DELWP))
Decision date:	14 March 2023
Exemption and provision considered:	Sections 30(1), 33(1), 25
Citation:	'FA6' and Department of Energy, Environment, and Climate Change (Freedom of Information) [2023] VICmr 14 (14 March 2023)

FREEDOM OF INFORMATION – issuing of authority to control wildlife – permit to kill wildlife – wildlife management – kangaroos – application information – third party personal affairs information – agency officers – disclosure unreasonable

All references to legislation in this document are to the *Freedom of Information Act 1982 (Vic)* (**FOI Act**) unless otherwise stated.

Notice of Decision

I have conducted a review under section 49F of the Agency's decision to refuse access to documents requested by the Applicant under the FOI Act.

My decision on the Applicant's request differs to the Agency's decision.

While I am satisfied the disclosure of certain personal affairs information in the documents would be unreasonable, I am not satisfied all information to which the Agency refused access is exempt from release under section 33(1).

Where I am satisfied it is practicable to provide the Applicant with an edited copy of a document with irrelevant and exempt information deleted in accordance with section 25, access to the document is granted in part. Where it is not practicable to do so, access is refused in full.

My decision in relation to each document is set out in the Schedule of Documents in **Annexure 1**.

A marked-up copy of the documents will be provided to the Agency with this decision indicating the information to be released and deleted.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

14 March 2023

Reasons for Decision

Background to review

1. The Applicant is aware of [a third party] being granted one or more 'Authority to Control Wildlife' (ATCW) by the Agency to manage or kill kangaroos on [a] property. [Circumstances redacted]. The Applicant seeks to understand the information submitted to the Agency in support [the] application for the authority and the grounds upon which the authority was granted.
2. The Applicant made a request to the Agency seeking access to the following documents:
 - 1: Copy of ATCW [Authority to Control Wildlife] (s) issued to [Address and name of third party] - from [year to year]. From here forth, all the below mentioned comments are to be considered from the period [year to year], relating to ATCWs for [Address of third party].
 - 2: Applicants reason for applying for ATCW(s) and DELWPs reason for issuing these.
 - 3: File notes and or/ATCW application notes that indicate what damage has been caused by wildlife (viz: Kangaroos). E.G: damage to pasture and/or fences. Proof of this, such as before and after photos for instance.
 - 4: File notes and/or ATCW application notes, that explain what non-lethal methods were used to try and address reasons (problems for owner of property) for ATCW(s) which led to ATCW(s) needing to be issued and how long were these methods tried for.
 - 5: Number of kangaroos that could be killed per ATCW(s) issued for [Address of third party] (if not specified in the ATCW(s)).
 - 6: Any file notes that show how DELWP came to issue ATCW(s) based on the above for instance file notes that show that a DELWP officer came on site to assess or view damage and how officer knew that all non-lethal methods were utilised and satisfied that all non-lethal methods were exhausted.
 - 7: Any notes that would indicate that consideration was made by DELWP in approving the ATCW(s) and any resulting requirements placed on permit holder of the following: - bullets used (gauge), & distance bullets can travel. - Were different bullets needed to be used when killing deer and/or kangaroos. How did DELWP, in this case, know what owner was actually using. - Noise levels of guns used and times of shooting allowed, taking into consideration close proximity to houses and walking/riding tracks (impact on people, tourists, visitors, domestic animals, other wildlife such as bird life) - Notification(s) to neighbours that shooting will take place (warnings) - Use of spotlights (how long for instance) and how this might impact on adjoining private residence and other wildlife - Safety regarding distances to adjoining properties (land and place of residence) and of where owner is allowed to shoot from (e.g.: if shooter is standing on fence line, distance to adjoining property land, house, walking trails, etc). - Warning signs or notifications that shooting takes place, so that riders walkers and adjoining property owners can feel safe walking/using their own property. - How long carcasses can remain exposed before collection and requirements of disposal of carcasses.
 - 8: If there are any notes on file or in application, that would indicate that there was any consideration or consultation(s) with adjoining properties, and how the ATCW(s) may impact environmentally, financially and or/emotionally on surrounding neighbours (e.g.: covenanted property at [Address of Applicant], walking/riding trail that a southern boundary).
 - 9: Any file not how DELWP have monitored the Rd and that it was adhered to by the permit holder in accordance with the obligations/regulations of the ATCW(s) permit(s).
 10. Any notes that DELWP have responded to complaints being made by neighbours, and how these were responded to.
3. The Agency identified 46 pages of documents falling within the terms of the Applicant's request and granted access to one document in full and refused access to 10 documents in full under section 33(1). The Agency's decision letter sets out the reasons for its decision.

