

## Notice of Decision and Reasons for Decision

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Applicant:	'FC3'
Agency:	Mental Health Tribunal
Decision date:	20 April 2023
Exemptions and provisions considered:	Sections 30(1), 33(1), 38 in conjunction with section 175 of the <i>Mental Health Act 2014</i> (Vic)
Citation:	'FC3' and <i>Mental Health Tribunal</i> (Freedom of Information) [2023] VICmr 29 (20 April 2023)

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FREEDOM OF INFORMATION – Mental Health Tribunal – draft statement of reasons – emails – internal working documents – data protection breach notification – contrary to the public interest – personal affairs information – secrecy provision

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

### Notice of Decision

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

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

While I am satisfied certain information is exempt under sections 30(1) and 33(1), I am not satisfied all information to which the Agency refused access under sections 30(1) and 33(1) is exempt.

I am also satisfied certain information exempted by the Agency under section 38 in conjunction with section 175 of the *Mental Health Act 2014* (Vic) is irrelevant to the Applicant's request and is to be deleted in accordance with section 25.

As 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 determined to grant access to certain documents in part. However, where it is impracticable to provide an edited copy, the document is withheld in full.

The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

My reasons for decision follow.

**Sven Bluemmel**  
Information Commissioner  
20 April 2023

## Reasons for Decision

### Background to review

1. On [date], the Applicant made a request to the Agency seeking access to the following documents:  

...all information relating to myself [the Applicant]. I already obtained a statement of reasons for a MHT hearing in [year]...feel free to exclude that document.
2. On [date], the Agency answered the Applicant's request advising it had interpreted the request to mean 'records relating to your hearing on [date] and the hearings that were listed but did not proceed on [date] and [date]'. The Agency released 25 documents to the Applicant outside the provisions of the FOI Act.
3. By email dated [date], the Applicant responded to the Agency stating:  

...it does not appear to be complete copy of all information regarding me (as per my request)...please provide all information in any way connected to myself held by the Mental Health Tribunal or any agent / person working in affiliation with that office.
4. On [date], the Agency provided a decision to the Applicant on their request advising it had identified 67 relevant documents, including the 25 documents previously released. In its decision, the Agency released 38 documents in full, refused access to eight documents in part and 21 documents in full relying on the exemptions in sections 30(1), 33(1) and 38 in conjunction with section 175 of the *Mental Health Act 2014 (Vic) (MH Act)*.
5. The Agency's decision letter sets out the reasons for its decision.

### Review application

6. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
7. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
8. I have considered all communications received by the parties.
9. In conducting a review under section 49F, section 49P requires that I make a new or 'fresh decision'. Therefore, my review does not involve determining whether the Agency's decision is correct, but rather requires my fresh decision to be the 'correct or preferable decision'.<sup>1</sup> This involves ensuring my decision is correctly made under the FOI Act and any other applicable law in force at the time of my decision.

### Review of exemptions

#### **Section 38 – Secrecy provision**

10. The Agency determined Documents 22-24, 38-39, 45 and 67a, 67b and 67c were exempt under section 38 of the FOI Act in conjunction with section 175 of the MH Act.
11. By email [date], the Agency confirmed with my Office section 38 is not relied upon to exempt Document 67b, but maintained its view that the document is exempt under sections 30(1) and 33(1).
12. A document is an exempt document under section 38 if:

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

- (a) there is an enactment in force;
  - (b) the secrecy provision in the enactment applies specifically to the kind of information in a document; and
  - (c) the enactment prohibits persons referred to in the enactment from disclosing the specific kind of information (either absolutely or subject to exceptions or qualifications) in a document.
13. For section 38 to apply in connection with a secrecy provision in an enactment, the enactment must be formulated with such precision that it specifies the actual information sought to be withheld.

14. Section 175 of the MH Act provides:

**Secrecy**

A person who is, or has been, a member (including as President or Deputy President) of the Tribunal or an executive officer, principal registrar, registrar or other member of staff of the Tribunal must not, directly or indirectly, make a record of, disclose or communicate to any person, any information relating to the affairs of a natural person acquired in the performance of functions or duties or the exercise of powers under this Act which may identify the person, unless—

- (a) it is necessary to do so for the purpose of, or in connection with, the performance of function or duty or the exercise of power under this Act; or
- (b) it is necessary to do so for the purposes of criminal proceedings or to initiate any proceeding under this Act; or
- (c) the person to whom the information relates gives written consent to the making of the record, disclosure or communication.

Penalty: 60 penalty units

15. In relation to the application of section 38 to certain documents, the Agency's submitted the following:

...documents 38 and 39 also contain information about a statement of reasons related to an entirely different patient that the legal team and President reviewed at the same time as the review of the applicant's statement of reasons. In our submission this information is irrelevant to the applicant's request for documents containing information about himself...

In this submission we would like to emphasise the exemption claimed under section 38, namely that it would be a breach of section 175 of the Mental Health Act to release any information to the applicant about the statements of reasons relating to other patients...

