

Notice of Decision and Reasons for Decision

Applicant:	'AU8'
Agency:	Major Transport Infrastructure Authority
Decision Date:	5 December 2019
Provision considered:	Section 25
Citation:	'AU8' and Major Transport Infrastructure Authority (<i>Freedom of Information</i>) [2019] VICmr 189 (5 December 2019)

FREEDOM OF INFORMATION – whether deleted information is irrelevant to freedom of information request

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 differs from the Agency's decision in that I have decided to release additional information to the Applicant.

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

My reasons for decision follow.

Sven Bluemmel
Information Commissioner

5 December 2019

Reasons for Decision

Background to review

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

Asked in question time in the Legislative Council on Thursday, 21 March 2019, “did you or your department analyse or assess the impact of – or do any modelling around – the now infamous P-turn situation on surrounding traffic, including on Swan Street”, the Minister for Roads responded, ‘Yes, of course we did’.

Pursuant to the *Freedom of Information Act 1982*, I seek access to the documents referred to by the Minister for Roads in her answer.

2. In its decision, the Agency identified two documents falling within the terms of the Applicant’s request. It decided to refuse access to the documents in full pursuant to sections 30(1) and 34(4)(a)(ii).

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. On 2 October 2019, the Agency made a fresh decision and included an additional document (**Document 3**) found to be within scope of the original FOI request. The Agency’s fresh decision was to apply different exemptions and release the three documents in part. This was completed within the required 28 days under section 49M(2).
5. The Applicant did not agree with the Agency’s fresh decision and, as required by section 49MA(2), I proceeded with my review on the basis of the fresh decision.
6. The Applicant advised my office that they did not seek review of the Agency’s decision to exempt personal affairs information in the documents. Accordingly, this review relates only to the information deleted by the Agency as irrelevant under section 25 of the Act in Document 3.
7. I have examined a copy of Document 3, titled ‘*Transport Modelling Report Contract No. 9321 Streamlining Hoddle Street – Stage 1*’ which is subject to this review.
8. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
9. During the course of the review the Agency was provided with my preliminary view that the information deleted in Document 3 under section 25 of the Act was relevant to the Applicant’s request and should be released. The Agency was afforded with an opportunity to provide further submissions in response to this view.
10. I have considered all communications and submissions received from the parties, including:
 - (a) the Agency’s fresh decision on the FOI request;
 - (b) the information provided with the Applicant’s review application and subsequent correspondence with OVIC;
 - (c) the Agency’s submissions dated 15 and 26 November 2019 and all communications with this office.

11. 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 provision

12. The Agency relied on the exemption in section 33(1) to refuse access to parts of Document 3, and deleted certain information which it regarded to be irrelevant under section 25. The Agency's decision letter sets out the reasons for its decision.
13. As detailed above, my review relates only to the application of section 25 to information in Document 3.

Section 25

14. In its decision, the Agency determined that certain information in Document 3 is irrelevant to the Applicant's request. The Agency deleted that information from Document 3 pursuant to section 25 and released the remainder of the information to the Applicant, with the exemption of some personal affairs information.
15. Section 25 provides in relation to the deletion of exempt matter or irrelevant material in a document:

Where—

- (a) a decision is made not to grant a request for access to a document on the ground that it is an exempt document or that to grant the request would disclose information that would reasonably be regarded as irrelevant to the request;
- (b) it is practicable for the agency or Minister to grant access to a copy of the document with such deletions as to make the copy not an exempt document or a document that would not disclose such information (as the case requires); and
- (c) it appears from the request, or the applicant subsequently indicates, that the applicant would wish to have access to such a copy—

the agency or Minister shall grant access to such a copy of the document.

16. In summary, section 25 permits an agency, if it is practicable to do so and the applicant is agreeable, to release an edited copy of a document with any information that either falls outside the scope of the applicant's request or is exempt information to be deleted from the document. Alternatively, if it is not practicable to provide an edited copy of the document, or the applicant is not agreeable to receiving an edited copy, the agency is permitted to refuse access to the document in full.
17. The Agency has a duty to locate and disclose to an applicant all documents relevant to the terms of the request.¹
18. Section 49F provides that I 'may review the decision that is the subject of the application for review'.
19. Having reviewed the Applicant's request and the terms of the request, I consider the Applicant seeks access to documents relating to the analysis and assessment of the impact or modelling undertaken in relation to the 'P-turn and **surrounding traffic**, including on Swan Street'.
20. In response to my preliminary view and in support of its interpretation of the Applicant's request scope, in further submissions provided on 26 November 2019, the Agency referred to and provided a copy of Legislative Council Hansard dated 21 March 2019, and stated –

¹ *Roberts v Southern Rural Water* (unreported, VCAT, Preuss SM, 20 April 2000).

