

## Notice of Decision and Reasons for Decision

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Applicant:	'FD7'
Agency:	Department of Families, Fairness and Housing
Decision date:	17 May 2023
Exemption considered:	Section 33(1)
Citation:	'FD7' and Department of Families, Fairness and Housing (Freedom of Information) [2023] VICmr 42 (17 May 2023)

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FREEDOM OF INFORMATION – complaints made to agency by applicant – OurBriefings – eMinisterials – Child Protection – internal emails – correspondence – correspondent action summary – disclosure of personal affairs information of agency officers unreasonable – peripheral role of agency officers in handling complaints

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 is the same as the Agency's decision.

I am satisfied the information to which the Agency refused access in the documents is exempt from release under section 33(1) and it is practicable to provide the Applicant with an edited copy of the documents with irrelevant and exempt information deleted in accordance with section 25.

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

My reasons for decision follow.

Joanne Kummrow  
Public Access Deputy Commissioner

17 May 2023

## Reasons for Decision

### Background to review

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

Request 1- All documents in relation to the administration of my complaint dated [date] and addressed to DHHS Complaints Reception and sent by email.  
([complaints.reception@dhhs.vic.gov.au](mailto:complaints.reception@dhhs.vic.gov.au))

Request 2 -All documents in relation to the administration of my complaint dated [date]and addressed to DHHS Complaints Reception and sent by email. (complaints.reception@dhhs.vic.gov.au)

Request 3 - All documents held on the Department's OurBriefings and/or eMinisterials systems in relation to the administration of my complaint dated [date]addressed to the then Child Protection Minister- Minister Luke Donnellan MP and referred to DHHS for advice and/ or reply.

Request 3a - Including all documents held on the Department's OurBriefings and/or eMinisterials systems in relation to the information exchanged between the Child Protection Ministers Office and the DHHS in relation to my complaint dated [date] (all documents received from and sent to Minister Donnellan and his office).

Request 4 -All documents held on the Department's OurBriefings and/or eMinisterials systems in relation to the administration of my complaint dated 24 January 2019 addressed to the then Child Protection Minister - Minister Luke Donnellan MP and referred to DHHS for advice and/ or reply.

Request 4a- Including all documents held on the Department's OurBriefings and/or eMinisterials systems in relation to the information exchanged between the Child Protection Ministers Office and the DHHS in relation to my complaint dated [date] (all documents received from and sent to Minister Donnellan and his office).

Request 5 -All documents held on the Department's OurBriefings and/or eMinisterials systems in relation to the Department's administration of complaints and enquiries (including the provision of advice) following representations to the Child Protection Minister- Minister Donnellan by the office [name of MP] MP and [date]December 2019 inclusive.

Request 6 - Requests 1 to 5 include, but are not limited to, all related records kept by the Department on its complaint handling/ feedback databases and systems.

2. The Agency identified 41 pages of documents falling within the terms of the Applicant's request and granted access to 14 documents in full and 10 documents in part. The Agency refused access to information in the documents under sections 30(1), 31(1)(c), 33(1), 35(1)(b) and 38. The Agency's decision letter sets out the reasons for its decision.

### Review application

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

7. In undertaking my review, I have had regard to the object of the FOI Act, which is to create a general right of access to information in the possession of the Government or other public bodies, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.
8. I note Parliament's intention the FOI Act must be interpreted so as to further the object of the Act and any discretions conferred by the Act must be exercised, as far as possible, so as to facilitate and promote the disclosure of information in a timely manner and at the lowest reasonable cost.

## Review of exemptions

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

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

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

10. Information relating to a person's 'personal affairs' includes information that identifies any person or discloses their address or location. It also includes any information from which such information may be reasonably determined.<sup>2</sup>
11. A document will disclose a third party's personal affairs information if it is capable, either directly or indirectly, of identifying that person. As the nature of disclosure under the FOI Act is unrestricted and unconditional, this is to be interpreted by reference to the capacity of any member of the public to identify a third party.<sup>3</sup>
12. 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>4</sup>
13. The documents contain the following personal affairs information:
  - (a) the names, position titles, email addresses and telephone numbers of Agency officers;
  - (b) the names of other third parties, and their email addresses and telephone numbers; and
  - (c) other information regarding third parties.

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

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

<sup>2</sup> Section 33(9).

<sup>3</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>4</sup> *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 at [58]; *Akers v Victoria Police* [2003] VCAT 397 at [41].

14. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the personal interest in privacy in the particular circumstances of a matter.
15. In *Victoria Police v Marke*,<sup>5</sup> the Victorian Court of Appeal held there is 'no absolute bar to providing access to documents which relate to the personal affairs of others'. Further, the exemption under section 33(1) 'arises only in cases of unreasonable disclosure' and '[w]hat amounts to an unreasonable disclosure of someone's personal affairs will necessarily vary from case to case'.<sup>6</sup> The Court further held, '[t]he protection of privacy, which lies at the heart of [section] 33(1), is an important right that the FOI Act properly protects. However, an individual's privacy can be invaded by a lesser or greater degree'.<sup>7</sup>
16. In determining whether disclosure of the personal affairs information would be unreasonable in the circumstances, I have considered the following factors:
  - (a) The nature of the personal affairs information.
  - (b) The circumstances in which the information was obtained.
  - (c) The Applicant's interest in the information and whether their purpose for seeking access to the information is likely to be achieved.
  - (d) Whether any public interest would be promoted by release of the personal affairs information.
  - (e) The likelihood of disclosure of information, if released.
  - (f) Whether the individuals to whom the information relates object, or would be likely to object, to the release of the information.

In deciding whether disclosure of a document would involve the unreasonable disclosure of a third party's personal affairs information, an agency must notify that person an FOI request has been received for documents containing their personal information and seek their view as to whether disclosure of the document should occur.<sup>8</sup> However, this obligation does not arise if including it is not practicable to do so.<sup>9</sup>

There is no information before me to conclude any third party was consulted in relation to their views on the disclosure of their personal affairs information in this matter. However, given the sensitive nature of the Applicant's contact with the Agency, I agree it would be impracticable to do so.

17. In their application for review, the Applicant states they require the names of Agency officers in the documents to understand their role in the administration of the Applicant's complaints.

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<sup>5</sup> [2008] VSCA 218 at [76].

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid* at [79].

<sup>8</sup> Section 33(2B).

<sup>9</sup> Section 33(2C).

18. I have decided disclosure of third party personal affairs information in the documents would be unreasonable for the following reasons:
- (a) The majority of information in the documents was released by the Agency to the Applicant, and this information demonstrates how their complaints were handled.
  - (b) Certain information in the documents to which the Agency refused access is sensitive and personal in nature.
  - (c) The responses to the Applicant's complaints include the name and signature of those responsible for those responses. In my view, the remainder of the Agency officers named in the documents had peripheral roles in handling the Applicant's complaints and were not directly responsible for the Agency's responses. As such, I do not consider disclosure of the third party personal affairs information is necessary in order for the Applicant to understand the documents or how their complaints were handled by the Agency and its responses to the Applicant's complaint.
  - (d) Given the circumstances of this matter, I consider it likely the relevant third parties would not consent to the disclosure of their personal affairs information in the documents under the FOI Act.
  - (e) In the circumstances of this matter, I do not consider the release of the third party personal affairs documents would be in the public interest. Rather, I consider the public interest weighs in favour of protecting the personal privacy of the third parties named and to which the Agency refused access.
19. While in many instances I do not consider the names of Agency officers, where they appear in the ordinary course of the professional duties would be unreasonable to release, in the circumstances described above, I have determined that it would be unreasonable.
20. As I have decided it would be unreasonable to disclose the personal affairs information in the documents, it is exempt under section 33(1).
21. My decision regarding each document is set out in the Schedule of Documents in **Annexure 1**.

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

22. 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.
23. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>10</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>11</sup>

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<sup>10</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>11</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].

24. I have considered the information the Agency deleted from the documents as irrelevant and agree it falls outside the terms of the Applicant's request.
25. Given the Agency's original decision to grant access to the documents in part with irrelevant and exempt information deleted in accordance with section 25, I am satisfied it remains practicable to provide the Applicant with an edited copy of the documents.

### Conclusion

26. On the information before me, I am satisfied certain information in the documents is exempt from release under section 33(1) and it is practicable to provide the Applicant with an edited copy of the documents with irrelevant and exempt information deleted in accordance with section 25.
27. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

### Review rights

28. 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>12</sup>
29. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>13</sup>
30. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>14</sup>
31. 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.
32. 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>15</sup>
33. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

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

<sup>13</sup> Section 52(5).

