

Notice of Decision and Reasons for Decision

Applicant:	'BG3'
Agency:	Department of Environment, Land, Water and Planning
Decision Date:	12 March 2020
Provision considered:	Section 25
Citation:	'BG3' and Department of Environment, Land, Water and Planning (Freedom of Information) [2020] VICmr 63 (12 March 2020)

FREEDOM OF INFORMATION – irrelevant information – whether information deleted by Agency is irrelevant to terms of applicant's 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 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 information deleted by the Agency under section 25 is irrelevant to the terms of the Applicant's request.

As it is practicable to delete the irrelevant information in accordance with section 25, I have determined to release in part.

As such, the document to be released to the Applicant will be the same as the Agency released to the Applicant.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

12 March 2020

Reasons for Decision

Background to review

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

Correspondence between the Minister for Water, DELWP, Barwon Water and Southern Rural Water specifically concerning the decision by the Minister for Water to impose an Order under section 78 of the Water Act 1958 on Barwon Water requiring Barwon Water to remediate damage caused by excessive pumping from the Barwon Downs bore field. The documents sought should relate to the reasons why the section 78 method was chosen in preference to other statutory remedies that were available.
2. In its decision, the Agency identified certain documents falling within the terms of the Applicant's request. It decided to grant access to certain documents in part.

Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access
4. During the review, the Applicant advised they do did not seek review of the Agency's decision to exempt personal affairs information in the documents.
5. Accordingly, this review relates to information the Agency determined is irrelevant to the terms of the Applicant's request and deleted from the documents released to the Applicant in accordance with section 25 (**irrelevant information**).
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 and submissions 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) the Agency's submission dated 21 February 2020.
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 provision

10. In its decision, the Agency determined certain information in Documents 1 and 2 is irrelevant to the Applicant's request. The Agency deleted the information in accordance with section 25 and released the remainder of the information to the Applicant, with the exemption of some personal affairs information it decided was exempt under section 33(1).
11. As detailed above, my review relates to the Agency's application of section 25 to the irrelevant information only.

Section 25

12. Section 25 provides:

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 reasonable be regarded as irrelevant;
- (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.

13. In summary, section 25 permits an agency, where 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 a document, or the applicant is not agreeable to receiving an edited copy, the agency may refuse access to the document in full.
14. I note the Applicant is seeking correspondence relating to a specific decision made by the Minister for Water under section 78 of the *Water Act 1989* (Vic). That decision required a water business to remediate damage caused to specific locations.
15. The documents located by the Agency cover two topics, being the remediation information sought by the Applicant and another issue related to a water business.
16. Having reviewed the documents, I am satisfied the information the Agency determined to be irrelevant to the terms of the Applicant's request and deleted from the documents in accordance with section 25 is irrelevant to the terms of the Applicant's request.

Deletion of exempt or irrelevant information under section 25

17. As stated above, section 25 requires an agency to grant access to an edited copy of a document when it is practicable for the agency to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
18. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹ 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 25.²
19. As the Agency previously released an edited copy of the document, I am satisfied it is practicable to delete the irrelevant information in accordance with section 25.

¹ *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].

² *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].

Conclusion

20. On the information available, I am satisfied the information deleted by the Agency under section 25 is irrelevant to the terms of the Applicant's request.
21. As I am satisfied it is practicable to delete the irrelevant information, the document is to be released to the Applicant in part with the following information deleted in accordance with section 25:
 - (a) information the Agency decided was exempt under section 33(1), as it is not sought by the Applicant; and
 - (b) information the Agency determined to be irrelevant.
22. As such, the edited document to be released to the Applicant will be the same as the Agency released to the Applicant.

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.³
24. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁴
25. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁵
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.⁶

When this decision takes effect

28. 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.

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

⁴ Section 52(5).

⁵ Section 52(9).

⁶ Sections 50(3F) and (3FA).