

## Notice of Decision and Reasons for Decision

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Applicant:	'BQ5'
Agency:	City of Darebin
Decision date:	15 June 2020
Exemption considered:	Section 33(1)
Citation:	'BQ5' and City of Darebin ( <i>Freedom of Information</i> ) [2020] VICmr 157 (15 June 2020)

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FREEDOM OF INFORMATION – council documents – complaint – dog attack – investigation – *Domestic Animals Act 1994* (Vic) – 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 certain information in a document requested by the Applicant under the FOI Act.

My decision on the Applicant's request is the same as the Agency's decision in that I am satisfied certain information, being the name and telephone number of a third party individual, is exempt under section 33(1).

As I am satisfied it is practicable to delete the exempt information from the document in accordance with section 25, the document is to be released in part with the name and telephone number of the third party removed.

My reasons for decision follow.

**Joanne Kummrow**  
Public Access Deputy Commissioner

15 June 2020

## Reasons for Decision

### Background to review

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

I'm seeking a copy of the current animal registration details in accordance with Section 18(2)(3) of the Domestic Animals Act 1994, detailing the dog ([breed description]) that attacked my dog on [date] on the bend of [location description].
2. The Agency identified one document falling within the terms of the Applicant's request. The Agency released this document in part and relied on the exemption under section 33(1) to refuse access to certain information in the document, being a name and telephone number.
3. The Agency's decision letter sets out the reasons for its decision.

### 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 a copy of the document subject to review.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. 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;
  - (c) the Agency's submission dated [date]; and
  - (d) all communications between OVIC staff, the Agency and the Applicant
8. 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 exemption

#### **Section 33(1)**

9. A document is exempt under section 33(1) if two conditions are satisfied:
  - (a) disclosure of the document under the FOI act would 'involve disclosure of information relating to the 'personal affairs' of a person other than the Applicant;<sup>1</sup>
  - (b) such disclosure would be 'unreasonable'.

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<sup>1</sup> Sections 33(1) and (2).

*Does the document contain personal affairs information?*

10. Information relating to a person's 'personal affairs' includes any information that identifies any person or discloses their address or location. It includes any information from which such information may be reasonably determined.<sup>2</sup>
11. The single page document subject to review contains the registration details of a dog involved in an incident with the Applicant's dog.
12. The document includes the name, address and telephone number of a third party. I am satisfied this information is personal affairs information for the purposes of section 33(1).

*Would disclosure of the personal affairs information be unreasonable?*

13. The concept of unreasonable disclosure involves balancing the public interest in the disclosure of official information with the interest of protecting an individual's personal privacy.<sup>3</sup>
14. The Victorian Court of Appeal stated the following in an appeal concerning the operation of section 33(1):

On the contrary, it stipulates as the only condition for the determination of whether a document is an exempt document that the disclosure of the exempt document 'would involve the unreasonable disclosure of information relating to the personal affairs of any person'.

The very significant public interest sought to be protected by that condition, namely the right of any person to have his or her personal affairs kept private, suggests to me that the condition should not be construed narrowly. Section 33(1) of the Act is the legislature's attempt to reconcile two important, but competing, objectives: the public interest in disclosure and the personal interest of privacy. The mechanism chosen by the legislature to reconcile those objectives is to require a decision-maker to balance them against each other by identifying and inquiring into the facts relevant to that balancing process and making an evaluation of which is to prevail. The condition posed by s 33(1) for its application depends, like that in s 35(1)(b) and others, upon a question dependent upon the particular facts of an actual application. [Footnotes removed]

15. In determining whether disclosure of the personal affairs information is unreasonable in the particular circumstances of this matter, I have given weight to the following factors:<sup>4</sup>

(a) The nature of the personal affairs information

The personal affairs information exempted by the Agency to which this review relates is the name and telephone number of a third party. I consider this information is sensitive and personal in nature.

I acknowledge the Applicant knows the address of the third party or the address of a property owned by the third party. However, even where an applicant claims to know the identity of a third party, disclosure of their personal affairs information in a document under the FOI Act may still be unreasonable in the circumstances.<sup>5</sup>

The personal affairs information was collected by the Agency in the course of carrying out its regulatory and law enforcement functions in relation to the regulation of domestic animals. In other circumstances, the Agency would not have had an authorised purpose for collecting and recording the personal affairs information. On balance, I consider these factors weigh against disclosure.

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<sup>2</sup> Section 33(9).

<sup>3</sup> *Re Page v Metropolitan Transit Authority* (1988) 2 VAR 243 at 245-6.

<sup>4</sup> *Ibid.*

<sup>5</sup> *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 at [58].

(b) The extent to which the information is available to the public

The personal affairs information in the format sought by the Applicant is not available in the public domain. This factor weighs against disclosure.

(c) The circumstances in which information was obtained by the Agency

The information was obtained by the Agency in the course of carrying out its regulatory and law enforcement functions including under section 18 of the *Domestic Animals Act 1994* (Vic) (**Domestic Animals Act**) under which it is required keep a register of all domestic dogs and cats residing within the municipality.

I am of the view third parties, who provide their personal affairs information to the Agency, do so on the understanding it is collected for the purpose of the Agency carrying out its regulatory and law enforcement functions. I consider it is reasonably likely the individuals who provided this information to the Agency, would not expect their personal affairs information would be disclosed by the Agency under the FOI Act as a matter of course.

