

Notice of Decision and Reasons for Decision

Applicant:	'FY4'
Agency:	Monash Health
Decision date:	26 March 2025
Exemption considered:	Section 33(1)
Citation:	'FY4' and Monash Health (Freedom of Information) [2025] VICmr 49 (26 March 2025)

FREEDOM OF INFORMATION – medical records – parent seeking access to adult child’s medical record

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 and no further information is to be released.

I am satisfied the patient’s medical records are exempt under section 33(1), other than the discharge summaries which have already been released and are not subject to review.

Please refer to the end of my decision for information about review rights through the Victorian Civil and Administrative Tribunal (**VCAT**).

My reasons for decision follow.

Penny Eastman
Public Access Deputy Commissioner

26 March 2025

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to their child's (the patient's) medical record. The Applicant included the following with their request:
 - (a) a signed authority from the patient authorising the Agency to release information about them to the Applicant;
 - (b) identity documents for the Applicant and the patient;
 - (c) an Order from VCAT appointing The Public Advocate, Office of The Public Advocate as the guardian of the patient;
 - (d) the first page of an Appointment of Medical Support person made under the *Medical Treatment Planning and Decisions Act 2016* (Vic), appointing the Applicant as the patient's medical support person; and
 - (e) the first page of a Mental Health Act Nomination of Person form, made under section 24 of the *Mental Health Act 2014* (Vic), appointing the Applicant as the patient's nominated person under that Act.
2. The Agency released two documents to the Applicant in full, namely, discharge summaries. The Agency refused access to the remaining medical records on the basis that the Agency did not have the appropriate authority to release the records to the Applicant from the Office of the Public Advocate, being the patient's appointed legal guardian as of [date]. The decision letter advised that the Agency had consulted with the patient's legal guardian and considered section 20 of the *Guardianship and Administrative Act 2019* in making its decision.
3. The Agency's decision letter did not specify any exemption under the FOI Act to which access to records were refused.

Review application

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. I have examined a copy of the documents subject to review.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered relevant communications, submissions and supporting documents received from both parties.
8. 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.

9. 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.

Clarification of the Agency's decision

10. During the review, OVIC staff contacted the Agency to explain that their decision letter was insufficient as it did not advise any exemption under the FOI Act to which access to information was being refused. OVIC staff also asked the Agency to provide a further explanation why the discharge summaries had been released to the Applicant.
11. The Agency responded by drafting a new decision letter, indicating that access to the patient's medical records was refused under section 33(1), with exception to the medical discharge summaries. The reasoning for refusing access to information under section 33(1) was the same as set out in the version of the decision letter that the Agency provided to the Applicant.
12. The Agency elected not to make a fresh decision on the Applicant's request, and thereby, the redrafted decision letter was not sent to the Applicant. The Agency instead asked for the draft revised decision letter to be taken as an explanation to OVIC as to what exemption was relied on in refusing access to information within the patient's medical records.
13. The Agency also provided OVIC with additional information about its decision to release the discharge summaries to the Applicant.

Review of exemption

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

14. 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.

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

15. The documents comprise of the patient's medical records, which are inherently the personal affairs information of the patient.

Would disclosure of the personal affairs information be unreasonable?

16. 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.
17. In *Victoria Police v Marke*,¹ 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

¹ [2008] VSCA 218, [76].

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'.² 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'.³

18. In determining whether disclosure of the personal affairs information would be unreasonable in the circumstances, I have considered the following factors:⁴
 - (a) the nature of the personal affairs information, which I see as highly sensitive;
 - (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) the interests of the patient and the potential impact of release on them;
 - (f) whether any public or important interest would be promoted by release of the information;
 - (g) whether the individuals to whom the information relates object, or would be likely to object, to the release of the information; and
 - (h) whether disclosure of the information would or would be reasonably likely to endanger the life or physical safety of any person.⁵
19. During the review, OVIC staff requested advice from medical professionals from the Agency who were involved in the patient's care about the potential release of further information in the documents, in light of the fact that the discharge summaries have already been released. I have carefully considered the confidential response provided.
20. I have also carefully considered the Applicant's reasons for seeking access to the documents, along with the supporting documentation [they] provided, including the written authority from the patient that was submitted to the Agency as part of the Applicant's request, and the Applicant's status as the patient's nominated medical support person.
21. On careful consideration of all information before me and consideration of the factors outlined above, I am satisfied that disclosure of the remaining information in the patient's medical records under the FOI Act would be unreasonable in the circumstances of this matter.
22. As such, I am satisfied that no additional information is to be released, beyond the discharge summaries which were already released to the Applicant.

² Ibid.

³ Ibid, [79].

⁴ <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-33/#would-disclosure-be-unreasonable>.

⁵ Section 33(2A).

Section 25 – Deletion of exempt or irrelevant information

23. 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.
24. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’⁶ 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 25.⁷
25. I am satisfied it is not practicable to edit the documents to delete exempt information, as they would be rendered meaningless.

Conclusion

26. On the information before me, I am satisfied the patient’s medical records are exempt under section 33(1), other than the discharge summaries which have already been released and are not subject to review.
27. I am satisfied it is not practicable to delete exempt information from the documents because it would render them meaningless. Therefore, no additional information is to be released to the Applicant.

Timeframe to seek a review of my decision

28. If the Applicant is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.⁸
29. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁹
30. 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.
31. 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.¹⁰

⁶ *Mickelburgh 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].

⁷ *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], [155].

⁸ Section 50(1)(b).

⁹ Section 52(5).

¹⁰ Section 50(3FA).