

Notice of Decision and Reasons for Decision

Applicant:	'FV6'
Agency:	Monash Health
Decision date:	5 June 2025
Exemption and provision considered:	Section 30(1), 25
Citation:	'FV6' and Monash Health (Freedom of Information) [2025] VICmr 24 (5 June 2025)

FREEDOM OF INFORMATION – Culture review – workplace review – information received in confidence – deidentified quotes – Agency officer opinion, advice or recommendation – personal affairs information that could be reidentified

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 a document requested by the Applicant under the FOI Act.

My decision on the Applicant's request differs from the Agency's decision as, during the review, the Agency agreed to the disclosure of a small amount of additional information.

Please refer to page 6 for information about review rights through the Victorian Civil and Administrative Tribunal (**VCAT**).

My reasons for decision follow.

Penny Eastman
Public Access Deputy Commissioner

5 June 2025

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to the 'Urology Unit report by [person and date]'.
2. The Agency identified the document falling within the terms of the Applicant's request and released it in part, exempting certain information under section 30(1). 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 document 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 relevant 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 30(1) – Internal working documents

9. For more information about section 30, see the FOI Guidelines.¹
10. Section 30(1) exempts documents that contain opinion, advice or recommendation, or consultation or deliberation, where disclosure would be contrary to the public interest. A document is not exempt simply because it is an internal working document.²
11. To be exempt under section 30(1), three conditions must be satisfied:
 - (a) the document or information is matter in the nature of:

¹ <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-30/>.

² *Graze v Commissioner of State Revenue* [2013] VCAT 869, 25.

- (i) opinion, advice or recommendation prepared by an agency officer or a Minister or
 - (ii) consultation or deliberation that has taken place between agency officers or Ministers and
 - (b) the matter was created during the deliberative process of an agency, Minister, or the government's functions and
 - (c) disclosure of the matter would be contrary to the public interest.
12. There are four circumstances where section 30(1) does not apply:
- (a) documents required to be made available for inspection and purchase under section 8
 - (b) purely factual information
 - (c) certain documents relating to adjudicative functions and
 - (d) documents more than 10 years old.
13. The term 'officer' is defined in section 5(1). It includes independent contractors, consultants and legal advisers engaged by an agency to carry out work or provide services.³
14. During the review, the Agency advised it agreed to the release of a small amount of information, being the 'closing remarks' on page 15. This information is therefore not subject to my further review and is to be released to the Applicant.

Does the document contain opinion, advice or recommendation, or consultation or deliberation?

15. The document is a 'culture review' of the Urology Unit of the Agency. The document was prepared by a consultant engaged by the Agency.
16. The consultant is considered an Agency officer for the purposes of section 30(1).
17. The document contains deidentified quotes from members of the Urology Unit, as well as the advice and opinions of the person who prepared the report.
18. The Agency has released the document in part; however, has exempted a majority of the document.
19. I am satisfied the information exempted by the Agency contains factual information as well as the opinion, advice and recommendations that were prepared by an Agency officer.

Was the matter created during the deliberative process of an agency, Minister, or the government's functions?

20. Further, I am satisfied the information exempted by the Agency was created during the deliberative processes of the Agency, being the provision of a productive and safe workplace.

³ *Mees v University of Melbourne (General)* [2009] VCAT 782, [31].

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

21. In deciding whether disclosure of the information would be contrary to the public interest, I have given weight to the following relevant factors:⁴
- (a) the right of every person to gain access to documents under the Act
 - (b) the sensitivity of the issues involved and the broader context of how the document was created
 - (c) the stage of a decision or policy development at the time the communications were made
 - (d) whether disclosure of the document would be likely to inhibit communications between agency officers that are essential for the agency to make an informed and well-considered decision or for those officers to properly participate in a process of the agency's functions (such as an audit or investigation, regulatory or law enforcement function)
 - (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, but only where the agency would not otherwise be able to explain upon disclosure of the document
 - (f) the likelihood that disclosure would inhibit the independence of officers, including their ability to conduct proper research and make detailed submissions
 - (g) the public interest in the community being better informed about an agency's deliberative, consultative and decision-making processes
 - (h) the public interest in government transparency and accountability by enabling scrutiny or criticism of decisions and the decision-making process and building the community's trust in government and its decision-making processes
 - (i) whether there is controversy or impropriety around the decision or the decision-making process.