Review application

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. The Applicant indicated they do not seek access to certain personal affairs information in the documents. Accordingly, I consider the names, addresses, email addresses and telephone numbers of a third party is not sought by the Applicant and is irrelevant information for the purposes of section 25.
6. However, 'information that relates to a person's personal affairs' is interpreted broadly and 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.¹ As such, I am satisfied such information remains subject to review.
7. I have examined a copy 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 and any third 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.

Background

12. The Agency's website provides the following information about the purpose and issuing of ATCWs under the *Wildlife Act 1975* (Vic):

In some areas, wildlife can damage property, farmland or the environment. Wildlife can also pose a threat to human safety, or suffer in areas where the species is over-abundant. Wildlife control may be needed to manage the problem.

Wildlife control must be lawful, thoughtful and well planned. It must consider the needs of people to protect their land, property and safety and it must also ensure animal welfare and environmental values are protected.

Landholders or land managers may apply to the Conservation Regulator for an Authority to Control Wildlife (ATCW).²

...

What activities don't require an ATCW?

There are also other exceptions when an ATCW is not required, including:

- shooting Eastern or Western Grey Kangaroos if you are using an authorised harvester as part of the Kangaroo Harvesting Program

¹ Section 33(9).

² Victorian Government website, *Wildlife management and control authorisations*
<https://www.vic.gov.au/wildlife-management-and-control-authorisations>.

- if you engage a DELWP licensed Wildlife Controller for reptiles that are posing a safety risk to humans
- where a species of wildlife has been declared by Governor in Council Orders as unprotected (noting only in the circumstances specified in the order).

The Conservation Regulator undertakes a rigorous assessment of all ATCW applications to ensure that they meet the requirements of the Wildlife Act 1975. Your application will be assessed by a Forest and Wildlife Officer who may also contact you to organise a time to inspect your property to confirm the wildlife issues, including any damage being caused and any steps you have put in place to try to manage the issue.

...

How are ATCW applications assessed?

The Conservation Regulator will assess what is practical on a case-by-case basis, considering what is achievable for individual landholders.

These include, but are not limited to:

- the wildlife impact to the landholder
- the impact on wildlife, including animal welfare and potential population impacts
- the extent to which non-lethal control methods have been undertaken and their effectiveness
- the impact of the proposed control, including on non-target species, local environmental values and neighbours
- timing of the control (particularly in relation to non-lethal control options)
- other management options being undertaken in the area that might impact the local wildlife population.

In considering an application, the Conservation Regulator needs to be assured that there has been adequate assessment of the management options available and that any authorised control is consistent with the requirements of the Wildlife Act. In some cases, the Conservation Regulator may seek independent expert advice or require the property owner/manager to submit a Wildlife Management Plan to support the application.

Review of section 33(1) – Documents affecting the personal privacy of third parties

13. As stated above, the Agency refused access to 10 documents in full under section 33(1).
14. 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**);³ and
 - (b) such disclosure would be ‘unreasonable’.

Do the documents contain the personal affairs information of a third party?

15. 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.⁴

³ Sections 33(1) and 33(2).

⁴ *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].

