

## Notice of Decision and Reasons for Decision

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Applicant:	'FC8'
Agency:	Department of Premier and Cabinet
Decision date:	27 April 2023
Exemption and provision considered:	Sections 33(1), 25
Citation:	'FC8' and Department of Premier and Cabinet (Freedom of Information) [2023] VICmr 34 (27 April 2023)

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FREEDOM OF INFORMATION – complaints – government agencies – personal affairs information of agency officers – disclosure of certain information not 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.

I am satisfied certain third party personal affairs information, to which the Agency refused access under section 33(1), is exempt from release. However, I have determined to release a small amount of additional information. I also agree that the information deleted from the document by the Agency does not relate to the terms of the Applicant's request.

Accordingly, I have determined to grant access to the documents in part with exempt and irrelevant information deleted in accordance with section 25.

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

My reasons for decision follow.

**Joanne Kummrow**  
Public Access Deputy Commissioner  
27 April 2023

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency for access to certain documents. Following consultation with the Agency, the Applicant clarified the terms of their request and sought access to documents held by the Agency relating to themselves.
2. The Agency identified nine documents falling within the terms of the Applicant's request and granted access to six documents in full and refused access to three documents in part under section 33(1). 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 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.
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.

### Review of exemptions

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

9. A document is exempt from release under section 33(1) if two conditions are satisfied:
  - (a) disclosure of the document under the FOI Act would 'involve' the disclosure of information relating to the 'personal affairs' of a person other than the Applicant (a **third party**);<sup>1</sup> and
  - (b) such disclosure would be 'unreasonable'.

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

10. A document will disclose a third party's personal affairs information if it is capable, either directly or indirectly, of identifying that person. As the nature of disclosure under the FOI Act is unrestricted and unconditional, this is to be interpreted by reference to the capacity of any member of the public to identify a third party.<sup>2</sup>

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

<sup>2</sup> *O'Sullivan v Department of Health and Community Services (No 2)* [1995] 9 VAR 1 at [14]; *Beauchamp v Department of Education* [2006] VCAT 1653 at [42].

11. I have also considered the following principles in determining whether information constitutes personal affairs information:<sup>3</sup>
  - (a) 'personal information' has been given a wide interpretation;<sup>4</sup>
  - (b) information that 'concerns or affects' a person as an individual is personal information;<sup>5</sup>
  - (c) a person's personal opinion about another person or their conduct, may be 'personal information' regarding the opinion holder;<sup>6</sup> and
  - (d) information that is 'fairly benign' will not deprive the information of its personal character.<sup>7</sup>
12. I am satisfied the documents contain third party personal affairs information, being the names, position titles, email addresses and telephone numbers of Agency and Ministerial officers.

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

13. 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 personal privacy in the particular circumstances.
14. In *Victoria Police v Marke*,<sup>8</sup> the Victorian Court of Appeal held there is 'no absolute bar to providing access to documents which relate to the personal affairs of others'. Further, the exemption under section 33(1) 'arises only in cases of unreasonable disclosure' and '[w]hat amounts to an unreasonable disclosure of someone's personal affairs will necessarily vary from case to case'.<sup>9</sup> The Court further held, '[t]he protection of privacy, which lies at the heart of [section] 33(1), is an important right that the FOI Act properly protects. However, an individual's privacy can be invaded by a lesser or greater degree'.<sup>10</sup>
15. In determining whether disclosure of the personal affairs information would be unreasonable in the circumstances, I have considered the following factors:
  - (a) The nature of the personal affairs information and the circumstances in which it was obtained.
  - (b) The Applicant's interest in the information and their purpose for seeking access to the information.
  - (c) Whether any public interest would be promoted by release of the personal affairs information.
  - (d) The likelihood of disclosure of information, if released.
  - (e) Whether the individuals to whom the information relates object, or would be likely to object, to the release of the information.
  - (f) Whether disclosure of the information would or would be reasonably likely to endanger the life or physical safety of any person.<sup>11</sup>

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<sup>3</sup> *Marke v Department of Justice and Regulation (Review and Regulation)* [2019] VCAT 479 at [43].

<sup>4</sup> *Hutchinson v Department of Human Services* (1997) 12 VAR 422.

<sup>5</sup> *Hanson v Department of Education and Training* [2007] VCAT 123 at [9].

<sup>6</sup> *Richardson v Business Licensing Authority* [2003] VCAT 1053.

<sup>7</sup> *Hutchinson v Department of Human Services* (1997) 12 VAR 422.

<sup>8</sup> [2008] VSCA 218 at [76].

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid* at [79].

<sup>11</sup> Section 33(2A).

16. The Agency and Ministerial officers named in the documents were responsible for forwarding the Applicant's correspondence to more appropriate areas within the Agency or another agency. That is, rather than making any formal decisions that affected the Applicant, I consider they fulfilled an administrative role only. In these circumstances, I have determined disclosure of their names, email addresses and telephone numbers would be unreasonable.
17. Therefore, I am satisfied the names, email addresses and telephone numbers of Agency and Ministerial officers are exempt from release under section 33(1).
18. Should the Applicant seek access to further information regarding how their correspondence was handled, it would be open to them to make an FOI request to the agency that responded to their correspondence.
19. However, so that the Applicant can understand the way in which their correspondence was handled by the Agency, I am satisfied disclosure of the position titles of the Agency and Ministerial officers in the documents would not be unreasonable. Therefore, I am satisfied Agency and Ministerial officers' position titles throughout the documents are not exempt from release under section 33(1).
20. My decision in relation to section 33(1) and each document is set out in the Schedule of Documents in **Annexure 1**.

