

## Notice of Decision and Reasons for Decision

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Applicant:	'F17'
Agency:	Department of Families, Fairness and Housing
Decision date:	25 August 2023
Exemptions and provisions considered:	Sections 30(1), 31(1)(a), 31(1)(c), 33(1), 35(1)(a), 35(1)(b) and section 38 in conjunction with sections 41(1), 191(1) and 209(1) of the <i>Children Youth and Families Act 2005</i> (Vic)
Citation:	'F17' and Department of Families, Fairness and Housing (Freedom of Information) [2023] VICmr 87 (25 August 2023)

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FREEDOM OF INFORMATION – Child Protection records – investigation report – Ombudsman enquiries – meeting agenda – emails – letters – disclosure contrary to the public interest – disclosure of personal affairs information unreasonable – secrecy provision – *Children Youth and Families Act 2005* (Vic)

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

### Notice of Decision

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

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

I am satisfied the documents are exempt under sections 30(1), 31(1)(a), 31(1)(c), 33(1), 35(1)(a), 35(1)(b) and 38 in conjunction with sections 41(1), 191(1) and 209(1) of the *Children Youth and Families Act 2005* (Vic) (**CYF Act**). However, I am satisfied certain information in the documents is not exempt from release under sections 30(1), 33(1) and 35(1)(b).

Where it is practicable to provide the Applicant with an edited copy of the documents with exempt information deleted in accordance with section 25, access is granted in part. However, where it is not practicable to do so, access is refused in full.

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

A marked-up copy of certain documents indicating exempt and non-exempt information and information that is exempt under an alternative exemption has been provided to the Agency.

My reasons for decision follow.

**Joanne Kummrow**  
Public Access Deputy Commissioner  
25 August 2023

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency seeking access to the following documents:
  - The investigator's report for a[n] [investigation type] investigation relating to allegations against [the Applicant] that was endorsed in [date].
  - The investigator's report for the revised [investigation type] investigation relating to allegations against [the Applicant] that was endorsed in [date].
  - Copies of all evidence and interview records that [Agency] have relating to the [investigation type] case.
  - All correspondence [named individual] (DFFH) had in relation to the [investigation] (when/how [they] learned about the [investigation] case and outcome and any discussion [they] had about it) and [the] decision [outcome]
  - All correspondence [the Agency] [investigation] team had with [named organisation] regarding this investigation, any advice given to [named organisation], the endorsement of the outcome and any review/appeal process.
  - Any IT records relating to the [investigation] case
  - If not included in the other documents requested, the date the allegations were made, person they were made to and the circumstances.
  - If not included in the other documents requested, the name of the [position title] at [named organisation] and any conflict of interest that was disclosed by [named organisation].
  - Statistical data on [Agency management system] cases for the last three years, including how many allegations were made, how many progressed to investigation, how many were substantiated, how many were appealed and how many were changed on appeal ...
2. The Agency identified 28 documents, comprising 509 pages, falling within the terms of the Applicant's request. The Agency granted access to three documents in full and refused access to 14 documents in part and 11 documents in full under sections 30(1), 31(1)(a), 31(1)(c), 33(1), 35(1)(b) and 38 in conjunction with sections 41(1), 191(1) and 209(1) of the CYF Act.
3. The Agency's decision letter sets out the reasons for its decision.

### Review application

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. I have examined a copy of the documents subject to review.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered all communications and submissions received from the parties.
8. 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.

9. 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.
10. 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.

### **Child Protection and Child Protection records**

11. The Agency is responsible for enforcing and administering the law relating to Child Protection in Victoria under the CYF Act.
12. Child Protection files come into existence when the Agency is notified or becomes aware of a child that is at risk of harm, wellbeing or other safety concerns. The CYF Act provides for voluntary reports from a person and mandatory reporting by persons in certain professions specified under the CYF Act.
13. Parliament has determined strict parameters apply to what information can be released in relation to Child Protection matters, including a prohibition on identifying any person who notifies the Agency about any child protection concerns (notifiers) and any subsequent Agency investigations into, or action taken, to address any such concerns.
14. For example, the CYF Act prohibits disclosure of the names of notifiers, as well as any information likely to lead to the identification of a notifier, except in certain limited circumstances where disclosure is authorised. This reflects the strong need for confidentiality around Child Protection notifications and any subsequent inquiries or investigations conducted by the Agency to ensure the confidentiality of notifiers when making sensitive notifications to the Agency in the interests of protecting a child or children from harm or possible harm.
15. Therefore, when a person who has been involved with Child Protection as a child or as a parent or guardian and seeks access to Child Protection information, the confidentiality provisions that apply under the CYF Act are strictly applied.

### **Review of exemptions**

#### ***Section 38 – Documents to which secrecy provisions of enactments apply***

16. Section 38 provides:

#### **38 Documents to which secrecy provisions of enactments apply**

A document is an exempt document if there is in force an enactment applying specifically to information of a kind contained in the document and prohibiting persons referred to in the

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

enactment from disclosing information of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.

17. Therefore, for a document to be exempt under section 38, three conditions must be satisfied:
  - (a) there must be an enactment in force;
  - (b) the enactment must be formulated with such precision that it specifies the actual information prohibited from disclosure in the document; and
  - (c) the enactment must prohibit persons referred to in the enactment from disclosing the specific kind of information in the document (either absolutely or subject to exceptions or qualifications).
18. In order for section 38 to apply to an enactment, the enactment must be formulated with such precision that it specifies the actual information sought to be withheld.
19. The Agency refused access to information that would identify a confidential source of information under section 38 in conjunction with sections 41(1), 191(1) and 209(1) of the CYF Act.
20. Section 41 of the CYF Act provides:

**41 Identity of reporter or referrer confidential**

- (1) If a report is made to the Secretary under section 28 or 29, a person (other than the person who made it) must not disclose to any person other than the Secretary or a community-based child and family service –

- (a) the name of the person who made the report; and
- (b) any information that is likely to lead to the identification of the person who made the report

Penalty: 60 penalty units.