16. I have also considered the following principles in determining whether information constitutes personal affairs information:⁵
- (a) 'personal information' has been given a wide interpretation;⁶
 - (b) information that 'concerns or affects' the person as an individual is personal information;⁷
 - (c) a person's personal opinion of another person, or the conduct, may be 'personal information' regarding the opinion holder;⁸ and
 - (d) that information is 'fairly benign' will not deprive the information of its personal character.⁹
17. I am satisfied the documents contain the personal affairs information of a third party and Agency officers, including information that could identify a third party.

Would disclosure of third party personal affairs information be unreasonable?

18. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the interest in protecting the personal privacy of an individual in the particular circumstances.
19. In *Victoria Police v Marke*,¹⁰ 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'.¹¹ 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'.¹²
20. During the review, the Applicant submitted:

... I do, want to know names of the DELWP officers that approved the ATCW, so that we can understand their assessment process in issuing the ATCW. The officers ARE government officials and hold government positions - so, this should NOT be a secret.

I want to know - what was the 'damage' caused to the property, thus requiring an ATCW (any evidence of this - as we are an adjoining property, and have not witnessed any damage to land or fences) - we have been residing at this property for 23 years - we have put time and money into protecting and promoting healthy, bio diverse land that connects important wildlife corridors and protects precious flora - we have a covenant on our property, and this therefore exemplifies the importance of this area.

...

Also- IF there was damage - WHAT non lethal methods were used to eradicate kangaroos - and For how long were these methods used/tried?? ...

...

We want some account from the officer that assessed the property and how they assessed the property and why the ATCW was issued and then, how it was monitored.

⁵ *Marke v Department of Justice and Regulation (Review and Regulation)* [2019] VCAT 479 (3 April 2019) at [43].

⁶ *Hutchinson v Department of Human Services* (1997) 12 VAR 422.

⁷ *Hanson v Department of Education and Training* [2007] VCAT 123 at [9].

⁸ *Richardson v Business Licensing Authority* [2003] VCAT 1053.

⁹ *Hutchinson v Department of Human Services* (1997) 12 VAR 422.

¹⁰ [2008] VSCA 218 at [76].

¹¹ *Ibid.*

¹² *Ibid* at [79].

...

We also believe that ATCW's are seriously out of date in how they are approved, and given the fragility of the environment - ... such a cost to so many lives – human, wildlife and environment.

21. In determining whether disclosure of the personal affairs information of third parties would be unreasonable, I have considered the following factors:

(a) The nature of the personal affairs information and the circumstances in which it was obtained

The personal affairs information sought by the Applicant includes a range of information provided to the Agency by a third party, the assessment of that information by the Agency, and the names of Agency officers.

The personal affairs information was obtained by the Agency in the context of carrying out its statutory responsibilities for wildlife management in Victoria. In this case, the information concerns applications made by a third party for ACTWs at different times and assessments made of those applications by Agency officers.

Subject to special circumstances, there is nothing particularly sensitive about matters occurring or arising out of the course of an agency officer's professional duties or work responsibilities as a public servant.¹ I generally consider it would not be unreasonable to disclose the name of an agency officer, regardless of their seniority, where a document sought is an official document of the agency and records agency staff carrying out their usual employment duties and responsibilities within a professional context. In this case, I consider personal information pertaining to Agency officers is recorded in the context of them performing their professional duties.

(b) The Applicant's interest in the information

The FOI Act provides a general right of access that can be exercised by any person, regardless of their motive or purpose for seeking access to a document. However, the reasons why an applicant seeks access to a document is a relevant consideration in determining whether disclosure would be unreasonable under section 33(1).¹³

The Applicant has knowledge of the making and issuing of ACTWs at [location]. Therefore, the fact that documents concerning such applications and the Agency's assessment of the applications is a known fact.