16. I am satisfied section 175 of the MH Act is a secrecy provision to which section 38 applies, because:

- (a) the MH Act is an enactment in force for the purpose of section 38;
- (b) section 175 of the MH Act, albeit applying to information covering a relatively wide field and subject to qualification and exceptions, is sufficiently specific to refer to the kind of information contained in documents, being information regarding the affairs of others, from which they may be identified, acquired by the Agency during the exercise of its duties and functions and powers under the MH Act;
- (c) I am satisfied information in the documents relates to information of the kind, as described by the words in section 175 of the MH Act, as it concerns information collected by the Agency relating to the affairs of individuals, who are not the Applicant, from which their identity could reasonably be determined, obtained during the course of the Agency producing a statement of reason for a decision it had made under the MH Act; and

- (d) Section 175 of the MH prohibits specified persons, being any person who is or once was a panel member, executive officer, principal registrar, registrar or member of staff from disclosing information to which section 175 of the MH applies.

### **Section 25 of the FOI Act – Deletion of irrelevant information**

17. While I am satisfied section 175 of the MH Act is a secrecy provision applying to certain information in the identified documents, I also note the scope of the Applicant's request, which specifically asks for 'all information relating to myself'.
18. Section 25 of the FOI Act allows for the editing of a document to remove exempt or **irrelevant information**.
19. Therefore, I consider where the Agency has applied section 38 to exempt third party information pertaining to other Tribunal clients, the information is better characterised as 'irrelevant information' and the use of section 25 of the FOI Act is better suited, given this information falls outside the scope of the Applicant's request.
20. The Document Schedule at **Annexure 1** demonstrates my decision in relation to section 38 and the deletion of irrelevant information under section 25.

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

21. 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, Minister or an officer and Minister;
  - (b) such matters must be made in the course of, or for the purposes 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.
22. The exemption does not apply to purely factual material in a document.<sup>2</sup>
23. The term 'officer of an agency' is defined in section 5(1). It includes a member of an agency's staff and any person employed by or for an agency, whether or not they are subject to the provisions of the *Public Administration Act 2004* (Vic).
24. The words 'opinion, advice or recommendation' convey a meaning of matters in the nature of a 'personal view', 'an opinion recommended or offered' or a 'presentation worthy of acceptance'.<sup>3</sup>
25. The term 'deliberative process' has been interpreted widely. In *Re Waterford and Department of Treasury (No. 2)*,<sup>4</sup> it was 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.
26. Section 30(1)(a) may apply where discussions take place between officers of different agencies so long as they relate to the deliberative process of one of those agencies.<sup>5</sup>

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

<sup>3</sup> *Halliday v Office of Fair Trading* (unreported, AAT of Vic, Coghlan PM, 20 July 1995).

<sup>4</sup> [1981] 1 AAR 1.

<sup>5</sup> *Brog v Department of Premier & Cabinet* (1989) 3 VAR 201.

27. I am satisfied documents contain deliberative material between the Agency's panel members made in the course of the Agency's deliberative process, specifically the collation, collaboration and drafting of a statement of reasons for the Applicant.
28. I am satisfied the documents also contain information in the nature of advice, opinion and recommendation, or otherwise disclose deliberation between Agency officers concerning the Agency's deliberative processes; both in responding to a previous FOI request of the Applicant as well as the Agency's responses to a data breach, relating to the Applicant's personal information.

*Would disclosure of the opinion, advice or recommendation be contrary to the public interest?*

29. In deciding if release is contrary to the public interest, I must consider all relevant facts and circumstances remaining mindful that the object of the FOI Act is to facilitate and promote the disclosure of information.
30. I have given weight to the following factors in determining whether release would be contrary to the public interest for this matter:
  - (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 process being undertaken at the time the communications were made;
  - (d) whether disclosure 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.
31. Providing reasons for a decision is an important mechanism to ensure transparency of decision makers. A statement of reasons gives an affected person an opportunity to better understand the reasoning process that led to the final decision. This is a fundamental principle in good decision making and the public's access to documents that supplement a decision is supported by the object of the FOI Act. Therefore, the public interest in being better informed and engaged in decisions made by government is a factor I have given considerable weight.
32. Although this an important consideration in favour of disclosure even so, this does not equate to an automatic right of access to all documents brought into existence as part of the Agency's production of its statement of reasons. I must also consider the integrity of the decision-making process and ensuring that disclosure does not unfairly prejudice the functions of the Agency as an independent and objective decision-making body. I am also mindful in this case that the final statement of reasons for the Agency's decision has been provided to the Applicant.
33. In its submissions, the Agency states:

...internal documents regarding the statement of reasons prepared in relation to the applicant's [date] hearing contain or attach confidential member notes from the applicant's hearing, draft versions of the statement of reasons the members prepared or contributed to and the members' deliberations during the process of preparing the SOR [statement of reasons]...

We reiterate and rely on the reasoning on page 5 of the formal decision letter as to why disclosure of these documents would be contrary to the public interest. Without limiting the reasoning set out there we wish to highlight that it is of the utmost importance that Tribunal member and staff be able to communicate freely with candour and frankness about Tribunal decisions and statement of reasons. If these documents could be obtained under an FOI request, members and staff would undoubtedly feel constrained in the way they are able to deliberate, discuss, raise issues and communicate about the reasons for making a particular decision and preparing a statement of reasons. In this sense disclosure would inhibit the exercise of one of the Tribunals' key statutory functions under the Mental Health Act (and a key function of any Court or Tribunal), namely the preparation of reasons for decision.

