

Notice of Decision and Reasons for Decision

Applicant:	'GH9'
Agency:	Monash University
Decision date:	11 March 2026
Exemptions and provision considered:	Sections 30(1), 33(1), 35(1)(b), 25
Citation	'GH9' and Monash University (<i>Freedom of Information</i>) [2026] VICmr 15 (11 March 2026)

FREEDOM OF INFORMATION – survey results – ‘your say’ – staff opinions – confidentiality – aggregated data – small sample sizes – potential for reidentification

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 fresh decision to refuse access to documents requested by the Applicant under the FOI Act.

My decision on the Applicant’s request differs from the Agency’s decision and more information is to be released.

Please refer to pages 8-9 for information about review rights through the Victorian Civil and Administrative Tribunal (VCAT).



The Applicant has **60 days** from the date they receive this decision to apply to VCAT.

My reasons for decision follow.

Penny Eastman
Public Access Deputy Commissioner
11 March 2026

Reasons for Decision

Background to review

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

The "Your Say" survey results documents and/or survey reports sent to the relevant [Agency officers] for the following Faculties and work areas:

 1. The top-level Survey Report sent to [a specified Agency officer];
 2. The survey results document and/or survey report sent to [specified Agency officers] each Monash University faculty: [specified faculties listed]
 3. The survey results document and/or survey report sent to [specified Agency officers] responsible for the following work areas: [areas listed].
2. The Agency identified 26 documents falling within the terms of the request and refused them in full under sections 30(1), 33(1) and 35(1)(b). 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 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.
9. Section 49M(1) permits an agency to make a fresh decision on an FOI request during a review. On [date], the Agency made a fresh decision to release 12 documents in full and continued to exempt the remaining 14 documents under sections 30(1), 33(1) and 35(1)(b).
10. The Applicant did not agree with the Agency's fresh decision and, as required by section 49MA(2), I proceeded with my review of the fresh decision.

Review of exemptions

Relevant case law

11. *Wellington v Surf Coast SC (Review and Regulation)*¹ (the **Surf Coast Shire decision**) dealt with similar documents subject to this review, being ‘the three most recent staff/employee satisfaction surveys (however named)’². The Deputy President decided that sections 33(1) and 35(1)(b) apply to verbatim responses, but not to ‘spreadsheet documents’ consisting of ‘a spectrum of “agree” to “disagree” type responses to a series of propositions’³. This information was ordered to be released. For reference, Surf Coast Shire currently employs approximately 500 people.⁴
12. Relevantly for this matter, the Deputy President decided that identities of individuals cannot be ascertained from statistical values of 10 or more.⁵

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

13. Section 33(1) protects an individual’s privacy where their right to privacy outweighs the public interest in disclosing their information.⁶ This will only occur when disclosing the individual’s personal affairs information is unreasonable.
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)
 - (b) disclosure of that personal affairs information is unreasonable in all the circumstances.
15. For more information about section 33(1), see the FOI Guidelines.⁷
16. In the Surf Coast Shire decision, the Deputy President was not satisfied the data amounted to personal affairs information because they were not satisfied a person’s identity could be determined from it. That decision, in part, was due to the age of the documents being 4-6 years old.⁸
17. The documents in this matter are from [date] from surveys taken prior to that. As these documents are newer, it is less likely that there would be significant changes to staff, and therefore more likely that small numbers could reveal the identities of individuals.
18. I also note that in information released to the Applicant the following information appears in most of the documents:

The survey is confidential. Responses can not be attributed to any individual or a subset of demographics that can identify an individual.

¹ [2022] VCAT 942.

² Ibid, [1].

³ Ibid, [141].

⁴ <https://www.surfcoast.vic.gov.au/About-us/Council/Policies-plans-strategies-and-reports/Annual-report-2024-2025>

⁵ *Wellington v Surf Coast SC (Review and Regulation)* [2022] VCAT 942, [148] to [152].

