

Notice of Decision and Reasons for Decision

Applicant:	Australian Broadcasting Corporation
Agency:	Department of Education and Training
Decision date:	23 June 2020
Exemptions considered:	Sections 30(1), 31(1)(a), 33(1), 34(1)(b), 35(1)(b)
Citation:	<i>Australian Broadcasting Corporation and Department of Education and Training (Freedom of Information) [2020] VICmr 167 (23 June 2020)</i>

FREEDOM OF INFORMATION – internal audit report – funding of community organisations – public interest in favour of disclosure

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 differs from the Agency’s decision.

I am not satisfied the document is exempt under sections 30(1), 31(1)(a), 34(1)(b), 35(1)(b). However, I am satisfied certain information in the document is exempt under section 33(1).

As I am satisfied it is practicable to provide an edited copy of the document with irrelevant and exempt information deleted in accordance with section 25, I have determined to grant access to the document in part.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
23 June 2020

Reasons for Decision

Background to review

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

A copy of the audit report into [Name] Chinese Language and Culture School completed in 2019.

We do not have the exact name of the report, but the Department of Education and Training wrote this to the ABC on [date]: Here's a response to your enquiry: To be attributed to a Department spokesperson. The audit of [Name] Language and Culture School is complete and a report has been provided to the Department. We are currently analysing the findings and will determine any actions required from the audits recommendations. Background not for attribution. The purpose of the audit was to determine the schools compliance with the accreditation and funding guidelines and is not intended for publication. -ENDS-

2. The Agency subsequently advised the report is in draft. Following consultation with the Agency, the Applicant clarified they seek access to the draft document.
3. In its decision, the Agency identified a document falling within the terms of the Applicant's request and refused access to the document in full relying on sections 30(1), 33(1), 34(1)(b) and 35(1)(b). The Agency also identified certain information in the document as irrelevant to the request as it relates to other schools not captured by the request.
4. The document records the outcome of an audit of a community language school conducted by a third party business undertaking engaged by the Agency.

Review

5. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
6. I have examined a copy of the document subject to review.
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 from the parties, including:
 - (a) the Agency's decision on the FOI request;
 - (b) information provided with the Applicant's review application and their submission; and
 - (c) the Agency's three submissions.
9. 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.

Preliminary view

10. Following consideration of the document, a preliminary view was provided to the Agency in relation to whether section 31(1)(a) applied to the document.

11. The Agency and the Applicant were subsequently invited to make submissions on the application of section 31(1)(a) to the document.
12. Following these submissions, this office asked the Agency to provide further information about the current status of the document.

Review of exemptions

Section 31(1)(a)

13. 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;

14. 'Reasonably likely' means there is a real chance of an event occurring; it is not fanciful or remote.¹
15. 'Prejudice' means to hinder, impair or undermine and includes actual prejudice as well as impending prejudice.²
16. 'In a particular instance' does not require a single specific investigation. The phrase can encompass specific, identified aspects of law, administration of law or investigations of breaches or potential breaches of law.³
17. Section 31(2) provides section 31(1) does not apply to any document that is:
 - (a) a document revealing that the scope of a law enforcement investigation has exceeded the limits imposed by law;
 - (b) a document revealing the use of illegal methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law;
 - (c) a document containing any general outline of the structure of any programme adopted by an agency for investigating breaches of, or enforcing or administering, the law;
 - (d) a report on the degree of success achieved in any programme adopted by an agency for investigating breaches of, or enforcing or administering, the law;
 - (e) a report prepared in the course of routine law enforcement inspections or investigations by an agency which has the function of enforcing and regulating compliance with a particular law other than the criminal law;
 - (f) a report on a law enforcement investigation, where the substance of the report has been disclosed to the person who, or the body which, was the subject of the investigation—

if it is in the public interest that access to the document should be granted under this Act.

¹ *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.