34. I understand the notion that a draft or incomplete version of a document, particularly where a final document is available, may be inappropriate for release. However, this notion is not an absolute, and the correct application of section 30(1)(b) requires each document to be examined in its own merit.<sup>6</sup> Importantly, the purpose and content of each document must be scrutinised on a case-by-case basis, having regard to all factors relevant to the public interest both in favour and against release.<sup>7</sup>
35. On matters of frankness and candour, I accept the view public servants are duty bound to provide frank and candid advice and, in most cases, an officer would continue to discharge their professional and ethical obligations to provide such advice irrespective of disclosure of a document. Nonetheless, I do consider the argument can hold merit in cases where successful outcomes are dependent on agency officers exchanging frank and candid opinions and where disclosure would be likely to impair the quality of information recorded in the future. In such circumstances maintaining the confidentiality of the advice, opinions and deliberations of agency officers will outweigh the public interest in disclosure. However, this will always depend on the particular circumstances of any given case.
36. Applying the above factors to the circumstances of this case, my decision in relation to section 30(1) and each document is set out in the Schedule of Documents at **Annexure 1**.

### ***Section 33(1) – Personal affairs information***

37. Section 33(1) provides a document is exempt if two conditions are satisfied:
  - (a) disclosure of the document would involve the disclosure of information relating to the 'personal affairs' of a person other than the Applicant (**third party**)<sup>8</sup>;
  - (b) such disclosure would be 'unreasonable'.
38. Information relating to a person's 'personal affairs' includes information that identifies any person or discloses their address or location. It also includes any information from which such information may be reasonably determined.<sup>9</sup>

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

39. The Agency's decision letter advises that it applied the section 33(1) exemption to remove names, email addresses, telephone numbers and other 'personal information' pertaining to its Agency officers.

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<sup>6</sup> *Penhalluriack v Glen Eira City Council* [2012] VCAT 370 at [25].

<sup>7</sup> *Perton v Department of Education* [2004] VCAT 1143.

<sup>8</sup> Sections 33(1) and (2).

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

40. Having reviewed the documents, I note the Agency has also applied section 33(1) to names, signatures and addresses of other individuals who are not officers of the Agency. I also note the Agency exempted statements which concern the private affairs of certain individuals.
41. I am satisfied this information is personal affairs information within the meaning of section 33(9).

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

42. It is not enough to simply identify information as being personal affairs information. The exemption turns on whether disclosure of the personal affairs information would be unreasonable, having regard to to any matter that may 'relevantly, logically, and probatively' bear upon this question.<sup>10</sup>
43. Subject to an agency demonstrating special circumstances apply, my general view is there is nothing particularly sensitive about disclosing the identity of Victorian public sector officers, or other professional, where such information merely concerns or represents those individuals performing their ordinary professional duties. The nature of such information is to be contrasted with information relating to an individual in their personal or private capacity.
44. Therefore, in determining whether the personal affairs information in the documents for this matter is unreasonable, 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 whether such interest would be served by release of the personal affairs information;
  - (c) whether the public interest would be promoted by release of the personal affairs information;
  - (d) the context in which the personal affairs information appears in documents and whether it has been obtained by the Agency during the course of an individual performing their professional duties and responsibilities as opposed to information relating to their personal or private lives; and
  - (e) whether individuals to whom the information relates object, or would be likely to object, to release of the information to the Applicant; and
  - (f) whether disclosure of the information would or would be likely to endanger the life or physical safety of any person.<sup>11</sup>
45. My decision on section 33(1) and the documents is set out in **Annexure 1**.

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

46. 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.
47. Determining what is 'practicable' requires consideration of the effort involved in making the deletions 'from a resources point of view'<sup>12</sup> and the effectiveness of those deletions. Where deletions would render a document meaningless, they are not 'practicable' and therefore, release of the document is not required under section 25.<sup>13</sup>

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<sup>10</sup> *Victoria Police v Marke* [2008] VSCA 1653 at [98].

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

<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], [155].

48. I have considered the effect of deleting irrelevant information (discussed at paragraphs 17-20) 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.

### **Conclusion**

49. On the information before me, I am satisfied certain information in the documents is exempt from release under sections 30(1) and 33(1).
50. However, I am not satisfied all information exempted by the Agency under sections 30(1) and 33(1) is exempt.
51. I am satisfied information which the Agency exempted under section 38, in conjunction with section 175 of the MH Act, is information better characterised as irrelevant to the Applicant's request and is to be deleted in accordance with section 25.
52. Where 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, access is granted in part. However, where deletion of exempt and irrelevant information would render a document meaningless, the document is refused in full.

### **Review rights**

53. 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>
54. 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>
55. 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>
56. 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.
57. 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**

58. 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 those persons of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.<sup>18</sup>
59. In the circumstances, I have decided notifying third parties of their review rights is not practicable. I am of the view that there is not enough information before me to appropriately identify and contact

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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 (3FA).

<sup>18</sup> Sections 49P(5), 50(3) [for personal affairs information], 50(3A) [for business information], 50(3AB) [for section 35(1)(b) information] and 52(3).



affected parties where the information to be released is only a name. Further, I do not consider it necessary to notify a third party who is an officer of the Agency considering their information has been released to the Applicant in other documents.