As stated above, the Applicant is concerned the Agency has granted [redacted] ATCWs to kill kangaroos [at location]. The Applicant holds concerns about the Agency's decision to issue the authorities and seeks to understand the information submitted to the Agency by [redacted] in support of their applications and the grounds upon which Agency decision makers granted the ATCWs. What is not known by the Applicant is the content of the ATCW applications and how those applications were assessed by the Agency.

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

The Applicant submits it is in the public interest to obtain access to information relating to the Agency's decision to issue the ACTWs given their associated concerns about the Agency's decision to issue ATCWs.

I consider both personal and public interests arise in this matter and these competing interests need to be balanced.

¹³ *Victoria Police v Marke* [2008] VSCA 218 at [104].

Firstly, I acknowledge the Applicant's personal interest in obtaining access to the requested documents given their personal views and concerns, as described above.

I acknowledge what appears to be a significant conflict between the Applicant and [redacted]. However, I do not agree it is reasonable to refuse access to the requested documents in full given the Applicant is aware of the ACTWs being issued and the information concerns not only a third party's personal affairs information but relates to the way in which the Agency carries out its statutory functions.

Secondly, I acknowledge the public interest in an agency with statutory decision making powers being transparent and accountable in relation to its decision making processes. In many circumstances, this will involve providing reasons for decision to an applicant and, possibly, a person affected by a decision made by the agency (an **affected person**).

Therefore, to the extent a document concerns the Agency's decision making and the exercise of its statutory functions and powers, consistent with the transparency objectives and principles under the FOI Act, I consider it is in the public interest for the Applicant, as an affected person, to know the factors the Agency took into account and the basis upon which it granted the ACTWs given its statutory responsibility for wildlife management in Victoria.

Disclosure of certain personal affairs information of a third party would ensure there is adequate transparency regarding the Agency's decision making processes and ensure it is accountable for its decisions. Examples of such information are the types and number of wildlife to which the ATCW applies and any conditions that apply to the authority granted.

However, I have carefully considered the nature of the personal affairs information provided by a third party in their ATCW applications. Where such information can be separated from information submitted in support of the ATCW applications and upon which the Agency relied to make its decisions, I am satisfied the ATCW applicant is entitled to assume the Agency will maintain the confidentiality of this information and not disclose it under the FOI Act. In my view, to do otherwise would have a detrimental impact on the Agency's ability to carry out its statutory functions in relation to receiving adequate information in support of an ATCW application. Examples of such information are the name, address and date of birth of the ATCW applicant.

In relation to the names of Agency officers recorded in the documents, while I acknowledge the Applicant seeks access to this information, I am not persuaded disclosure of Agency officer names is necessary so that the Applicant can 'understand their assessment process in issuing the ATCW' and I therefore consider their disclosure to be unreasonable.

(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.¹⁴

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.

While there is no specific information before me as to whether the Applicant intends to further disseminate the documents, I consider there is a reasonable possibility they will do so given

¹⁴ Ibid at [68].

the nature of their concerns about the issuing of the ATCWs. This includes contacting individual Agency officers who assessed the ATCW applications and issued the ATCWs.

(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 affairs information and seek their view as to whether disclosure of the document should occur.¹⁵ However, this obligation does not arise if:

- (a) the notification would be reasonably likely to endanger the life or physical safety of a person, or cause them undue distress, or is otherwise unreasonable in these circumstances;
- (b) the notification would be reasonably likely to increase the risk to the safety of a person experiencing family violence; or
- (c) it is not practicable to do so.¹⁶

The Agency consulted with one third party regarding their views on the release of their personal affairs information in the documents. The third party did not consent to its disclosure under the FOI Act. I have given careful consideration to the views of the third party.

The Agency did not consult with Agency officers as it determined it was not practicable to do so in these circumstances.

There is no information before me to indicate the document will be disseminated more broadly. However, given what appears to be a dispute or strained relations between the Applicant and a third party, I have given weight to the third party's right to privacy and any objection to disclosure of the document in these circumstances.