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

21. 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.
22. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>12</sup> and the effectiveness of the deletions. Where deletions would render a document meaningless, they are not 'practicable' and release of the document is not required under section 25.<sup>13</sup>
23. I have considered the information the Agency deleted from the documents as irrelevant. I agree it falls outside the scope of the Applicant's request as it relates to matters or people other than those specified in the request.
24. I have considered the effect of deleting irrelevant and exempt information from the documents. In my view, it is practicable for the Agency to delete the irrelevant and exempt information, because it would not require substantial time and effort, and the edited documents would retain meaning.
25. My decision in relation to section 25 and each document is set out in the Schedule of Documents in **Annexure 1**.

#### **Conclusion**

26. On the information before me, I am satisfied certain third party personal affairs information, to which the Agency refused access under section 33(1), is exempt from release. However, I have determined to release a small amount of additional information. I also agree that the information deleted from the document by the Agency does not relate to the terms of the Applicant's request.
27. Accordingly, I have determined to grant access to the documents in part with exempt and irrelevant information deleted in accordance with section 25.

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<sup>12</sup> *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 at [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

<sup>13</sup> *Honeywood v Department of Human Services* [2006] VCAT 2048 at [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140] and [155].

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

### **Review rights**

29. 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.<sup>14</sup>
30. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>15</sup>
31. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>16</sup>
32. Information about how to apply to VCAT is available online at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au). Alternatively, VCAT may be contacted by email at [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au) or by telephone on 1300 018 228.
33. The Agency is required to notify the Information Commissioner in writing as soon as practicable if either party applies to VCAT for a review of my decision.<sup>17</sup>

### ***Third party review rights***

34. In relation to third party review rights, I note the Agency did not consult with the third parties identified in the documents as required under section 33(2B).
35. Given my decision to refuse access to all third party personal affairs information, other than the position titles of Agency and Ministerial officers, I am satisfied consultation with these third parties is not required nor practicable given the limited information to be released in the context of the time and effort involved in notifying the third parties, and the consequential delay in the documents being released to the Applicant.

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

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

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<sup>14</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>15</sup> Section 52(5).

<sup>16</sup> Section 52(9).

<sup>17</sup> Sections 50(3F) and 50(3FA).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.	[date]	Internal email	1	Released in part Section 25	Release in part Section 25 My decision is the same as the Agency's decision.	Section 25: I am satisfied the information the Agency deleted from the document is not relevant to the terms of the Applicant's request. Further, I am satisfied it is practicable to provide the Applicant with an edited copy of this document with irrelevant information deleted in accordance with section 25.
1a.	[Date]	Internal email	2	Refused in full Section 25	Refuse in full Section 25 My decision is the same as the Agency's decision.	Section 25: I am satisfied the entire document is outside the terms of the Applicant's request.
1b.	[date]	Email to agency from applicant	3	Released in full	Not subject to review	
2.	[date]	Email to agency from applicant	1	Released in full	Not subject to review	
3.	[date]	Email to agency from applicant	3	Released in full	Not subject to review	
4.	[date]	Email to agency from applicant	1	Released in full	Not subject to review	
5.	[date]	Internal email	1	Released in part Section 25	Release in part Section 25	Section 25: See comments for Document 1.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					My decision is the same as the Agency's decision.	
5a.	[date]	Internal email	2	Refused in full Section 25	Release in part Section 25  My decision is the same as the Agency's decision.	Section 25: See comments for Document 1.
5b.	[date]	Internal email	1	Released in part Section 33(1)	Release in part Sections 33(1), 25  The document is to be released with exempt information, being names, email addresses and telephone numbers, deleted in accordance with section 25.	Section 33(1): With the exception of their position titles, I am satisfied disclosure of third party personal affairs information would be unreasonable for the reasons outlined in the Notice of Decision above. Accordingly, all other personal affairs information is exempt from release under section 33(1).  Section 25: I am satisfied it is practicable to delete exempt information from the document.
5.b(a)	[date]	Email from Applicant	1	Released in full	Not subject to review	
5.b(b)	[date]	Email from Applicant	2	Released in full	Not subject to review	
6.	[date]	Email from Applicant and internal email	3	Released in part Section 33(1)	Release in part Sections 33(1), 25  The document is to be released with exempt	Section 33(1): See comments for Document 5b.  Section 25: See comments for Document 5b.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					information, being names and email addresses, deleted in accordance with section 25.	
7.	[date]	Internal email	1	Released in part Section 33(1)	Release in part Sections 33(1), 25  The document is to be released with exempt information deleted in accordance with section 25.	Section 33(1): See comments for Documents 5b and 6.  Section 25: See comments for Document 5b.
7a.	[date]	Email from applicant	1	Released in full	Not subject to review	
7b.	[date]	Email from applicant		Released in full	Not subject to review	
8.	[date]	Email from applicant	1	Released in full	Not subject to review	
9.	[date]	Email from applicant	2	Released in full	Not subject to review	