

Notice of Decision and Reasons for Decision

Applicant:	'BA4'
Agency:	City of Port Phillip
Decision Date:	21 January 2020
Exemption considered:	Section 33(1)
Citation:	'BA4' and City of Port Phillip (<i>Freedom of Information</i>) [2020] VICmr 8 (21 January 2020)

FREEDOM OF INFORMATION – council documents – invoices – expense reimbursement claims – 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.

I am satisfied certain information in the documents is exempt under section 33(1). However, my decision on the Applicant's request differs from the Agency's decision in that I have decided to release additional information in the documents.

As it is practicable to edit the documents to delete exempt information in accordance with section 25, I have determined to grant access to the documents in part.

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
21 January 2020

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to documents. Following consultation with the Agency, the Applicant clarified their initial request.
2. The clarified request sought access to the following documents:
 - Copies of invoices received from [named individual] relating to childcare expenses.
 - Copies of documentation evidencing names, dates, times & length of time attended of events/meetings attended by [named individual] relating to all childcare/babysitting claims.
 - Copies of documentation evidencing monies reimbursed to [named individual] or paid directly to third parties for babysitting or childcare. This information should include the name of any third parties and the number of hours charged to give the total figure that was reimbursed/paid for each childminding occasion/claim made. If no name was provided, please also advise.
 - Copies of documentation containing any material information other than that relating to the above points that relates to [named individual] childcare expenses. An example of this would be where monies have not been paid to [named individual] or a carer but directly to a party such as a Council-run childcare centre.
 - Copies of documentation evidencing any claims for childcare expenses that have been rejected by Port Phillip with dates and details of the rejection of the claim.
 - Timeframe for search: [financial year] & [financial year] Financial Years.
3. In its decision, the Agency identified 15 documents, comprising 56 pages, falling within the terms of the Applicant's request. It decided to grant access to the documents in part.

Review

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. The Applicant indicated in their review application they did not seek access to address and contact information of third parties.
6. I have examined copies of the documents subject to review.
7. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
8. I have considered all communications received from the parties, including:
 - (a) the Agency's decision on the FOI request;
 - (b) third party notification and responses conducted in accordance with section 33(2B)
 - (c) information provided with the Applicant's review application; and
 - (d) all communications between this Office and the Applicant and the Agency.

9. 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 irrelevant material

10. Section 25 permits an agency to grant access to an edited copy of a document, removing exempt material or information that would reasonably be regarded as irrelevant to the request, if it is practicable for the agency or Minister to delete that information, and if the applicant is agreeable to receiving such a copy.
11. The Agency deleted information in Documents 7, 10 and 11, in accordance with section 25, where it determined the information did not fall within the scope of the Applicant's request.
12. There is some information in the documents that, if adopting a narrow reading of the Applicant's request, could be considered irrelevant. However, in certain circumstances the deleted information is clearly relevant to the request and is necessary to give further context to information released to the Applicant. This is the case for information deleted in Document 7. Accordingly, I am satisfied this information falls within the scope of the Applicant's request.
13. In all other instances, I am satisfied it falls outside the scope of the Applicant's request as it relates to communications between Agency officers that do not involve a record of monies reimbursed or owed, or documentary evidence of claims. Nor does it record events or meetings attended by the named individual. Accordingly, this information should remain deleted in accordance with section 25.

Review of exemptions

14. The Agency relies on the exemption in section 33(1) to refuse access to the documents in part. The Agency's decision letter sets out the reasons for its decision. In summary, the Agency considered the following factors in reaching its decision:
 - (a) the nature of the information;
 - (b) the circumstances in which the Agency came to possess the information; and
 - (c) the likelihood the individuals concerned would object to the disclosure of their personal affairs information in the documents.
15. The Applicant, in their review application, expresses concern regarding the relevant individual's childcare reimbursement claims and has indicated access to the times and dates would allow them to determine whether a claim lodged was legitimate or not.
16. Further, access to names of childcare minders is sought to ensure compliance with the relevant policies and guidelines regarding childcare reimbursement.

Section 33(1)

17. 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'.

¹ Sections 33(1) and (2).

18. 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

Would disclosure of the documents involve the disclosure of personal affairs information?