**When this decision takes effect**

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

Amended Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1-19.	Various	Various		Released in full	Not subject to review	
20.	[date]	Form	1	Released in part Section 33(1)	Release in part Section 33(1) and 25 No further information is to be released	<p><b>Section 33(1):</b> I am satisfied release of third-party personal affairs information in the document would be unreasonable. I consider disclosure of the information would not assist the Applicant in understanding the content of the document in that the personal affairs information does not add any material value to the document. Accordingly, my decision on the document is the same as the Agency's decision.</p> <p><b>Section 25:</b> I am satisfied it is practicable for the Agency to delete exempt information from the document.</p>
21.	Undated	[database] extract	1	Released in part Section 33(1)	Release in full	<p><b>Section 33(1):</b> I am satisfied it would not be unreasonable to release the names and titles of third parties obtained in the setting of these individuals performing their professional role and responsibilities. Also, in some cases I am not satisfied the information exempted by the Agency is the personal affairs information of a person. Accordingly, I am satisfied section 33(1) does not apply to the document.</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
22.	[date]	Email	1	Released in part Sections 33(1) and 38	<p><b>Release in part</b> Sections 33(1) and 25</p> <p>The document is to be released with the personal affairs information exempted by the Agency to remain deleted.</p> <p>Where the Agency relied on section 38 to exempt third party information, this information is irrelevant rather than exempt and is to be deleted in accordance with section 25</p>	<p><b>Section 33(1):</b> I am satisfied it would be unreasonable to release the personal affairs information exempted in the document. See comments for Document 20.</p> <p><b>Sections 38 and 25:</b> For reasons set out in the Notice of Decision, I am satisfied the information exempted under section 38 is in fact irrelevant to the Applicant's request as it does not concern information about them, and therefore can be removed from the document in accordance with section 25.</p> <p>I am satisfied it is practicable to provide the Applicant with an edited copy of the document with exempt and irrelevant information deleted as it would not take substantial time and effort to do so, and the document would retain meaning.</p>
23.	[date]	Email	2	Released in part Sections 33(1) and 38	<p><b>Release in part</b> Sections 33(1) and 25</p> <p>No further information is to be released</p>	<p><b>Section 33(1):</b> See comments for Document 20.</p> <p><b>Sections 38 and 25:</b> See comments for Document 22.</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
24.	[date]	Email	2	Released in part Sections 33(1) and 38	Release in part Sections 33(1) and 25 No further information is to be released	Section 33(1): See comments for Document 20. Sections 38 and 25: See comments for Document 22.
25a.	[date]	Email	2	Refused in full Sections 30(1) and 33(1)	Release in part Sections 33(1) and 25 The document is to be released with the personal affairs information exempted by the Agency to remain deleted	Section 30(1): I am satisfied the communication was made for a deliberative process of the Agency. Nonetheless, after careful consideration of the document, I am satisfied its release would not be contrary to the public interest for the following reasons:  (a) its content would not divulge the sensitive issues raised by the Agency in its submission. Rather, I am of the view that the information is instructional material providing guidance to panel members. I consider the information is more administrative in nature;  (b) release would support the public interest in knowing what guidance is given in regard to the Agency's statement of reasons process, without disclosing the sensitive

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						<p>opinions, advice and deliberations of members;</p> <p>(c) I am not satisfied release of this information would disrupt the future processes of the Agency in responding to a request for reasons; and</p> <p>(d) I consider disclosure would support the public interest in transparency of government as it would demonstrate Agency members communicating in an appropriate and considered manner.</p> <p>Accordingly, I am not satisfied section 30(1) applies to the document.</p> <p><b>Section 33(1):</b> See comments for Document 20.</p> <p><b>Section 25:</b> See comments for Document 20.</p>
25b.	Undated	Attachment to Doc 25a	4	Refused in full Section 30(1)	<b>Release in full</b>	<p><b>Section 30(1):</b> The document is an attachment to Document 25a. Further to my comments in Document 25a, I note the document is an internal Agency document, setting out the Agency's process in compiling a statement of reasons. While I accept it has been used for a deliberative</p>

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						purpose, I am not satisfied the documents reveal sensitive deliberations. Rather, I consider the information to be more general, setting out a generalised approach to the task at hand.
25c.	Undated	Attachment to Doc 25a	8	Refused in full Section 30(1)	Release in full	Section 30(1): The document is an attachment to Document 25a.  See comments for Documents 25a and 25b.
25d.	Undated	Attachment to Doc 25a	23	Refused in full Sections 30(1) and 33(1)	Release in part Section 33(1) and 25  The document is to be released with the personal affairs information exempted by the Agency to remain deleted	Section 30(1): Further to my reasons provided in Document 25a, I am satisfied the document was provided for the use of the Agency's deliberative process in providing a statement of reasons to the Applicant, however I am not satisfied release would be contrary to the public interest, because: <ul style="list-style-type: none"> <li>(a) I believe release of the document would provide the Applicant with a better understanding on the material relied upon;</li> <li>(b) most of the information in the document is already in the possession of the Applicant; and</li> <li>(c) in some parts, I consider the information to be factual and</li> </ul>

