

Notice of Decision and Reasons for Decision

Applicant:	'AI4'
Agency:	Victorian Building Authority
Decision Date:	9 August 2019
Exemption considered:	Section 33(1)
Citation	'AI4' and Victorian Building Authority (<i>Freedom of Information</i>) [2019] VICmr 76 (9 August 2019)

FREEDOM OF INFORMATION – building permit – building plans – neighbourhood dispute – complaint – 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 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 Documents 4, 9, 12 and 14.

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

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
9 August 2019

Reasons for Decision

Background to review

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

All documents relating to [reference number] (works at [specified address]) including but not limited to:

- documents showing details of [Victorian Building Authority] (VBA) or council requests to the owners of [specified address], and their responses
- showing details of requests to [named] Council and the response from council including in particular,
- any differences in documents provided by [named] Council in [time period], and the material provided in [time period] in response to a request from VBA on or about [date].
- notes of telephone discussions, notes to file relates to the above and [reference number] generally
- any notes taken as a result of any site inspections carried out by [named Council] and/or VBA; and
- a copy of the building permit including especially as it relates to the retaining wall and drainage/sees discharge.

2. In its decision, the Agency identified 16 documents falling within the terms of the Applicant's request. It decided to:

- (a) release 10 documents in full;
- (b) release 5 documents in part; and
- (c) refused 1 document in full.

Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. On 22 April 2019, the Applicant indicated [they] only seek a review of Documents 4, 9, 12 and 14. Accordingly, this review relates to these documents only.
5. I have examined copies of the documents subject to review.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered all communications received from the parties, including:
 - (a) the Agency's decision on the FOI request;
 - (b) information provided with the Applicant's review application; and
 - (c) communications between OVIC staff, the Agency and the Applicant.

8. 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

9. The Agency relied on the exemption under section 33(1) to refuse access to parts of the documents. The Agency's decision letter sets out the reasons for its decision.

Section 33(1)

10. 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'.
11. 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

Do the documents contain the personal affairs information of individuals other than the Applicant?

12. The documents subject to review include a building permit and accompanying plans and documents relevant to a construction project that were lodged with a Council.
13. I am of the view:
- (a) the names, contact details, addresses and position titles of various individuals involved in the above correspondences relates to their personal affairs information;
 - (b) the Council's username does not relate to personal affairs information; and
 - (c) I do not consider the building application documents to be in the nature of personal affairs information. However, for the purposes of completeness, I will consider whether this information satisfies the second limb of section 33(1).

Would the release of the personal affairs information be unreasonable?

14. 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. The following factors are particularly relevant in the circumstances of this matter:
- (a) The nature of the personal affairs information – The documents subject to review contain technical information and drawings of building works and proposals relating to external works to be performed on a residential property. This external work is publicly visible (as opposed to internal works within a residential property). I do not consider this information to be particularly sensitive or confidential information. This supports disclosure.
 - (b) Whether any public interest would be promoted by disclosure – Victorian building legislation and regulations require building works to be subject to a building permit. An application for a building permit must be accompanied by supporting documentation, which generally includes

¹ Sections 33(1) and (2).

² Section 33(9).

copies of specifications, plans and other relevant documentation. If a private building surveyor issues a building permit, a copy of the permit and all supporting plans and documentation must be submitted to the local council. I consider there is a public interest in ensuring building works are carried out in accordance with the permit issued and in accordance with applicable building legislation and regulations. This supports disclosure.

- (c) The Applicant's interest in the information – The Applicant advised the FOI request was made to understand if appropriate processes were followed in the building process and to determine if there would be any damage to the adjoining property. I am of the view releasing the relevant documents would further the Applicant's understanding of the building works on the neighbouring property and the reasons why investigations by the Agency and the council resulted in no action being taken following a complaint about building works on a neighbouring property. This supports disclosure.
- (d) Whether the individuals, whose information is contained in the documents, object or would be likely to object to the release of their information – Section 33(2B) requires an Agency to consult with relevant individuals when deciding whether or not to release their personal affairs information. I reviewed the consultation documents and I note certain individuals have not consented to the release of their personal information to the Applicant. The views of these third parties is a relevant, but not a determinative, consideration in determining whether the release of their personal affairs information is unreasonable.

- 15. Section 33(2A) requires that, in deciding whether the disclosure of a document would involve the unreasonable disclosure of information relating to the personal affairs of any person, I must take into account whether the disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person.
- 16. As stated above, I have reviewed the consultation documents and noted the express views of the relevant third parties. Given the nature of the documents in these particular circumstances, I do not consider there to be a reasonable likelihood of endangerment to life and physical safety if these documents were to be released. This supports disclosure.
- 17. Accordingly, I am not satisfied that the release of the personal affairs information in the document would be unreasonable. I have determined this information is not exempt under section 33(1).

Deletion of exempt or irrelevant information

- 18. 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.
- 19. 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
- 20. On 24 July 2019, the Applicant advised [they] agree to exclude the neighbour's email addresses, telephone contact details and signatures from the scope of the review. Accordingly, I consider this information to be irrelevant for the purposes of this review.

