

26 May 2011

Mr Andrew Crook
Level 7/22 William Street
MELBOURNE VIC 3000

Dear Mr Crook

FREEDOM OF INFORMATION REQUEST

I refer to your request under the *Freedom of Information Act 1982* ("**the Act**") received at the Victorian Managed Insurance Authority ("**VMIA**") on 12 April 2011 which sought a copy of the document(s) "VMIA 2008 Culture Survey, September 2008 (follow up to 'Making the VMIA a Great Place to Work')".

BACKGROUND

An extensive search was undertaken of our filing and email systems to locate the document(s) requested. As part of this process, I contacted you by telephone on 28 April 2011 to further clarify specific aspects of your request to assist in our search. I note that you confirmed that the document being sought was a one-off report entitled "VMIA 2008 Culture Survey, September 2008 (follow up to 'Making the VMIA a Great Place to Work' and the author of the report. On that basis we identified one document relevant to your request for decision, being a draft report prepared in September 2008.

DECISION

I have decided to exempt this document from release on the basis that:

- The entire document is exempt in accordance with the internal working document exemption section 30(1) of the Act.
- The document was provided in confidence on the basis that it substantially comprises information obtained in confidence, and is exempt under section 35(1)(b) of the Act.
- Information in the document relating to personal affairs is exempt under section 33(1) of the Act.

SECTION 30(1) - INTERNAL WORKING DOCUMENTS

A document is an exempt document if its disclosure:

- '(a) would disclose matter in the nature of opinion, advice or recommendation prepared by an officer [...], or consultation or deliberation that has taken place between officers [...], in the course of or for the purpose of the deliberative processes involved in the functions of an agency [...]; and

(b) would be contrary to the public interest'.

The document is a report provided by a consultant to the VMIA in the course of and for the purposes of consultative and deliberative activities undertaken by the VMIA in the context of developing and instigating a cultural change program. It was prepared following a number of focus group sessions the consultant held with VMIA employees. The report was one of a number of inputs used by VMIA to identify key issues, to guide discussion about ongoing change and to form messages to staff.

I have determined that the document is an internal working document on the following basis:

- A document produced by an independent consultant may fall within the internal working documents exemption if it is used for deliberative processes.
- The term 'deliberative process' may be given a wide interpretation and may encompass simple reflection about an issue or problem, or may include thinking processes that were undertaken by officers of an agency to respond to a situation.
- The report was not expressly commissioned by VMIA and was not part of the terms of agreement between the consultant and VMIA to conduct the focus group sessions. Furthermore, the report was provided by the consultant only in draft form. It has never been provided in final form. The report has errors, is incomplete, unsigned and was not circulated. It was not adopted or endorsed by VMIA and does not represent or reflect a final view of VMIA. I note that documents obtained in similar circumstances have been held to be exempt in past FOI cases.
- As the report was a draft, the opinions expressed in it have not been tested for their validity or factual basis and therefore may be misleading or misinterpreted.

I have determined that the release of the report would be contrary to the public interest on the following basis:

- The report concerns issues that are sensitive in nature. It is one input into the development of an ongoing cultural change program. The report expresses conflicting opinions about actions and activities of VMIA management, based on the views expressed by individuals who attended focus groups rather than factual information. Accordingly, release of the report would provide an incomplete picture of cultural issues within the VMIA and VMIA's response to them.
- As the report contains comments made by VMIA employees participating (on a confidential basis) in focus group sessions conducted by the consultant, disclosure is likely to inhibit the willingness of VMIA employees to participate in similar processes in the future. In addition, disclosure would inhibit VMIA officers or consultants tasked with reporting on workplace culture in future from obtaining candid input and providing honest and frank advice. This could inhibit VMIA's ability to monitor and evaluate the programs and initiatives it has put in place.

SECTION 35 - INFORMATION OBTAINED IN CONFIDENCE

Section 35(1)(a) provides that a document is exempt document if 'its disclosure would divulge information or matter communicated in confidence by or on behalf of a person to an agency [...] and the information would be exempt if it were generated by an agency'.

As I consider that the report is exempt under section 30(1), the report being a document prepared by a person and communicated to the VMIA and being marked 'Confidential Report', I consider this exemption also applies.

Section 35(1)(b) provides that a document is an exempt document if its 'disclosure would divulge information or matter communicated in confidence by or on behalf of a person [...] to an agency, and [...] disclosure of the information would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of an agency to obtain similar information in future'.

In deciding to exempt the document on this ground, I have had regard to the following:

- The document discusses focus group sessions with VMIA staff undertaken by the consultant and contains reports of comments made by VMIA staff who participated. Staff who participated were given an assurance of confidentiality prior to their participation. It is likely that many would not have participated, and unlikely that they would have spoken freely and openly, if they had known that their views would be made public or released to a media organisation. Under those circumstances, I consider that the comments and opinions reported in the document were provided in confidence, and disclosure would inhibit VMIA's ability to obtain similar comments and opinions in future. In addition, the report contains an interpretation by the consultant of the individual views expressed by VMIA staff in confidence, on what they believe may or may not have occurred.
- I consider that in this context, disclosure would not be in the public interest because if staff do not participate in these sorts of processes, positive changes in workplace culture would be harder to achieve.

SECTION 33(1) PERSONAL PRIVACY EXEMPTION

A document is exempt if its disclosure under the Act would involve the unreasonable disclosure of information relating to the personal affairs of a person. Section 33(9) of the Act states that information relating to the personal affairs of a person includes information from which any person's identity can be reasonably determined. The document names individuals who were subject of discussion in focus groups. I also consider it likely that the identity of individual staff who participated in focus group sessions would be known to other VMIA staff and management, and that comments in focus groups would be able to be linked to identifiable staff. I consider that parts of the report that discloses information about named individuals or participants in focus groups is exempt.

REVIEW OF DECISION

In accordance with Section 51 of the Act you may request an internal review of my decision within 28 days of receipt of this letter by writing to Steve Marshall, Chief Executive Officer, Level 30, 35 Collins Street, Melbourne VIC 3000. If you have any queries in relation to my decision, please contact me on 9270 6912

Yours sincerely



Peter Heard
Freedom of Information Officer
Manager Risk and Compliance