⁶ *Victoria Police v Marke* [2008] VSCA 218.

⁷ <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-33/>.

⁸ *Wellington v Surf Coast SC (Review and Regulation)* [2022] VCAT 942, [65] and [183].

The demographic segmentation of results has been set at participant sample sizes of 10 or greater only. Therefore impacting the availability of data for smaller groups of participants.

19. I also note that in Document 13 certain breakdowns are not provided in relation to two smaller cohorts, being the first two listed on page 5.
20. I therefore consider the Agency has sought to anonymise the results. I also consider that while not created for public distribution, the reports were prepared for some distribution, and at least the discussion of the survey results by the participants. Therefore, it would have been important to the report creators to limit the ability for any staff to be identifiable.
21. In its submission to OVIC, the Agency argues that individuals could be identified from the smaller cohorts that appear throughout the document, providing an example where it can be inferred that 1 person did not respond, or that a specified office contains a number of subgroups with less than 30 individuals each.
22. Based on the information before me, I am satisfied groups of less than 10, while a remote possibility, could be reidentified by people with knowledge of those groups. I therefore consider information from such groups contain personal affairs information.
23. Information from any group at 10 or more I do not consider amounts to personal affairs information for the purposes of the FOI Act.
24. For content I considered does amount to personal affairs information, I am satisfied it would be unreasonable to release that information. This is because I agree that the information was obtained with the expectation of confidentiality, and that disclosure could cause distress to staff who expressed unfavourable views of the Agency.
25. Groups of less than 10 are therefore exempt under section 33(1).

Section 35(1)(b) – Information obtained in confidence

26. A document may be exempt under section 35(1)(b) if two conditions are satisfied:
 - (a) disclosure would divulge information or matter:
 - (i) communicated in confidence
 - (ii) by or on behalf of a person or a government to an agency or a Minister
 - (b) disclosure would be contrary to the public interest because the disclosure would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.
27. I am satisfied the information was provided in confidence.
28. However, I am only satisfied disclosure would impair the ability of the Agency to obtain similar information in the future where individuals could be identified. I am only satisfied that individuals could be identified in groups of less than 10. It is only this information that is therefore exempt under section 35(1)(b) – being the same information that is exempt under section 33(1).

Section 30(1) – Internal working documents

29. 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.⁹
30. To be exempt under section 30(1), three conditions must be satisfied:
- (a) the document or information is matter in the nature of
 - (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
 - (b) the matter was created during the deliberative process of an agency, Minister, or the government's functions
 - (c) disclosure of the matter would be contrary to the public interest.
31. 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
 - (d) documents more than 10 years old.
32. For more information about section 30, see the FOI Guidelines.¹⁰
33. The Surf Coast Shire decision found that aggregated statistical information does not form part of the deliberative function of the Agency concerned for the purposes of the FOI Act.¹¹
34. Despite this, I have further considered that if the documents contained opinion, advice and recommendations, and if they were created during the deliberative process of the Agency, whether disclosure would be contrary to the public interest.
35. The Agency advised disclosure would be contrary to the public interest because:
- the survey results all involve the opinion of University staff members given under assurances of confidentiality;
 - disclosure would likely cause staff members to become less willing to engage in future staff surveys at the risk that the disclosure of aggregated statistics could enable their response to be used to identify them. It is contrary to the public interest for the University to be adversely

⁹ *Graze v Commissioner of State Revenue* [2013] VCAT 869, 25.

¹⁰ <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-30/>.

¹¹ *Wellington v Surf Coast SC (Review and Regulation)* [2022] VCAT 942, [178].

affected in its ability to obtain staff feedback on matters concerning their employment with the University;

the survey results contained in the documents inform the University's decision making process in relation to employment matters. In other words, they comprise preliminary opinions in the context of a broader decision making process. Disclosure of such matters has been held to be contrary to the public interest;

the public interest concerns the interest of the public as distinct from the interest of individuals; and

while some of the results may have been communicated to staff members, other results, in particular, the comment themes, may have not been communicated to staff members. Disclosure of such information in these circumstances would have further adverse consequences on the relationship between the University and its staff.