- (1A) If a referral is made to a community-based child and family service under section 31 or 32, a person (other than the person who made it) must not disclose to any person other than the Secretary or a community-based child and family service –

- (a) the name of the person who made the referral; and
- (b) any information that is likely to lead to the identification of the person who made the referral.

Penalty: 60 penalty units.

- (2) Subsections (1) and (1A) do not apply if the person who made the report or referral –

- (a) gives written consent to the Secretary; or
- (b) gives written or oral consent to the community-based child and family service.

- (3) To avoid any doubt, the name of a person who made a report or who made a referral may be shared between –

- (a) the Secretary and any community-based child and family service; and
- (b) a community-based child and family service and any other community-based child and family service.

21. Section 191 of the CYF Act provides:

**191 Confidentiality**

- (1) If a report referred to in section 190(1) is made, a person (other than the person who made it or a person acting with the written consent of the person who made it) must not disclose to any person other than a protective intervener or a community-based child and family service in accordance with subsection (4)—
  - (a) the name of the person who made the report; or
  - (b) any information that is likely to lead to the identification of the person who made the report

Penalty: 10 penalty units

- (2) Subsection (1) does not apply to a disclosure made to a court or tribunal in accordance with section 190.
- (3) Subsection (1) does not apply to a disclosure to the Therapeutic Treatment Board of the name or information leading to the identification of a police officer who made a report under section 185.
- (4) If a report is made to the Secretary under section 183 or 184, the information referred to in subsection (1) may be disclosed to a community-based child and family service if –
  - (a) the Secretary has made a determination under section 187(1)(c) in respect of the report; and
  - (b) the matter is referred to the community-based child and family service under section 30.

- (5) A community-based child and family service to which information referred to in subsection (1) is disclosed must not disclose that information to any other person except in accordance with this Part.

Penalty: 60 penalty units

22. Section 191(1) of the CYF Act refers to reports made under section 183 (a report to a ‘protective intervener’); section 184 (a mandatory report made by a person in the course of their profession) and reports under section 185 (a report to the Secretary on reasonable grounds that a child is in need of therapeutic treatment).

23. ‘Protective intervener’ is defined under section 181 as ‘the Secretary’ [of the Agency] and ‘all police officers’.

24. Section 209 of the CYF Act provides:

**209 Confidentiality**

- (1) A protective intervener must not disclose to any person, other than to another protective intervener or to a person in connection with a court proceeding or to a person in connection with a review by [the Victorian Civil and Administrative Tribunal] VCAT—
  - (a) The name of a person who gave information in confidence to a protective intervener during the course of the investigation of the subject-matter of a protective intervention report; or
  - (b) any information that is likely to lead to the identification of a person referred to in paragraph (a)—

without the written consent of the person referred to in paragraph (a) authorisation by the Secretary.

Penalty: 10 penalty units

- (2) The Secretary may only authorise the disclosure of information to a person under subsection (1) if the Secretary believes on reasonable grounds that the disclosure is necessary to ensure the safety and wellbeing of the child.
  - (3) In this section ***court proceeding*** includes a proceeding in the Family Court of Australia.
25. In summary, sections 41(1), 191(1) and 209(1) of the CYF Act prohibit disclosure of the names of persons as well as any information likely to lead to the identification of any person who:
  - (a) provided confidential Child Protection information to the Agency in the course of a protective intervention and investigation; and
  - (b) notified the Agency of their concerns for the wellbeing of a child.
26. I am satisfied the relevant sections of the CYF Act prohibit disclosure of the identity, or any information likely to lead to the identification of a notifier or reporter, or any person who gives, or has given information in confidence to the Agency for child protection purposes. This includes not only the record of report of confidential information itself, but also any subsequent documents created containing details of the report or associated confidential information.
27. Accordingly, I am satisfied:
  - (a) the CYF Act is an enactment in force for the purpose of section 38 of the FOI Act;
  - (b) the documents sought by the Applicant contain specific information the disclosure of which is prohibited under sections 41(1), 191(1) and 209(1) of the CYF Act;
  - (c) Agency officers are prohibited from disclosing information that would identify a notifier or person who has given information in confidence to the Agency during the investigation into a reported child protection matter; and
  - (d) none of the limited authorised exceptions for disclosure apply in this case.
28. Accordingly, I am satisfied the information identified by the Agency as exempt from release under section 38 of the FOI Act is exempt, on the basis that it is prohibited from being disclosed under sections 41(1), 191(1) and 209(1) of the CYF Act.
29. My decision in relation to section 38 is set out in the Schedule of Documents at **Annexure 1**.

***Section 31(1)(a) – Disclosure of documents that would prejudice the enforcement or proper administration of the law***

30. Section 31(1)(a) provides:

**31 Law enforcement documents**

Subject to this section, a document is an exempt document if its disclosure under this Act would, or would be reasonably likely to —

- (a) prejudice the investigation of a breach or possible breach of the law or prejudice the enforcement or proper administration of the law in a particular instance;

31. 'Reasonably likely' means that there is a real chance of an event occurring; it is not fanciful or remote.<sup>2</sup> 'Prejudice' means to hinder, impair or undermine and includes actual prejudice as well as impending prejudice.<sup>3</sup>
32. 'In a particular instance' does not require a single specific investigation and can encompass specific, identified aspects of law, administration of law or investigations of breaches or potential breaches of law.<sup>4</sup>
33. 'Proper administration of the law' includes the manner in which the law is administered, including regulatory, monitoring and compliance activities.<sup>5</sup>
34. The Agency's submissions state:

In relation to the first limb, the documents have been created as a result of protective concerns being raised for the children while in the applicant's care and the [investigation type] investigation that followed. Therefore, the documents relate to the investigation of a breach or potential breach of the law.