“...the question specifically concerned “*the intersection of Swan Street, Punt Road and Olympic Boulevard in my electorate of Northern Metropolitan Region...*”.

[The Agency] reviewed the Hansard before processing and responding to the Applicant’s request and on the evidence was satisfied the request was narrowed to the Continuous Flow Intersection only. The reference to “surrounding traffic” was taken to be references to Swan Street, Bridge Road, Brunton Avenue and Olympic Boulevard, which was the information released in the relevant documents.

It was open to the Applicant to frame [their] request to seek access to traffic modelling for the Streamlining Hoddle Street project. Rather [they] opted to refer specifically to the Hansard when framing [their] request. The Applicant cannot now request access to the other parts of the Streamlining Hoddle Street project when [they] chose to frame [their] request in such a manner by referring to a Parliamentary Question.”

21. While I have considered the Agency’s position, I am not convinced that the Applicant intended this narrower scope when submitting their request, as inferred by the Agency.
22. I consider the terms of the Applicant’s request are sufficiently broad to include the information the Agency deleted for the following reasons:
 - (a) it concerns the surrounding area and forms part of the larger Streamlining Hoddle Street upgrade project, with various intersections analysed as part of the Hoddle Street modelling report being relevant and necessary to understand the background and context of the project.
 - (b) the information about one intersection is integrated with and needs to be considered in conjunction with modelling of the surrounding traffic to understand the various options considered.
 - (c) the use of words “surrounding traffic” in the Applicant’s request can reasonably be interpreted to cover the traffic surrounding a particular intersection the Applicant asked to be included in their request.
 - (d) the information falls within the broad nature of analysis and assessment on the impact and modelling relating to “surrounding traffic” to the P-turn intersection in the Applicant’s request. It discusses pertinent issues concerning the upgrade project and the information on the intersections covered in the modelling report is relevant to the specific Swan Street intersection that the Applicant asked to also be included.
 - (e) the introductory background to the modelling report, released to the Applicant, discusses the problem and outlines the purpose of the report in addressing the key intersections of the corridor, and information relating to the intersections of key importance.
23. Accordingly, I consider the deleted information in Document 3 relates to the larger upgrade project and falls within the scope of the Applicant’s request.
24. Having examined the contents of Document 3 and considered the terms of the Applicant’s request, I am not satisfied the Agency’s decision to delete information as irrelevant in accordance with section 25 is the appropriate application of this provision, in this instance.

Deletion of exempt or irrelevant information

25. 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.

26. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'² 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 25.³
27. I note in this case the information exempt under section 33(1) is outside the scope of review. It is to remain deleted.

Conclusion

28. On the information available, I am satisfied the information deleted by the Agency under section 25 is relevant to the terms of the Applicant's request. I note the Agency has not sought to apply any other exemption to the information subject to this review. Given the information deleted by the Agency is similar in nature to other information in Document 3 which was released to the Applicant, I am further of the view that no other exemption applies to this information. Accordingly, I have decided to grant access to this information in full.
29. The personal affairs information in Document 3 is outside the scope of this review and is to remain deleted.
30. Refer to **Annexure 1 – Schedule of Documents** for further information.

Review rights

31. 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.⁴
32. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁵
33. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁶
34. 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.
35. 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.⁷

When this decision takes effect

36. My decision does not take effect until the relevant review period (stated above) expires. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

² *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

³ *Honeywood v Department of Human Services* [2006] VCAT 2048 [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140], [155].

⁴ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁵ Section 52(5).

⁶ Section 52(9).

⁷ Sections 50(3F) and (3FA).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1.	[Date]	Swan Street Tram Separation Kerb – Streamlining Hoddle Street	25	Released in part Section 33(1)	Not subject to review	N/A
2.	[Date]	SMEC Memorandum	14	Released in part Section 33(1)	Not subject to review	N/A
3.	[Date]	SMEC Streamlining Hoddle Street – Transport Modelling Report	91	Released in part Sections 33(1), 25	<p>Release in part Section 25</p> <p>The information in the document which was marked as irrelevant is to be released to the Applicant in full.</p> <p>The personal affairs information on page two is not subject to review and is to remain deleted.</p>	<p>Section 25: The Agency deleted parts of the document it considered irrelevant to the terms of the Applicant's request.</p> <p>However, having reviewed the document, considered the Applicant's request and the Agency's submissions, I do not agree this information is irrelevant to the terms of the Applicant's request. As such, I am not satisfied that the deleted sections of this document are irrelevant.</p> <p>Accordingly, I am of the view that the information marked as irrelevant should be released to the Applicant.</p> <p>Section 33(1): As detailed in my decision, the Applicant did not seek review of the information exempted by the Agency under section 33(1). As such, this is to remain deleted.</p>