

## Notice of Decision and Reasons for Decision

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Applicant:	'AV7'
Agency:	Moonee Valley City Council
Decision Date:	12 December 2019
Exemption considered:	Section 38A(1)(d)
Citation:	'AV7' and Moonee Valley City Council ( <i>Freedom of Information</i> ) [2019] VICmr 197 (12 December 2019)

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FREEDOM OF INFORMATION – council documents – disclosure of a decision or deliberations – council meeting – closed meeting – *Local Government Act 1989* (Vic)

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 is the same as the Agency's decision.

I am satisfied the documents are exempt under section 38A(1)(d).

As I am satisfied it would not be practicable to provide the Applicant with an edited copy of the documents with exempt information deleted in accordance with section 25, the documents are exempt in full.

My reasons for decision follow.

**Joanne Kummrow**  
Public Access Deputy Commissioner  
12 December 2019

## Reasons for Decision

### Background to review

1. On 14 October 2019, the Applicant made a request to the Agency for access to documents relating to a recent property purchased by the Agency.
2. On 25 October 2019, the Applicant clarified the terms of the request:

... I would expect that the expenditure would require specific approval by all councillors I am seeking all ...copies of council resolutions, minutes, etc documenting such approval.
3. The Agency identified two documents falling within the terms of the Applicant's request and refused to grant access to both documents in full.

### Review

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. I have examined copies of the documents subject to review.
6. 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) all communications between this Office and the Applicant and the Agency.
7. 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

8. The Agency relied on the exemption in section 38A(1)(d) to refuse access to the documents in full. The Agency's decision letter sets out the reasons for its decision.

### **Section 38A(1)(d)**

9. Section 38A(1)(d) provides that a council document will be exempt if it is:
  - (d) a document the disclosure of which would involve the disclosure of any deliberation or decision of a closed meeting (other than the official records under section 89(3) of the Local Government Act 1989 in the minutes of a meeting of the reason for closing a meeting to the public) or of a meeting that is likely to be a closed meeting;
10. 'Closed meeting' is defined in section 5 as 'a meeting closed to the public under section 89(2) of the Local Government Act 1989'.

11. Section 89 of the *Local Government Act 1986* (Vic) (**LG Act**) provides:
- (1) Unless subsection (2) applies, any meeting of a Council or a special committee must be open to members of the public.
  - (2) A Council or special committee may resolve that the meeting be closed to members of the public if the meeting is discussing any of the following –
    - (a) personal matters;
    - (b) the personal hardship of any resident or taxpayer;
    - (c) industrial matters;
    - (d) contractual matters;
    - (e) proposed developments;
    - (f) legal advice;
    - (g) matters affecting the security of Council property;
    - (h) any other matter which the Council or special committee considers would prejudice the Council or any person;
    - (i) a resolution to close the meeting to members of the public
  - (3) If a Council or special committee resolves to close a meeting to members of the public the reason must be recorded in the minutes of the meeting.
12. In its decision letter, the Agency relied on the following reasons to refuse access to the documents:
- (a) the exempted documents were presented and considered at a closed meeting of the Council's Land Acquisition Committee (**LAC**);
  - (b) LAC is a special committee established under section 86 of the LG Act, which was constituted to facilitate the acquisition of land to fulfil the Agency's requirements set out in its Open Space Strategy;<sup>1</sup>
  - (c) the documents are confidential under section 89(2)(d) of the LG Act; and
  - (d) disclosure of the documents would reveal the details of deliberations and the decision of a closed Council meeting.
13. Document 1 is a copy of an agenda for a LAC meeting held on 17 September 2019. Item 5 lists a 'closed meeting to the public pursuant to Section 89(2)(d) *Local Government Act*'. Item 6 lists the matter/s to be decided and/or deliberated at the closed meeting. Item 6 is the only substantive item of business on the agenda.
14. Document 2 is the meeting minutes for the LAC meeting. Item 6 contains minutes in relation to the substantive matter/s to be decided and/or deliberated at the closed meeting.
15. On the information before me, I am satisfied both documents relate to a closed meeting of Council. Therefore, I am satisfied the documents, if released, would disclose the LAC's decision and/or deliberations at the closed meeting.

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<sup>1</sup> Councils are able to participate in the property market to buy land to create new open spaces in existing suburbs, including land acquisitions for new parks and their embellishment. See Moonee Valley Council website at <https://yoursay.mvcc.vic.gov.au/42894/documents/110646>.

### ***Deletion of exempt or irrelevant information***

16. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
17. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>2</sup> and the effectiveness of the deletions. Where deletions would render a document meaningless, they are not 'practicable' and release of the document is not required under section 25.<sup>3</sup>
18. Having reviewed the content of the documents, I am satisfied it would not be practicable to provide the Applicant with an edited copy of the documents with exempt information deleted, as to do so would not require substantial time and effort, and the edited documents would retain meaning.

### ***Conclusion***

19. I accept the expenditure of public funds by local government are matters of significant public interest which strengthen accountability and transparency of government decision making. However, the exemptions in section 38A(1) do not allow me to take into account any public interest factors as to whether this exemption applies. As such, my consideration is confined to whether the legal requirements of the relevant exemption are satisfied.
20. In this case, I am satisfied the documents are exempt under section 38A(1)(d).
21. As I have determined it would not be practicable to provide the Applicant with an edited copy of the documents with exempt information deleted in accordance with section 25, the documents are exempt in full.

### ***Review rights***

22. 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.<sup>4</sup>
23. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>5</sup>
24. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>6</sup>
25. Information about how to apply to VCAT is available online at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au). Alternatively, VCAT may be contacted by email at [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au) or by telephone on 1300 018 228.
26. 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.<sup>7</sup>

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<sup>2</sup> *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].

<sup>3</sup> *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].

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

<sup>5</sup> Section 52(5).

<sup>6</sup> Section 52(9).

<sup>7</sup> Sections 50(3F) and (3FA).

***When this decision takes effect***

27. 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.