The department submits that release of information regarding a child protection investigation is not in the best interests of the child for the following reasons:

- Disclosure of the documents to the applicant would therefore be reasonably likely to prejudice Child Protection's investigation of any current or future breaches of the CYF Act relating to the children, or other children in the applicant's care. If notification or investigation information became known to a person who was responsible for the care of a child, committed a crime against a child, or was in breach of a Child Protection Order or Intervention Order, that person would know the information that the department has obtained. It would make clear what was known to the department and also what evidence may lead to future investigation, or what evidence, if any, has not yet been uncovered or provided to the department. A person could use that information to avoid further child protection involvement. Even seemingly innocuous information could be extremely useful to any person wanting to modify his or her behaviour to prepare an explanation in the event they were investigated due to protective concerns.
- As outlined above, the department must be able to properly investigate breaches or possible breaches of the law and administer and enforce the law in regards to child protection cases. Therefore, it is in the best interests of children that the department is able to carry out these obligations.

In relation to the second limb, the department submits that the entire child protection process should be viewed as part of the enforcement and administration of the CYF Act, and that release of child protection documents, and documents relating to any aspect of investigations in care for vulnerable children, would be reasonably likely to prejudice the department's enforcement or proper administration of the CYF Act in relation to the child.

...

Once a notification is made, it triggers a number of processes that are administered and enforced under the CYF Act, such as investigations, assessments, and in some cases, court proceedings to place children at risk of harm in more suitable accommodation. The department

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<sup>2</sup> *Bergman v Department of Justice Freedom of Information Officer* [2012] VCAT 363 at [65], quoting *Binnie v Department of Agriculture and Rural Affairs* [1989] VR 836.

<sup>3</sup> *Ibid*, Bergman at [66], referring to *Sobh v Police Force of Victoria* [1994] VicRp 2; [1994] 1 VR 41 at [55].

<sup>4</sup> *Cichello v Department of Justice (Review and Regulation)* [2014] VCAT 340 at [24].

<sup>5</sup> *Ibid* at [23]; *Croom v Accident Compensation Commission* (1989) 3 VAR 441, affirmed on appeal [1991] VicRp 72; [1991] 2 VR 322.

submits that it is consistent with the authorities to find that those activities do form part of the administration or enforcement of the law for the purposes of section 31(1)(a) of the Act. For example, the decision of *Anderson v Community Services Victoria*<sup>4</sup> found that the *Children and Young Person's Act 1989* constitutes part of the administration of the law and as such, documents disclosing the identity of a confidential source could not be disclosed. The CYF Act replaced the *Children and Young Person's Act 1989* in 2005. In addition, in *RFJ v Victoria Police FOI Division*<sup>5</sup> the Tribunal held that disclosure of a collection of investigation documents would be reasonably likely to prejudice both an investigation and the enforcement of the law in respect of the matters subject to investigation.

Should certain information be released there is also a risk that methods and processes employed by the department during child protection investigations would be exposed. This would impede the department's ability to properly administer the various obligations and duties imposed pursuant to the CYF Act ...

35. Child Protection investigations are by their nature, and as demonstrated by provisions in the CYF Act, highly confidential. Therefore, I am satisfied any information provided to the Agency by third parties during a Child Protection investigation would have been provided with an expectation of confidentiality.
36. Having carefully read the documents and submissions provided by the Agency, I am satisfied disclosure of certain information in the documents would be likely to prejudice the Agency's proper administration of its protective functions under the CYF Act.
37. Accordingly, I am satisfied the information to which the Agency refused access under section 31(1)(a) is exempt from release.

#### *Documents relating to inquiries of the Victorian Ombudsman*

38. I note Documents 18 and 22 is a document produced by the Agency following a request for information by the Victorian Ombudsman under section 13A of the *Ombudsman Act 1973* (Vic) (**Ombudsman Act**).
39. While the Agency did not apply section 31(1)(a) to this document, I consider the exemption should be applied as I am satisfied disclosure of the Agency's response to enquiries made by the Victorian Ombudsman would prejudice the proper administration of the Ombudsman Act in a particular instance.
40. In doing so, I have considered the role of the Ombudsman, which is to receive complaints and investigate allegations of improper conduct of Victorian public entities. Information gathered during the handling of a complaint is often done in confidence, and any disclosure of information is at the discretion of the Victorian Ombudsman, to the extent the Ombudsman deems it necessary to assist the resolution of a matter. To routinely disclose information received in response to a request under the FOI Act would, I believe, undermine the proper administration of the Victorian Ombudsman to handle complaints as it deems appropriate in accordance with its functions set out in the Ombudsman Act.
41. Accordingly, I am satisfied Documents 18 and 22 are exempt from release under section 31(1)(a).
42. My decision in relation to section 31(1)(a) is set out in the Schedule of Documents at **Annexure 1**.

***Section 31(1)(c) – Disclosure of documents that would disclose a confidential source of information***

43. Section 31(1)(c) provides a document is exempt if its disclosure would, or would be reasonably likely to, disclose or enable a person to ascertain the identity of a confidential source of information in relation to the enforcement or administration of the law.

44. In relation to the application of section 31(1)(c), the Agency submissions provide:

... Child protection documents contain information which is obtained in confidence both voluntarily and where required by law. Notification details are the basis of the department's involvement with the child and these details will be paraphrased and referred to many times throughout the child protection records. Additionally, throughout the course of child protection investigations, records detailing Child Protection's interactions with family members, professionals and/or community members involved with the family (for example, the child's extended family, doctor, or childcare service) who have provided information to Child Protection in confidence.

In addition to the release of the name, position title or contact details of a confidential source of information, releasing the date that the confidential information was provided could also inadvertently disclose the identity of the confidential source. This is especially so as the department cannot know what other details the applicant knows in relation to individuals who have observed or had contact with the children around the time the information is provided. The applicant could determine the identity of the confidential source through a process of elimination.

45. I acknowledge the Applicant's interest in obtaining access to the requested documents as detailed in their correspondence to OVIC. However, the nature and purpose of the Child Protection scheme is central to the protection and welfare of children by the State. Parliament's intention regarding what information can and cannot be released concerning child protection matters is clearly set out in the provisions of the CYF Act, as discussed above.