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						<p>falling within the ambit of section 30(3).</p> <p>Accordingly, I am not satisfied the document is exempt under section 30(1).</p> <p><b>Section 33(1):</b> See comments for Document 20.</p> <p><b>Section 25:</b> See comments for Document 20.</p>
26a.	[date]	Email	2	<p>Refused in full</p> <p>Sections 30(1) and 33(1)</p>	<p><b>Release in part</b></p> <p>Sections 30(1), 33(1), 25</p> <p>A marked copy of the document illustrating my decision on the document has been provided to the Agency.</p>	<p><b>Section 30(1):</b> I am satisfied the document contains advice, opinion and deliberation between officers of the Agency. I am also satisfied it would be contrary to the public interest to disclose, because:</p> <p>(a) I acknowledge the inherent sensitivities of the information, as it relates to the Applicant. I also note the concerns raised by the Applicant in their submission. Nevertheless, I am equally mindful of the operation of the Agency as an independent decision maker, which requires its appointed members to exchange preliminary thoughts, views and discussions on highly sensitive matters concerning the compulsory treatment of individuals before the provision of a final decision.</p>

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						<p>(b) Release of preliminary views and deliberations, particularly noting the statement of reasons already provided to the Applicant, may not assist an Applicant with a proper understanding on why the final decision was made.</p> <p>(c) While I cannot attest that disclosure of the information in response to the Applicant's request would deter Agency's members from exchanging their professional views I do, however, consider that if the Agency were to routinely disclose this type of information the degree of candour likely adopted by members when dealing with such matters would diminish. This could have serious negative consequences on the Agency's function as an objective decision maker to appropriately record internal deliberation and discussions associated with a compulsory treatment decision.</p> <p>(d) Importantly, in this case I am not satisfied the way in which the Agency conducted its deliberations</p>



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						in this instance requires public scrutiny, nor do I consider it would be in the public interest.  <b>Sections 33(1) and 25:</b> See comments for Document 20.
26b.	Undated	Attachment to Doc 26a	2	Refused in full Sections 30(1) and 33(1)	<b>Refuse in full</b> Section 30(1)	See comments for Document 26a.
27.	[date]	Email	2	Refused in full Sections 30(1) and 33(1)	<b>Release in part</b> Section 33(1) and 25  A marked copy of the document illustrating my decision on the document has been provided to the Agency.	<b>Section 30(1):</b> See comments for Documents 25a and 26a. <b>Section 33(1):</b> See comments for Document 20. <b>Section 25:</b> See comments for Document 20.
28-31.	[date]	Hearing notices	5	Released in full	<b>Not subject to review</b>	
32a.	[date]	Email	2	Refused in full Sections 30(1) and 33(1)	<b>Release in part</b> Sections 33(1) and 25  The document is to be released with the personal affairs information exempted by the Agency to remain deleted	<b>Section 30(1):</b> I accept the document is deliberative in nature however, I am not satisfied its release would be contrary to the public interest for my reasons set out in Document 25a above.  <b>Section 33(1):</b> I am satisfied the document contains personal affairs information of third parties being; private emails and telephone numbers. I also note it contains

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						<p>personal information relating to private matters involving these individuals. I am satisfied it would be unreasonable to release the personal affairs information as it is information that is not widely known nor would release benefit the Applicant's purpose of seeking access. Accordingly, I am satisfied the information is to remain exempt under section 33(1).</p> <p><b>Section 25:</b> See comments for Document 20.</p>
32b.	Undated	Attachment to Doc 32a	9	Refused in full Sections 30(1) and 33(1)	Refuse in full Section 30(1)	<p><b>Section 30(1):</b> The document is the attachment to Document 32a, which is a draft statement of reasons submitted for comment. For reasons provided in Document 26a, I am satisfied release of the document is contrary to the public interest. Therefore, section 30(1) applies to exempt the document in full.</p> <p><b>Section 25:</b> See comments for Document 26a.</p>
33a.	[date]	Email	3	Refused in full Sections 30(1) and 33(1)	<p><b>Release in part</b> Sections 33(1) and 25</p> <p>The document is to be released with the personal affairs information exempted by the Agency to remain deleted</p>	<p><b>Section 30(1):</b> I am satisfied the document is deliberative, however I am not satisfied it would divulge deliberations concerning sensitive issues that it would be likely to prejudice the Agency's deliberative processes. See comments for Document 25a.</p>

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						<p><b>Section 33(1):</b> See comments for Document 32a.</p> <p><b>Section 25:</b> See comments for Document 20.</p>
33b.	Undated	Attachment to Doc 33a	9	Refused in full Sections 30(1) and 33(1)	Refuse in full Section 30(1)	<p><b>Section 30(1):</b> The document is the attachment to Document 33a, which is a draft statement of reasons submitted for comment. For reasons provided in Document 26a, I am satisfied release of the document is contrary to the public interest. Therefore, section 30(1) applies to exempt the document in full.</p> <p><b>Section 25:</b> See comments for Document 26a.</p>
34.	[date]	Email	1	Refused in full Sections 30(1) and 33(1)	Refuse in full Section 30(1)	<p><b>Section 30(1):</b> I am satisfied the document contains advice, opinion and deliberation relating to the draft statement of reasons. For reasons provided in Document 26a, I am satisfied release of the document is contrary to the public interest. Therefore, section 30(1) applies to exempt the document in full.</p> <p><b>Section 25:</b> See comments for Document 26a.</p>
35.	[date]	Email	3	Refused in full Sections 30(1) and 33(1)	Release in part Sections 33(1) and 25	<p><b>Section 30(1):</b> See comments for Document 25a and 33a.</p>

