



**Office of the Victorian  
Information Commissioner**

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## Notice of Decision and Reasons for Decision

Applicant:

Agency: Department of Education and Training

Agency Reference:



Our Reference:



Decision Date: 24 September 2019

Exemption considered: Section 30(1)

FREEDOM OF INFORMATION – internal working documents – educational institution – communication between agency officers

All references to legislation in this document are to the *Freedom of Information Act 1982* (Vic) (**FOI Act**) unless otherwise stated.

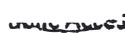
### Notice of Decision

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 in that I have decided to release additional information in the documents.

The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

My reasons for decision follow.

 Deputy Commissioner

24 September 2019

## Reasons for Decision

### Background to review

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

A full and complete copy of all the information and or the full file held by [specified school] for [name and date of birth of child who] resides with [parent] at [specified address] and is currently enrolled at [specified school]. My name is [Applicant's name] and I am the [parent] of [named child].
2. In its decision, the Agency identified 67 documents falling within the terms of the Applicant's request. It decided to release the documents in part.

### Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. Section 49M(1) permits an agency to make a fresh decision on an FOI request during a review.
5. On 16 August 2019, the Agency made a fresh decision to release further information to the Applicant. The fresh decision was made within the required 28 days under section 49M(2).
6. The Agency decided to:
  - (a) release 18 documents in full;
  - (b) release 47 documents in part; and
  - (c) refuse access to two documents in full.
7. The Applicant did not agree with the Agency's fresh decision and, as required by section 49MA(2), I proceeded with my review on the basis of the fresh decision.
8. I have examined copies of the documents subject to review.
9. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
10. I have considered all communications received from the parties, including:
  - (a) the Agency's decision on the FOI request;
  - (b) the information provided with the Applicant's review application; and
  - (c) communications between OVIC staff, the Applicant and the Agency.
11. 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.
12. I note the Applicant also lodged a complaint with OVIC in relation to the processing of the FOI request by the Agency and the complaint was finalised in June 2019.

## Review of exemptions

13. The Agency's fresh decision relied on the exemptions under sections 30(1), 33(1) and 38 to refuse access to the documents. The Agency's fresh decision letter sets out the reasons for its decision.

### *Section 33(1)*

14. On 8 September 2019, the Applicant stated:

... we request that all information not directly related to identification [of] individuals at this stage be made available to me.

15. Accordingly, I have excluded personal affairs information exempted by the Agency from my review as the Applicant does not seek review of this information. I consider this information to be irrelevant to my review.

### *Section 30(1)*

16. Section 30(1) has three requirements:

- (a) the document must disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister; and
- (b) such matter must be made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government; and
- (c) disclosure of the matter would be contrary to the public interest.

17. The exemption does not apply to purely factual material in a document.<sup>1</sup>

18. The term 'officer of an Agency' is defined in section 5(1). It includes a member of the agency, a member of the agency's staff, and any person employed by or for the agency, whether that person is one to whom the provisions of the *Public Administration Act 2004* (Vic) apply or not.

*Do the documents disclose matter in the nature of opinion, advice, recommendation, consultation or deliberation of an officer?*

19. The Agency identified documents of varying nature as relevant to the Applicant's FOI request. The Schedule of Documents in **Annexure 1** describes these various documents.
20. Having reviewed the documents, I am satisfied information exempted by the Agency is in the nature of an Agency officer's opinions, advice and/or recommendations noting the documents contain information relating to staff observations, comments, assessments, diary notes and other forms of internal communications.
21. On 12 September 2019, the Agency confirmed the Independent Office for School Dispute Resolution (**Independent Office**) is part of the Department of Education and Training. Accordingly, I am satisfied the officer from the Independent Office is an 'officer' of the Agency.

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<sup>1</sup> Section 30(3).