46. Having considered the documents, I am satisfied the information to which access was refused identifies various individuals who, either directly or indirectly, provided information to Child Protection in confidential circumstances and in relation to the Agency's enforcement and administration of the CYF Act. I am satisfied disclosure of such information would impair the effectiveness of the Agency's ability to administer Child Protection services. This includes the disclosure of any notifier named in a Child Protection document, any information provided in confidence by a notifier, or other person in connection with an investigation of the Agency and any information about the assessments and decisions made by Agency officers.

47. Accordingly, I am satisfied the information to which the Agency refused access is exempt from release under section 31(1)(c) as it discloses the identity, or is information that could lead to the identification of, a person who provided confidential information to the Agency during a Child Protection investigation.

48. My decision in relation to section 31(1)(c) is set out in the Schedule of Documents at **Annexure 1**.

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

49. 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>6</sup> and
- (b) such disclosure would be ‘unreasonable’.

*Do the documents contain personal affairs information of individuals other than the Applicant?*

- 50. 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 this may be reasonably determined.<sup>7</sup>
- 51. A document will disclose a third party’s personal affairs information if it is capable, either directly or indirectly, of identifying that person.<sup>8</sup> 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.
- 52. Even where an applicant claims to know the identity of a third party, disclosure of their personal affairs information may still be unreasonable in the circumstances.<sup>9</sup>
- 53. The Agency refused access to the following information under section 33(1):
  - (a) names and contact details of Agency officers and other professionals;
  - (b) opinions and statements of certain third parties; and
  - (c) names of other third parties.
- 54. I am satisfied this information constitutes the personal affairs of persons other than the Applicant.

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

- 55. The concept of ‘unreasonable disclosure’ involves balancing the public interest in the disclosure of official information with the interest in protecting an individual’s personal privacy in the particular circumstances.
- 56. I note the views expressed by the Victorian Court of Appeal in *Victoria Police v Marke*,<sup>10</sup> which 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’.<sup>11</sup>

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<sup>6</sup> Sections 33(1) and 33(2).

<sup>7</sup> Section 33(9).

<sup>8</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].

<sup>9</sup> *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 at [58]; *Akers v Victoria Police* [2003] VCAT 397 at [41].

<sup>10</sup> [2008] VSCA 218 at [76].

<sup>11</sup> *Ibid.*

57. In determining whether disclosure of the personal affairs information of third parties would be unreasonable, I have considered the following factors:
- (a) the nature of the personal affairs information and the circumstances in which the information was obtained;
  - (b) the Applicant's interest in the information;
  - (c) whether the public interest would be promoted by the release of the information; and
  - (d) whether the individuals, to whom the information relates, would likely object to the release of the information.
58. The documents were created in response to concerns raised with the Agency regarding the Applicant [applicant's circumstances]. The Agency's investigation into those concerns would have been conducted as part of its administration of the CYF Act. I consider the personal affairs information would have been obtained by the Agency voluntarily as well as in accordance with the law. I also consider the nature of such investigations, given the seriousness of the allegations, to be highly sensitive and confidential.
59. In relation to why it would be unreasonable to release the third party personal affairs information, the Agency submits:
- ... we submit that the department's obligation to protect the privacy of third parties, especially in regard to sensitive information or information that does not relate to the applicant or which involved information about vulnerable children, outweighs any public interest which might be satisfied through the release of the information.
- In relation to the personal affairs information of non-departmental professionals and other third parties, we submit that the personal affairs information of these individuals was provided in the context of a child protection investigation, and specifically the [investigation type] investigation into [circumstances]. Given the nature of the involvement of these third parties with the department, it is likely they would not consent to their personal affairs information being disclosed. The department submits that protecting the privacy of these third parties outweighs any public interest which might be satisfied through the release of the information.
60. After careful consideration, I am satisfied that in the circumstances of this matter:
- (a) disclosure of the personal affairs information of third parties, who provided confidential information to the Agency in response to its investigation into allegations made against the Applicant, would be unreasonable in the circumstances;
  - (b) it would be unreasonable to release the personal affairs information of the children, including information that relates to any safety and well-being concerns; and
  - (c) it would be unreasonable to release the names and contact information of certain Agency officers and other professionals, noting the sensitive context in which this information was provided to the Agency. In considering these sensitivities, I am of the view that relevant individuals would likely object to the disclosure of their personal affairs information to the Applicant in the circumstances.
61. While I acknowledge the Applicant's personal interest in seeking access to the requested documents in full, I am not satisfied disclosure would serve a broader public interest. In this case, I am of the view the public interest lies in ensuring the Agency can receive sensitive and

personal information from third parties to conduct investigations under the CYF Act in connection with its Child Protection functions.

62. However, after careful review of the documents, I am satisfied a small amount of information to which the Agency refused access in Documents 1 and 12 is not exempt from release, as I am satisfied its disclosure would not identify a third party and its disclosure would not be unreasonable in the circumstances.
63. Accordingly, I am satisfied section 33(1) applies to the documents; however, I have determined to release a small amount of additional information in Documents 1 and 12.
64. My decision in relation to section 33(1) is set out in the Schedule of Documents at **Annexure 1**.

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

65. Section 30(1) has three requirements:
  - (a) the document must disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister;
  - (b) such matter must be made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government; and
  - (c) disclosure of the matter would be contrary to the public interest.
66. The exemption does not apply to purely factual material in a document.<sup>12</sup>

*Do the documents disclose matter in the nature of opinion, advice or recommendation prepared in the course of, or for the purpose of, a deliberative process involved in the functions of the Agency?*

67. I am satisfied the documents contain information in the nature of advice, opinion and recommendation as well as consultation that has taken place between Agency officers. I am also satisfied the advice, opinions, recommendations and consultation were made for a deliberative process of the Agency namely, its investigation and responses to matters involving the Applicant.
68. I am satisfied the documents also contain information in the nature of advice, opinion and recommendation, or otherwise disclose consultation between officers concerning the Agency's deliberative processes in responding to a request for information by the Victorian Ombudsman, regarding a complaint made by the Applicant.

