

Notice of Decision and Reasons for Decision

Applicant: 'CI5'
Agency: Department of Justice and Community Safety
Decision date: 20 November 2020
Exemption considered: Section 33(1)
Citation: 'CI5' and Department of Justice and Community Safety (*Freedom of Information*) [2020] VICmr 325 (20 November 2020)

FREEDOM OF INFORMATION – FOI request of third party – emails – ministerial briefings – recruitment of [position title] – successful and unsuccessful candidates – resumes – job applications – response to the key selection criteria – referees – interviews

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 satisfied the exemption in section 33(1) applies to the documents in part.

Where I am satisfied it is practicable to provide the Applicant with edited copy of the documents with irrelevant and exempt information deleted in accordance with section 25, I have granted access to those 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
20 November 2020

Reasons for Decision

Background to review

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

A copy of the wording of all Freedom of Information requests submitted to the department from the [named party] or [named party], from [date] to the date of this request.

A copy of all documents identified by the department as relevant to Freedom of Information requests from the [named party] or [named party] (including those which were later withdrawn) relating to [named party], from [date] to the date of this request.

2. In its decision, the Agency identified 196 pages of documents falling within the terms of the Applicant's request. It refused access to the documents in full relying on the exemption in section 33(1). The Agency's decision letter sets out the reasons for its decision.

Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. I have examined copies of the documents subject to review.
5. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
6. I have considered all communications and submissions received from the parties, including
 - (a) the Agency's decision on the FOI request; and
 - (b) the Applicant's review application.
7. In undertaking my review, I have had regard to the object of the FOI Act, which is to create a general right of access to information in the possession of the Government or other public bodies, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.
8. I also note Parliament's intention the FOI Act must be interpreted so as to further the object of the Act and any discretions conferred by the Act must be exercised, as far as possible, so as to facilitate and promote the disclosure of information in a timely manner and at the lowest reasonable cost.

Review of exemptions

Section 33(1)

9. The Applicant advised in their review application, that they do not seek access to personal affairs information and confirmed 'details which could allow the identity, address and/or location of individuals to be determined to be redacted'. Accordingly, I have considered relevant information in the documents as follows:
 - (a) all names, addresses, phone numbers and email addresses fall outside the scope of the request and are irrelevant; and
 - (b) where I am satisfied other information could identify an individual and its disclosure would be unreasonable, I have determined such information is exempt under section 33(1).

10. A document is exempt under section 33(1) if two conditions are satisfied:
 - (a) disclosure of the document under the FOI Act would 'involve' the disclosure of information relating to the 'personal affairs' of a person other than the Applicant;¹ and
 - (b) such disclosure would be 'unreasonable'.
11. Information relating to a person's 'personal affairs' includes information that identifies any person or discloses their address or location. It also includes any information from which such information may be reasonably determined.²
12. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the protection of an individual's personal privacy in the circumstances.
13. In deciding 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. However, I do not consider this to be a relevant factor in this matter.³
14. 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 if an FOI request has been received for documents containing their personal information and seek their views as to whether disclosure of the document should occur,⁴ unless an exception to this requirement applies.⁵
15. The Agency consulted with a third party named in the documents, who objected to the release of their personal affairs information. I note, however, the Applicant does not seek certain personal affairs information. I have taken this objection into account in my assessment of the remaining personal affairs information in the documents in relation to the individual. Although, I note the documents do not contain a substantial amount of personal affairs information in relation to that individual.
16. In determining whether release 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;
 - (b) the circumstances in which the personal information was obtained by the Agency;
 - (c) the views of the individual to whom the information relates in relation to its disclosure;
 - (d) whether any public interest would be promoted by the release of the information; and
 - (e) the Applicant's interest in the information, and purpose for seeking access to the information.
17. My decision in relation to section 33(1) is set out in the Schedule of Documents at **Annexure 1**.

¹ Sections 33(1) and (2).

² Section 33(9).

³ Section 33(2A).

⁴ Section 33(2B).

⁵ Section 33(2C).

Deletion of exempt or irrelevant information

18. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
19. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁶ 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 25.⁷
20. I have considered whether it is practicable to provide the Applicant with an edited copy of the document with irrelevant and exempt information deleted in accordance with section 25.
21. I am satisfied it is practicable to delete the irrelevant and exempt information from certain documents, as to do so would not require substantial time and effort, and the edited documents would retain meaning. However, given the specific and personal nature of information in certain documents, I have determined it would not be practicable to delete the exempt information as to do so would render those documents meaningless.

