

28 December 2023

Dear 'FM2'

Notice of Decision under section 49P of the *Freedom of Information Act 1982* (Vic)

Applicant	'FM2'
Agency:	Department of Families, Fairness and Housing
Agency decision:	Refuse access under section 25A(5)
OVIC review decision:	Refuse access under section 25A(5)
Information requested:	Child Protection documents
Date of OVIC review decision:	28 December 2023
Citation:	'FM2' and Department of Families, Fairness and Housing (Freedom of Information) [2023] VICmr 114 (28 December 2023)

Thank you for your request for review of a decision to refuse you access to information you requested under the *Freedom of Information Act 1982* (Vic) (the **FOI Act**).

Initial view

My office provided you with an initial view that it is likely section 25A(5) applied to your request.

You were provided with similar OVIC decisions made on requests for Child Protection records, setting out the reasons why such records are exempt from release under the FOI Act.

The decisions are available at [CQ8 and Department of Families Fairness and Housing freedom of Information 2021 VICmr 44 3 December 2021](#) and [EP1 and Department of Families Fairness and Housing Freedom of Information 2022 VICmr 164 15 June 2022](#).

You were invited to withdraw your review application given the likelihood the decision in your matter would be the same as the decision provided to you. Alternatively, you were invited to provide further information to support your review application.

In making my decision, I have considered information provided in your review application and during the review, in addition to the Agency's reasons for decision and previous similar decisions of this office in relation to requests for child protection records.

Reasons for decision

I have conducted a review of the decision made by the Department of Fairness, Families and Housing (the **Department**) and made a fresh decision under section 49P of the FOI Act.

Relevant legislation

I have decided the Child Protection documents you seek are exempt from release under the following provisions of the FOI Act:

- **Section 31(1)(a)** – this provision applies to information that would be likely to prejudice an investigation by the Department into a breach or possible breach of the law, or prejudice the enforcement or proper enforcement of the law in a particular instance.
- **Section 31(1)(c)** – this provision applies to information provided to the Department from a confidential source.
- **Section 33(1)** – this provision applies to personal information about a person other than the FOI applicant that would be unreasonable to release in the circumstances, for example, it would interfere with that person's right to privacy.
- **Section 35(1)(b)** – this provision applies to information that the Department received in confidence from a person other than the FOI applicant and releasing that information would impair the Department's ability to obtain similar information in the future.
- **Section 38** – this provision applies to information that the Department is not permitted to release under another law. In this case, the confidentiality provisions under sections 191(1) and 209(1) of the *Children, Youth and Families Act 2005* (Vic) (the **Children, Youth and Families Act**) which apply to Child Protection records created and held by the Department.

The exemption under section 38 does not permit me to take into consideration any public interest factors in favour or against disclosure of a document. Therefore, any specific personal circumstances of an applicant or broader public interest or purpose for which an applicant may seek access to a document is not permitted to be considered.

What this means

The role of Child Protection is of fundamental importance and is strictly regulated under the Children, Youth and Families Act. For example, the Children, Youth and Families Act prohibits the disclosure of the name of any person who raises concerns about the welfare or safety of a child (known as a 'notifier'), and any information that could identify a notifier, except in certain limited circumstances.

These restrictions on the release of Child Protection information allow for Child Protection notifications made to the Department and any related investigation to remain confidential. This supports the welfare and safety of children and notifiers. These restrictions apply to all persons, including a person who has been involved with Child Protection or a parent or guardian of a child seeking access to Child Protection documents.

After conducting a review of the Department's decision, I have made a fresh decision under section 49P of the FOI Act. My decision is that:

- (a) I am satisfied each of the documents you seek is exempt from release under the sections of the FOI Act listed above.

- (b) I am satisfied none of the documents you seek could be released in part, as each document would be exempt in full.
- (c) There is no discretion for me to consider any other factors in my decision, including the reasons why you seek access to the documents.
- (d) This means section 25A(5) applies to your FOI request and the Department is not required to process the request.

My fresh decision is the same as previous OVIC decisions in relation to FOI requests seeking access to Child Protection documents, including the example decisions sent to you as part of OVIC's preliminary view process.

I understand a decision refusing you access to Child Protection documents is likely to be disappointing. However, I am satisfied that the documents you have requested under the FOI Act would be exempt in full based on the FOI Act and the secrecy provisions under the Children, Youth and Families Act.

Your review rights

If you are not satisfied with my decision, you can apply to the Victorian Civil and Administrative Tribunal (VCAT) for it to be reviewed.

If you wish to seek review of my decision, **you must make a review application to VCAT within 60 days from the date you are given notice of my decision.**

Information about how to make an application to VCAT is available at www.vcat.vic.gov.au. VCAT can also be contacted by email at admin@vcat.vic.gov.au or by telephone on 1300 018 228.

Yours sincerely

Joanne Kummrow
Acting Information Commissioner