*Would disclosure of the deliberative information be contrary to the public interest?*

69. In determining if release of a document would be contrary to the public interest, I must consider all relevant facts and circumstances remaining mindful the object of the FOI Act is to facilitate and promote the disclosure of information. In the context of this matter, I have given weight to the following relevant factors:<sup>13</sup>

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<sup>12</sup> Section 30(3).

<sup>13</sup> *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

- (a) the right of every person to gain access to documents under the FOI Act;
- (b) the degree of sensitivity of the issues discussed in the documents and the broader context giving rise to the creation of the documents;
- (c) the stage of a decision, or status of policy development, or a process being undertaken at the time the communications were made;
- (d) whether disclosure of the documents would be likely to inhibit communications between Agency officers, essential for the Agency to make an informed and well considered decision or participate fully and properly in a process in accordance with the Agency's functions and other statutory obligations;
- (e) whether disclosure of the documents would give merely a part explanation, rather than a complete explanation for the taking of a particular decision or outcome, which the Agency would not otherwise be able to explain upon disclosure of the documents;
- (f) whether disclosure of a draft or earlier version of a document would not clearly or accurately represent a final position or action taken by the Agency that could not be reasonably explained through disclosure of the surrounding documents; 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.

70. I acknowledge the Applicant's interest in obtaining copies of the documents in full to inform their understanding of the Agency's investigation [circumstances], and any outcomes that may have resulted. I also accept that in principle, individuals who are subject to a decision of an agency should be given as much information as possible to understand the process that led to a final outcome. Although this an important consideration in favour of disclosure, it does not require in all circumstances an agency to disclose all documents it may hold, particularly where disclosure could prejudice the agency's necessary deliberative and consultative processes.

71. The Agency submits:

... The principal argument that disclosure would be contrary to the public interest rests on the fact that there is a strong public interest in departmental staff being able to access confidential advice on matters of public importance, including responding to allegations about quality of care provided to vulnerable children in need [additional circumstances].

...

Whilst the department recognises there is a public interest in the investigative process and steps, and outcome of [investigation type] investigations and other matters referred to within the documents, the department submits that the public interest in the information within the documents is outweighed by the department's obligation to [additional circumstances]. Further, the department has an obligation to safeguard the privacy of those children whose information is, naturally, contained within such documents.

72. I accept the Agency's position that disclosure of certain information in the documents would impede the provision of fulsome advice needed for the deliberative functions of the Agency to conduct sufficient inquiries into reported matters concerning the protection and welfare of children. This involves Agency officers providing opinions and recommendation to one another before reaching a final outcome or action. I am satisfied it is contrary to the public

interest to reveal these processes, where they would reveal sensitive deliberations made in the process of protecting the interest and welfare of the children involved. I also note the Agency exempted certain communications between Agency officers involving sensitive discussions regarding potential legal implications and possible advice. I am satisfied the sensitivity of these deliberations would be contrary to the public interest to disclose.

73. I also accept that a draft or incomplete version of a document, particularly where a final document is available, in consideration, may be inappropriate for release. However, this is not an absolute, and the correct application of section 30(1)(b) requires each document to be examined in its own merit.<sup>14</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>15</sup>
74. Having considered the sensitivity of the issues discussed and significance of the Agency's role both in conducting investigations into the child welfare and its role in appropriately responding to a request for information by the Victorian Ombudsman, I am satisfied release of draft or earlier iterations of letters, emails and submissions would be contrary to the public interest. In these circumstances, I consider it was imperative for the Agency to consult upon such matters to ensure information being provided was accurate and in line with its obligations under the CYF Act. While I note the Applicant's interest in disclosure nonetheless, I consider release of the preliminary views and deliberations contained in draft documents would not assist the Applicant with a proper understanding on why the final decision was made, particularly noting a summary of the findings has already been communicated to the Applicant.
75. However, after careful consideration, I am satisfied that disclosure of certain information in the documents would not be detrimental to the manner in which the Agency manages reported incidents in this case or for similar matters in the future. In particular, I am satisfied where information may provide further assistance to the Applicant as to their understanding of certain processes involved, or where the information does not concern highly sensitive aspects of the Agency's inquiries and merely concerns deliberations and consultation made in an administrative context, in these specific circumstances, I am satisfied disclosure would not be contrary to the public interest. I also note in some cases, information exempted by the Agency involves external communications, which is information not caught by this exemption.
76. Accordingly, while I am satisfied the documents are exempt from release under section 30(1), I have determined certain information is not exempt and can be released to the Applicant.
77. My decision in relation to section 30(1) is set out in the Schedule of Documents at **Annexure 1**.

***Section 35(1) – Documents containing material obtained in confidence***

78. Section 35(1) applies to documents that, if disclosed, would divulge any information or matter communicated in confidence by or on behalf of a person or a government to an agency. This provision contains two exemptions: sections 35(1)(a) and 35(1)(b).
79. The Agency applied section 35(1)(b) to certain documents in part.

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<sup>14</sup> *Penhalluriack v Glen Eira City Council* [2012] VCAT 370 at [25].

<sup>15</sup> *Perton v Department of Education* [2004] VCAT 1143.

Section 35(1)(b)

80. Section 35(1)(b) provides that a document is an exempt document if it would divulge:
- (a) information or matter communicated in confidence by a person or government to an agency; and
  - (b) the disclosure of the information would be contrary to the public interest by reason that it would be reasonably likely to impair the ability of the agency to obtain similar information in the future.

*Was the information obtained in confidence?*

81. Whether information communicated by an individual to an agency was communicated in confidence is a question of fact.<sup>16</sup>
82. In doing so, it is necessary to consider the position from the perspective of the communicator, noting confidentiality can be expressed or implied from the circumstances of a matter.<sup>17</sup>
83. The Agency's decision letter states:

This section applies to material provided in confidence to the department, including information provided to the department in the investigation reports. Release of information exempt under this section, such as the identity of relevant individuals or information that is capable of identifying a confidential source, would compromise the department's ability to obtain information in the future. This would compromise the department's capacity to protect children.

84. Having reviewed the documents, and considering the sensitive context in which the documents were created, I am satisfied they disclose information communicated to the Agency in circumstances where confidentiality is reasonably implied.

