

Notice of Decision and Reasons for Decision

Applicant:	'CF6'
Agency:	City of Boroondara
Decision date:	27 October 2020
Exemptions considered:	Sections 33(1), 35(1)(b)
Citation:	'CF6' and City of Boroondara (<i>Freedom of Information</i>) [2020] VICmr 300 (27 October 2020)

FREEDOM OF INFORMATION – council documents – complaint – personal affairs information – unreasonable disclosure – information communicated in confidence – contrary to the public interest – impair ability to obtain similar information in the future

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 differs from the Agency's decision in that I have decided to release additional information in the documents.

I am not satisfied certain information in the documents is exempt under sections 33(1) or 35(1)(b).

However, I am satisfied certain personal affairs information of third parties is exempt under section 33(1), certain information provided in confidence is exempt under section 35(1)(b) and information deleted by the Agency as irrelevant does not relate to the terms of the Applicant's request.

Where I am satisfied it is practicable to delete irrelevant or exempt information in a document in accordance with section 25, I have determined to grant access to that document 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

27 October 2020

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to certain documents. Following consultation with the Agency, the Applicant amended their initial request.
2. The amended request sought access to the following documents:

Preliminary

1. In this request:

Council means the Council of the City of Boroondara;

File means the file identified as [file number];

Property means [address];

Document means any record of information, and includes:

- anything on which there is writing;
- anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and
- a map, plan, drawing or photograph.

2. I seek access to the following documents, dated/created between [date] and [date]:

- (a) Each and every document forming part of the File, referring to the file or referring to the property, created, annotated, marked, edited or modified by:

- (i) [name];

- (ii) [name];

- (iii) [name];

- (iv) [name]; or

- (v) Any other officer in the [named] Department

- (b) Documents provided by any one or more of [name], [name] or [name] to the [named] Department which refer to the File or the property.

- (c) Documents provided by the [named] Department to any one or more of [name], [name] or [name] which refer to the File or the property.

- (d) Any file note of any telephone call, discussion, conversation or meeting attended by any one or more of:

- (i) [name];

- (ii) [name]; and

- (iii) [name],

of the one part, and:

- (i) [name];
- (ii) [name];
- (iii) [name];
- (iv) [name]; or
- (v) Any other officer in the [named] Department

- (e) A copy of any letter, email, report, memorandum, note, file note, notice, order, or any other document referring to:
 - (i) the inspection of the Property that occurred on [date];
 - (ii) the inspection of the Property that occurred on [date]; and
 - (iii) the inspection of the Property that occurred on [date]

3. The Agency identified 40 documents falling within the terms of the Applicant's request and granted access to 10 documents in full and four documents in part, and refused access to 13 documents in full. The Agency released 13 documents outside the FOI Act.
4. The Agency relied on the exemptions under sections 31(1)(c), 33(1) and 35(1)(b) to refuse access to certain information in the documents. The Agency's decision letter sets out the reasons for its decision.

Review

5. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access to certain information in the documents.
6. I have examined a copy 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) the Applicant's submission dated [date] and information provided with their review application;
 - (c) the Agency's submission dated [date]; and
 - (d) all other communications between the Applicant, the Agency and OVIC staff.
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.

10. I also 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.

Agency's submission

11. In addition to the reasons set out in its decision letter, the Agency made a submission setting out reasons for exempting certain information in the documents from release under sections 31(1)(c), 33(1) and 35(1)(b). A summary of the reasons follows:
- (a) Whilst the Applicant may be aware of a complainant's identity, disclosure of their correspondence with the Agency or disclosure of their personal affairs information in documents would involve the unreasonable disclosure of the complainant's personal affairs, and would impair the Agency's ability to obtain similar information in the future.
 - (b) The complaint and complainant's details were provided to the Agency in confidence.
 - (c) The Agency has not directly disclosed any personal details of the complaint to the Applicant.
 - (d) It is not appropriate for the Agency to release confidential interactions between its officers and complainants where the communication relates to the Agency 'discharging its obligations to the community'.
 - (e) While the Agency acknowledges the Applicant's personal interest in obtaining access to the information, there are no broader public interest considerations supporting release of the information to the Applicant.
 - (f) If the Agency disclosed the identity and interactions between a complainant and Agency officers, it would impair the Agency's ability to receive similar information in future, as complainants may fear their names and identifying information would be disclosed, which would hinder the agency's enforcement activities.
 - (g) The Agency has a duty to follow up complaints and information provided by members of the public.
 - (h) Disclosure of the personal affairs information of the relevant third parties would cause those individuals undue distress and anxiety.