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					The document is to be released with the personal affairs information exempted by the Agency to remain deleted	<b>Section 33(1):</b> See comments for Document 32a. <b>Section 25:</b> See comments for Document 20.
36.	[date]	Email	3	Refused in full Sections 30(1) and 33(1)	<b>Release in part</b> Sections 33(1) and 25 The document is to be released with the personal affairs information exempted by the Agency to remain deleted	<b>Section 30(1):</b> See comments for Document 25a and 33a. <b>Section 33(1):</b> See comments for Document 32a. <b>Section 25:</b> See comments for Document 20.
37a.	[date]	Email	1	Refused in full Sections 30(1) and 33(1)	<b>Release in part</b> Sections 33(1) and 25 The document is to be released with the personal affairs information exempted by the Agency to remain deleted	<b>Section 30(1):</b> See comments for Document 25a and 33a. <b>Section 33(1):</b> See comments for Document 32a. <b>Section 25:</b> See comments for Document 20.
37b.	Undated	Attachment to Doc 37a	9	Refused in full Sections 30(1) and 33(1)	<b>Refuse in full</b> Section 30(1)	<b>Section 30(1):</b> The document is the attachment to Document 37a, which is a draft statement of reasons submitted for comment. For reasons provided in Document 26a, I am satisfied release of the document is contrary to the public interest. Therefore, section 30(1) applies to exempt the document in full.

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						<b>Section 25:</b> See comments for Document 26a.
38.	[date]	Email	2	Refused in full Sections 30(1), 33(1) and 38	<b>Refuse in full</b> Section 30(1)	<b>Section 30(1):</b> See comment for Documents 26a and 34. <b>Section 25:</b> See comments for Document 26a.
39.	[date]	Email	2	Refused in full Sections 30(1), 33(1) and 38	<b>Refuse in full</b> Section 30(1)	<b>Section 30(1):</b> See comment for Documents 26a and 34. <b>Section 25:</b> See comments for Document 26a.
40a.	[date]	Email	2	Refused in full Sections 30(1) and 33(1)	<b>Release in part</b> Sections 33(1) and 25  The document is to be released with the personal affairs information exempted by the Agency to remain deleted	<b>Section 30(1):</b> I am satisfied the document is deliberative, however I am not satisfied it would divulge deliberations concerning sensitive issues that it would be likely to prejudice the Agency's deliberative processes. See comments for Document 25a. <b>Section 33(1):</b> See comments for Document 32a. <b>Section 25:</b> See comments for Document 20.
40b.	Undated	Attachment to Doc 40a	9	Refused in full Sections 30(1) and 33(1)	<b>Refuse in full</b> Section 30(1)	<b>Section 30(1):</b> The document is the attachment to Document 40a, which is a draft statement of reasons submitted for comment. For reasons provided in

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						Document 26a, I am satisfied release of the document is contrary to the public interest. <b>Section 25:</b> See comments for Document 26a.
41a.	[date]	Email	1	Refused in full Sections 30(1) and 33(1)	<b>Release in part</b> Sections 33(1) and 25 The document is to be released with the personal affairs information exempted by the Agency to remain deleted	<b>Section 30(1):</b> I am satisfied the document is deliberative, however I am not satisfied it would divulge deliberations concerning sensitive issues that it would be likely to prejudice the Agency's deliberative processes. See comments for Document 25a. <b>Section 33(1):</b> See comments for Document 32a. <b>Section 25:</b> See comments for Document 20.
41b.	Undated	Attachment to Doc 41a	9	Refused in full Sections 30(1) and 33(1)	<b>Refuse in full</b> Section 30(1)	<b>Section 30(1):</b> The document is the attachment to Document 41a, which is a draft statement of reasons submitted for comment. For reasons provided in Document 26a, I am satisfied release of the document is contrary to the public interest. Therefore, section 30(1) applies to exempt the document in full. <b>Section 25:</b> See comments for Document 26a.
42-43b.	[date]	Various	21	Released in full	Not subject to review	

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44.	[date]	Email	1	Refused in full Sections 30(1), 33(1)	<b>Release in part</b> Sections 33(1) and 25 The document is to be released with the personal affairs information exempted by the Agency to remain deleted	<b>Section 30(1):</b> I am satisfied the document is deliberative, however I am not satisfied it would divulge deliberations concerning sensitive issues that it would be likely to prejudice the Agency's deliberative processes. See comments for Document 25a. <b>Section 33(1):</b> See comments for Document 32a. <b>Section 25:</b> See comments for Document 20.
45.	Undated	Spreadsheet	6	Refused in full Sections 30(1), 33(1) and 38	<b>Release in part</b> Sections 33(1) and 25 The document is to be released with the personal affairs information exempted by the Agency to remain deleted.  Where the Agency relied on section 38 to exempt third party information, this information is irrelevant and to be deleted in accordance with section 25	<b>Section 30(1):</b> While I accept the document has been used as a deliberative purpose, I am not satisfied its release would be contrary to the public interest. See reasons in Document 25a. <b>Section 33(1):</b> See comments for Document 20. <b>Section 38 and 25:</b> I note the only information relating to the Applicant is located on page 5 of the Document. For reasons provided in Document 22, I am satisfied all other information in the document relates to third parties, which is irrelevant to the Applicant's request. See also comments for Document 20.