(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.¹⁷

The Victorian Civil and Administrative Tribunal (**VCAT**) has accepted, and I accept that the concept of 'pose a safety risk to any person' may extend not only to a perceived threat of physical harm, but can include 'a reasonable apprehension of the possibility of confrontation, retaliation, and/or danger to physical safety'.¹⁸

I understand from the Applicant's submission that there is a strained relationship between them and [redacted]. While there is no information before me to suggest disclosure of the requested documents would be likely to endanger the physical safety of any person, in the circumstances of this matter, I accept disclosure of the documents would be likely to cause stress and anxiety to the relevant third party. Similarly to the above factor, I have given careful

¹⁵ Section 33(2B).

¹⁶ Section 33(2C).

¹⁷ Section 33(2A).

¹⁸ See, for example, *Melbourne Health v Ooz* (Review and Regulation) [2021] VCAT 623 at [48] and *Proctor v Mornington Peninsula Shire* (Review and Regulation) [2018] VCAT 638 at [104].

consideration to the views of the third party in determining whether the information should be released to the Applicant.

Given what appears to a dispute between the Applicant and a third party property owner, on balance, I am unable to discount the possibility disclosure of the documents in full under the FOI Act would be reasonably likely to pose a safety risk to any person.

22. Having weighed up the above factors, on balance, I am satisfied certain information in the documents constitutes the personal affairs information of a third party, namely information that expressly concerns them and their property. I am satisfied disclosure of some of this information would be unreasonable given what appears to be the strained relationship between the Applicant and [redacted].
23. However, this information is to be distinguished from information that relates more closely to the Agency carrying out its statutory functions in relation to the management of wildlife in Victoria through the issuing of ATCWs under section 28A or section 28A(1A) of the *Wildlife Act 1975* (Vic).
24. In relation to the names of Agency officers, on balance, I am satisfied disclosure of this information would be unreasonable given the possibility of the Applicant contacting those individual officers.
25. My decision in relation to section 33(1) and each document is set out in the Schedule of Documents in **Annexure 1**.

Section 30(1) – Internal working documents

26. 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.
27. The exemption does not apply to purely factual material in a document.¹⁹

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?

28. 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.
29. 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 engaged on behalf of an agency, whether or not they are subject to the *Public Administration Act 2004* (Vic).
30. 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.²⁰

¹⁹ Section 30(3).

²⁰ *Mildenhall v Department of Education* (1998) 14 VAR 87 at 90.

31. I am satisfied the documents were prepared by Agency officers and disclose matter in the nature of opinion, advice or recommendation.

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?

32. 'Deliberative processes' is interpreted broadly and includes any of the processes of deliberation or consideration involved in the functions of an agency, Minister or government.²¹

33. In *Re Waterford and Department of Treasury (No.2)*,²² 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.

34. I am satisfied the documents were prepared in the course of, or for the purpose of, the deliberative processes of the Agency in the context of assessing ACTW applications.

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

35. In determining if disclosure of a document would be contrary to the public interest, 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 given weight to the following relevant factors:²³

- (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 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.

²¹ *Brog v Department of Premier and Cabinet* (1989) 3 VAR 201 at 208.

²² [1984] AATA 67; (1984) 5 ALD 588; 1 AAR 1 at [58].