Applicant's submission

12. The Applicant provided a detailed submission setting out their view the Agency made an error and misapplied the law. Some of the key points raised by the Applicant in their submission include:

The application of s. 31(1)(c) of the Act to the Disputed Documents

... the correct and preferable decision in respect of s. 31(1)(c) of the Act is that:

- (a) neither [named person] or [named person] are a 'confidential source of information' within the meaning of s. 31(1)(c) of the Act; and
- (b) as a consequence of the above, s. 31(1)(c) of the Act has no application to the Disputed Documents insofar as their release would disclose the identity of [named person] or [named person].

... is not a 'confidential source of information' within the meaning of the Act. This is patently the case given that:

- (a) on the date correspondence was first received by the Council, [named person] stated to [the Applicant] that [they] had provided information to the Council; and
- (b) by disclosing the fact that [they] provided information to Council to [the Applicant] on the same day such information was provided to the Council [named persons]:
 - (i) did not consider that such information was to be subject to an obligation of confidentiality by Council;
 - (ii) waived whatever obligations of confidentiality were owed by Council by acting a manner inconsistent with the maintenance of confidence in respect of that information; and
 - (iii) in the premises, ceased being a 'confidential source of information' within the meaning of s. 31(1)(c) of the Act. [sic]

...if such information were communicated to Council in confidence, then the significance of that fact is entirely lost once [named person] or [named person] disclosed the fact of [their] communications (and thus waived any duty of confidentiality that was owed in respect to those communications).

The application of s. 33(1) of the Act to the Disputed Documents

...

As to those matters relied upon by Council, they are ill-considered, misconceived and of little weight for the following reasons:

- (a) Council relies upon an assertion that the Disputed Documents contain personal affairs information provided to it in confidence. That assertion is plainly wrong in the circumstances in respect to any personal information of [named person] or [named person] because each of them has disclosed their personal affairs information to [the Applicant] (and thus such information loses its quality of confidentiality) as described above.
- (b) Council asserts more broadly that the entirety of the information provided to it was in confidence. That is plainly an irrelevant consideration in respect of s. 33(1) of the Act which is concerned only with personal affairs information and not other kinds of information.
- (c) Council has asserted that it considers disclosure of the Disputed Documents would amount to disclosure to the world at large. It does so without regard to any particular facts or circumstances and, in that regard, it has misapplied the law and its views are contrary to binding authority being *Marke v Victoria Police* [2007] VSC 522 ...
- (d) ... the Council's error is compounded by the fact there are no facts or matters suggesting that release of the Disputed Documents to [the Applicant] would result in their dissemination to the world at large. To the extent the Council has concluded otherwise, it has done so based on an impermissible underlying assumption rather than the particular facts before it, this is squarely in conflict with the Court's reasons in *Marke v Victoria Police* (being reasons that were binding on the Council and are binding on the Commissioner in deciding this application).
- (e) The facts and matters set out under the heading 'Whether the individual the subject of the information would wish to have such information disclosed' ought to be given little or no weight in this case to the extent such individuals are [named person] or [named person]. This is because, although they may not wish for their personal affairs information to be disclosed by Council, such disclosure is of no substance given that they have clearly identified themselves as the complainants to Council in communications with [the Applicant]. To now assert that they do not wish [the Applicant] to know that information is of no significance.
- (f) Council asserts that it would be against the public interest to disclose personal affairs information as that may impair Council's ability to obtain information from other complainants in future. That is plainly an irrelevant consideration in the context of s. 33(1) of the Act and is properly relevant only to the application of s. 35(1)(b) of the Act.

- (g) The facts and matters set out under the heading 'public interest against disclosure' have no relevance to the application of s. 33(1) of the Act. Section 33(1) of the Act does not require one to consider any 'public interest' as articulated by the Council and those matters referred to under the heading are properly relevant only to the application of s. 35(1)(b) of the Act.

The application of s. 35(1)(b) of the Act to the Disputed Documents

...