Conclusion

22. On the information before me, I am satisfied the documents are exempt under section 33(1).
23. Where I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with irrelevant and exempt information deleted in accordance with section 25, I have granted access to those documents in part.

Review rights

24. 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.⁸
25. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁹
26. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁰
27. 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.
28. 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.¹¹

When this decision takes effect

29. 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.

⁶ *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].

⁷ *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].

⁸ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁹ Section 52(5).

¹⁰ Section 52(9).

¹¹ Sections 50(3F) and (3FA).

Annexure 1 – Schedule of Documents –

No.	Date of document	Title or description of document	Number of pages	Agency's decision	OVIC decision	OVIC comments
1	[date]	FOI request	4	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	<p>Section 33(1): The FOI applicant is not a person but an organisation. While I consider members of the community are entitled to make FOI requests confidentially, particularly where it relates to sensitive matters, this request has not been made by an individual in their personal capacity, but rather on behalf of an organisation. For this reason, I do not consider disclosure of this letter would unreasonably disclose the personal affairs information of a person. Therefore, I am not satisfied the document is exempt under section 33(1).</p> <p>Section 25: The Applicant does not seek access to personal affairs information. I am satisfied it is practicable to delete all names, addresses, telephone numbers, email addresses and signatures, which are irrelevant, in accordance with section 25.</p>
2	[date] to [date]	Email chain	5	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	<p>Section 33(1): Once irrelevant information is deleted from this series of emails, they do not contain any personal affairs information, rather, they relate to Agency officers and officers of another agency carrying out their usual professional duties in relation to a recruitment exercise. Therefore, I am not satisfied the document is exempt under section 33(1).</p> <p>Section 25: See comments for Document 1.</p>

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No.	Date of document	Title or description of document	Number of pages	Agency's decision	OVIC decision	OVIC comments
3	[date]	Ministerial briefing	4	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 33(1): The document is a briefing to the Minister regarding the recruitment of [position title]. It does not contain any sensitive personal affairs information. Therefore, I am not satisfied the document is exempt under section 33(1). Section 25: See comments for Document 1.
4	[date]	Email	1	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 33(1): See comments for Document 2. Section 25: See comments for Document 1.
5	Undated	Agency brief covering note	1	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 33(1): See comments for Document 3. Section 25: See comments for Document 1.

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No.	Date of document	Title or description of document	Number of pages	Agency's decision	OVIC decision	OVIC comments
6	[date]	Ministerial Briefing	4	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	This document is a duplicate of Document 3. Section 33(1): See comments for Document 3. Section 25: See comments for Document 1.
7	[date]	Agenda	1	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 33(1): See comments for Document 3. Section 25: See comments for Document 1.
8	[date]	Email chain	2	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with	Section 33(1): See comments for Document 2. Section 25: See comments for Document 1.

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No.	Date of document	Title or description of document	Number of pages	Agency's decision	OVIC decision	OVIC comments
					section 25.	
9	[date]	Ministerial Briefing	3	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 33(1): See comments for Document 3. Section 25: See comments for Document 1.
10	[date]	Email	1	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 33(1): See comments for Document 2. Section 25: See comments for Document 1.
11	[date]	Agency Brief	1	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with	Section 33(1): See comments for Document 3. Section 25: See comments for Document 1.

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No.	Date of document	Title or description of document	Number of pages	Agency's decision	OVIC decision	OVIC comments
					section 25.	
12	[date]	Ministerial Briefing	3	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	This document is a duplicate of Document 9. Section 33(1): See comments for Document 3. Section 25: See comments for Document 1.
13	[date]	Email chain	2	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 33(1): See comments for Document 2. Section 25: See comments for Document 1.
14	N/A	Job advertisement	2	Refused in full Section 33(1)	Release in full	Section 33(1): This document is a copy of a public job advertisement. It does not contain any personal affairs information. Therefore, I am not satisfied the document is exempt under section 33(1).
15	[date]to [date]	Email chain	8	Refused in full	Release in part	Section 33(1): See comments for Document 2.

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No.	Date of document	Title or description of document	Number of pages	Agency's decision	OVIC decision	OVIC comments
				Section 33(1)	Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 25: See comments for Document 1.
16	[date]	Briefing	2	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 33(1): See comments for Document 3. Section 25: See comments for Document 1.
17	[date]	Update Briefing	2	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 33(1): The document was prepared by a recruitment agency to record the recruitment processes undertaken for the [named] role. The personal affairs information in the document is not sought by the Applicant. Therefore, I am not satisfied the document is exempt under section 33(1). Section 25: See comments for Document 1.
18	[date]	Email chain	2	Refused in full	Release in part	Section 33(1): See comments for Document 2.

