



Department of Justice and Community Safety

Information Integrity & Access

Freedom of Information
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10 July 2019

Mr Kevin Jones
Workplace Safety Services P/L

Dear Mr Jones

Freedom of Information (FOI reference 69487)

The following is my decision on your request under the *Freedom of Information Act 1982* (the FOI Act).

The terms of your request are:

1. *The Workplace Manslaughter Consultation Paper dated May 2019.*
2. *Member list of the Workplace Manslaughter Implementation Taskforce.*
3. *Members list of the Workplace Fatalities and Serious Incidents Reference Group.*
4. *Members list of the Legal Advisory Group.*
5. *A schedule of meetings of the Taskforce and Groups.*

The department identified the following relevant documents:

- *Workplace manslaughter Consultation Paper (the Consultation Paper)*
- *DJCS-Workplace Safety Reform Calendars.*

These documents total 21 pages.

Please note that the department does not hold a confirmed schedule of the Family Reference Group meetings as this is organised by WorkSafe Victoria. You may wish to consider directing your enquiries to WorkSafe Victoria if you wish to pursue access to this document.

Decision

I have decided to:

- release two pages in full
- release four pages in part
- refuse access in full to 15 pages (most of the Consultation Paper).

These documents include information concerning opinion, advice or recommendation of an officer and the personal affairs of third parties, which cannot be disclosed for the reasons detailed below.

Section 30(1) (Internal working documents)

Section 30(1) of the FOI Act concerns documents that have been prepared as part of the deliberative processes of the department, and which contain:

- opinion, advice or recommendation prepared by an officer or Minister; or
- consultation or deliberation between officers and/or Ministers.

These documents are exempt if disclosure is contrary to the public interest.

These documents were created for the purpose of providing advice to the Attorney-General on a new workplace manslaughter criminal offence and, therefore, forms part of the deliberative processes involved in the functions of the department.

The Consultation Paper contains information on the proposed legislation, key issues as well as matters for consideration by policy makers.

Disclosure of the material in the Consultation Paper would be contrary to the public interest because it concerns a matter that is under consideration and on which government has not yet made a final decision. Such disclosure could lead to debate outside of the established decision making processes and would interfere with and potentially undermine these processes.

In *Bracks v Department of Premier & Cabinet* (1999) 15VAR 83 the VCAT (Victorian Civil and Administrative Tribunal) concluded that it would be contrary to the public interest to disclose a number of internal working documents relating to a proposed review of the *Audit Act 1994*. In reaching this conclusion the VCAT made the following observations:

Questions of government policy and whether legislation ought to be amended to reflect government policy are political in nature which lie within the sovereignty of the Parliament. That is why Parliamentary debates occur, why proceedings in Parliament are afforded absolute privilege and may not be impugned by courts or tribunals for to do so is a contempt of the Parliament itself.

The formulation of policy by government entails a consideration of a host of factors, the execution of a balancing process in order to ascertain whether an amendment to legislation is required rests, in part, upon the advice of many people and bodies. This is part of the consultative or investigative processes, and if government cannot conduct this process freely and confidentially there is a potential for the impairment of the consultative process, because government, or for that matter, any member of Parliament, may not seek and canvass a range of views on the subject under consideration, whether from public servants, consultants or review committee if those communications ultimately become public. The merits and demerits of any effects of a change to legislation should, in order to maintain efficiency of government, remain within the confidence of the party seeking the advice..... It is upon the completion of this process that policy is formulated and legislation is then proposed in the form of a Bill for the consideration of Parliament. It is there that the public interest is preserved through the process of representative democracy. Bills are debated, often amendments are made to them and an Act of Parliament is passed.

...

In my opinion, there remains a real potential for the conduct of government to be inhibited in the investigative process involved in the formulation of policy if the opinion of those persons or bodies from whom or from which the government seeks advice, was sought in circumstances where it may become public. This may result in a reluctance on the part of

the government to canvass advice sought from appropriate sources, or on the other it may result in inhibited advice from those persons or authorities providing it.

Section 33(1) (documents affecting personal privacy)

Under section 33(1) the department will not disclose information if it would involve the unreasonable disclosure of the personal affairs of any person.

The meaning of 'personal affairs' is broad – it includes information from which a person's identity, address or location can be determined.

Material exempt under this section includes names and position titles that may assist in the identification of an individual.

I have determined that the release of the above information would be unreasonable, considering the following factors:

- the nature of the information in question
- the circumstances in which the department came to possess the information
- the statutory consequences of release, there being no restrictions or limits to the dissemination of the information.

Access Charges

As access charges are waived in this instance, please find enclosed the documents to which you are granted access.

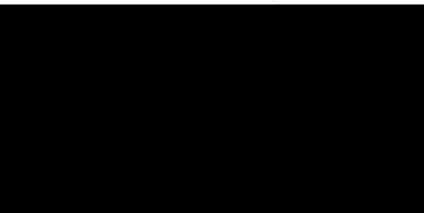
Review Rights

You have the right to seek a review of my decision by the Victorian Information Commissioner within 28 days of receiving this letter under sections 49A(1) and 49B of the FOI Act. You can send a request for a review to:

Freedom of Information - Reviews
Office of the Victorian Information Commissioner
PO Box 24274
MELBOURNE VIC 3001

Telephone: 1300 00 6842
Email: enquiries@ovic.vic.gov.au
Website: www.ovic.vic.gov.au

If you have any queries, please contact this office by telephone on (03) 8684 0063, or by writing to the mailing address shown at the top of this letter.



Freedom of Information Officer