... it is clear that to the extent s. 35(1)(b) of the Act has been applied to exempt the disclosure of information provided by [named person] or [named person], that is wrong given such information either:

- (a) was not communicated to the Council in confidence; or
- (b) whatever duty or obligation of confidentiality was owed by the Council in respect of that information was waived by the disclosure of the substance of the information provided to [the Applicant].

...

Furthermore, even accepting the assertions of Council at face value, the matters relied upon fell well short of what is required by s. 35(1)(b) of the Act because:

- (a) the matter refers to, at best, an ill-defined and asserted fear that there would be a lack of frankness and candour by the public in dealing with Council; and
- (b) as noted in *Medical Practitioners Board v Sifridi*, there is no impairment of an agency's ability to obtain similar information in the future where the facts go no further than demonstrating a risk of there being less frankness or candour in providing information to an agency.

Similarly, the Commissioner would fall into error were he to adopt reasoning analogous to that of the Council given the total lack of any, let alone relevant, evidence as to the impairment that would arise should the Disputed Documents be released.

...

Review of exemptions

Section 35(1)(b)

13. A document is exempt under section 35(1)(b) if two conditions are satisfied:
- (a) disclosure would divulge information or matter communicated in confidence by or on behalf of a person or a government to an agency or a Minister; and
- (b) disclosure would be contrary to the public interest as it would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.
14. In summary, section 35(1)(b) is concerned with protecting the public interest in the free flow of information provided in confidence between an individual and an agency.

Was the information or matter communicated in confidence?

15. When determining whether information was communicated to an agency in confidence, it is necessary to consider the position from the perspective of the communicator.¹ Further, confidentiality can be expressed or implied from the circumstances of the matter.²

¹ *XYZ v Victoria Police (General)* [2010] VCAT 255 at [265].

² *Ibid.*

16. In summary, the documents concern an enquiry made and information provided to the Agency by a third party regarding a [specified structure] on the Applicant's property, and further action taken by the Agency following receipt of the enquiry and information. As such, I will refer to the enquiry and information provided to the Agency as a 'complaint'.
17. From my review of the documents, there is nothing on the face of the documents to indicate the complaint was made to the Agency in confidence. However, a document does not need to be marked 'confidential' for its contents to be considered to have been communicated in confidence.³ Confidentiality can be express or implied from the circumstances of a matter.⁴
18. When determining whether information provided to an agency was communicated in confidence, it is necessary to consider the position from the perspective of the communicator.⁵
19. I have carefully considered the information in the documents subject to review, in particular, from the perspective of the person who communicated the information. I will refer to this person as the 'complainant'.
20. For section 35(1)(b) to apply, I must be satisfied the information was communicated to the Agency by the complainant in circumstances that would give rise to an expectation of confidentiality, and that its disclosure would be contrary to the public interest.
21. I note the Applicant's submission certain information concerning the complaint was disclosed to the Applicant by a third party. However, having reviewed the documents and information provided by the Applicant and the Agency, I am satisfied the complainant communicated to the Agency in circumstances in which confidentiality can reasonably be implied based on the nature and context of the complaint.
22. I consider complaints made to a local government agency are generally communicated with an expectation the agency will not disclose a complainant's name or any information that would identify them, in particular to the party the subject of the complaint. This is particularly so given local government agencies have powers to investigate non-compliance or possible non-compliance with building and planning legislation and local laws, and take necessary regulatory and enforcement action against a party found to be not complying with a relevant law.
23. Having reviewed the documents, I am satisfied certain information in the documents was provided to the Agency in confidence. However, certain information details the general nature of the complaint and action taken by the Agency. I am not satisfied this information was communicated in confidence for the purposes of section 35(1)(b). Therefore, information of this kind does not meet the first limb of section 35(1)(b) and is not exempt.

Would disclosure be contrary to the public interest as it would be reasonably likely to impair the ability of the Agency to obtain similar information in the future?

24. The second condition requires I must be satisfied, if the information were to be disclosed, it would impair the ability of the Agency to obtain similar information in the future. For example, others in the position of the communicator or communicators would be reasonably likely to not provide similar information to the Agency in the future.
25. The public interest test in section 35(1)(b) is narrow, in that it is directed toward the impact release would have on an agency's ability to obtain the same type of information in the future. I note the

³ *Williams v Victoria Police* [2007] VCAT 1194 at [75].

