



Office of the Victorian
Information Commissioner

t 1300 00 6842
e enquiries@ovic.vic.gov.au
w ovic.vic.gov.au

PO Box 24274
Melbourne Victoria 3001

Notice of Decision and Reasons for Decision

Applicant:	'EY2'
Agency:	RMIT University
Decision date:	21 December 2022
Exemptions considered:	Sections 33(1), 35(1)(b)
Citation:	'EY2' and RMIT University (Freedom of Information) [2022] VICmr 248 (21 December 2022)

FREEDOM OF INFORMATION – higher education examination and assessment – PhD – assessment of thesis – university examiner – qualifications – curriculum vitae – resume – personal affairs information of a third party – 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 a document requested by the Applicant under the FOI Act.

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

I am satisfied the document is exempt from release under section 33(1).

As I am satisfied it is not practicable to provide the Applicant with an edited copy of the document with exempt information deleted in accordance with section 25, access to the document is refused in full.

My reasons for decision follow.

Joanne Kummrow

Public Access Deputy Commissioner

21 December 2022

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking documents containing the name, affiliations and qualifications of an examiner relating to the Applicant's PhD thesis valuation and re-examination.
2. The Agency identified eight documents falling within the terms of the Applicant's request excluding duplicates and granted access to seven documents in full and refused access to one document in full under sections 33(1) and 35(1)(b). The Agency's decision letter sets out the reasons for its decision.

Review application

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 a copy of the document subject to review. The document is a curriculum vitae of an examiner engaged by the Agency to undertake a reviews of the Applicant's research submission.
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 in relation to this matter.
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 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 information

9. The Agency, through its legal representative, made a submission in which it set out background information regarding its procedures for 'monitoring and managing the submission and examination of Higher Degrees by Research and all HDR candidates'. I consider this information provides important context in considering disclosure of the document in this matter.

Statutory and policy framework

1. RMIT University is established under the *Royal Melbourne Institute of Technology Act 2010* ("**RMIT Act**"). The objects of the University include to provide and maintain a teaching and learning environment of excellent quality and offering higher education at an international standard and to undertake scholarship and pure and applied research. [Section 5(a) and (c), RMIT Act]
2. The University has the powers and functions conferred on it by the RMIT Act or any university statute or university regulation, and can do anything necessary or convenient to be done for or in connection with its objects, powers and functions. [Section 6(3), RMIT Act]
3. The Council of the University exercises the powers, functions and duties of the University (subject to the RMIT Act, the university statutes and university regulations). [Section 8(2), RMIT Act] Its primary responsibilities include:
 - establishing policy and procedural principles for the operation of the University consistent with legal requirements and community expectations; [Section 3(d), RMIT Act]

- overseeing and monitoring the academic activities of the University; [Section 8(3), RMIT Act.]
 - establishing policies relating to the governance of the University. [Section 9(1)(b), RMIT Act]
4. The Council may make university statutes and university regulations with respect to any matter relating to the University including with respect to examinations, students, degrees and other academic awards. [Section 29, RMIT Act]
 5. Clause (9) of the Assessment, Academic Progress and Appeals Regulations [Available here: <https://policies.rmit.edu.au/document/view.php?id=190>] provides that the research component of higher degree by research programs is assessed via external, independent examination.
 6. The Higher Degree Research (HDR) Submission and Examination Procedure [Available here: <https://policies.rmit.edu.au/document/view.php?id=18>]. This is made under the Higher Degrees by Research Policy: <https://policies.rmit.edu.au/document/view.php?id=12> of the University applies to all staff and examiners responsible for monitoring and managing the submission and examination of Higher Degrees by Research and all HDR candidates and provides the rules for submission and examination of research towards a Higher Research Degree. [Sections 1 and 3, HDR Submission and Examination Procedure]
 7. That procedure makes it clear that:
 - (a) Before research is submitted, candidates must not be told the names of their examiners. [Subsection 4(9), HDR Submission and Examination Procedure, except where examination includes oral presentation or performance in the presence of examiners]
 - (b) Only the Associate Deputy Vice-Chancellor Research Training and Development or nominee may communicate with examiners on behalf of the University while the research is under examination. [Subsection 4(32), HDR Submission and Examination Procedure]
 - (c) Examiners identities must not be disclosed to the candidate until after the final classification has been given, and only with the permission of the examiner. [Subsection 4(33(c)), HDR Submission and Examination Procedure]
 - (d) The examination period extends from the date examiners are provided with the research submission to the date a final classification has been determined and registered. [Subsection 4(34), HDR Submission and Examination Procedure]
 - (e) In any re-examination process, after a candidate is given the interim classification “revise and resubmit” for re-examination, the original and any replacement examiners of the revised thesis are provided with, among other things, the de-identified co-examiners’ reports to determine if the required amendments and revisions have been made. [Subsection 4(67(c)), HDR Submission and Examination Procedure]
 - (f) Where a candidate whose examination has been completed receives a result of “failed” they may appeal against any perceived irregularities in the conduct of their HDR examination that has had a significant impact on the examination result. [Subsection 4(75), HDR Submission and Examination Procedure]
 8. The University’s Research Policy [Available here: <https://policies.rmit.edu.au/document/view.php?id=28#section6>] applies to all research and all persons (including students and candidates). Researchers must commit to and must comply with all legislation, national standards and institutional policy. [Subsection 4(4) and (5), Research Policy]
 9. University policies about research are consistent with the Australian Code for the Responsible Conduct of Research. [Available here: <https://www.nhmrc.gov.au/file/14384/download?token=gje4DNtT>] Under the heading of responsibilities of researchers, researchers are required to uphold principles of responsible research which includes:

