

Notice of Decision and Reasons for Decision

Applicant:	'AS6'
Agency:	Department of Health and Human Services
Decision date:	18 November 2019
Exemption considered:	Section 33(1)
Citation:	'AS6' and Department of Health and Human Services (<i>Freedom of Information</i>) [2019] VICmr 169 (18 November 2019)

FREEDOM OF INFORMATION – Housing Integrated Information Program (HIIP) repairs maintenance history report – property maintenance history – tenant information – 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 a document 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 the document.

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

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
18 November 2019

Reasons for Decision

Background to review

1. The Applicant is a tenant in government funded housing.
2. The Applicant made two requests to the Agency, through their legal representative (**the representative**), for access to documents held on the Housing Integrated Information Program (**HIIP**) repairs database. In summary, the documents sought relate to maintenance requests made by any previous tenant (including the Applicant) for a specific property address.
3. In its decision, the Agency identified 62 pages falling within the terms of the Applicant's request. The Agency separated the documents into four categories:
 - (a) HIIP repairs maintenance history
 - (b) Rental Statement [address]
 - (c) Rental Statement [second address]
 - (d) Hygienist report [third address]
4. The Agency granted access to 25 pages in full, 18 pages in part and refused access to 19 pages in full.
5. The 19 pages to which the Agency refused access in full form part of the HIIP repairs maintenance history report for the period prior to the Applicant's tenancy at the property.

Review

6. Through their representative, the Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
7. The representative indicated the Applicant seeks access to the 19 pages refused in full, but does not seek access to the personal affairs information of third parties, including that of Agency officers.
8. Accordingly, my review relates to a 19 page document which the Agency refused access in full, with the exception of personal affairs information, which is no longer subject to review.
9. I have examined a copy of the document subject to review.
10. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
11. I have considered all communications and submissions received from the parties, including:
 - (a) the Agency's decision on the FOI request, dated 15 May 2019;
 - (b) the submission made by the representative, dated 12 July 2019, and information provided with the Applicant's review application;
 - (c) the Agency's submission, dated 11 September 2019; and
 - (d) communications between OVIC staff, the representative and the Agency during the review.

12. 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

13. The Agency relied on the exemption in section 33(1) to refuse access to the document. The Agency's decision letter sets out the reasons for its decision.

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. 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
16. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the personal interest in privacy in the circumstances of a particular matter.
17. The Applicant's representative submitted:
 - (a) The Applicant has no interest in obtaining the personal details of any previous tenant at the property nor did [they] request this information.
 - (b) The information to be disclosed was not provided to the Agency in confidentiality.
 - (c) The information to be disclosed is mundane in nature and not connected to the personal interests of the person who provided it to the Agency.
 - (d) The information to be disclosed is unlikely to be able to be used in a way that would adversely affect the interest of the person who provided it to the Agency.
 - (e) The person who provided the information to the Agency would be unlikely to object to its disclosure.
 - (f) There is no suggestion the Applicant is seeking to obtain this information for ulterior purposes that would put the person who provided the information to the Agency at risk of harm.
 - (g) Any concern about the potential risk of abuse or misuse of such information by the Applicant could be mitigated by providing edited versions of the documents requested (ie with any identifying personal affairs information redacted).
 - (h) The public interest in ensuring government agencies are accountable, and that members of the public have access to information held by government agencies which affects their personal interests, outweighs the concerns raised about the potential disclosure of personal information where the information disclosed is mundane or trivial in nature.

¹ Sections 33(1) and (2).

² Section 33(9).

- (i) That contacting the person referred to in the documents requested or providing edited versions of the documents requested is not unduly burdensome on [the Agency].