² *Ibid*, *Bergman* at [66], referring to *Sobh v Police Force of Victoria* [1994] VicRp 2; [1994] 1 VR 41 (Nathan J) at [55].

³ *Cichello v Department of Justice (Review and Regulation)* [2014] VCAT 340 at [24].

18. In relation to the application of section 31(1)(a) to the document, the Agency submits, in part:

The Department provides funding to various community language schools through the application of the Community Language Schools Funding Program. Specifically, the Department is legally empowered to create and administer this funding by various sections contained in the Education and Training Reform Act 2006 (Vic) (the **ETRA Act**), specifically –

- (1) Section 5.2.1(2)(a) - that provides that the Minister has power “to set the overall policy for education and training in or related to Victoria”.
- (2) Section 5.1.1(1) – that provides that the Department is “responsible for the administration of education and training in Victoria with the principal function of assisting the Minister in the administration of [the ETRA Act].”
- (3) Section 5.3.2 – that provides that “[t]he Secretary is responsible for implementing any policy or decision of Minister.”

The draft financial audit, provided by an external auditor, was created to ensure the responsibilities the Minister, Secretary and Department have for administering policies and decisions permitted by the ETRA Act are adhered to. The financial auditing of [Name] Language and Culture School helps to ensure that the Community Language Schools Funding Program, as permitted to operate pursuant to the above cited sections of the ETRA Act, is properly administered according to law.

...

19. OVIC staff requested the Agency provide further information about the status of the audit and was advised the Agency had ‘determined its response to the audit’. However, the Agency is awaiting advice from the Minister and about whether any further action should be taken prior to the Agency contacting the school to advise of the outcome of the audit.
20. In relation to section 31(1)(a), the Applicant submits in part:

I submit that the Department cannot rely on these sections of the Education and Training Reform Act to invoke the s 31 FOI Act law enforcement document exemption. These Education and Training Reform Act sections are foundational provisions creating all powers and activities of the Education Department and Minister.

There is no document held by the Department that does not relate to these foundational provisions. All its documents will by definition relate to the creation of the department, its policies, the powers of its Minister, the responsibilities of its Secretary, the implementation of its policies and the decisions of the Minister, and the delivery and administration of education. All documents held by the Department would be exempt if such an argument were upheld.

...

21. Following further consideration of the document and submissions from the Agency and Applicant, I have reconsidered the preliminary provided in relation to section 31(1)(a).
22. I note the Victorian Civil and Administrative Tribunal (**VCAT**) has held section 31(1)(a) is not confined to matters involving criminal law or the exercise of specific government regulatory powers.⁴
23. I accept the ETRA Act requires the Agency to ensure the probity of its funding of community schools, and to ensure the requirements in the following are met:

⁴ See for example *Thwaites v Department of Human Services* (1998) 14 VAR 347 and *Horrocks v Department of Justice* (Vic) [2012] VCAT 241 at [80]-[81].

- (a) the Community Language Schools Funding Program accreditation and funding guide 2019-2021;
 - (b) the Victorian Common Funding Agreement; and
 - (c) any schedules to those agreements specific to the school concerned.
24. On balance, I have decided disclosure of the document would not prejudice the Agency's proper administration of the ETRA Act in relation to the subject document for the following reasons:
- (a) The Community Language Schools Funding Program Accreditation and Funding Guide 2019-2021 and the Victorian Common Funding Agreement are publicly available documents. These documents set out the criteria for an audit. Therefore, the nature of the audit, including the criteria considered, and the types of documents required to be produced, is publicly available information.
 - (b) In this instance, I consider the school would be reasonably aware of the nature of the audit, given its contact with the auditors and information it provided to them to assist in the audit, and would likely be aware of at least the nature of the concerns identified in the document.
 - (c) The audit, for all intents and purposes, has been concluded and the only action remaining was to advise the school of the outcome of the audit and the actions it is required to take.
 - (d) Given the above matters, I do not consider disclosure of the document would affect the implementation of the findings of the audit or any further action the Agency, or Minister, may take as a result of this or future similar audits.
25. Accordingly, I am not satisfied the document is exempt under section 31(1)(a).