19. The Agency relied on section 33(1) to exempt names, email addresses, telephone numbers, residential addresses, signatures, third party banking details, information recorded relating to a third party, who is a child, as well as dates and times claimed for the reimbursement of childcare services provided by the Agency.
20. In most instances, I am satisfied the information exempted by the Agency is the personal affairs information of individuals other than the Applicant and, therefore, the first limb of the exemption is met.
21. However, having carefully reviewed each document, I do not accept the Agency's position the dates and times recording when childcare services were provided would amount to personal affairs information as contemplated by section 33(1).
22. In reaching this conclusion, I have considered whether the information includes details that identify any person, or discloses their address or location, or provides information from which this could reasonably be determined. I consider once identifying information such as names, addresses and contact information is removed, an individual could not be identified from the times and dates alone.
23. Even if I were to accept the information is of a private concern, as opposed to being official information or administrative in nature, I am not satisfied release would be unreasonable as it relates to past services provided. Any sensitivity in the nature of the information, from a personal perspective, would have significantly reduced and, in some cases, I consider the information could easily be determined from the context of the information already released to the Applicant by the Agency.
24. As stated above, the Applicant does not seek access to addresses and contact information of any person. I have interpreted this to mean telephone numbers, email addresses and residential addresses of third parties are irrelevant to the scope of the Applicant's review. However, I must decide whether it would be unreasonable to disclose the remaining personal affairs information, being names, signatures, third party banking information and information that relates to the personal affairs of a child.

Would disclosure of the personal affairs information be unreasonable?

25. 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 matter.
26. Further, I note the views of the Victorian Court of Appeal which has held:
- [t]he protection of privacy, which lies at the heart of section 33(1), is an important right that the FOI Act properly protects. However, an individual's privacy can be invaded to a lesser or greater degree.³
27. In this case, I have considered the following factors⁴ when determining if the release of the personal affairs information in the documents would be unreasonable in the circumstances:
- (a) the nature of the personal affairs information that would be disclosed;

² Section 33(9).

³ *Victoria Police v Marke* [2008] VSCA 218 at [79].

⁴ A number of these factors were identified in *Page v Metropolitan Transit Authority* (1988) 2 VAR 243.

- (b) the circumstances in which the information was obtained;
 - (c) the Applicant's interest in the information;
 - (d) the likelihood of further disclosure of the information, if released;
 - (e) whether the individuals to whom the information relates object, or would be likely to object to the release of the information;
 - (f) whether disclosure would cause the individuals stress, anxiety or embarrassment; or
 - (g) whether disclosure would, or would be reasonably likely to, endanger the life or physical safety of any person.
28. In deciding whether disclosure of a document would involve the unreasonable disclosure of a third party's personal affairs information, an agency must notify the person that an FOI request has been received for a document containing their personal information and seek their views on disclosure of the document.⁵
29. The Agency advised it consulted with relevant third parties. I have taken their responses into consideration in my decision. I also note, notwithstanding the third parties raised objections to the disclosure of their personal affairs information, the Agency's decision nevertheless determined to release some personal affairs information and those third parties were notified of their appeal rights to the Victorian Civil and Administrative Tribunal (**VCAT**).
30. Having carefully considered the documents, I have decided it would be unreasonable to release the remaining information, which was exempted by the Agency, for the following reasons:
- (a) Although there is nothing overtly sensitive about the way the personal affairs information was obtained by the Agency, I consider some information was provided with an expectation of confidence.
 - (b) It follows, the relevant third parties objected to the disclosure of their personal affairs information to the Applicant.
 - (c) The Agency released most of the information in the documents to the Applicant, including some personal affairs information of relevant third parties.
 - (d) While I note the Applicant's interest in seeking access to the information, being their interest in knowing the reimbursement of funds was conducted in accordance with the Agency's policy, nevertheless, I must consider the potential dissemination of information in the documents and the effects broader disclosure of that information would have on the privacy of relevant third parties.
 - (e) Non-disclosure of the personal affairs information does not preclude the Applicant from raising any alleged concerns directly with the Agency or a relevant oversight agency.
 - (f) On balance, I am of the view the privacy of the individuals who provided the information to the Agency outweighs any public interest in disclosure in the circumstances of this matter.
31. I am also required to consider whether disclosure of the information would be reasonably likely to endanger the life or physical safety of any person. There is no information before me to suggest this arises in the circumstances of this matter.