36. In deciding whether disclosure of the information would be contrary to the public interest, I have given weight to the following relevant factors:¹²
- (a) the right of every person to gain access to documents under the FOI Act
 - (b) the sensitivity of the issues involved and the broader context of how the documents were created
 - (c) the stage of a decision or policy development at the time the communications were made
 - (d) whether disclosure of the documents 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 documents 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 documents
 - (f) the impact of disclosing documents in draft form, including disclosure not clearly or accurately representing a final decision by an agency or Minister
 - (g) the likelihood that disclosure would inhibit the independence of officers, including their ability to conduct proper research and make detailed submissions
 - (h) the public interest in the community being better informed about an agency's deliberative, consultative and decision-making processes

¹² See <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-30/#disclosure-would-be-contrary-to-the-public-interest>.

- (i) 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
 - (j) whether there is controversy or impropriety around the decision or the decision-making process.
37. I have decided it would not be contrary to the public interest to disclose the information in the documents for the following reasons:
- (a) I accept respondents were assured of confidentiality, however, I am not satisfied the documents cannot be edited to remove small sample sizes where reidentification of individuals could occur
 - (b) because I consider it unlikely that individuals could be identified, and that the survey itself sought to not present information that could be used for that purpose, I do not consider disclosure would have any impact on the level of responses obtained by the Agency in the future
 - (c) I do not consider the document contains the preliminary opinions of the Agency
 - (d) as I consider the information can be anonymised, I do not consider disclosure will have any impact on the relationship between the Agency and its staff.
38. I am therefore satisfied the documents are not exempt under section 30(1).

Section 25 – Deletion of exempt or irrelevant information

39. 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.
40. 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 view¹³ and
 - (b) the effectiveness of those deletions – that is, whether the edited document still has meaning.¹⁴
41. I have considered the effect of deleting exempt information from the documents. In my view, it is practicable for the Agency to delete the exempt information I have identified in the conclusion to my decision, because it would not require substantial time and effort, and the edited documents would retain meaning.

¹³ *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].

¹⁴ *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.

Conclusion

42. On the information before me, I am not satisfied the documents are exempt from release under section 30(1). I am also not satisfied most of the information is exempt under sections 33(1) or 35(1).
43. However, I have determined that numbers in the data of less than 10 could be used to reidentify individuals. This information is exempt under sections 33(1) and 35(1)(b) for the reasons above.
44. The Agency is to delete the numbers less than 10 from the data and release the remainder of the documents to the Applicant.
45. I acknowledge that certain cohorts with low numbers and low percentage amounts could be calculated to be less than 10. However, I consider that where extra steps are required to calculate the size of a group, it would not be practicable to locate that information. I also consider this is likely to occur in a very small number of cases.

Timeframe to seek a review of my decision

46. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.¹⁵
47. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁶
48. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁷
49. 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.
50. 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.¹⁸

Third party review rights

51. As I have determined to release documents that contain the personal affairs information of persons other than the Applicant and documents claimed exempt under section 35(1)(b), if practicable, I am required to notify those persons of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.¹⁹

¹⁵ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁶ Section 52(5).

¹⁷ Section 52(9).

¹⁸ Sections 50(3F) and 50(3FA).

¹⁹ Sections 49P(5), 50(3), 50(3AB) and 52(3).

52. In the circumstances, I have decided notifying the relevant third parties of their review rights is not practicable as this office cannot determine the identities of the individuals from the content I have determined is to be released in the documents.

When this decision takes effect

53. This decision takes effect 60 days after the Agency receives this decision to account for the fact I have determined to release information the Agency considers is personal affairs information.
54. If a review application is made to VCAT, my decision will be subject to any VCAT determination.
55. If an application is not made to VCAT, the Agency is required to release the documents in accordance with my decision.

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