Section 30(1)

26. 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.
27. The exemption does not apply to purely factual material in a document.⁵
28. The term 'officer of an Agency' is defined in section 5(1). It includes a member of the agency, a member of the agency's staff, and any person engaged by or on behalf of the agency, whether or not that person is one to whom the provisions of the *Public Administration Act 2004* (Vic) apply.

Does the document 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?

29. While I consider the document includes factual information, which is not exempt by virtue of section 30(3), I accept it discloses matter in the nature of opinion, advice or recommendation prepared by an

⁵ Section 30(3).

officer of the Agency, namely the auditor engaged by the Agency to undertake an audit and prepare a report setting out any findings and recommendations arising from the audit.

Was the document 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?

30. I am satisfied the document was created in the course of the deliberative processes involved in the functions of the Agency, being an audit to determine compliance with accreditation and funding agreements between the Agency and the community language school.

Would disclosure of the document be contrary to the public interest?

31. In deciding if release 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.
32. In deciding whether the information exempted by the Agency would be contrary to the public interest, I have given weight to the following factors:
- (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 document and the broader context giving rise to the creation of the document;
 - (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 document 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 document 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 document;
 - (f) the impact of disclosing a document 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.
33. I note the Agency advised its submission to this office is confidential. However, in order to adequately explain my reasons for decision, as required by section 49P(3), it is appropriate to summarise its submission as follows.
34. The Agency submitted it would not be in the public interest to disclose the document for the following reasons:
- (a) The document is a draft document and subject to change. Therefore, its release would be likely to be misleading and create confusion.

- (b) The community language school has not viewed the report and would be denied natural justice if the document is released.
- (c) The report is sensitive and contentious.
- (d) Disclosure would impair the Agency's ability to obtain similar information in the future.
- (e) The Agency relies on *Smeaton v Victorian WorkCover Authority*⁶ (**Smeaton decision**), in which VCAT considered a number of previous decisions:⁷

... the general thrust of the AAT's and VCAT's decisions is clear. Releasing documents concerning the audit process is contrary to the public interest. I agree with the ...observations of the AAT and VCAT about the public interest in protecting the integrity of the audit process, including where appropriate (as I see as the case here) protecting the confidentiality of the process.

- (f) The Agency submits there is a risk of incorrect or unintended interpretation.

35. In their submission, the Applicant addressed the public interest, in part, as follows:

Audit documents are frequently released under FoI applications. This is because they contain conclusions of financial facts that reveal how public funds have been used and how agencies responsible for oversight of organisations that receive public funds have performed.

They are not deliberative, they do not reflect internal departmental thinking; they set out the results of external assessments of the use of public funds. They contain information that is precisely the sort of information the Freedom of Information regime was set up to make accessible to the public.

36. In relation to the public interest factors as set out in paragraph 32 above, I have concluded the following:

- (a) The degree of sensitivity of the issues discussed in the documents and the broader context giving rise to the creation of the documents

While I do not accept the whole of the document is sensitive, for example where it sets out the purpose of the audit, certain audit findings and methods, I agree parts of the document are sensitive, as it relates to the financial management practices of a community language school that receives public funding.

However, the document was prepared for the Agency in connection with its governmental functions, being an audit to determine compliance with accreditation and funding agreements between the Agency and community language schools. While matters of this nature may be considered sensitive, I consider there is a broader public interest in transparency and accountability in relation to the Agency's obligations regarding the expenditure of public funds provided to fund or subsidise privately run educational programs.