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No.	Date of document	Title or description of document	Number of pages	Agency's decision	OVIC decision	OVIC comments
				Section 33(1)	Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 25: See comments for Document 1.
19	[date]	Ministerial Briefing	2	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 33(1): See comments for Document 3. Section 25: See comments for Document 1.
20	[date]	Update Briefing	1	Refused in full Section 33(1)	Release in full	Section 33(1): The document does not contain any personal affairs information. Therefore, I am not satisfied the document is exempt under section 33(1).
21	[date]	Email chain	2	Refused in full Section 33(1)	Release in part Section 25 The document is to be released	Section 33(1): See comments for Document 2. Section 25: See comments for Document 1.

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No.	Date of document	Title or description of document	Number of pages	Agency's decision	OVIC decision	OVIC comments
					with irrelevant information deleted in accordance with section 25.	
22	[date]	Ministerial Briefing	2	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 33(1): See comments for Document 3. Section 25: See comments for Document 1.
23	[date]	Update Briefing	1	Refused in full Section 33(1)	Release in full	Section 33(1): The document does not contain any personal affairs information. Therefore, I am not satisfied the document is exempt under section 33(1).
24	[date]	Possible Parliamentary Questions	2	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 33(1): The document was prepared for the Minister to respond to possible questions asked in Parliament about [the Agency's recruitment process]. The document, therefore, was prepared with the understanding the information it contains could potentially be made public. I also note information in the document is publicly available. Therefore, I am not satisfied the document is exempt under section 33(1).

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No.	Date of document	Title or description of document	Number of pages	Agency's decision	OVIC decision	OVIC comments
						Section 25: See comments for Document 1.
25	[date]	Email chain	2	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 33(1): See comments for Document 2. Section 25: See comments for Document 1.
26	[date]	Ministerial Briefing	2	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 33(1): See comments for Document 3. Section 25: See comments for Document 1.
27	[date]	Update Briefing	1	Refused in full Section 33(1)	Release in full	Section 33(1): The document does not contain any personal affairs information. Therefore, I am not satisfied the document is exempt under section 33(1).

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No.	Date of document	Title or description of document	Number of pages	Agency's decision	OVIC decision	OVIC comments
28	[date]	Emails	2	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 33(1): See comments for Document 2. Section 25: See comments for Document 1.
29	[date]	Ministerial Briefing	2	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 33(1): See comments for Document 3. Section 25: See comments for Document 1.
30	[date]	Update Briefing	1	Refused in full Section 33(1)	Release in full	Section 33(1): The document does not contain any personal affairs information. Therefore, I am not satisfied the document is exempt under section 33(1).
31	[date]	Email	1	Refused in full Section 33(1)	Release in full	Section 33(1): The document does not contain any personal affairs information. Therefore, I am not satisfied the document is exempt under section

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No.	Date of document	Title or description of document	Number of pages	Agency's decision	OVIC decision	OVIC comments
						33(1).
32	[date]	Email chain	2	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 33(1): See comments for Document 2. Section 25: See comments for Document 1.
33	[date]	Possible Parliamentary Question	2	Refused in full Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 33(1): See comments for Document 24.
34	[date]	Email and PDF reference report attached	7	Refused in full Section 33(1)	Release in part Sections 33(1), 25 The document is to be released with irrelevant information deleted in accordance with	<u>Email</u> Section 33(1): See comments for Document 2. Section 25: See comments for Document 1. <u>Attachment</u>

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No.	Date of document	Title or description of document	Number of pages	Agency's decision	OVIC decision	OVIC comments
					<p>section 25.</p> <p>The attachment to the email, being a referee report, is exempt in full under section 33(1).</p>	<p>The attachment is a document recording referee reports provided for a candidate for the [position title]. It contains personal affairs information that I am satisfied would be unreasonable to release on grounds:</p> <ul style="list-style-type: none"> • it contains sensitive personal affairs information; • the person whom it concerns would be reasonably likely to object to its release; and • I consider there is no countervailing public interest in disclosure that outweighs the individual's personal privacy in circumstances where the disclosure of other documents provide the recruitment process is subject to appropriate public scrutiny. <p>Section 25: I am satisfied it is not practicable to delete the sensitive personal affairs information in the attachment in accordance with section 25 without rendering it meaningless. This is because it contains detailed biographical information from which the person's identity could be determined. Therefore, I have determined the attachment is exempt in full.</p>
35	Various	Email chain and attachments	64	<p>Refused in full</p> <p>Section 33(1)</p>	<p>Release in part</p> <p>Sections 33(1), 25</p>	<p><u>Emails, interview panel questions, interview schedule, market report and position description</u></p>

