

Notice of Decision and Reasons for Decision

Applicant:	'AF2'
Agency:	Department of Health and Human Services
Decision Date:	31 May 2019
Exemption considered:	Section 33(1)
Citation:	'AF2' and Department of Health and Human Services (<i>Freedom of Information</i>) [2019] VICmr 47 (31 May 2019)

FREEDOM OF INFORMATION – Housing integrated information Program (Hiip) database report – application for housing – personal affairs information

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 is the same as the Agency's decision in that I have decided to release the document in part.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
31 May 2019

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to the following categories of documents:
 - (a) their application to the Victorian Housing Register;
 - (b) their file in relation to the application;
 - (c) any correspondence with the [location in regional Victoria] Housing Office in relation to the application;
 - (d) details of any properties offered to the Applicant; and
 - (e) any notes taken by Agency officers in relation to the application.
2. In its decision, the Agency identified 62 pages of documents falling within the scope of the request. The Agency decided to release 60 pages in full and 2 pages 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 12 April 2019, the Agency made a fresh decision to release further information in the documents. Following the Agency's fresh decision, I note the Agency released the majority of information in the documents to the Applicant.
6. The Applicant did not agree with the Agency's fresh decision that certain information on one page of a report, known as a Housing integrated information Program or 'Hiip' report, was exempt from release. Accordingly, as required by section 49MA(2), I proceeded with my review on the basis of the fresh decision.
7. I have examined a copy of the document subject to review.
8. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
9. I have considered all communications and submissions received from the parties, including:
 - (a) the Agency's decision on the FOI request;
 - (b) the Applicant's review application and submission following the Agency's fresh decision;
 - (c) the Agency's submission dated 27 May 2019.
10. 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.

Review of exemptions

11. The Agency relied on the exemptions in sections 33(1) and 35(1)(b) to refuse access to parts of one of the documents. The Agency's fresh decision letter sets out the reasons for its decision.
12. The Applicant's submission states the reason for seeking access to the documents is that the Applicant was offered accommodation by the Agency. However, the accommodation offer was withdrawn by the Agency. The Applicant seeks the documents to 'determine the basis of the decision to withdraw the housing offer' with a view to obtaining legal advice about the matter.
13. As stated above, following the Agency's fresh decision, the Agency released the majority of information in the documents to the Applicant. From my review of the documents, the reasons for the housing offer being withdrawn are detailed in the documents. In summary, the only information to which access has been denied is information that concerns:
 - (a) a property address;
 - (b) names of two Agency officers;
 - (c) information provided to the Agency by a third party.

Section 33(1)

14. A document is exempt under section 33(1) if two conditions are satisfied:
 - (a) disclosure of the document under the FOI Act would 'involve' the disclosure of information relating to the 'personal affairs' of a person other than the Applicant;¹ and
 - (b) such disclosure would be 'unreasonable'.
15. Section 33(2A) requires that, in deciding whether disclosure of a document under this Act would involve the unreasonable disclosure of information relating to the personal affairs of any person, I must take into account, in addition to any other matters, whether disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person.
16. Information relating to a person's 'personal affairs' includes information that identifies any person, or discloses their address or location. It also includes any information from which this may be reasonably determined.²
17. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the personal interest in privacy in the particular circumstances of a matter.
18. The following matters are particularly relevant, in the circumstances of this case:
 - (a) the nature of the personal affairs information (for example, whether it is sensitive or its current relevance);
 - (b) the extent to which the information is available to the public;
 - (c) the circumstances in which the information was obtained (for example, whether it was obtained involuntarily or in confidence);

¹ Sections 33(1) and (2).

² Section 33(9).

- (d) the Applicant's interest in the information (including their purpose for seeking access to the documents);
- (e) whether any public interest would be promoted by release of the information;
- (f) whether the individuals to whom the information relates object, or would be likely to object to the release of the information; and
- (g) the likelihood of further disclosure of the information, if released.

19. The Applicant submitted:

- (a) [They] understood a third party provided adverse information to the Agency about [their] tenancy, which may have formed the basis of its decision to withdraw an offer of housing.
- (b) The identity of the person providing the information will assist [the Applicant] to determine whether there was a basis for making any assertions made, noting [the Applicant] was not provided with an opportunity to respond.
- (c) The Applicant was subjected to harassment from other residents and believes them to be the source of the information.
- (d) To the extent the information provides contact details of the individuals, disclosure of that information is not warranted.
- (e) [The Applicant] is seeking the information to assess [their] legal options, therefore, disclosure in this case should not raise concerns about the dissemination of the information.
- (f) There is a significant public interest in releasing the information due to allegations of discrimination against Aboriginal people, particularly in the context of government authority.

20. The Agency submitted:

- (a) In relation to the names of Agency officers, the information is exempt under section 33(1) where they are junior officers performing administrative duties and who may not be the Applicant's allocated worker.
- (b) The release of these names would not assist the Applicant's understanding of the Agency's decision making process.
- (c) The Agency released officer names in other documents, where it was reasonable to do so.
- (d) In relation to other third parties, the Agency submits it has a responsibility to protect an individual's right to privacy, the information provided is sensitive, it is likely the person concerned provided the information in confidence, and disclosure of the information would likely cause distress.