*Would disclosure of the information be contrary to the public interest?*

85. Section 35(1)(b) also requires I consider whether the Agency would be impaired from obtaining similar information in the future if the information were to be disclosed under the FOI Act. The public interest test in section 35(1)(b) is narrow and limited to considering whether others in the position of the communicator would be reasonably likely to be inhibited or deterred from providing similar information to the Agency should the information be disclosed.
86. The exemption will not be made out if an agency's impairment goes no further than showing potential communicators of the information may be less candid than they would otherwise have been.<sup>18</sup>
87. I consider where the documents disclose third party accounts and statements provided for the purpose of its investigation into allegations made against the Applicant, I am satisfied it would be contrary to the public interest to release this information. In concluding this, I have

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<sup>16</sup> *Ryder v Booth* [1985] VR 869 at [883]; *XYZ v Victoria Police* [2010] VCAT 255 at [264].

<sup>17</sup> *XYZ v Victoria Police* [2010] VCAT 255 at [265].

<sup>18</sup> *Smeaton v Victorian WorkCover Authority* [2012] VCAT 1549 at [69], approving *Birnbauer v Inner and Eastern Health Care Network* [1999] 16 VAR 9.

considered the perspective of the communicator and believe the relevant third parties provided their accounts on assurances that the information would only be used for the purpose in which it was provided. To routinely release this information under the FOI Act would deter fulsome participation of individuals, if they were of the view any such statements made would not be kept confidential. This in turn would impair the effectiveness of the Agency to investigate child protection matters or complaints in the future.

88. However, where the documents disclose information shared between Agency officers, that do not divulge third party statements or accounts provided, I am satisfied this information can be disclosed without prejudicing the Agency's ability to obtain information of a similar nature in the future. Accordingly, I am not satisfied the Agency's application of section 35(1)(b) is upheld in all circumstances.

Section 35(1)(a)

89. While the Agency did not apply section 35(1)(a) to the documents, I consider it relevantly applies to certain information in Documents 19 and 27.
90. A document is exempt from release under section 35(1)(a) if two conditions are satisfied:
- (a) disclosure would divulge information or matter communicated in confidence by or on behalf of a person or a government to an agency or a Minister; and
  - (b) the information would be exempt matter if it were generated by an agency or Minister.
91. Section 30(1) concerns 'internal working documents' of an agency. However, section 35(1)(a) has the effect that so long as the requirements of section 30(1) are met, those communicating information in confidence are 'deemed' to be officers of the agency and the material will be assessed as if it were generated by the agency. Therefore, if the material is capable of being exempt under section 30(1), the exemption under section 35(1)(a) will be made out.<sup>19</sup>
92. The Agency applied section 35(1)(b) to information submitted for its consideration and advice from an external organisation. In considering the purpose for which the information was provided and the relationship of the communicating parties, I am not satisfied disclosure would impede the Agency from receiving similar information in the future. However, in considering the purpose of the communications, which was to consult upon, and seek advice on, I am satisfied, for the reasons already provided under section 30(1), it would be contrary to the public interest to release the consultation and deliberations made for the purpose of responding to sensitive matters or to documents, which are draft or earlier iterations.
93. Accordingly, I am satisfied certain information in Documents 19 and 27, which was exempted by the Agency under section 35(1)(b) is in fact exempt under section 35(1)(a), because:
- (a) I am satisfied it was communicated in confidence; and
  - (b) it would be considered exempt matter under section 30(1), if it were generated by the Agency.

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<sup>19</sup> *Casey City Council v Environment Protection Authority* [2010] VCAT 453 at [28]-[30].

94. My decision in relation to sections 35(1)(a) and 35(1)(b) is set out in the Schedule of Documents at **Annexure 1**.

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

95. 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.
96. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’<sup>20</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>21</sup>
97. I have considered the effect of deleting exempt information from the documents. In my view, it is practicable to delete the exempt information as to do so would not require substantial time and effort, and the edited documents would retain meaning.
98. However, where deleting exempt information would render the document devoid of meaning, I consider it is not practicable to provide an edited document to the Applicant and the document is refused in full.

#### **Conclusion**

99. On the information before me, I am satisfied the documents are exempt under sections 30(1), 31(1)(a), 31(1)(c), 33(1), 35(1)(a), 35(1)(b) and 38 in conjunction with sections 41(1), 191(1) and 209(1) of the CYF Act. However, I am satisfied certain information is not exempt from release under sections 30(1), 33(1) and 35(1)(b).
100. Where it is practicable to provide the Applicant with an edited copy of the documents with exempt information deleted in accordance with section 25, access is granted in part. However, where it is not practicable to do so, the document is refused in full.
101. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.
102. A marked-up copy of certain documents indicating exempt and non-exempt information and information that is exempt under an alternative exemption has been provided to the Agency.

#### **Review rights**

103. 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>22</sup>

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<sup>20</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>21</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].

<sup>22</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

104. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>23</sup>
105. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>24</sup>
106. 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.
107. 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>25</sup>

***Third party review rights***

108. As I have determined to release documents that contain information claimed exempt under sections 33(1) and 35(1)(b), if practicable, I am required to notify those persons, in this case the organisation, of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.<sup>26</sup>
109. In this case, I am satisfied it is practicable to notify third party organisation of their review rights.

***When this decision takes effect***

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

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<sup>23</sup> Section 52(5).

<sup>24</sup> Section 52(9).

<sup>25</sup> Sections 50(3F) and 50(3FA).