R16 Undertake and promote education and training in responsible research conduct.

R17 Comply with the relevant laws, regulations, disciplinary standards, ethics guidelines and institutional policies related to responsible research conduct...

A guide on Peer Review [Available here

<https://www.nhmrc.gov.au/file/14502/download?token=3ipiDqWk>] supporting that Code

provides that the responsibilities of researchers include that researchers whose work is undergoing peer review must not seek to influence the process or outcomes. [Clause 4.3] It is submitted this includes by not contacting the peer reviewer, just as the peer reviewer must not contact the author. [Clause 4.2]

Review of exemptions

Section 33(1) – Personal affairs information of a third party

10. 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**); and
 - (b) such disclosure would be ‘unreasonable’.

Does the document contain the ‘personal affairs information’ of a third party?

11. Information relating to a third party’s ‘personal affairs’ includes, but is not limited to, 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
12. Personal affairs information that relates to a third party ‘concerns or affects that person as an individual’.²
13. A document will disclose personal affairs information if it is capable of, either directly or indirectly, identifying a particular individual whose personal affairs are disclosed. As the nature of disclosure under the FOI Act is unrestricted and unconditional, this is to be interpreted by the capacity of any member of the public to potentially identify a third party.³
14. The document subject to review is a collection of details regarding the examiner’s professional background (**qualification information**). I am satisfied the document contains the personal affairs information of a third party, including their name, contact information, employment history and other personal information.

Would disclosure of the personal affairs information be unreasonable?

15. The concept of ‘unreasonable disclosure’ involves balancing the public interest in the disclosure of official information with the interest in protecting a third party’s right to privacy in the particular circumstances.
16. In *Victoria Police v Marke*,⁴ the Victorian Court of Appeal held there is ‘no absolute bar to providing access to documents which relate to the personal affairs of others’, and the exemption under section 33(1) ‘arises only in cases of unreasonable disclosure’ and ‘[w]hat amounts to an unreasonable disclosure of someone’s personal affairs will necessarily vary from case to case’. The Court further held, ‘[t]he protections of privacy, which lies at the heart of s 33(1), is an important right that the FOI Act properly protects. However, an individual’s privacy can be invaded to a lesser or greater degree’.⁵
17. In determining whether disclosure of the personal affairs information would be unreasonable in this matter, I have considered the following factors:

¹ Section 33(9).

² *Hanson v Department of Education & Training* [2007] VCAT 123.

³ *Ibid.*

⁴ [2008] VSCA 1653 at [42].

⁵ [2008] VSCA 218 at [79].

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

The document contains information relevant to a PhD examiner and their qualifications to perform their official duties in the PhD thesis examination processes.

Whether the personal affairs information of an agency officer is exempt from release under section 33(1) must be considered in the context of each matter.⁶ It has been held there is nothing particularly sensitive about matters occurring or arising in the course of one's official duties and disclosure of this type of information is generally considered not unreasonable.⁷

I consider the personal affairs information does not provide further information about the Agency's decision making process. Rather it is documentation that would be considered by the Agency only when considering a person's suitability to be an examiner.

Accordingly, I consider release of the document would not provide further information about government decision making nor provide any further accountability of government processes.

(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 may be a relevant consideration in determining whether disclosure would be unreasonable.⁸

The Applicant states they seek access to the document for the following reasons:

I requested University FOI to provide the following details which will allow me to check whether the examiners are qualified in my field of research, and also to check whether University followed the rules (#Document 9).

