

## Notice of Decision and Reasons for Decision

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Applicant:	'FU3'
Agency:	Department of Education
Decision date:	25 March 2025
Exemptions considered:	Sections 33(1) and 38 in conjunction with section 191(1) of the <i>Children, Youth and Families Act 2005</i> (Vic)
Citation:	'FU3' and <i>Department of Education</i> (Freedom of Information) [2025] VICmr 12 (25 March 2025)

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FREEDOM OF INFORMATION – school documents – parent seeking access to documents – Child Protection

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.

I am satisfied certain information in Document 2 is exempt under section 33(1) and it is not practicable to provide the Applicant with an edited copy of Document 2.

Accordingly, while my decision differs from the Agency's decision, I have decided not to release any further information to the Applicant.

Please refer to pages 7-8 for information about review rights through the Victorian Civil and Administrative Tribunal (**VCAT**).

My reasons for decision follow.

Penny Eastman  
**Public Access Deputy Commissioner**

25 March 2025

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency seeking access to [documents relating to mandatory reports to the Department of Families, Fairness and Housing and an incident report]. The Applicant did not seek access to information that would identify the reporter.
2. The Agency identified three documents, comprising ten pages, falling within the terms of the Applicant's request and granted access to two documents in part and refused access to one document in full under sections 33(1) and 38 in conjunction with section 191(1) of the *Children, Youth and Families Act 2005* (Vic) (**CYF Act**). 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. The Applicant advised they only seek review of Document 2 and that they do not seek access to personal affairs information of other people. Based on the Applicant's submission within their review application, I consider the Applicant was likely referring specifically to explicit personal affairs information only, such as names or contact information of other people. As such, I consider this type of information is irrelevant for the purpose of my review. However, given the personal affairs information exempted in Document 2 extends beyond names or contact information, I have proceeded with my review on the basis that the Applicant does seek access to certain personal affairs information and have considered whether this information can be released.
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.

### Preliminary enquiries with the Agency

9. During the review, OVIC staff made enquiries with the Agency concerning its document searches to ensure that all relevant documents had been located.
10. Based on the Agency's response, I am satisfied that it has located all documents meeting the terms of the Applicant's FOI request.

## Review of exemptions

11. I will first consider the application of section 38 followed by section 33(1).

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

12. For more information about section 38 see the FOI Guidelines.<sup>1</sup>
13. Section 38 exempts documents where information in those documents is protected by a secrecy provision.
14. A document is exempt under section 38 if three requirements are met:
- (a) there is an enactment that is in force; and
  - (b) the enactment applies specifically to information contained in the document; and
  - (c) the enactment prohibits specific persons from disclosing the specified information.

#### *Is there an enactment in force?*

15. An enactment is defined broadly in section 5. It means an Act or instrument made under an Act, including rules, regulations, local laws, or by-laws.
16. The CYF Act is an enactment in force.

#### *Does the enactment refer specifically to the information in the document?*

17. For section 38 to apply to a document, an enactment must be formulated with such precision that it specifies the actual information sought to be withheld.
18. Section 191 of the CYF Act provides:
- (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 provider 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.

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<sup>1</sup> <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-38/>

- (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 provider 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 provider 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.

- 19. Section 190(1) of the CYF Act refers to reports made under section 183 (a report to a 'protective intervener' on reasonable grounds a child is in need of protection); section 184 (a mandatory report on reasonable grounds a child is in need of protection made by a person in the course of practicing their profession or carrying out the duties of their office, position or employment); reports determined to be a protective intervention report under section 34; and reports under section 185 that a child is in need of therapeutic treatment.
- 20. 'Protective intervener' is defined in section 181 of the CYF Act and includes 'the Secretary' [of the Department of Families, Fairness and Housing].
- 21. In summary, section 191(1) of the CYF Act prohibits disclosure of the names of persons as well as any information likely to lead to the identification of any person who:
  - (a) provided confidential information to Child Protection services at the Department of Families, Fairness and Housing in the course of a protective intervention investigation; or
  - (b) notified Child Protection of their concerns for the wellbeing of a child.
- 22. Document 2 is an internal file note made on a templated document. I am satisfied that it does not disclose the identity of a person who made a report to Child Protection nor information that could lead to identifying a person who may have made a report to Child Protection.
- 23. Accordingly, section 191(1) of the CYF Act does not apply to the document, and consequently, section 38 does not apply to the document.

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

- 90. A document or information is exempt under section 33(1) if two conditions are satisfied:
  - (a) the document or information relates to the 'personal affairs' of a natural person (living or deceased); and

- (b) disclosure of that personal affairs information is unreasonable in all the circumstances.

*Does Document 2 contain personal affairs information of individuals other than the Applicant?*

91. The concept of personal affairs information is broad. Information will relate to the personal affairs of a person if it 'concerns or affects that person as an individual'.<sup>2</sup> This includes information relating to health, private behaviour, home life, or personal or family relationships of individuals.<sup>3</sup>
92. A document will indirectly disclose personal affairs information if it contains information from which any person's identity, address or location can reasonably be determined. This means that a document can be exempt under section 33(1) where the document itself does not contain personal affairs information, but its disclosure would reveal personal affairs information.
93. Personal affairs information can be revealed or indirectly disclosed by connecting or linking the information in the disclosed document with other information available to the applicant.<sup>4</sup>
94. Document 2 is an internal file note made on a templated document. It does not directly disclose the identity of the author, however, there is potential that their identity could be inferred by the Applicant or other persons familiar with the situation to which the document relates.