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46-47.	Various	Email	1	Released in full	Not subject to review	
48.	[date]	Email	1	Released in part Section 33(1)	Release in part Sections 33(1) and 25 No further information is to be released	Section 33(1): See comments for Document 20. Section 25: See comments for Document 20.
49.	[date]	Microsoft Team Messages	1	Released in part Sections 30(1) and 33(1)	Release in part Sections 33(1) and 25 The document is to be released with the personal affairs information exempted by the Agency to remain deleted	Section 30(1): Having reviewed the document, I consider it is administrative in nature, rather than in the character of advice, opinion or recommendation provided for the Agency's deliberative processes. In any case, given the low level of sensitivity of the information, which merely records Agency staff carry out their general duties and responsibilities, I am satisfied disclosure would not be contrary to the public interest. Accordingly, I am not satisfied the document is exempt under section 30(1). Section 33(1): See comments for Document 20. Section 25: See comments for Document 20.
50a.-59	Various	Various		Released in full	Not subject to review	



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60.	[date]	Microsoft Team Messages	1	Released in part Sections 30(1) and 33(1)	<b>Release in part</b> Sections 30(1), 33(1) and 25 No further information is to be release from the document	<b>Section 30(1):</b> I am satisfied the document records information made in the course of the Agency's deliberative process namely, responding to the Applicant's prior FOI request. Given the preliminary nature of the information I am satisfied it would be contrary to the public interest to disclose. I consider that if this information were to be released, staff would be inhibited in their ability to participate in and obtain meaningful information from these processes in the future. Accordingly, I am satisfied this information is exempt under section 30(1).  <b>Section 33(1):</b> See comments for Document 20.  <b>Section 25:</b> See comments for Document 20.
61a-61b.	[date]	Email	5	Released in full	Not subject to review	
62a.	[date]	Email	6	Refused in full Sections 30(1) and 33(1)	<b>Release in part</b> Sections 30(1), 33(1) and 25  The document is to be released with: <ul style="list-style-type: none"><li>the personal affairs information exempted</li></ul>	<b>Section 30(1):</b> I accept the information in the document is deliberative, however I am not satisfied all information would be contrary to the public interest to release. Where the document merely reflects accepted facts about a plan of action taken, rather than evaluation or consideration of multiple options canvassed, I am satisfied this information

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					<p>by the Agency to remain deleted; and</p> <ul style="list-style-type: none"> <li>[section 30(1) decision directions]</li> </ul>	<p>can be released. I also consider emails sent by and to the Applicant in the document is not exempt as it does concern deliberations between Agency officers. However, in all other circumstances I am satisfied it would be contrary to release.</p> <p>Accordingly, I am satisfied section 30(1) applies to the document in part.</p> <p><b>Section 33(1):</b> See comments for Document 20.</p> <p><b>Section 25:</b> See comments for Document 20.</p>
62b.	[date]	Attachment to Doc 62a	3	Refused in full Sections 30(1) and 33(1)	Release in full	<p><b>Section 30(1):</b> The document is the attachment to Document 62a. It is a signed letter addressed to the Applicant and appears in final form as opposed to a draft submitted for consideration. I am satisfied the information is already in the possession of the Applicant, therefore I am not satisfied its release would be contrary to the public interest.</p> <p><b>Section 33(1):</b> I note, the document provided to my Office did not clearly identify information to which the Agency sought to exempt under section 33(1). However, I am satisfied the document contains personal affairs information being, a name, signature and job title of an</p>

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						Agency officer. As this information is already in the possession of the Applicant, I am not satisfied release would be unreasonable in this instance.
63.	[date]	Email	6	Refused in full Sections 30(1) and 33(1)	<p><b>Release in part</b> Sections 30(1), 33(1) and 25</p> <p>The document is to be released with:</p> <ul style="list-style-type: none"> <li>the personal affairs information exempted by the Agency to remain deleted;</li> <li>[section 30(1) decision directions]</li> </ul>	<p><b>Section 30(1):</b> I am satisfied it would be contrary to the public interest to release certain information that discloses sensitive deliberations of Agency staff in the document. However, for the reasons provided in Document 62a, I am not satisfied all information in the document is exempt under section 30(1).</p> <p><b>Section 33(1):</b> See comments for Document 20.</p> <p><b>Section 25:</b> See comments for Document 20.</p>
64.	[date]	Email	7	Refused in full Sections 30(1) and 33(1)	<p><b>Release in part</b> Sections 30(1), 33(1) and 25</p> <p>The document is to be released with:</p> <ul style="list-style-type: none"> <li>the personal affairs information exempted by the Agency to remain deleted;</li> </ul>	<p><b>Section 30(1):</b> See comments for Document 63 and 62a.</p> <p><b>Section 33(1):</b> See comments for Document 20.</p> <p><b>Section 25:</b> See comments for Document 20.</p>