While I note the Agency's concern the community language school would be denied natural justice if the document is released to the Applicant under the FOI Act, I consider this is an issue that reasonably sits with the Agency, given the audit is completed and the Agency has been in possession of the document since November 2019. In this regard, the Agency has had more than six months to consider the audit findings, provide the school with an opportunity to respond to any concerns raised and for any necessary action arising from the audit to be taken.

⁶ VCAT 1234 at [22]-[37].

⁷ *Prescott v Auditor-General (Vic)* (1987) 2 VAR 93 at [97]-[98], *Rabel v Gas and Fuel Corp (Vic)* (1989) 3 VAR 334, *Kotsiras v Department of Premier & Cabinet* [2003] VCAT 472.

In any case, as stated above, I consider the school would be reasonably aware of the nature of the audit given its contact with the auditors and information it provided to assist in the audit, and would likely be aware of the nature of the concerns identified in the document.

On balance, these factors weigh in favour of disclosure.

(b) The stage of a decision or status of policy development or a process being undertaken at the time the communications were made

The Agency submits the document is in draft form. From a review of the document, I note the document is stamped 'draft' and the 'management response' section has not been completed. I also note the document is dated, 'November 2019' and states the audit was undertaken on 12 and 13 September 2019.

Based on information provided by the Agency during the review, that it had 'determined its response' to the audit and was waiting on advice from the Minister prior to contacting the school, and the time that has passed since the document was provided to the Agency, I consider the auditor's findings in the document are complete and in final form. Accordingly, I am not persuaded the integrity of the audit process would be compromised or negatively impacted in these circumstances.

I accept the Agency's advice it has 'determined its response to the audit'. I also note, as discussed above, the Agency has briefed the Minister and is awaiting advice about whether any further action should be taken prior to contacting the school to advise it of the outcome of the audit.

These circumstances raise legitimate concerns as to the premature release of the document prior to the Agency and the Minister confirming whether any necessary action should be taken arising from the audit findings.

While on the one hand, this factor would appear to weigh against disclosure in order to allow the proper decision making processes of the Agency and Minister to run their course, in the particular circumstances of this matter, I consider there are special circumstances that weigh in favour of disclosure. Namely, the audit is completed and the Agency has been in possession of the document since November 2019 and has had more than six months to consider the audit findings, brief the Minister, and determine if any necessary action should be taken.

In this regard, I note the Applicant's submission:

...the audit is not ongoing – the submitted audit was finalised over six months ago. That is the document we sought, not some second, department-authored document which includes and glosses the audit, which the Department calls the "final" audit.

...the Department's so-called "final" audit may or may not be ongoing. I have not been informed. If that process has not been concluded, this in itself is a matter of public interest that the public are entitled to know. The public needs the audit as it was submitted in November to form a view about that.

As stated above, I consider there is a broader public interest in transparency and accountability in relation to the Agency's obligations to ensure the expenditure of public funds provided to fund or subsidise privately run educational programs, such that disclosure would not be contrary to the public interest. Rather, in this case, disclosure would serve the public interest given the Agency's obligations to ensure the expenditure of public funds provided to fund or subsidise privately run educational programs.

On balance, these factors weigh in favour of disclosure.

- (c) 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

The audit was undertaken and the report prepared by an independent contractor engaged by the Agency for a fee. I do not consider disclosure of the document would have any negative impact on the Agency's ability to receive similar advice in the future. Rather, such contractors are generally subject to professional obligations and are also contractually obliged to provide professional services in exchange for a fee in accordance.

I note the document also includes information provided by the community language school. In my view, they are obliged to provide such information as part of the requirements of accreditation and any funding agreement with the Agency.

Accordingly, these factors weigh in favour of disclosure.

- (e) 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

For the reasons set out above, I consider the audit findings are complete and in final form. Further, as the report sets out its purpose, steps taken and the audit findings, I do not consider disclosure of the document would provide a part explanation in relation to the audit findings.

I also note the Agency's concern about the potential for information in the document to be broadly disseminated. As described above, the purpose of the document and its findings are described in the document. I consider the public are capable of understanding the content of the document and its disclosure would not mislead the public or lead to confusion as to the outcome of the audit.