18. The Agency submitted:

- (a) The information in these circumstances is of a sensitive nature, being information that relates to the private personal affairs information of public housing tenants.
- (b) Although the department keeps public housing maintenance records in relation to a property, maintenance records for a private dwelling (as opposed to public areas of a public housing property) are considered part of the personal housing records of the individual who is tenanted the property at the time the maintenance occurs. For example, if the [Agency] receives a freedom of information request for an individual's housing records, we would consider the maintenance records for the public houses they have tenanted, during the period of their tenancy, to fall within the scope of the request.
- (c) Maintenance reports disclose personal information about tenants of a property such as the length of their tenancy, composition of their family, health information, and their behaviours within their home.
- (d) Given the personal nature of the information exempt in the document, the department considers it highly unlikely that the individuals would want their personal information disclosed.
- (e) In relation to the maintenance history of other public housing tenants, the department submits that while public housing tenants who make maintenance requests would reasonably expect their information would be shared internally within the department and with a company conducting the maintenance work, there would be a reasonable expectation that the department would not disseminate or use the information for purposes other than the reasons for which it was provided.
- (f) Furthermore, the maintenance history for a private rental property would not ordinarily be available to future tenants and the Agency submits that public housing tenants are entitled to the same right to privacy enjoyed by other members of the community.
- (g) There is no public interest in providing the exempt material; rather, it is the department's obligation and it is in the public interest to protect the personal affairs information of third parties.

19. In deciding whether disclosure of a document would involve the unreasonable disclosure of a third party's personal affairs information, an agency must notify that person an FOI request has been received for documents containing their personal information and seek their view as to whether disclosure of the document should occur.³ However, this obligation does not arise if:

- (a) the notification would be reasonably likely to endanger the life or physical safety of a person, or cause them undue distress, or is otherwise unreasonable in the circumstances;
- (b) the notification would be reasonably likely to increase the risk to the safety of a person experiencing family violence; or
- (c) it is not practicable to do so.⁴

³ Section 33(2B).

⁴ Section 33(2C).

20. The Agency determined it was unreasonable to consult with third parties, who were previous tenants, and cited the primary reason as the likelihood consultation would cause undue suffering, distress and anxiety in notifying them their personal information may be released to an unrelated third party.
21. The Agency outlined its view that, despite the unreasonableness of consulting with the individual third parties concerned, 'given the highly personal nature of the information exempt within the document, the department nonetheless considers it highly unlikely that the individuals would want their personal information disclosed without their consent'.
22. When considering the HIIP repairs maintenance history report, I am of the view its release, with the complete maintenance history, would unreasonably disclose the personal affairs information of the previous tenant or tenants. As outlined by the Agency, the document contains information such as the length of tenancy, family composition, health information and other information I consider to be inherently sensitive and personal in nature.
23. I am of the view the previous tenant or tenants would neither consent to, nor expect, this information would be disclosed to unrelated third parties and accept the Agency's position consultation is not practicable in the circumstances.

Narrowed scope of review

24. On 3 October 2019, the representative was contacted by OVIC staff who outlined the preliminary view that release of the HIIP repairs maintenance history report in full would be likely to disclose the personal affairs information of the previous tenant or tenants, and in the circumstances disclosure would likely be unreasonable. OVIC staff outlined release of the report in part (e.g. disclosure of particular job types) would make the information less sensitive as the reader would be unlikely to be able to 'piece together' the personal affairs information and history of the previous tenant or tenants.
25. On 7 October 2019, the representative agreed to reduce the scope of the review to the following:

Documents or parts of documents requested which describe:

- Mould at the rented premises
- Water leaks at the rented premises
- Structural or ventilation issues at the rented premises which may result in mould, water leaks or water damage
- Plumbing at the rented premises
- Storm water pipes and guttering at the rented premises
- Drainage at the rented premises
- Roofing and roof tiling at the rented premises, including sealing of the roof
- Any other ancillary repair issues which may be related to any of the above

26. I have conducted my review based on the narrowed scope as set out above.

Do the documents contain the personal affairs information of individuals other than the Applicant or does the information the Applicant is seeking contain the personal affairs information of individuals other than the Applicant?

27. I am not satisfied the following columns/rows in the document constitute personal affairs information for the purposes of section 33(1):
- The details of the property, recorded at the top of the document;
 - Job number;
 - RGD Date;
 - SOR/nonSOR;
 - Job Line Code;
 - Office;
 - Details;
 - TOW/COW;
 - Contractor Ref;
 - Location;
 - TR, P or W;
 - Serial Number;
 - Job Price;
 - Quantity;
 - Current Status;
 - Current Status Date;
 - Unit Price; and
 - Total Price.
28. While I consider the names of Agency officers listed in the document to be personal affairs information of persons other than the Applicant, I note the Applicant is not seeking this information. Therefore, where I have determined to release certain rows/columns in the document be released with the names and contact numbers of Agency officers to remain deleted as irrelevant information in accordance with section 25.
29. As I am not satisfied release of the relevant rows/columns in isolation constitutes personal affairs information, it is not necessary for me to consider whether disclosure of such information would be unreasonable in the circumstances.
30. Having considered the application of the relevant exemption to the narrowed scope of information sought by the Applicant (which excludes the names of Agency officers and the personal affairs information of unrelated third parties), I have determined the disclosure of the information now sought does not constitute personal affairs information of third parties. Accordingly, the information sought is not exempt under section 33(1).
31. The Schedule of Documents in **Annexure 1** contains a summary of my decision with respect to each page of the document.