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					<ul style="list-style-type: none"> <li>[section 30(1) decision directions]</li> </ul>	
65.	[date]	Email	8	Refused in full Sections 30(1) and 33(1)	<p><b>Release in part</b> Sections 30(1), 33(1) and 25</p> <p>The document is to be released with:</p> <ul style="list-style-type: none"> <li>the personal affairs information exempted by the Agency to remain deleted;</li> <li>[ section 30(1) decision directions]</li> </ul>	<p><b>Section 30(1):</b> See comments for Document 63 ad 62a.</p> <p><b>Section 33(1):</b> See comments for Document 20.</p> <p><b>Section 25:</b> See comments for Document 20.</p>
66a.	[date]	Email	1	Refused in full Sections 30(1) and 33(1)	<p><b>Release in part</b> Sections 33(1) and 25</p> <p>The document is to be released with the personal affairs information exempted by the Agency to remain deleted</p>	<p><b>Section 30(1):</b> The document is an email containing an attachment. The attachment is Document 66b.</p> <p>I am satisfied there are instances a document providing a briefing will attract the section 30(1) exemption, particularly where the briefing subject is inherently sensitive containing high level advice, which could reasonably disrupt the efficient and economical conduct of government. However, I do not consider this to the case for this matter. There is nothing inherently confidential or sensitive about the actual purpose and content of the document, prepared to assist the</p>

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						<p>Agency's obligations under the Privacy Act. Also, noting the responsibility of public sector employees to provide responsive and impartial advice and having regard to information in the possession of the Applicant at the time of my decision, I am not satisfied disclosure of the document would be contrary to the public interest.</p> <p><b>Section 33(1):</b> See comments for Document 22.</p> <p><b>Section 25:</b> See comments for Document 20.</p>
66b.	[date]	Attachment to Doc 66a	2	Refused in full Sections 30(1) and 33(1)	Release in full	<p><b>Section 30(1):</b> See comments for Document 66a.</p> <p><b>Section 33(1):</b> The Agency has not provided me with clear direction as to what information in the document it considered exempt under section 33(1). Nonetheless, having read the documents content, I am satisfied it is not exempt under section 33(1) given it largely concerns the personal affairs of the Applicant.</p>
67a.	[date]	Email		Refused in full Sections 30(1), 33(1) and 38	Release in part Sections 33(1) and 25 The document is to be released with the personal affairs	<p><b>Section 30(1):</b> The document is an email to OVIC, attaching two privacy incident notifications; one involving the Applicant, the other involving another client of the Agency. I accept the exemption in section 30(1) may apply to a document, which</p>

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					<p>information exempted by the Agency to remain deleted.</p> <p>Where the Agency relied on section 38 to exempt third party information, this information is irrelevant and to be deleted in accordance with section 25.</p>	<p>contains deliberation between officers at two different government agencies so long as the communication concerns a deliberative process of one of those agencies. Having viewed the document, I am not satisfied it contains advice, opinion or recommendation, or information of that nature. Nor do I consider it has been provided for a deliberative purpose. Rather, I consider the communication involves the Agency's fulfillment of its statutory obligation to notify the regulator of a privacy incident. Accordingly, I am not satisfied the document is exempt under section 30(1).</p> <p><b>Section 33(1):</b> See comments for Document 20.</p> <p><b>Sections 38(1) and 25:</b> The Agency deleted certain information in the document relating to another client under section 38. For the reasons set out in the Notice of Decision above, I am satisfied the information is irrelevant to the Applicant's request and to be deleted in accordance with section 25. See also comments for Document 20.</p>
67b.	Undated	Form	4	Refused in full	<p><b>Release in part</b></p> <p>Sections 33(1) and 25</p>	<p><b>Section 30(1):</b> In addition to the comments contained in Document 67a, I am not entirely satisfied the document is</p>

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				Sections 30(1), 33(1) and 38		<p>deliberative in nature. For the most part, it contains accepted facts or actions already taken. Even if I were satisfied, I am not satisfied release would be contrary to the public interest. Rather, disclosure supports the public interest in demonstrating how the Agency responds to a privacy breach and in this case, it demonstrates the Agency's taking an appropriate level of action to a possible data breach. To the extent the document contains a 'typographical error', I consider it is open to the Agency to release additional information or guidance to the Applicant to mitigate any confusion this may cause. Therefore, in considering the purpose of the document, the fact the Applicant is aware of the subject breach by the Agency and having regard to all factors both contrary and in favour of the public interest, I am not satisfied its release would be contrary to the public interest. Accordingly, the document is not exempt under section 30(1).</p> <p><b>Section 33(1):</b> See comments for Document 20.</p> <p><b>Section 38:</b> See comments for Document 67a.</p>

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						<b>Section 25:</b> See comments for Document 20.
67c.	Undated	Form	4	Refused in full Sections 30(1), 33(1) and 38	<b>Refuse in full</b> Section 25 The information is irrelevant information	<b>Sections 38 and 25:</b> The document concerns a privacy incident notification of a third party. For reasons provide in Document 67a, I am satisfied the information is irrelevant to the Applicant's request and is to be deleted under section 25. See also comments for Document 26a.