²³ *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

36. While the Agency did not rely on section 30(1) to refuse access to information, as it relied on section 33(1), having reviewed the documents I consider Documents 9 and 11 contain information which is in the nature of opinion, advice or recommendation prepared by an Agency officer in the course of assessing ATCW applications.
37. Having examined the documents, I have considered the following relevant factors and information before me:
- (a) Certain information in the documents constitutes the opinion and advice of Agency officers as part of a deliberative process in relation to the handling of ATCW applications. I acknowledge some of this information is sensitive in nature given the circumstances of this matter and it is likely the relevant officers would oppose it being released under the FOI Act.
 - (b) I acknowledge there may be circumstances where information regarding deliberation or consultation on a licensing application or permit, such as an ACTW, is particularly sensitive and it is in the public interest for Agency officers to record or exchange opinions and advice in a frank and candid manner without concern their necessary internal deliberations will be later disclosed to an applicant or other person under the FOI Act.
 - (c) However, I believe that by providing access to information that demonstrates well considered administrative decisions, disclosure will serve the public interest in open and accountable actions of the public sector.
 - (d) From my review of the documents subject to review, I consider there is a public interest in transparency in the way in which ACTW applications, such as those subject to review, are handled by the Agency to build public trust in government decision making and ensure accountability and integrity in the decision making processes of the Agency.
38. Having considered the above factors and the nature and content of the documents subject to review, I have determined that certain information in Documents 9 and 11 is exempt from release under section 30(1).
39. My decision in relation to section 30(1) is set out in the Schedule of Documents in **Annexure 1**.

Section 25 – Deletion of exempt or irrelevant information

40. 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.
41. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’²⁴ 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 25.²⁵
42. The Applicant does not seek access to certain personal affairs information subject to review. However, as described above, personal affairs information extends to more than just names and locations. It also encompasses a broader range of information that concerns the personal affairs of a third party.

²⁴ *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].

²⁵ *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].

43. I am satisfied it is practicable to delete irrelevant and exempt information from the documents in accordance with section 25 where to do so would not render a document meaningless.
44. My decision in relation to section 25 and each document is set out in the Schedule of Documents in **Annexure 1**.

Conclusion

45. On the information before me, I am satisfied information in the documents is exempt from release under section 33(1) and certain information is exempt from release under section 30(1).
46. While I am satisfied the disclosure of certain personal affairs information in the documents would be unreasonable, I am not satisfied all information to which the Agency refused access is exempt from release under section 33(1).
47. In doing so, my decision seeks to balance the right of the Applicant to know the basis upon which the Agency exercised its statutory decision-making powers to grant ATCW's to a third party with the third party's right to privacy regarding their sensitive personal information submitted with their ATCW applications.
48. While I am satisfied the disclosure of certain information in the documents under section 30(1) would be contrary to the public interest, I am not satisfied all information to which the Agency refused access is exempt from release under section 33(1).
49. My decision in relation to each document is set out in the Schedule of Documents in **Annexure 1**.
50. A marked-up copy of the documents will be provided to the Agency with this decision indicating the information to be released and deleted.

Review rights

51. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.²⁶
52. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.²⁷
53. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.²⁸
54. 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.
55. 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.²⁹
56. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

Third party review rights

²⁶ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

²⁷ Section 52(5).

²⁸ Section 52(9).

²⁹ Sections 50(3F) and 50(3FA).

57. As I have determined to release documents that contain the personal affairs information of persons other than the Applicant, if practicable, I am required to notify any such persons of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.³⁰
58. In this case, I am satisfied it is practicable to notify the relevant third party of their review rights and confirm they will be notified of my decision.