<sup>26</sup> Sections 49P(5), 50(3AB) and 52(3).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1	[date range]	Emails	14	Released in part Sections 30(1), 31(1)(a) 31(1)(c), 33(1), 35(1)(b), 38	<b>Release in part</b> Sections 30(1), 31(1)(a), 31(1)(c), 33(1), 35(1)(b), 38, 25  A marked-up copy of the document has been provided to the Agency indicating exempt and non-exempt information	<b>Section 30(1):</b> I am satisfied the disclosure of certain information in the document would be contrary to the public interest and is exempt from release under section 30(1). However, I am also satisfied certain additional information is not exempt from release and is to be provided to the Applicant. In concluding so, I consider it may assist their understanding of the processes involved, or where the information does not concern highly sensitive aspects of the Agency’s inquiries.  <b>Section 35(1)(b):</b> For the reasons set out in the Notice of Decision above, I am not satisfied the disclosure of certain information provided in confidence to the Agency would be contrary to the public interest. Accordingly, this information is not exempt from release under section 35(1)(b) and is to be released.  <b>Sections 31(1)(a) and 31(1)(c):</b> I am satisfied the information to which the Agency refused access under sections 31(1)(a) and 31(1)(c) is exempt from

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>release for the reasons described in the Notice of Decision above.</p> <p><b>Section 33(1):</b> For the reasons set out in the Notice of Decision above, I am satisfied disclosure of third party personal affairs information would be unreasonable, except for a small amount of information on page 11.</p> <p><b>Section 38:</b> For the reasons set out in the Notice of Decision above, I am satisfied information in the document is exempt from release under section 38 in conjunction with sections 41(1), 191(1) and 209(1) of the CYF Act.</p> <p><b>Section 25:</b> I am satisfied it remains practicable to provide the Applicant with an edited copy of the document with exempt information deleted in accordance with section 25. Accordingly, access to the document is granted in part.</p>
2	[date]	Investigation report and response	20	Refused in full Sections 31(1)(a), 31(1)(c), 33(1), 35(1)(b), 38	<b>Refuse in full</b> Sections 31(1)(a), 31(1)(c), 33(1), 35(1)(b), 38	<b>Section 31(1)(a):</b> For the reasons set out in the Notice of Decision above, I am satisfied disclosure of the document would prejudice the Agency's proper administration of the CYF Act in a particular instance and therefore, is

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>exempt from release under section 31(1)(a).</p> <p><b>Section 31(1)(c):</b> I am satisfied the document contains information provided by confidential sources and is exempt from release under section 31(1)(c).</p> <p><b>Section 35(1)(b):</b> I am satisfied, information in the document was provided in confidence to the Agency and its release would be contrary to the public interest.</p> <p><b>Sections 33(1) and 38:</b> For the reasons set out in the Notice of Decision above, I am satisfied information exempted by the Agency in the document under the exemptions in sections 33(1) and 38 is exempt.</p> <p><b>Section 25:</b> I am not satisfied it is practicable to provide the Applicant with an edited copy of the document with exempt information deleted in accordance with section 25. Accordingly, access to the document is refused in full.</p>
3	[date]	Report	6	Refused in full	<b>Refuse in full</b>	See comments for Document 2.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
				Sections 31(1)(a), 31(1)(c), 33(1), 35(1)(b), 38	Sections 31(1)(a), 31(1)(c), 33(1), 35(1)(b), 38	
4	-	Investigation report	3	Refused in full Sections 31(1)(a), 31(1)(c), 33(1), 35(1)(b), 38	<b>Refuse in full</b> Sections 31(1)(a), 31(1)(c), 33(1), 35(1)(b), 38	See comments for Document 2.
5	[date range]	Emails	10	Released in part Sections 30(1), 33(1), 35(1)(b)	<b>Release in part</b> Sections 30(1), 33(1), 35(1)(b), 25  A marked-up copy of the document has been provided to the Agency indicating exempt and non-exempt information	<b>Sections 30(1), 33(1), 35(1)(b) and 25:</b> See comments for Document 1.
6	[date]	Letter to Applicant	2	Released in part Section 33(1)	<b>Release in part</b> Sections 33(1), 25	<b>Section 33(1):</b> While I understand the information may be in the possession of the Applicant, for the reasons set out in the Notice of Decision above, I am satisfied the disclosure of personal affairs information concerning children would be unreasonable in the circumstances. Accordingly, me decision

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						on the document is the same as the Agency's decision. <b>Section 25:</b> See comments for Document 1.
7	[date range]	Emails	23	Released in part Sections 30(1), 31(1)(a), 33(1), 35(1)(b), 38	<b>Release in part</b> Sections 30(1), 31(1)(a), 33(1), 35(1)(b), 38, 25  A marked-up copy of the document has been provided to the Agency indicating exempt and non-exempt information	See comments for Document 1.
8	[date]	Letter to Applicant	1	Released in part Section 33(1)	<b>Release in part</b> Sections 33(1), 25	<b>Section 33(1):</b> See comments for Document 6. <b>Section 25:</b> See comments for Document 1.
9	[date]	A guide [type]	31	Released in full		Not subject to review.
10	[date range]	Emails	42	Released in part Sections 30(1), 31(1)(a), 31(1)(c), 33(1), 35(1)(b), 38	<b>Release in part</b> Sections 30(1), 31(1)(a), 31(1)(c), 33(1), 35(1)(b), 38, 25	See comments for Document 1.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					A marked-up copy of the document has been provided to the Agency indicating exempt and non-exempt information	
11	[date]	Care Advisory Groups – Terms of Reference	4	Released in full		Not subject to review.
12	[date range]	Emails	55	Released in part Sections 30(1), 33(1), 35(1)(b)	<b>Release in part</b> Sections 30(1), 33(1), 35(1)(a), 25  A marked-up copy of the document has been provided to the Agency indicating exempt and non-exempt information	<b>Sections 30(1):</b> See comments for Document 1. <b>Section 33(1):</b> See comments for Document 1. <b>Sections 35(1)(a) and 35(1)(b):</b> For the reasons outlined in the Notice of Decision above, I am not satisfied release of the information communicated in confidence to the Agency would be contrary to the public interest as I am not satisfied the Agency would be impaired from receiving similar information in future if the relevant information is disclosed. Therefore, I am not satisfied the document is exempt from release under section 35(1)(b).