I also consider it would be open to the Agency to explain the audit findings and, in particular, any decision or process underway in relation the outcome of the audit, including whether any necessary action is to be taken arising from the audit findings.

On balance, these factors weigh in favour of disclosure.

- (f) 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

I note the Agency advised in its submission that the audit provides the appropriate scrutiny of the community language school and, therefore, the findings do not require exposure under the FOI Act.

I agree the audit provides information to the Agency about whether the funding it provides to privately run education programs is being correctly expended by third parties, and assurance about the probity of its processes.

However, accountability is not limited to making information of this nature available to an Agency only. In my view, the object and purpose of the FOI Act is to ensure public accountability of agencies and government more broadly through the provision of public access to documents. In this matter, I consider disclosure of the document ensures transparency and accountability not only in relation to the relevant community language school, given its receipt of public funding, but also serves a broader public interest in

transparency and accountability in relation to the Agency's obligations to ensure the expenditure of public funds provided to fund or subsidise privately run educational programs.

Another factor considered is the fact the audit was conducted more than eight months ago, and the report received by the Agency more than six months ago. Given the importance of such audits, this would appear to be sufficient time for the Agency to conduct any further consultation or to determine if any necessary action should be taken.

I also note the Agency's reference to the Smeaton decision. Audit documents are not exempt as a class, and I must consider each document subject to review, including its purpose, the context surrounding its creation, and its contents. In the Smeaton decision, the documents were held to be exempt on the basis they revealed the audit process.

In my view, the audit process in this matter could be reasonably inferred from publicly available information. I also note the audit process, as set out in the document, appears to be generic in nature and would likely be common to many similar audits. Therefore, I do not consider the document reveals information about the Agency's audit processes that could subvert or interfere with the proper undertaking of future audits.

37. In weighing up the above factors, I am satisfied the public interest weighs in favour of disclosure.
38. Accordingly, having taken into consideration the submissions of both the Applicant and the Agency and in balancing the above factors, I am satisfied disclosure of the document would not be contrary to the public interest and the document is not exempt under section 30(1).

Section 34(1)(b)

39. Section 34(1)(b) provides a document is exempt if it would disclose information acquired by an agency (or a Minister) from a business, commercial or financial undertaking and:
 - (a) the information relates to other matters of a business, commercial or financial nature; and
 - (b) the disclosure of the information would be likely to expose the undertaking unreasonably to disadvantage.
40. In *Thwaites v Department of Human Services*,⁸ VCAT observed the phrase 'information acquired' in section 34(1) signifies the need for some positive handing over of information in some precise form.
41. VCAT has also recognised the words 'business, commercial or financial nature' should afforded their ordinary meaning.⁹
42. Section 34(2) provides:

In deciding whether disclosure of information would expose an undertaking unreasonably to disadvantage, for the purposes of paragraph (b) of subsection (1), an agency or Minister may take account of any of the following considerations—

 - (a) whether the information is generally available to competitors of the undertaking;
 - (b) whether the information would be exempt matter if it were generated by an agency or a Minister;

⁸ (1999) 15 VAR 1.

⁹ *Gibson v Latrobe CC* [2008] VCAT 1340 at [25].

- (c) whether the information could be disclosed without causing substantial harm to the competitive position of the undertaking; and
- (d) whether there are any considerations in the public interest in favour of disclosure which outweigh considerations of competitive disadvantage to the undertaking, for instance, the public interest in evaluating aspects of government regulation of corporate practices or environmental controls—

and of any other consideration or considerations which in the opinion of the agency or Minister is or are relevant.

