

Notice of Decision and Reasons for Decision

Applicant:	'CE1'
Agency:	Mount Alexander Shire Council
Decision date:	30 September 2020
Exemption and provision considered:	Sections 33(1), 25
Citation:	'CE1' and Mount Alexander Shire Council (<i>Freedom of Information</i>) [2020] VICmr 286 (30 September 2020)

FREEDOM OF INFORMATION – council documents – work permit – personal affairs information – disclosure not unreasonable

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.

I am not satisfied the document is exempt in full under section 33(1).

As I am satisfied it is practicable to provide the Applicant with an edited copy of the document with exempt or irrelevant information deleted in accordance with section 25, I have determined to grant access to the document in part.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
30 September 2020

Reasons for Decision

Background to review

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

The works permit granted for “Minor” works on the verge of [address].

2. In its decision, the Agency identified a document falling within the terms of the Applicant’s request and refused access to the document under section 33(1) in full. The Agency’s decision letter sets out the reasons for its decision.

Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency’s decision to refuse access.
4. The Applicant advised they do not seek access to any personal affairs information in the document and would be willing to receive a copy of the document with such information deleted. The personal affairs information in the document is therefore irrelevant and is to be deleted in accordance with section 25.
5. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
6. I have examined a copy of the document subject to review and considered all relevant communications received from the parties in relation to this review.
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.
8. I note Parliament’s intention the FOI Act must be interpreted so as to further the object of the Act and any discretions conferred by the Act must be exercised, as far as possible, so as to facilitate and promote the disclosure of information in a timely manner and at the lowest reasonable cost.

Preliminary view

9. On [date], OVIC staff provided my preliminary view to the Agency.
10. In doing so, OVIC staff noted that, in the Agency’s submission dated [date], it advised the document was refused in full on the basis providing the document in part would still confirm the address of a third party, as the original request specified the address in question.
11. My preliminary view was, by confirming the existence of a document specifying an address in the Applicant’s request, the Agency had already disclosed the address of a third party and therefore section 33(1) cannot be relied upon to refuse access to the document in full. In this instance, the exemption under section 33(1) is correctly applied to the name of the permit holder on the first page only. The Agency was provided with an opportunity to respond.

Review of exemptions

Section 33(1)

12. 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.

Do the documents contain the personal affairs information of individuals other than the Applicant?

13. Information relating to an individual's personal affairs includes information that identifies any person or discloses their address or location. It also includes any information from which such information may reasonably be determined.²
14. The document contains the following personal affairs information: the name and address of the permit holder, the name of the contractor, and the name of the council's authorised officer. The Applicant does not seek access to this information.
15. As described above, the Agency contends the document cannot be released with personal details redacted as it will reveal the address of the works. However, my view is that by advising through its decision letter that a relevant document exists, the Agency has already revealed a minor works permit exists for that address.
16. Therefore, the decision before me is whether:
- (a) disclosure of the document, in part, even with all personal affairs information deleted, would disclose the personal affairs information of another person (being their address); and
 - (b) whether that disclosure would be unreasonable.
17. I agree disclosure of the document would confirm a minor works permit was issued to the address of a third party nominated by the Applicant. Therefore, I must consider whether disclosure would be unreasonable in the circumstances.
18. In my view, it would not be unreasonable to disclose the document with personal affairs information deleted for the following reasons:
- (a) while the Applicant is aware of the address, it will not be disclosed on the document as this information is irrelevant to the request;
 - (b) the Agency has already disclosed the existence of the document;
 - (c) while I note the third party concerned objects to its disclosure, the document does not contain sensitive personal affairs information; rather it relates to minor works to a road reserve; and
 - (d) in these circumstances I consider the public interest in disclosure weighs in favour of the release of the document in part.
19. Therefore, I have decided the document is not exempt in full under section 33(1).

¹ Sections 33(1) and (2).

² Section 33(9).

Deletion of exempt or irrelevant information

20. 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.
21. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'³ 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 25.⁴
22. I have considered the effect of deleting irrelevant information in the document in accordance with section 25. I am satisfied it is practicable to delete the irrelevant information, as to do so would not require substantial time and effort, and the edited document would retain meaning.

Conclusion

23. On the information before me, I am satisfied the document is exempt in part under section 33(1).
24. As I am satisfied it is practicable to delete the irrelevant information in the document, I have determined to grant access to the document in part.
25. The document is to be released with the following irrelevant information deleted in accordance with section 25:
 - (a) the name and address of the addressee;
 - (b) the name of the contractor and insurer;
 - (c) the address of the 'location'; and
 - (d) the name of the council's authorised officer.

Review rights

26. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.⁵
27. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁶
28. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁷
29. 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.
30. 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.⁸

³ *Mickelburgh 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].

⁴ *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].

⁵ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁶ Section 52(5).

⁷ Section 52(9).

Third party review rights

31. As I have determined to release a document that contains the personal affairs information of an individual other than the Applicant, if practicable, I am required to notify that person of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.¹
32. In considering the meaning of 'practicable' in relation to other sections of the FOI Act, VCAT has stated the following:

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.¹

33. VCAT also considers the possibility of an unnecessary intrusion into the lives of third parties is relevant when assessing the practicability of notifying them.¹
34. Given the third party was consulted in relation to their views on disclosure and objects to the disclosure of their personal affairs information, as referred to above, in these circumstances, I have determined it is practicable to notify them of their review rights.

When this decision takes effect

35. Accordingly, my decision does not take effect until the third parties' 60 day review period expires, or if an application for review is made to VCAT, until the matter is concluded.

⁸ Sections 49P(5), 50(3) and 52(3).