

7 May 2026

'GK1'

Copy provided to Victorian WorkCover Authority

By email only

Dear 'GK1',

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

Agency:	Victorian WorkCover Authority
Agency decision:	Refuse access in part under section 32(1) and section 33(1) of the <i>Freedom of Information Act 1982</i> (Vic)
OVIC review decision:	Same decision
Citation:	'GK1' and Victorian WorkCover Authority (<i>Freedom of Information</i>) [2026] VICmr 34 (7 May 2026)

FREEDOM OF INFORMATION – WorkCover – Work Safe Victoria – legal privilege – personal affairs information – section 61B(3) – document search concerns

Thank you for your application to OVIC for review of a decision made by Victorian WorkCover Authority (the **Agency**) to refuse you access to information you requested under the *Freedom of Information Act 1982* (Vic) (the **FOI Act**).

In your application, you also complained about the Agency's search for documents. Under section 61B(3) of the FOI Act, the Information Commissioner must dismiss a complaint if the subject-matter of the complaint has been or could be dealt with by an application for review. Accordingly, your complaint concerning the Agency's search is also addressed within this review.

This letter sets out my review decision made on 7 May 2026 under section 49P of the FOI Act and reasons for it.



If you disagree with my decision, you have **60 days** from the date you receive my decision to apply to the Victorian Civil and Administrative Tribunal (VCAT) for a further review. Details about how to apply to VCAT are at the end of this letter.

Background

You asked [the Agency] for various documents relating to a WorkSafe Victoria claim file as follows:

Request all documents held by WorkSafe relating to the evaluation, negotiation, and finalisation of the [date] settlement, Case No. [number], including but not limited to:

1. Internal Working Documents: All internal memos, file notes, advice, and recommendations created by VWA staff or agents regarding the decision to settle this claim.
2. Assessment Reports: Any internal reports or medical reviews that informed the "denial of liability" and the subsequent agreement to pay costs.
3. Provider Correspondence: Internal documentation regarding the approved costs for [named third party 1] and [named third party 2].
4. Deliberative Material: Any records of internal deliberations concerning "reasonable future medical and like expenses" as referenced in Clause 3 of the settlement.

The Agency located 14 documents within the scope of your request. In its decision, dated [date], the Agency granted you access to 8 documents in part and refused access in full to 6 documents, claiming content exempt under sections 32(1) and 33(1) of the FOI Act.

On [date], you applied to OVIC for a review of the Agency's decision. In your application and submissions, you also raised concerns that the Agency did not locate any 'working documents' in response to your request. These concerns are addressed below.

My review decision under [OVIC reference number] relates to 'Part Two' of your request, which was the part dealt with by the Agency. 'Part One' was completed by the WorkCover Agent - DXC (previously known as Xchanging) with your consent and dealt with under the *Workplace Injury Rehabilitation and Compensation Act 2013 (WIRC Act)*. 'Part One' of your request is the subject of a separate decision with OVIC reference: [OVIC reference number].

Reasons for decision

In making my decision, I have considered information provided in your review application and your submissions, in addition to the Agency's reasons for decision and previous decisions of OVIC concerning requests for similar documents. I have also reviewed the documents subject to review.

Relevant legislation

Section 32(1) – Documents affecting legal proceedings (legal privilege)

Section 32(1) exempts documents which are subject to either legal professional privilege or client legal privilege. Legal privilege aims to promote public interest by protecting confidential communications between lawyers and clients.¹

Types of information which legal privilege protects, includes but is not limited to:

- communications between lawyers or lawyers and their clients for the dominant purpose of requesting or preparing for legal services in relation to current or anticipated legal proceedings – for example, emails and letters²
- documents that record legal work carried out by a lawyer for the benefit of the client, for the purpose of providing advice or conducting litigation. This includes, but is not limited to legal advice, file notes, research memoranda, collations and document summaries whether provided to the client or not.³

Is the information you requested exempt under section 32(1) of the FOI Act?

I am satisfied that the information that has not been released to you is subject to legal professional privilege on the basis that it includes file notes, memoranda, and correspondence which was created for the dominant purpose of litigation. It is therefore exempt under section 32(1) of the FOI Act.

Section 33(1) – Personal affairs information

Section 33(1) of the FOI Act provides information cannot be released:

- (a) where it relates to the personal affairs of another person (a third party) and
- (b) disclosure of that personal affairs information is unreasonable in all the circumstances.

Is the information you requested exempt under section 33(1) of the FOI Act?

Section 33(1) protects an individual's privacy where their right to privacy outweighs the public interest in disclosing their information. This will only occur when disclosing the individual's personal affairs information is unreasonable.

Having reviewed the documents, I confirm that the information refused by the Agency is the identifying information of third parties, including lawyers and other legal staff, medical staff, and staff

¹ *Grant v Downs* [1976] HCA 63, [19].

² *Smeaton v Victorian WorkCover Authority* [2017] VCAT 1482.

³ *AWB Limited v Honourable Terence Rhoderic Hudson Cole* (No 5) [2006] FCA 1234, [44(8)].

of other organisations. This is personal affairs information for the purposes of section 33(1) of the FOI Act.

In determining whether disclosure of this personal affairs information would be unreasonable in the circumstances, I have considered several factors including but not limited to:

- (a) the nature of the personal affairs information
- (b) the circumstances in which it was recorded in the document
- (c) your interest in the information
- (d) whether any public or important interest would be promoted by release of the information
- (e) whether the individual/s to whom the information relates would be likely to object to the release of the information.

From the information before me, it is likely the persons would object to the release of their names and details in the circumstances in which it was obtained, and I do not consider that any public interest would be promoted from releasing that information. Disclosure of this information will not enhance your understanding of the material so far as it has been provided to you. In my view, the disclosure of the personal affairs information is unreasonable in the circumstances.

Complaint about 'missing' documents

Under the FOI Professional Standards, the Agency is required to undertake a thorough and diligent search for materials within the scope of your request. I acknowledge your concerns that 'internal working documents' are missing.

However, based on the terms of your request where you seek internal working documents relating to the evaluation, negotiation, and finalisation of litigation, I am satisfied the Agency has searched thoroughly and appropriately for relevant documents. I consider information you seek is likely exempt from release, rather than being missing. Given the subject matter of the request, it would not be expected that there would be other 'internal working documents' held by the Agency beyond those subject to this review.

Your VCAT review rights

If you are not satisfied with my decision, you can apply to 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.

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VCAT can also be contacted by email at admin@vcat.vic.gov.au or by telephone on 1300 018 228.

Yours sincerely,

Penny Eastman
Public Access Deputy Commissioner

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