<sup>14</sup> Section 52(9).

<sup>15</sup> Sections 50(3F) and 50(3FA).

**Annexure 1 – Schedule of Documents**

No.	Date of document	Title or description of document	Number of pages	Agency decision	OVIC decision	OVIC comments
1	[date]	Document 001 – Complaints Report – [reference number]	4	Released in full		
2	[date]	Document 002 – email	1	Released in full		
3	[date]	Document 003 – letter from Applicant	2	Released in full		
4	[date]	Document 004 – letter to Applicant	1	Released in full		
5	[date]	Document 005 – letter from Applicant	1	Released in full		
6	[date]	Document 006 – letter from Applicant	2	Released in full		
7	[date]	Document 007 – email	1	Released in part Section 33(1)	Release in part Sections 33(1), 25 No further information to be released.	Section 33(1): I am satisfied the third party personal affairs information to which the Agency refused access under section 33(1), would be unreasonable to release and is exempt from release for the

No.	Date of document	Title or description of document	Number of pages	Agency decision	OVIC decision	OVIC comments
						<p>reasons described above in the Notice of Decision.</p> <p>Section 25: Given the Agency's original decision to grant partial access to the document, I am satisfied it remains practicable to provide the Applicant with an edited copy of the document in accordance with section 25.</p>
8	[date]	Document 008 – Correspondence action sheet	1	Released in part Section 33(1)	Release in part Sections 33(1), 25  No further information to be released.	Sections 33(1) and 25: See comments for Document 7.
9	[date]	Document 009 – email	1	Released in part Section 33(1)	Release in part Sections 33(1), 25  No further information to be released.	Sections 33(1) and 25: See comments for Document 7.
10	[date]	Document 010 – letter from Applicant	7	Released in full		



No.	Date of document	Title or description of document	Number of pages	Agency decision	OVIC decision	OVIC comments
11	[date]	Document 011 – letter to Applicant	1	Released in full		
12	[date]	Document 012 – letter to Applicant	1	Released in full		
13	[date]	Document 013 – Correspondent action summary	2	Released in part Sections 30(1), 31(1)(c), 33(1), 35(1)(b), 38	Release in part Sections 33(1), 25  No further information to be released.	Sections 33(1) and 25: See comments for Document 7.  Sections 30(1), 31(1)(c), 35(1)(b), 38: Given my decision in relation to section 33(1), it is not necessary for me to consider the application of the remainder of the exemptions to the same information.
14	[date]	Document 014 – letter to Applicant	1	Released in full		
15	[date]	Document 015 – Correspondence action sheet	1	Released in part Section 33(1)	Release in part Sections 33(1), 25  No further information to be released.	Sections 33(1) and 25: See comments for Document 7.

No.	Date of document	Title or description of document	Number of pages	Agency decision	OVIC decision	OVIC comments
16	[date]	Document 016 – email	1	Released in part Section 33(1)	Release in part Sections 33(1), 25 No further information to be released.	Sections 33(1) and 25: See comments for Document 7.
17	[date]	Document 017 – letter from Applicant	3	Released in full		
18	[date]	Document 018 – screenshot	1	Released in part Section 33(1)	Release in part Sections 33(1), 25 No further information to be released.	Sections 33(1) and 25: See comments for Document 7.  Further, I agree the information identified by the Agency at the top of the document is irrelevant to the terms of the Applicant's request.
19	[date]	Document 019 – Correspondence action sheet	1	Released in part Section 33(1)	Release in part Sections 33(1), 25 No further information to be released.	Sections 33(1) and 25: See comments for Document 7.
20	[date]	Document 020 – letter to Applicant	1	Released in full		

No.	Date of document	Title or description of document	Number of pages	Agency decision	OVIC decision	OVIC comments
21	-	Document 021 – screenshot	1	Released in part Section 33(1)	Release in part Sections 33(1), 25 No further information to be released.	Sections 33(1) and 25: See comments for Document 7. Further, I agree the information identified by the Agency is irrelevant to the request.
22	[date]	Document 022 – email	4	Released in part Section 33(1)	Release in part Sections 33(1), 25 No further information to be released.	Sections 33(1) and 25: See comments for Document 7. Further, I agree the information identified by the Agency is irrelevant to the request.
23	[date]	Document 023 – letter to Applicant	1	Released in full		
24	[date]	Document 024 – dot points	1	Released in full		