- 43. The Agency exempted parts of the document relating to the community language school and the auditor engaged by the Agency. The Agency advised it consulted with the auditor and I have taken its response into consideration in my decision below.
- 44. I note the Agency also claimed the auditor was an officer of the Agency for the purposes of section 30(1). I agree with the Agency on this point. I also note the auditor, in its response to consultation under section 35(1A), did not provide any information about its commercial or business affairs information in the document, or identify how it would be unreasonably exposed to disadvantage by disclosure of the information.
- 45. In my view, while the document reveals certain audit methods, I consider these are general in nature and would be commonly employed in audits. Therefore, I am not satisfied information about or provided by the third party business undertaking is exempt under section 34(1)(b).
- 46. The document contains information of a financial nature, being the funds the school receives, its student numbers and financial and other related practices.
- 47. I note the Agency's reasons for not consulting with the community language school, as required, under section 34(3), given what it considers to be the sensitivity of the document. This means there is no information before me provided by the school regarding how disclosure of the document would expose it unreasonably to disadvantage. Finally, I am not persuaded on the basis of the information provided by the Agency to support the application of section 34(1)(b) to the document.
- 48. As such, I consider the Agency's decision in this regard supports a view that the nature of the financial information in the document was collected from the school in connection with a government regulatory process and this factor means considerations in relation to whether the school would be exposed unreasonably to disadvantage must be considered in the broader context of the public interest factors in favour of disclosure, as discussed above.
- 49. In any case, while I note not-for-profit organisations can be considered under this exemption,¹⁰ I do not accept the community language school is engaged in competition of a commercial nature despite the fact it may consider it 'competes' for public funding in relation to the provision of its educational services.
- 50. Finally, given the context of the audit and the public interest in evaluating aspects of government regulation, I consider the public interest considerations weigh in favour of disclosure and outweigh considerations of any competitive disadvantage to which the school may be subject.
- 51. Accordingly, I am not satisfied the document is exempt under section 34(1)(b).

Section 35(1)(b)

- 52. A document is exempt under section 35(1)(b) if two conditions are satisfied:

¹⁰ *Australian Institute of First Aid & Emergency Care Providers Pty Ltd v Victorian WorkCover Authority* (2000) 16 VAR 222

- (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) disclosure would be contrary to the public interest as it would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.
53. To determine whether information was communicated in confidence, it is necessary to consider the position from the perspective of the communicator.¹¹
54. In this matter, the Agency relies on section 35(1)(b) to exempt information supplied to it from:
- (a) the Learning, Teaching and Pathways Division of the Agency;
 - (b) the external auditors who conducted the audit; and
 - (c) the staff at the school.
55. I note it has been held staff may communicate 'to' an agency in limited circumstances.¹² However, I consider it is necessary to consider the circumstances of each matter when determining whether an agency's officers have provided information in confidence to their employer. This exemption is more likely to apply where an agency officer provides information outside the normal course of their duties, such as concerns regarding the conduct of another officer or the integrity of workplace processes or decisions.
56. To consider the exemption too broadly would, in my view, be to subvert the purpose of the FOI Act to provide, as far as possible, access to government information.
57. In this matter there is no information before me to suggest special circumstances apply to the information provided by Agency officers, or information from Agency staff was communicated to the Agency in confidence.
58. Accordingly, I am not satisfied the information referred to in paragraph 54(a) above is exempt.
59. In relation to the third party business undertaking, I note the submission from the Agency and the text at the end of the document indicates the report was provided to the Agency in confidence. However, I also note the third party, in its response to consultation under section 35(1A), did not advise the document was provided in confidence, rather, it addressed section 35(1)(b) in relation to the information provided by staff at the community language school.
60. I am satisfied the information was provided by the auditor to the Agency in confidence. However, I am not satisfied disclosure of the information provided would impair the ability of the Agency to obtain similar information in the future. As described above, the report was prepared by the auditor, in exchange a commercial fee. I do not consider disclosure of the document would reasonably have any impact on the Agency to obtain similar advice from an independent contractor in the future.
61. In relation to information supplied by staff at the community language school, I agree such information is reasonably likely to have been provided to in confidence.
62. The Agency submits it does not have the power to compel the community language school to provide such information. However, I note the Victorian Common Funding Agreement and the Community Language Schools Funding Program Accreditation and Funding guide state community language schools are required to participate in audits and provide requested documents as a condition of their

¹¹ *XYZ v Victoria Police* (2010) 33 VAR 1; [2010] VCAT 255 at [265], citing *Barling v Medical Board (Vic)* (1992) 5 VAR 542 at 561-562.