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No.	Date of document	Title or description of document	Number of pages	Agency's decision	OVIC decision	OVIC comments
					<p>The document is to be released with the following irrelevant and exempt 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"> • pages 105 to 107; • from page 108 to 111; • pages 112 and 113; • pages 122 to 133. 	<p>Section 33(1): Certain documents do not contain any personal affairs information once irrelevant information is deleted. Also see comments for Document 2.</p> <p>Section 25: See comments for Document 1. This includes the name of the successful candidate.</p> <p><u>Pages 105 to 107 (inclusive)</u></p> <p>Section 33(1): Consistent with my assessment of Document 34, the information in this document relates to the sensitive personal affairs of a candidate for the position of [position title]. I note the person named in the documents was [redacted contextual information]. I therefore have decided these pages are exempt under section 33(1) for the reasons set out in Document 34.</p> <p>Section 25: See comments for Document 1.</p> <p><u>Pages 108 to 111 (inclusive)</u></p> <p>Section 33(1): In relation to the successful candidate's response to the key selection criteria, I consider this document is sensitive and personal.</p> <p>In my view it would be unreasonable to release it, where the release of other information in these pages, in part, provides transparency in relation to</p>

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No.	Date of document	Title or description of document	Number of pages	Agency's decision	OVIC decision	OVIC comments
						<p>the recruitment process without unnecessary intrusion into that individual's personal privacy. Accordingly, I am satisfied these pages are exempt under section 33(1).</p> <p>Section 25: I am satisfied it is not practicable to delete personal affairs information from the document in accordance with section 25, given the specific biographical information it contains could identify that person.</p> <p><u>Pages 112 to 113 (inclusive)</u></p> <p>Section 33(1): Consistent with parts of the report, I consider the document contains sensitive personal affairs information. I have decided these pages are exempt under section 33(1) for the reasons set out in relation to pages 105 to 107 and 108 to 111.</p> <p>Section 25: I consider it is practicable to delete exempt information from this part of the document in accordance with section 25.</p> <p><u>Pages 122 to 133 (inclusive)</u></p> <p>Section 33(1): The document is a recruitment agency's assessment of potential candidates, together with the job application of an unsuccessful candidate. In my view, it would be unreasonable to release this information on the basis that:</p>

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No.	Date of document	Title or description of document	Number of pages	Agency's decision	OVIC decision	OVIC comments
						<ul style="list-style-type: none"> • it contains sensitive personal affairs information; • the person whom it concerns would be reasonably likely to object to its release; and • I consider there is no countervailing public interest in disclosure that outweighs the individuals' personal privacy in circumstances where the disclosure of other documents provide the recruitment process is subject to appropriate public scrutiny. <p>Section 25: I am not satisfied it would be practicable to delete personal affairs information in the document given the specific biographical information it contains. In my view such information could reasonably reidentify an unsuccessful candidate who applied for the position of [position title] and deletion of such information in accordance with section 25 would render the document meaningless. Accordingly, the document is exempt in full.</p> <p><u>Pages 134 to 144 (inclusive)</u></p> <p>I confirm these pages are duplicates of pages 92 and 105 to 114 that have been assessed above and should be deleted in accordance with section 25.</p>
36	N/A	Duplicate copy of Market Report	3	Refused in full	Refused in full	I confirm this is a duplicate of pages 97 to 99 that have been assessed above and should be deleted in

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No.	Date of document	Title or description of document	Number of pages	Agency's decision	OVIC decision	OVIC comments
				Section 33(1)	Section 25	accordance with section 25.
37	N/A	Duplicate copy of [position title] Job Advertisement	5	Refused in full Section 33(1)	Refused in full Section 25	I confirm this is a duplicate of pages 100 to 104 that have been assessed above and should be deleted in accordance with section 25.
38	N/A	Recruitment Applications	44	Refused in full Section 33(1)	Refuse in full Section 33(1)	<p>Section 33(1): The documents are recruitment applications and contain the personal information of unsuccessful candidates for the role, as described in Document 35 (pages 122 to 133). For similar reasons, I am satisfied the personal affairs information in the documents would be unreasonable to release. Accordingly, I am satisfied the document is exempt under section 33(1).</p> <p>Section 25: I am not satisfied it would be practicable to delete personal affairs information in the document given the specific biographical information it contains. In my view such information could reasonably reidentify unsuccessful candidates who applied for the position of [position title] and deletion of such information in accordance with section 25 would render the document meaningless. Accordingly, the document is exempt in full.</p>