When this decision takes effect

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

³⁰ Sections 49P(5), 50(3) and 52(3).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.	[Date]	Emails with Applicant	3	Released in full	Not subject to review	
2.	[Date]	Letter regarding Agency's decision to issue an ATCW	3	Refused in full Section 33(1)	<p>Release in part Sections 33(1), 25</p> <p>The document is to be released to the Applicant with irrelevant and exempt information identified in the marked-up copy of the document provided to the Agency with this decision deleted in accordance with section 25.</p>	<p>Section 33(1): This document is a letter sent by the Agency to a third party advising them of the Agency's decision to grant an ATCW in accordance with its statutory functions in relation to wildlife management in Victoria. I am satisfied disclosure of certain personal affairs information would be unreasonable for the reasons outlined in the Notice of Decision above. However, where the information discloses details of the Agency's decision and the factors it relied upon in making its decision, while I accept this information relates to a third party's personal affairs information, I am satisfied its disclosure would not be unreasonable. I consider there is a public interest in ensuring there is adequate transparency regarding the Agency's decision making processes and it is accountable for its statutory decision making. This information is therefore not exempt from release under section 33(1).</p> <p>Section 25: The document contains certain third party personal affairs information not sought by the</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						Applicant and is therefore irrelevant information for the purposes of section 25.
3.	[Date]	Compliance Case Management File Note	3	Refused in full Section 33(1)	Release in part Section 33(1) The document is to be released to the Applicant with irrelevant and exempt information identified in the marked-up copy of the document provided to the Agency with this decision deleted in accordance with section 25.	Section 33(1): See comments for Document 2. Section 25: The document contains certain third-party personal affairs information not sought by the Applicant and is therefore irrelevant to the request. See comments for Document 2.
4.	[Date]	Authorisation to destroy letter sent by Agency to third party	4	Refused in full Section 33(1)	Release in part Sections 33(1), 25 The document is to be released to the Applicant with irrelevant and exempt information identified in the marked-up copy of the document provided to the Agency with this decision deleted in accordance with section 25.	Section 33(1): See comments for Document 2. Section 25: The document contains certain third-party personal affairs information not sought by the Applicant and is therefore irrelevant to the request. See comments for Document 2.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
5.	[Date]	Authority to Control Wildlife Application form	3	Refused in full Section 33(1)	Refuse in full Section 33(1)	<p>Section 33(1): I am satisfied the document contains personal affairs information about a third party that would be unreasonable to disclose for the reasons described above in the Notice of Decision.</p> <p>Section 25: I do not consider it is practicable to delete exempt information from the document as to do so would render the document meaningless.</p>
6.	[Date]	Compliance case management system file note	2	Refused in full Section 33(1)	<p>Release in part Sections 33(1), 25</p> <p>The document is to be released to the Applicant with irrelevant and exempt information identified in the marked-up copy of the document provided to the Agency with this decision deleted in accordance with section 25.</p>	<p>Section 33(1): See comments for Document 5.</p> <p>Section 25: See comments for Document 5.</p>
7.	[Date]	Authorisation to destroy letter sent by Agency to third party	4	Refused in full Section 33(1)	<p>Release in part Sections 33(1), 25</p> <p>The document is to be released to the Applicant</p>	<p>Section 33(1): See comments for Document 2.</p> <p>Section 25: The document contains certain third-party personal affairs information not sought by the</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					with irrelevant and exempt information identified in the marked-up copy of the document provided to the Agency with this decision deleted in accordance with section 25.	Applicant and is therefore irrelevant to the request. See also comments for Document 2.
8.	[Date]	Authority to Control Wildlife Application form	3	Refused in full Section 33(1)	Refuse in full Section 33(1)	Section 33(1): See comments for Document 5. Section 25: See comments for Document 5.
9.	[Date]	ATCW template	8	Refused in full Section 33(1)	Release in part Sections 30(1), 33(1), 25 The document is to be released to the Applicant with exempt information identified in the marked-up copy of the document provided to the Agency with this decision deleted in accordance with section 25.	Section 30(1): I am satisfied certain information is exempt under section 30(1) for the reasons described above in the Notice of Decision. Section 33(1): See comments for Document 2. Section 25: See comments for Document 2.
10.	undated	Authority to Control Wildlife Application form	3	Refused in full Section 33(1)	Refuse in full Section 33(1)	Section 33(1): See comments for Document 5. Section 25: See comments for Document 5.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
11.	[Date]	ATCW template	10	Refused in full Section 33(1)	Release in part Sections 30(1), 33(1), 25 The document is to be released to the Applicant with exempt information identified in the marked-up copy of the document provided to the Agency with this decision deleted in accordance with section 25.	Section 30(1): See comments for Document 9. Section 33(1): See comments for Document 2. Section 25: See comments for Document 2.