I acknowledge the Applicant's personal interest in this matter given the requested document relates to an assessment of their PhD thesis.

The Agency submits the Applicant's examination is still in progress and they have until [date] to revise their thesis and resubmit it for re-examination. Further, consistent with the Agency's regulatory framework in relation to Higher Degree by Research as quoted above, 'it is clear that identities of examiners are not to be disclosed and are not known by candidates'.

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

In the circumstances, while the Applicant has a personal interest in obtaining a full copy of the document containing the examiner's personal affairs information, I do not consider that it is in the public interest to disclose the relevant information about the third party's employment and qualifications given their role in the examination process.

A document of this nature contains extensive personal information about many aspects of a person's life and career. Further, such a document embodies how a person presents aspects of themselves for scrutiny and evaluation in the context of an application or appointment to a position or a role. It inherently invites an assessment of the worthiness of many aspects of an individual, albeit in a professional context. While I accept there is a public interest in the examination and evaluation process being subject to appropriate scrutiny, I do not believe this

⁶ *Coulson v Department of Premier and Cabinet (Review and Regulation)* [2008] VCAT 229.

⁷ *Re Milthorpe v Mt Alexander Shire Council* (1997) 12 VAR 105.

⁸ *Victoria Police v Marke* [2008] VSCA 218 at [104].

necessarily requires access to a person's personal employment and qualification details under the FOI Act in the absence of material information that there is a public interest in doing so.

As such, I accept the Agency's submission that:

... There is no countervailing reason for greater accountability in the circumstances such as to warrant disclosure of the identity of the examiner before the examination process is completed; there is nothing to suggest that the process involved to date has been other than transparently fair.

To the contrary there is a public interest in maintaining the integrity of the assessment and academic review processes, and the regulatory framework, of the University requiring that the name of the examiner not be provided.

I also consider any concerns about an examiner's qualification or suitability to carry out their role is best served by an affected person pursuing a relevant appeal or grievance process conducted by the university rather than disclosure of their personal affairs information under the FOI Act.

I also accept provision of the requested curriculum vitae to the Applicant, during the ongoing assessment process, would also be contrary to the university's policy and to the integrity of its assessment framework, as quoted above. In particular, that the identity of an examiner must not be disclosed until after the final classification has been given to a PhD candidate.

As such, I am satisfied no public interest would be promoted by release of the document under the FOI Act.

(d) Whether the third party to whom the personal affairs information relates objects, or would be likely to object, to the disclosure

The Agency consulted with the relevant third party to seek their views on disclosure of their personal affairs information in accordance with section 33(2B). The third party objects to its release. While not determinative, I have given weight to this objection in light of the basis upon which they are engaged by the university to undertake assessments of PhD thesis and consider it weighs against disclosure.

(e) Whether the disclosure of information would, or would be reasonably likely to endanger the life or physical safety of any person

In determining whether disclosure of a document would involve the unreasonable disclosure of information relating to the personal affairs of any person, I must also take into account whether the disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person.⁹ However, there is no information before me to suggest this is a relevant factor in this matter.

18. Accordingly, having weighed up the above factors, on balance I am satisfied disclosure of the curriculum vitae would involve an unreasonable disclosure of their personal affairs information, and the document is therefore exempt from release under section 33(1).

Section 25 – Deletion of exempt or irrelevant information

19. 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.

⁹ Section 33(2A).

20. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹⁰ 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 25.¹¹
21. I have considered the effect of deleting exempt information from the document. I am satisfied it is not practicable to do so as deleting the exempt information would render the document meaningless.

Conclusion

22. On the information before me, I am satisfied the document is exempt from release under section 33(1).
23. As I am satisfied it is not practicable to provide the Applicant with an edited copy of the document with exempt information deleted in accordance with section 25, access is refused in full.
24. Given my decision to refuse access to the document in full under section 33(1), it is not necessary for me to also consider the additional exemption relied on by the Agency under section 35(1)(b).

Review rights

25. If either party to this review is not satisfied with my decision, they are entitled to apply to the Victorian Civil and Administrative Tribunal (**VCAT**) for it to be reviewed.¹²
26. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹³
27. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁴
28. 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.
29. The Agency is required to notify the Information Commissioner in writing as soon as practicable if either party applies to VCAT for a review of my decision.¹⁵

When this decision takes effect

30. My decision does not take effect until the Agency's 14 day review period expires.
31. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

¹⁰ *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].

¹¹ *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].

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

¹³ Section 52(5).

¹⁴ Section 52(9).

¹⁵ Sections 50(3F) and 50(3FA).