Deletion of exempt or irrelevant information

32. 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.

33. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁵ 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 25.⁶
34. In this case, I am satisfied it would be practicable to delete the names of Agency officers from the document in accordance with section 25 as to do so would not require substantial time and effort, and the edited document would retain meaning.

Conclusion

35. I am satisfied the narrowed scope of information sought by the Applicant is not exempt under section 33(1) and it is practicable to delete the names of Agency officers from the document. Accordingly, I have determined to release a copy of the document with irrelevant information deleted in accordance with section 25.
36. The Schedule of Documents in **Annexure 1** contains a summary of my decision with respect to each page of the document.

Review rights

37. 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.⁷
38. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁸
39. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁹
40. 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.
41. 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.¹⁰

When this decision takes effect

42. 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.

⁵ *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].

⁶ *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].

⁷ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁸ Section 52(5).

⁹ Section 52(9).

¹⁰ 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
1.	[Date]	Housing Integrated Information Program (HIIP) repairs maintenance history	19	Refused in full Section 33(1)	<p style="text-align: center;">Release in part Sections 33(1), 25</p> <p>The following lines in the document are to be released to the Applicant with the names and contact numbers of Agency officers deleted under section 25 as irrelevant information.</p> <p>I do not consider the release of following lines would disclose the personal affairs information of third parties:</p> <p>Page 1/19:</p> <ul style="list-style-type: none"> • The lines 'PIN' to the conclusion of the 'Total' line. <p>Page 3/19:</p> <ul style="list-style-type: none"> • The row of job number ending in [digits] • Rows: 20, 25, 41, 42, 43 and 45 <p>Page 4/19:</p> <ul style="list-style-type: none"> • The row of job number ending in [digits] • Row 55 <p>Page 5/19:</p> <ul style="list-style-type: none"> • The row of job number ending in [digits] and under that job- • Rows: 2 and 3 <p>Page 8/19:</p> <ul style="list-style-type: none"> • The row of job number ending in [digits] and under that job- • Rows: 18 and 19

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision
					<p>Page 10/19:</p> <ul style="list-style-type: none"> • The row of job number ending in [digits] and under that job- • Row 1 <p>Page 11/19:</p> <ul style="list-style-type: none"> • The row of job number ending in [digits] and under that job- • Row 2 <p>Page 12/19:</p> <ul style="list-style-type: none"> • The row of job number ending in [digits] and under that job- • Rows: 2 – 8 (inclusive) • The row of job number ending in [digits] and under that job- • Row 2 <p>Page 13/19:</p> <ul style="list-style-type: none"> • The row of job number ending in [digits] and under that job- • Rows: 10-14 (inclusive) <p>Page 14/19:</p> <ul style="list-style-type: none"> • The row of job number ending in [digits] and under that job- • Rows: 1 and 2

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision
					<p>Page 15/19:</p> <ul style="list-style-type: none"> • The row of job number ending in [digits] and under that job- • Row 1 • The row of job number ending in [digits] and under that job- • Row 2 <p>Page 17/19:</p> <ul style="list-style-type: none"> • The row of job number ending in [digits] and under that job- • Rows: 1 and 2 • The row of job number ending in [digits] and under that job- • Rows: 1 and 2 • The row of job number ending in [digits] and under that job- • Rows: 2 – 5 (inclusive) and 9 <p>Page 18/19:</p> <ul style="list-style-type: none"> • The row of job number ending in [digits] and under that job- • Rows: 2 and 3 • The row of job number ending in [digits] and under that job- • Rows: 7, 8 and 10

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision
					<p>Page 19/19:</p> <ul style="list-style-type: none"> • The row of job number ending in [digits] and under that job- • Row 21