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

95. In determining whether disclosure of the personal affairs information would be unreasonable in the circumstances, I have considered the following factors:<sup>5</sup>
- (a) the nature of the personal affairs information;
  - (b) the circumstances in which the information was obtained;
  - (c) the extent to which the information is available to the public;
  - (d) the Applicant's interest in the information;
  - (e) whether any public or important interest would be promoted by release of the information;
  - (f) whether the individuals to whom the information relates object, or would be likely to object, to the release of the information;
  - (g) whether disclosure of the information would or would be reasonably likely to endanger the life or physical safety of any person; and

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<sup>2</sup> *Hanson v Department of Education & Training* [2007] VCAT 123.

<sup>3</sup> *Re F and Health Department* (1988) 2 VAR 458, quoted in *RFJ v Victoria Police FOI Division* [2013] VCAT 1267 [103], [109].

<sup>4</sup> *Harrison v Victoria Police* [2022] VCAT 280, [153].

<sup>5</sup> See <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-33/#would-disclosure-be-unreasonable>.

- (h) whether the disclosure would increase the risk to a primary person's safety from family violence.
96. While I acknowledge the Applicant's interest in obtaining a copy of Document 2, I have decided it would be unreasonable to disclose the personal affairs information in the document for the following reasons:
- (a) the personal affairs information is highly sensitive, given the circumstances that led the creation of the document;
  - (b) there is no information before me to suggest that the exempted information is in the public domain;
  - (c) it is reasonably likely that the persons to whom the information relates would not agree to the information being disclosed to the Applicant under the FOI Act, given the circumstances to which the documents relate;
  - (d) there is no public or important interest that would be promoted by the release of the information;
  - (e) I have considered whether disclosure would or would be reasonably likely to endanger the life or physical safety of any person; and
  - (f) I have considered whether the disclosure would increase the risk to a primary person's safety from family violence.
97. On balance, I am satisfied information in Document 2 is exempt under section 33(1).

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

98. 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.
99. 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 view;<sup>6</sup> and
  - (b) the effectiveness of those deletions – that is, whether the edited document still has meaning.<sup>7</sup>
100. VCAT has held that deletion is not practicable where:

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<sup>6</sup> *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].

<sup>7</sup> *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.

- (a) it would effectively reduce the document 'to something which was either meaningless, misleading or unintelligible';<sup>8</sup>
- (b) what remains would be 'devoid of context';<sup>9</sup>
- (c) it would lead to unnecessary speculation as to what was missing<sup>10</sup> or lead the reader to draw erroneous conclusions.<sup>11</sup>

101. The Agency refused access to Document 2 in full under sections 33(1) and 38. For the reasons outlined above, I am not satisfied that section 38 applies, and I also consider that section 33(1) only applies to parts of the document. Accordingly, I must consider whether it is practicable to provide the Applicant with an edited copy of Document 2 with exempt and irrelevant personal affairs information, such as names of third parties, deleted.

102. In my view, it is not practicable for the Agency to delete the exempt and irrelevant information in Document 2 as it would reduce the document to something that is meaningless and would lead to unnecessary speculation about what is missing.

### Conclusion

103. On the information before me, I am satisfied certain information in Document 2 is exempt under section 33(1) and it is not practicable to provide the Applicant with an edited copy of Document 2.

104. Accordingly, while my decision differs from the Agency's decision, I have decided not to release any further information to the Applicant.

### Timeframe to seek a review of my decision

105. If the Applicant is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.<sup>12</sup>

106. 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>

107. 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.

108. 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.<sup>14</sup>

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<sup>8</sup> *Stewart v Department of Tourism, Sport and the Commonwealth Games* [2003] VCAT 45, [47].

<sup>9</sup> *Kotsiras v Department of Premier and Cabinet* [2003] VCAT 472, [31]; *Noonan v Victoria Police* [2006] VCAT 1918, [28].

<sup>10</sup> *Thwaites v Department of Human Services* (Victorian Civil and Administrative Tribunal, Nedovic PM, 15 December 1998) [26].

<sup>11</sup> *Koch v Swinburne University* [2004] VCAT 1513, [35].

<sup>12</sup> Section 50(1)(b).

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

<sup>14</sup> Section 50(3FA).

## Annexure 1 – Schedule of Documents

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.	[Date]	Student Chronicle	1	Released in part Sections 33(1), 38	Not subject to review by OVIC	
2.	Undated	Internal document	2	Refused in full Sections 33(1), 38	Refuse in full Sections 33(1), 25	<p>Section 38: I am satisfied this document is not exempt under section 38 for the reasons provided in my decision, above.</p> <p>Section 33(1): I am satisfied information in this document is exempt under section 33(1) for the reasons provided in my decision, above.</p> <p>Section 25: The document contains both exempt and irrelevant personal affairs information. I am satisfied it is not practicable to edit this document to delete exempt information.</p>
3.	[Date]	Incident event	7	Released in part Section 33(1)	Not subject to review by OVIC	