22. In their review application, the Applicant advised:

The document was the summary of a review [redacted]. The review was conducted under the understanding that findings would be made available to contributors. Senior Monash Health officials decided to not release the review and its findings have remained secret. This was not agreed to by the participants.

23. The Agency's decision letter describes why disclosure would be contrary to the public interest in the following terms:

It is in the public interest to enable health services to deliberate internally within the organisation

⁴ See <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-30/#disclosure-would-be-contrary-to-the-public-interest>.

and with other agencies with a view to provide a safe environment for patients, staff and the community. Clinicians took part in the review on the basis that the information discussed in the consultation remains confidential, allowing them to conduct full and frank discussion of the service, management team and working environment. To undermine this process by releasing documentation containing those matters risks limiting open and frank communications and consequently puts the health and safety of patients, staff and the public at risk.

24. I have decided it would be contrary to the public interest to disclose the information exempted by the Agency for the following reasons:
- (a) While I understand the Applicant's interest in the document, I must also consider the impact of disclosure on the Agency and the other participants in the review.
 - (b) I understand that the report is now more than [number redacted] years old; however, I consider the document would still contain sensitive information and it may be that many of the participants are still at the Agency.
 - (c) I consider the disclosure of the document could cause stress and anxiety for other participants and current staff of the Unit.
 - (d) In my view, it is important that such workplace reviews are able to obtain the unvarnished views of participants. While the document has had names removed, I consider given the small size of the Unit, and with knowledge of the workplace, the people who expressed particular views could be identified.
 - (e) I consider disclosure of the exempted information would mean that Agency officers would be less likely to provide their fulsome views in the future. This in turn could have a significant impact on the Agency and its ability to provide services to the public from that Unit, as well as to inform itself of workplace culture across its many services and units. Given the importance of the Agency's services to the community, I have given significant weight to this factor.
25. I am therefore satisfied the information in the document identified by the Agency is exempt under section 30(1).
26. While I have not further considered sections 33(1), relating to personal affairs information, and section 35(1)(b), in relation to information received in confidence, I note that these exemptions may also apply.

Section 25 – Deletion of exempt or irrelevant information

27. 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.
28. Deciding whether it is 'practicable' to delete exempt or irrelevant information requires an agency or Minister to consider:

- (a) the effort involved in making the deletions from a resources point of view⁵ and
 - (b) the effectiveness of those deletions – that is, whether the edited document still has meaning.⁶
29. I have considered the effect of deleting exempt information from the document. In my view, it is practicable for the Agency to delete exempt information, because it would not require substantial time and effort, and the edited document would retain meaning.
30. I have carefully considered whether purely factual information can be extracted from the document. However, I consider it is too intertwined with non-factual information for it to be practically removed from exempt information.

Conclusion

31. During the review, the Agency agreed to the disclosure of the closing remarks of the report. This information is therefore to be released to the Applicant.
32. The remainder of the information exempted by the Agency is exempt under section 30(1).

Timeframe to seek a review of my decision

33. If the Applicant to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.⁷
34. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁸
35. 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.
36. The Agency is required to notify the Information Commissioner in writing as soon as practicable if the Applicant applies to VCAT for a review of my decision.⁹

When this decision takes effect

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

⁵ *Mickelburgh v Victoria Police* [2009] VCAT 2786, [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967, [82].

⁶ *Honeywood v Department of Human Services* [2006] VCAT 2048, [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267, [140], [155]; *Re Hutchinson and Department of Human Services* (1997) 12 VAR 422.

⁷ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁸ Section 52(5).

⁹ Section 50(3FA).

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