³ *Mickelborough 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 at [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140] and [155].

21. I have considered the effect of deleting irrelevant and exempt information from the documents. In my view, it is practicable to delete this information, because it would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

22. Having considered the relevant exemptions, I have determined the information in the documents is not exempt under section 33(1). The Schedule of Documents in **Annexure 1** contains a brief summary of my decisions and reasons with respect to each document.

Review rights

23. 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
24. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁶
25. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁷
26. 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.
27. 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

28. I have decided to release documents that contain information relating to the personal affairs of third parties.
29. The relevant third parties will be notified of my decision and are entitled to apply to VCAT for a review within 60 days from the date they are given notice.
30. For that reason, my decision does not take effect until that 60-day period expires. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

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

⁶ Section 52(5).

⁷ Section 52(9).

⁸ Sections 50(3F) and (3FA).

Annexure 1 – Schedule of Documents

Doc	Date	Title	Pages	Agency's Decision	OVIC Decision	OVIC Comments
1	Undated	Report CR03789 Running Sheet	46	Released in part Section 33(1)	On 22 April 2019, the Applicant advised [they do] not seek review of this document. Therefore, this document is out of the scope of this review.	
2	[Date]	Email and attachment	1	Released in full	Not subject to review.	
3	[Date]	Attachment	2	Released in full	Not subject to review.	
4	[Date]	Email and attachments	4	Refused in full Section 33(1)	<p>Release in part Section 33(1)</p> <p>The document is to be released to the Applicant with exception to the building surveyor's personal email address that is exempt under section 33(1).</p>	<p>The document contains an email and a letter with an attachment sent to a person other than the Applicant.</p> <p>Having reviewed the contents of information in Document 3 (which has been released to the Applicant in full), I do not consider the release of Document 4 would be unreasonable.</p> <p>However, I consider it would be unreasonable to release the personal email addresses of third parties.</p>
5	[Date]	Email	1	Released in part Section 33(1)	On 22 April 2019, the Applicant advised [they do] not seek review of this document. Therefore, this document is out of the scope of this review.	
6	[Date]	Email	2	Released in full	Not subject to review.	
7	[Date]	Memorandum	2	Released in full	Not subject to review.	
8	[Date]	Email and attachments	6	Released in full	Not subject to review.	

Annexure 1 – Schedule of Documents

Doc	Date	Title	Pages	Agency's Decision	OVIC Decision	OVIC Comments
9	[Date]	Email and attachments	34	Released in part Section 33(1)	<p>Release in part Section 33(1)</p> <p>The document is to be released to the Applicant with exception to the following information:</p> <ul style="list-style-type: none"> the name and email address of the administrative staff in the email chain starting [date] at [time] that is exempt under section 33(1); and the signature, telephone contact numbers and personal email address of the property owners is irrelevant information and is to be deleted under section 25. 	<p>Section 33(1): In the email dated [specific date and time stamp], the Agency has deleted a username. I do not consider this username to be in the nature of personal affairs information. Therefore, it is not exempt under section 33(1). Additionally, I note this same information has been released to the Applicant in Document 12.</p> <p>The documents are in the nature of building permit application forms and notices from a Council. I do not particularly consider this information to be in the nature of personal affairs information of the relevant individuals. However, even if it were, I do not consider the release of this information to be unreasonable. Accordingly, this information is not exempt under section 33(1).</p> <p>I do not consider the release of the third parties' information to be unreasonable where it relates to their work in the ordinary course of their professional duties. However, it would be unreasonable to release the personal affairs information of staff purely performing administrative duties.</p> <p>Section 25: The Applicant agreed to exclude from the review any information relating to the property owner's personal email addresses, telephone contact numbers and signatures. This information is irrelevant.</p>

Annexure 1 – Schedule of Documents

Doc	Date	Title	Pages	Agency's Decision	OVIC Decision	OVIC Comments
10	[Date]	Email	1	Released in full	Not subject to review.	
11	[Date]	Email and attachments	3	Released in full	Not subject to review.	
12	[Date]	Email and attachments	35	Released in part Section 33(1)	<p>Release in part Section 33(1)</p> <p>The document is to be released to the Applicant with exception to the following information:</p> <ul style="list-style-type: none"> the name and email address of the administrative staff in the email chain starting [date] at [time] that is exempt under section 33(1); and the signature, telephone contact numbers and personal email address of the property owners is irrelevant information and is to be deleted under section 25. 	Section 33(1) and 25: See comments for Document 9.
13	[Date]	Email	1	Released in full	Not subject to review.	

Annexure 1 – Schedule of Documents

Doc	Date	Title	Pages	Agency's Decision	OVIC Decision	OVIC Comments
14	[Date]	Email and attachments	1	Released in part Section 33(1)	Release in full	See comments for Document 9 in relation to the attachment to the email attachment relating to building plans.
15	[Date]	Email and attachments	11	Released in full	Not subject to review.	
16	Undated	Complaint	2	Released in part Section 33(1)	On 22 April 2019, the Applicant advised [they do] not seek review of this document. Therefore, this document is out of the scope of this review.	