21. I note the Applicant's submission in this matter, particularly section 3(2) of the Act, which provides it is Parliament's intention the provisions of the FOI Act be interpreted so as to further the object of the Act, that is, to extend as far as possible the right of the community to access information in the possession of government. However, the Act also sets out the circumstances where information is exempt from release, and this includes consideration of the protection of individuals' privacy in circumstances where disclosure of their personal affairs information would be unreasonable.

22. In relation to the Agency's decision to exempt a property address, it appears to be an address unrelated to the Applicant's housing application. As such, I consider the address is that of an

unrelated third party and would not assist the Applicant's understanding of the Agency's decision to withdraw the housing offer. Accordingly, I am satisfied release of this information would be unreasonable in the circumstances and is exempt under section 33(1).

23. In relation to the Agency's decision to exempt two Agency officers' names, I agree disclosure of this information is unreasonable in the circumstances and this personal affairs information is exempt under section 33(1). In making this decision I note:
- (a) This information is not the focus of the Applicant's request for review; that is, it is not information the Applicant is particularly seeking.
 - (b) Release of this information would not assist in the Applicant's understanding of the Agency's decision making process in this matter.
 - (c) The Agency officers are not the decision makers in this matter and as such, their disclosure will not assist in the Applicant's understanding of the Agency's decision making process in this matter.
 - (d) While the Agency did not consult with the Agency officers, as required under section 33(2B), I consider the Agency officers would object to the release of their personal affairs information in the circumstances.
 - (e) The Agency released the names of relevant Agency staff, where it is reasonable to do so.
24. In relation to information provided to the Agency by a third party, I am satisfied the information is personal affairs information as it names a third party and other information in this section would also identify other third parties.
25. Having considered this information, I have decided it would be unreasonable to release for the following reasons:
- (a) The information is sensitive in nature.
 - (b) While I do not have any information from the third parties about whether they would object to release of their personal affairs information, I consider the sensitivity of the information is likely to mean the third parties would consider the information was provided to the Agency in confidence and, therefore, would reasonably object to its release.
 - (c) I note the Applicant's view the public interest would be served in the disclosure of this information. However, I consider there is a strong public interest in maintaining the confidentiality of such information as its disclosure may mean members of the public or housing tenants would be less likely to provide information to the Agency in the future on the grounds it may be released without their approval or knowledge. In my view, maintaining the confidentiality of information provided to the Agency is particularly important when dealing with sensitive and personal matters relating to public housing.
 - (d) Further, in the context of this matter, while I note the Applicant seeks the documents to 'determine the basis of the decision to withdraw the housing offer', I consider the relevant information as to the basis of the Agency's decision was released to the Applicant in the Agency's fresh decision. Therefore, this information will not assist in the Applicant's understanding of the Agency's decision making process in this matter.
26. In light of my decision the document is exempt under section 33(1) due to the above factors, I do not consider it is necessary for me to consider whether release would be unreasonable in light of the factors under section 33(2A).

27. For the above reasons, I have decided the information the Agency removed from the document is exempt under section 33(1). As I have decided the information is exempt under section 33(1), I have not further considered the application of any other exemptions in this matter.

Section 35(1)(b)

28. A document is exempt under section 35(1)(b) if two conditions are satisfied:
- (a) disclosure would divulge information or matter communicated in confidence by or on behalf of a person or a government to an agency or a Minister; and
 - (b) disclosure would be contrary to the public interest as it would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.
29. As I have decided the information subject to this review is exempt under section 33(1), it is not necessary for me to consider the application of section 35(1)(b) to the document subject to review.

Deletion of exempt or irrelevant information

30. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable for the agency or Minister to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
31. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'³ and the effectiveness of the deletions. Where deletions would render the document meaningless they are not 'practicable' and release of the document is not required under section 25.⁴
32. I have considered the effect of deleting exempt information from the documents. In my view, it is practicable for the Agency to delete the exempt information, because it would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

33. On the information available, I am satisfied the remaining information in the document exempted by the Agency is exempt under section 33(1). Therefore, my decision is the same as the Agency's and the document is to be released to the Applicant in part.

Review rights

34. If either party to this review is not satisfied with my decision, they are entitled to apply to the Victorian Civil and Administrative Tribunal (**VCAT**) for it to be reviewed.⁵
35. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁶
36. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁷

³ *Mickelburgh v Victoria Police (General)* [2009] VCAT 2786 at [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

⁴ *Honeywood v Department of Human Services* [2006] VCAT 2048 [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140] and [155].

⁵ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁶ Section 52(5).

⁷ Section 52(9).

37. Information about how to apply to VCAT is available online at www.vcat.vic.gov.au. Alternatively, VCAT may be contacted by email at admin@vcat.vic.gov.au or by telephone on 1300 018 228.
38. The Agency is required to notify the Information Commissioner in writing as soon as practicable if either party applies to VCAT for a review of my decision.⁸

When this decision takes effect

39. My decision does not take effect until the relevant review period (stated above) expires, or if either party applies to VCAT for a review, until the VCAT proceeding is concluded.

⁸ Sections 50(3F) and (3FA).