

Freedom of Information

Section 33(3) Consultation and notification

Practice guide

Documents affecting personal privacy: section 33

The purpose of section 33(1) of the *Freedom of Information Act 1981* is to prevent unreasonable disclosure of personal information and to protect the privacy of third parties.

What is personal information

Information is considered personal information if it identifies or is about any person. A document is exempt under section 33(1) if the following two conditions are satisfied:

- (i) release would involve disclosure of personal information relating to a third party
- (ii) such disclosure would be unreasonable.

Reasonableness of release involves balancing the right of the applicant to access the information against the potential breach of privacy and impact on a third party of release of their information. Reasonableness of release should be assessed on a case by case basis.

Section 33(3) third party consultation and notification

If a decision maker decides that release of third party information is not unreasonable, then section 33(3) requires an agency, where practicable, to consult with and notify third parties of their right to seek a review of that decision within 60 days at the Victorian Civil and Administrative Tribunal (VCAT).

Practicability of section 33(3) notification

It is likely to be **practicable** to notify where:

- release is reasonable and notifying is practicable from the circumstances on the file and after discussion with the applicant
- the applicant is able to provide current third party contact details.

It is likely to be **impracticable** to notify where:

- the applicant may have issues or concerns about other family members or third parties knowing that there is an FOI request
- current third party contact details are not available after contacting the applicant because the applicant has no contact with third parties
- third party contact is not appropriate and should not be sought where:
 - third parties are perpetrators of abuse
 - there are safety concerns (particularly if the family relationship has been violent or acrimonious)
 - there may be other circumstances on the file where it is considered not appropriate.

Documents can be released where the information has been assessed as reasonable to release and:

- it is impracticable to notify the third parties and the information is not exempt under another section
- third parties have been notified of their appeal rights and the 60 calendar day period (plus 10 business days) has expired and there is no notification from VCAT
- there is an unsuccessful 'reverse FOI application' as decided by VCAT.

Process

If the decision is made that it is reasonable to release personal information regarding third parties, **where appropriate**, contact the applicant to advise that the Act requires consultation with third parties if it is practicable. Discuss the implications with the applicant and ask the applicant to provide third party contact details. The applicant may want to contact the third parties in advance of the notification call.

Consultation with third parties regarding release of their personal information

Contact with third parties identified in the documents can occur as an optional consultation prior to making a decision regarding 'unreasonable' disclosure of personal affairs, or as a necessary notification that must occur after it has been decided that release of the information is not unreasonable and it is **practicable** to notify the third party.

The optional consultation prior to making a decision (that occurs via telephone) can assist an assessing officer in determining 'reasonableness' of release of the third party information (section 33(1)).

The compulsory notification occurs if practicable (via letter) when an assessing officer has decided that it is reasonable to release the personal information of a third party (section 33(3)).

During the initial telephone consultation with a third party, assessing officers should cover the following points:

- Advise the third party that documents are being assessed for release under FOI that contain the third party's personal information.
- Provide a detailed description of the personal information to be released, for example their name, address and relationship to the applicant (if the third party is the parent of a former Ward or child protection client advise that information regarding the circumstances under which their child entered care will also be released).
- If applicable advise the third party that their own sensitive information will be deemed exempt and therefore not released to the applicant.
- The third party may express their concern about the release of their information to the applicant and provide specific information about their relationship with the applicant that gives the assessing officer additional information in making their decision regarding reasonableness.
- Inform the third party that they have 60 days to appeal the decision to release their information to VCAT and that a confirmation letter will be sent to them explaining this process.

Complete the assessment (noting the consultation process may lead to changes in assessment decisions) and send third party notification letters (via registered post).

An interim decision letter is sent to the applicant (via registered post) advising them of the 60 day delay before the documents can be released.

At the expiry of the 60 day appeal period (plus 10 business days to allow for notification from VCAT) a final decision letter and the released documents are sent to the applicant.

If it is impracticable to notify third parties:

- File note reasons for impracticability which may vary depending on circumstances for different family members or for other third parties.
- Finalise the assessment and send decision letter and released documents as per the usual process.