¹² *Birnbauer v Inner & Eastern Health Care Network* (1999) 16 VAR 9 at 17.

accreditation and funding. As such, I consider the Agency has the power to discontinue funding or revoke the accreditation of such organisations.

63. Accordingly, I consider the Agency has the ability to compel the provision of financial and other information required to conduct audits of community language schools in receipt of public funding.
64. As such, I am not satisfied disclosure of the document would be contrary to the public interest on grounds the Agency's ability to obtain similar information in the future would not be impaired by disclosure of the document.
65. Therefore, I am not satisfied the document is exempt under section 35(1)(b).

Section 33(1)

66. A document is exempt under section 33(1) if two conditions are satisfied:
 - (a) disclosure of the document under the FOI Act would 'involve' the disclosure of information relating to the 'personal affairs' of a person other than the Applicant; and
 - (b) such disclosure would be 'unreasonable'.
67. 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.
68. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the protection of personal privacy in the circumstances of a matter.
69. In deciding whether the disclosure of a document would involve the unreasonable disclosure of information relating to the personal affairs of any person, I must take into account whether the disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person.¹³ However, I do not consider this to be a relevant factor in the circumstances.
70. The Agency applied section 33(1) to the names of people in the document, being staff of the community school. The Agency advised it considered it impracticable to consult with those people.
71. I agree the document contains the personal affairs of two individuals. While these names may be publicly known in the context of the school, in these circumstances I have decided it would be unreasonable to release the names. In my view, it is the Agency that carries the responsibility of the audit, not members of the community.
72. Accordingly, I am satisfied the names of two individuals in the document are exempt under section 33(1).

Deletion of exempt or irrelevant information

73. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
74. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹⁴ and the effectiveness of the deletions. Where

¹³ Section 33(2A).

¹⁴ *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].

deletions would render a document meaningless, they are not 'practicable', and release of the document is not required under section 25.¹⁵

75. I have considered information in the document the Agency determined as irrelevant. I agree it falls outside the scope of the Applicant's request, as it relates to different community language schools that are not the subject of the FOI request.
76. I have considered the effect of deleting irrelevant and exempt information from the document in accordance with section 25. I am satisfied, it is practicable to delete the irrelevant information, as to do so would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

77. On the information before me, I am not satisfied the document is exempt under sections 30(1), 31(1)(a), 34(1)(b), 35(1)(b). However, I am satisfied certain information in the document is exempt under section 33(1).
78. As I am satisfied it is practicable to provide an edited copy of the document with irrelevant and exempt information deleted in accordance with section 25, I have determined to grant access to the document in part.

Review rights

79. If either party to this review is not satisfied with my decision, they are entitled to apply to the VCAT for it to be reviewed.¹⁶
80. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁷
81. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁸
82. Information about how to apply to VCAT is available online at www.vcat.vic.gov.au. Alternatively, VCAT may be contacted by email at admin@vcat.vic.gov.au or by telephone on 1300 018 228.
83. 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.¹⁹

When this decision takes effect

84. I have decided to release a document that contains matters of a commercial nature relating to a third party business undertaking.
85. The relevant third party will be notified of my decision and is entitled to apply to VCAT for a review within 60 days from the date they are given notice.

¹⁵ *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].

¹⁶ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁷ Section 52(5).

¹⁸ Section 52(9).

¹⁹ Sections 50(3F) and (3FA).