⁵ Section 33(2B).

32. Therefore, I am satisfied release of the personal affairs information in the documents is unreasonable and is exempt under section 33(1).
33. As the Applicant does not seek access to contact information as detailed above, this information is to be removed as irrelevant in accordance with section 25.

Deletion of exempt or irrelevant information

34. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable for the agency to do so. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁶ 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 25.⁷
35. I have considered the effect of deleting irrelevant and exempt information from the documents. I am satisfied it would be practicable to delete this information in accordance with section 25, as to do so would not require substantial time and effort and the edited documents would retain meaning.

Conclusion

36. On the information before me, I am satisfied the exemption in section 33(1) applies to the documents. However, I am not satisfied that the dates and times of childcare services provided, which were exempted by the Agency, constitute 'personal affairs information', as contemplated by section 33(1). In any case, I am not satisfied release of this information would be unreasonable in the circumstances. Therefore, I am not satisfied this information is exempt under section 33(1).
37. As I have determined it is practicable to provide the Applicant with an edited copy of the documents with exempt and irrelevant information deleted in accordance with section 25, the documents are exempt in part.

Other matters

38. Section 49P(5) states if I decide to disclose a document claimed to be exempt under section 33(1) I must, if practicable, notify any person who has a right to apply to VCAT for a review of my decision of their right to do so.
39. VCAT has held in relation to the meaning of 'practicable' in the FOI Act:

The use of the word 'practicable' in the legislation to my mind connotes a legislative intention to apply common sense principles. 'Practicable' is not a term of art or a term of precise meaning.

.... The use of the word indicates there should be imported into the process the exercise of judgment by the agency concerned. It does not allow for the conclusion that because a task is possible, it must, ergo, be undertaken.⁸
40. VCAT also considers the possibility of an unnecessary intrusion into the lives of the third parties is relevant when assessing the practicability of notifying them.⁹

⁶ *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].

⁷ *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].

⁸ *Re Schubert and Department of Premier and Cabinet* (2001) 19 VAR 35 at [45].

⁹ *Coulston v Office of Public Prosecutions Victoria* [2010] VCAT 1234 at [42].

41. Given I am not satisfied the information proposed to be released (ie dates and times of childcare services) is personal affairs information, nor has it been made clear by the Agency whose personal affairs information it is, in the circumstances, I am not satisfied it is practicable to notify third parties of their review rights.

Review rights

42. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.¹⁰
43. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹¹
44. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹²
45. 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.
46. 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.¹³

When this decision takes effect

47. 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.

¹⁰ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹¹ Section 52(5).

¹² Section 52(9).

¹³ Sections 50(3F) and (3FA).

Annexure 1 – Schedule of Documents

Doc No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1.	[date]	Expense reimbursement claim form and supporting documentation	4	Released in part Section 33(1)	Release in part Section 33(1)	Section 33(1): For the reasons set out above, the dates and times of childcare services are to be released as they are not exempt. All other personal affairs information in the document is exempt under section 33(1).
2.	[date]	Expense reimbursement claim form and supporting documentation	4	Released in part Section 33(1)	Release in part Sections 33(1), 25	Section 33(1): For the reasons set out above, the dates and times of childcare services are to be released as they are not exempt. Section 25: As the Applicant does not seek access to addresses and contact information, this information is to be removed as irrelevant under section 25.
3.	[date]	Expense reimbursement claim form and supporting documentation	5	Released in part Section 33(1)	Release in part Sections 33(1), 25	Section 33(1): For the reasons set out above, the dates and times of childcare services are to be released as they are not exempt. All other personal affairs information in the document is exempt under section 33(1). Section 25: Addresses and contact information is to be removed as irrelevant under section 25.
4.	[date]	Expense reimbursement claim form and supporting documentation	3	Released in part Section 33(1)	Release in part Sections 33(1)	Section 33(1): For the reasons set out above, the dates and times of childcare services are to be released as they are not exempt. All other personal affairs information in the document is to remain exempt under section 33(1).
5.	[date]	Expense reimbursement claim form and supporting	2	Released in part Section 33(1)	Release in part Sections 33(1), 25	Section 33(1): For the reasons set out above, the dates and times of childcare services are to be released as they are not exempt. All other