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						However, I am satisfied the information, would be considered exempt matter under section 30(1), if it were generated by the Agency. Accordingly, I am satisfied the information is exempt under section 35(1)(a) instead of section 35(1)(b).  <b>Section 25:</b> See comments for Document 1.
13	[date]	Report	6	Refused in full Sections 31(1)(a), 31(1)(c), 33(1), 35(1)(b), 38	<b>Refuse in full</b> Sections 31(1)(a), 31(1)(c), 33(1), 35(1)(b), 38	See comments for Document 2.
14	-	Investigation report	4	Refused in full Sections 31(1)(a), 31(1)(c), 33(1), 35(1)(b), 38	<b>Refuse in full</b> Sections 31(1)(a), 31(1)(c), 33(1), 35(1)(b), 38	See comments for Document 2.
15	[date]	investigation report and response	32	Refused in full Sections 31(1)(a), 31(1)(c), 33(1), 35(1)(b), 38	<b>Refuse in full</b> Sections 31(1)(a), 31(1)(c), 33(1), 35(1)(b), 38	See comments for Document 2.
16	[date]	Investigation report and response	20	Refused in full	<b>Refuse in full</b>	See comments for Document 2.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
				Sections 31(1)(a), 31(1)(c), 33(1), 35(1)(b), 38	Sections 31(1)(a), 31(1)(c), 33(1), 35(1)(b), 38	
17	[date range]	Emails	58	Released in part Sections 31(1)(c), 30(1), 33(1), 38	<b>Release in part</b> Sections 30(1), 31(1)(c), 33(1), 38, 25	<b>Section 30(1):</b> For the reasons set out in the Notice of Decision above, I am satisfied disclosure of the advice, opinion and recommendations in the document would be contrary to the public interest.  <b>Sections 31(1)(c) and 38:</b> I am satisfied information in the document would disclose the identity of a confidential source of information. See comments in Document 1.  <b>Sections 33(1) and 25:</b> See comments for Document 1.  Accordingly, my decision on the document is the same as the Agency's decision.
18	[date]	DFFH response to enquiries from the Victorian Ombudsman	4	Refused in full Sections 30(1), 33(1), 35(1)(b)	<b>Refuse in full</b> Section 31(1)(a) A marked copy of the document has been provided to the Agency	<b>Section 31(1)(a):</b> For the reasons set out in the Notice of Decision above, I am satisfied the document is exempt from release under section 31(1)(a).  <b>Section 25:</b> See comments for Document 2.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
19	[ date range	Emails	56	Released in part Sections 30(1), 33(1), 35(1)(b)	<b>Release in part</b> Sections 35(1)(a), 33(1), 25  A marked-up copy of the document has been provided to the Agency indicating exempt and non-exempt information	<b>Section 30(1):</b> Having carefully reviewed the document, I am not satisfied disclosure of certain information would be contrary to the public interest and, therefore, is not exempt from release under section 30(1).  <b>Sections 35(1)(b) and 35(1)(a):</b> For the reasons outlined in the Notice of Decision above, I am not satisfied release of the information communicated in confidence to the Agency would be contrary to the public interest as I am not satisfied the Agency would be impaired from receiving similar information in future if the relevant information is disclosed. Therefore, I am not satisfied the document is exempt from release under section 35(1)(b).  However, I am satisfied certain information communicated in confidence, namely draft letters furnished for advice, would be exempt matter under section 30(1) if generated by the Agency. Therefore, I am satisfied this information is exempt from release under section 35(1)(a).

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<b>Sections 33(1) and 25:</b> See comments for Document 1.
20	[date]	Letter to Applicant	1	Released in full		Not subject to review.
21	[date]	Emails	7	Released in part Sections 33(1)	<b>Release in part</b> Sections 33(1), 25	<b>Sections 33(1) and 25:</b> See comments for Document 1.
22	[date]	DFFH response to Victorian Ombudsman enquiries	4	Refused in full Sections 30(1), 33(1), 35(1)(b)	<b>Refuse in full</b> Section 31(1)(a) A marked copy of the document has been provided to the Agency	See comments for Document 18.
23	[date range]	Emails	44	Released in part Sections 30(1), 33(1)	<b>Release in part</b> Sections 30(1), 33(1), 25  A marked-up copy of the document has been provided to the Agency indicating exempt and non-exempt information	<b>Sections 30(1), 33(1) and 25:</b> See comments for Document 1.
24	[date]	Management of carer complaints –	3	Released in part Sections 30(1), 33(1)	<b>Release in part</b>	<b>Section 30(1):</b> For the reasons described in the Notice of Decision above, I am satisfied release of the advice, opinions

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
		meeting agenda			Sections 30(1), 33(1), 25	and recommendations in the document would be contrary to the public interest. <b>Sections 33(1) and 25:</b> See comments for Document 1. My decision on the document is the same as the Agency's decision.
25	[date range]	Emails	18	Released in part Sections 30(1), 33(1)	<b>Release in part</b> Sections 30(1), 33(1), 25	<b>Section 30(1):</b> See comments for Document 24. <b>Sections 33(1) and 25:</b> See comments for Document 1. My decision on the document is the same as the Agency's decision.
26	-	Draft letter to Applicant	2	Refused in full Sections 30(1), 33(1)	<b>Refuse in full</b> Section 30(1)	<b>Section 30(1):</b> The document is a draft letter. For the reasons set out in the Notice of Decision above, I am satisfied its disclosure would be contrary to the public interest. <b>Section 25:</b> See comments for Document 2.
27	[date range]	Emails	20	Released in part Sections 30(1), 33(1), 35(1)(b)	<b>Release in part</b> Sections 30(1), 33(1), 35(1)(a), 25	<b>Section 30(1):</b> See comments for Document 24. <b>Sections 33(1) and 25:</b> See comments for Document 1.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					A marked copy of the document has been provided to the Agency	<b>Sections 35(1)(b) and 35(1)(a):</b> For the reasons set out in the Notice of Decision, I am satisfied certain information in the document is exempt under section 35(1)(a) instead of section 35(1)(b).
28	-	Table	19	Refused in full Sections 31(1)(a), 31(1)(c), 33(1), 35(1)(b), 38	<b>Refuse in full</b> Sections 31(1)(a), 31(1)(c), 33(1), 35(1)(b), 38	See comments for Document 2.