In this regard, I have also taken into account the nature of disclosure under the FOI Act, which provides for unrestricted and unconditional access to information.<sup>6</sup> As such, once a document is disclosed under the FOI Act, an applicant is free to use or further disclose the information as they choose to do so.<sup>7</sup>

On balance, these factors weigh against disclosure given the relevant information sought is the personal affairs information of a third party.

(d) The Applicant's interest in the information and whether their purpose for seeking the information is likely to be achieved

The FOI Act provides a general right of access that can be exercised by any person, regardless of their motive or purpose for seeking access to a document. However, the reasons why an applicant seeks access to a document is a relevant consideration in determining whether disclosure would be unreasonable.<sup>8</sup>

On the information before me, I understand the incident involving the Applicant's dog and the third party's dog resulted in [redacted – details of incident]. I acknowledge the incident has had a significant impact upon the Applicant and, no doubt, other members of their family.

During the review, the Applicant stated, '[w]e require these details to fully ascertain our legal rights in relation but not limited to compensation and/or cost recoveries'.

I acknowledge the Applicant's interest in obtaining access to the information is to pursue potential civil legal action against the third party dog owner. However, this is one factor and must be weighed against other relevant factors in an 'attempt to reconcile two important, but competing, objectives: the public interest in disclosure and the personal interest of privacy'.

It is unclear whether the Applicant's purpose for seeking the personal affairs information is likely to be achieved by disclosure. Accordingly, I consider this factor neither weighs in favour or against disclosure.

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<sup>6</sup> *Victoria Police v Marke* [2008] VSCA 218 at [104].

<sup>7</sup> *Victoria Police v Marke* [2008] VSCA 218 at [66].

<sup>8</sup> *Victoria Police v Marke* [2008] VSCA 218 at [104].

(e) Whether any public interest would be promoted by the release of the information

I acknowledge the impact of the alleged incident on the Applicant and the reasons behind seeking access to the personal affairs information. However, I am not satisfied there is any public interest that would be promoted by the disclosure of the third party's personal affairs information to the Applicant.

Maintaining the confidentiality of personal information individuals voluntarily provide to the Agency in such matters is essential for the Agency to continue to receive and act upon such information.

In this case, for example, information provided by the Agency during the review indicates its investigation resulted in the Agency taking relevant law enforcement action against the third party dog owner.

As such, I am of the view there is a broader public interest in individuals voluntarily providing their personal information to the Agency which allows for the Agency to carry out its regulatory and law enforcement functions efficiently and effectively.

On balance, I consider this broader public interest outweighs the Applicant's personal interest in the information. Therefore, this factor weighs against disclosure.

(f) Whether any individuals to whom the information relates object, or would be likely to object to the release of the information

The Agency attempted to contact the third party to obtain their views on the disclosure of their personal affairs information. The third party did not respond to the Agency's communications.

Accordingly, this factor neither weighs in favour or against disclosure.

(g) The likelihood of further disclosure of the information, if released

As stated above, the FOI Act does not impose any conditions or restrictions on an applicant's use of documents disclosed under the FOI Act. Accordingly, it is necessary to consider the likelihood and potential effects of further dissemination of the third party's personal affairs information if released.

While there is no information before me to suggest the information will be widely disseminated by the Applicant, I consider it is reasonably likely the personal privacy of the third party dog owner will be impacted should their personal affairs information be disclosed. Accordingly, I am satisfied this factor weighs against disclosure.

(h) Whether disclosure of the information would or would be reasonably likely to, endanger the life or physical safety of any person

I am also required under section 33(2A) to consider whether disclosure of the personal affairs information would, or would be reasonably likely, to endanger the life or physical safety of any person. The term 'any person' is broad and extends to any relevant endangerment involving the safety of an applicant, a related third party or any other person.

On the information before me, I am of the view there are reasonable grounds to consider concerns exist in relation to the impact of disclosure on the safety of persons involved in this matter. While I am unable to ascertain the extent of the relevant concerns, given the

circumstances of this matter, I have erred on the side of caution and I am satisfied this factor weighs against disclosure.

16. In balancing the above factors, I am satisfied it would be unreasonable to disclose the personal affairs information of the third party, being their name and telephone number, in the document. Accordingly, such information is exempt under section 33(1).

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

17. 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.
18. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>9</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>10</sup>
19. I have considered the effect of deleting irrelevant and exempt information from the documents in accordance with section 25. As the Agency has already done so, I am satisfied it is practicable to provide the Applicant with an edited copy of the document with such information deleted.

#### ***Conclusion***

20. On the information before me, I am satisfied the personal affairs information of a third party individual is exempt under section 33(1).
21. As I am satisfied it is practicable to delete the exempt information from the document, I have granted access to the document in part with the name and telephone number of the third party deleted in accordance with section 25.

#### ***Review rights***

22. If the Applicant 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>11</sup>
23. Any such application must be made within 60 days from the date the Applicant receives this Notice of Decision.<sup>12</sup>
24. Information about how to apply to VCAT is available 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.
25. The Agency is required to notify the Information Commissioner in writing as soon as practicable if the Applicant applies to VCAT for a review of my decision.<sup>13</sup>
26. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

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<sup>9</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>10</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>11</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>12</sup> Section 52(5).

<sup>13</sup> Sections 50(3F) and (3FA).