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		documentation				personal affairs information in the document is exempt under section 33(1). Section 25: Addresses and contact information is to be removed as irrelevant under section 25.
6.	[date]	Expense reimbursement claim form and supporting documentation	2	Released in part Section 33(1)	Release in part Sections 33(1), 25	Section 33(1): For the reasons set out above, the dates and times of childcare services are to be released as they are not exempt. All other personal affairs information in the document is exempt under section 33(1).
7.	[date]	Expense reimbursement claim form and supporting documentation	5	Released in part Section 33(1)	Release in part Sections 33(1), 25	Section 33(1): For the reasons set out above, the dates and times of childcare services are to be released as they are not exempt. All other personal affairs information in the document is exempt under section 33(1). Section 25: I am satisfied information deleted by the Agency on page 1 is not relevant to the scope of the Applicant's request. Therefore, it is to remain deleted in accordance with section 25. Addresses and contact information is also to be removed under section 25 as it is irrelevant. However, for the reasons set out above, I am satisfied page 3 is relevant to the Applicant's request. Subject to the removal of contact information under section 25 and names under section 33(1) all other information is to be released to the Applicant as it is not exempt.

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Doc No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
8.	[date]	Expense reimbursement claim form and supporting documentation	2	Released in part Section 33(1)	Release in part Section 33(1)	Section 33(1): For the reasons set out above, the dates and times of childcare services are to be released as they are not exempt. All other personal affairs information in the document remains exempt under section 33(1).
9.	[date]	Expense reimbursement claim form and supporting documentation	2	Released in part Section 33(1)	Release in part Section 33(1)	Section 33(1): For the reasons set out above, the dates and times of childcare services are to be released as they are not exempt. All other personal affairs information in the document remains exempt under section 33(1).
10.	[date]	Expense reimbursement claim form and supporting documentation	4	Released in part Section 33(1)	Release in part Sections 33(1), 25	Section 33(1): For the reasons set out above, the dates and times of childcare services are to be released as they are not exempt. All other personal affairs information in the document is exempt under section 33(1). Section 25: I am satisfied information deleted by the Agency on pages 3 and 4 is not relevant to the scope of the Applicant's request. Therefore, it is to remain deleted in accordance with section 25. Addresses and contact information is also to be removed under section 25 as it is irrelevant.
11.	[date]	Expense reimbursement claim form and supporting documentation	3	Released in part Section 33(1)	Release in part Sections 33(1), 25	Section 33(1): For the reasons set out above, the dates of childcare services are to be released as they are not exempt. All other personal affairs information in the document is exempt under section 33(1). Section 25: I am satisfied information deleted by the Agency on pages 2 and 3 is not relevant

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						to the scope of the Applicant's request. Therefore, it is to remain deleted in accordance with section 25.
12.	[date]	Statement of entitlement	8	Released in part Section 33(1)	Release in part Sections 33(1), 25	<p>Section 33(1): For the reasons set out above, the dates of childcare services are to be released as they are not exempt. All other personal affairs information in the document is exempt under section 33(1).</p> <p>Section 25: Addresses and contact information is to be removed as irrelevant under section 25.</p>
13.	[date]	Statement of entitlement	4	Released in part Section 33(1)	Release in part Sections 33(1), 25	<p>Section 33(1): For the reasons set out above, the dates of childcare services are to be released as they are not exempt. All other personal affairs information in the document is exempt under section 33(1).</p> <p>Section 25: Addresses and contact information is to be removed as irrelevant under section 25.</p>
14.	[date]	Statement of entitlement	6	Released in part Section 33(1)	Release in part Sections 33(1), 25	<p>Section 33(1): For the reasons set out above, the dates of childcare services are to be released as they are not exempt. All other personal affairs information in the document is exempt under section 33(1).</p> <p>Section 25: Addresses and contact information is to be removed as irrelevant under section 25.</p>
15.	[date]	Statement of	2	Released in part	Release in part	Section 33(1): For the reasons set out above,

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Doc No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
		entitlement		Section 33(1)	Sections 33(1), 25	<p>the dates of childcare services are to be released as they are not exempt. All other personal affairs information in the document is exempt under section 33(1).</p> <p>Section 25: Addresses and contact information is to be removed as irrelevant under section 25.</p>