⁴ *Ibid.*

⁵ *Ibid, XYZ* at [265].

exemption will not be made out if an agency's impairment goes no further than showing potential communicators of the information may be less candid than they would otherwise have been.⁶

26. Further, the exemption does not permit me to have regard to other matters, such as any public interest in favour of release, or the extent to which an applicant's personal interest in the document may be served by granting access to the documents.
27. The Agency's statutory functions require it to administer and ensure compliance with certain legislation and local laws. I accept the Agency relies on information provided by third parties and complainants on a voluntary basis, often in the form of a complaint, in order to carry out its regulatory and enforcement functions. Such information provided to the Agency will, by its very nature and context, often be sensitive and confidential from the perspective of the complainant.
28. I am of the view, if details of complainants were to be routinely released under the FOI Act, individuals would be deterred from providing complaint related information to the Agency in the future. In my view, the resultant impairment for the Agency and the community would go beyond a trifling or minimal impairment.⁷ I consider it would compromise the Agency's ability to receive and investigate complaints and thereby, interfere with its ability perform its regulatory and enforcement functions.
29. While I acknowledge the Applicant has an interest in accessing a file that contains complaint information about them, in my view, there is an essential public interest in protecting information provided by complainants in such circumstances that outweighs the Applicant's personal interest in obtaining access to the documents.
30. Therefore, I am satisfied disclosure of certain information in the documents would be contrary to the public interest as it would be reasonably likely to impair the Agency's ability to obtain similar information in the future.
31. However, as stated above, I am not satisfied all information in the documents, namely information that confirms the general nature of the complaint and details action taken by the Agency is exempt under section 35(1)(b).
32. The Schedule of Documents in **Annexure 1** sets out my decision in relation to section 35(1)(b).

Section 33(1)

33. 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;⁸ and
 - (b) such disclosure would be 'unreasonable'.

⁶ *Smeaton v Victorian WorkCover Authority* [2012] VCAT 1549, approving *Birnbauer v Inner and Eastern Health Care Network* [1999] 16 VAR 9.

⁷ *Ryder v Booth* [1985] VR 869.

⁸ Sections 33(1) and (2).

Do the documents contain personal affairs information?

34. 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.⁹
35. Personal affairs information in the documents comprises names, addresses and mobile telephone numbers relating to third party complainants. The documents also include information that discloses the nature of the complaints made and information from which a person's identity, address or location can reasonably be determined. The documents also include the names, position titles, email addresses, telephone numbers and signatures of Agency officers. I am satisfied this information is personal affairs information for the purposes of section 33(1).
36. However, in relation to information relating to the general nature of the complaint and action taken by the Agency, I do not consider this information is the personal affairs information of a third party and is not exempt under section 33(1).

Would disclosure of the personal affairs information be unreasonable?

37. The concept of unreasonable disclosure involves balancing the public interest in the disclosure of official information with the interest in protecting the personal privacy of individual other than the applicant.¹⁰
38. In determining whether disclosure of the personal affairs information would be unreasonable in the circumstances, I have given weight to the following factors.¹¹ I note in their submission, the Applicant considers certain factors are irrelevant or were incorrectly interpreted by the Agency. However, in my view, these factors are well established and accepted in determining whether disclosure of the personal affairs information would be unreasonable:

(a) The nature of the personal affairs information

I acknowledge the Applicant's submission they know the name and address of a third party.

However, even where an applicant claims to know the identity of a third party, disclosure of the third party's personal affairs information in a document by an agency under the FOI Act may still be unreasonable in the circumstances.¹²

I accept certain personal affairs information in the documents is sensitive and personal in nature. The information was collected by the Agency in the course of carrying out its regulatory and enforcement functions in relation to investigating the safety of building and [specified] structures in its local government area. In other circumstances, the Agency would not have had an authorised purpose for collecting and recording this type of personal affairs information.

The personal affairs information relating to Agency officers was recorded in the course of them performing their professional duties and responsibilities as public sector employees, including the handling of complaints.

⁹ Section 33(9).

¹⁰ *Re Page v Metropolitan Transit Authority* (1988) 2 VAR 243 at 245-6.

¹¹ *Ibid.*

¹² *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.

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

The information was obtained by the Agency in connection with its regulatory and enforcement functions. In such circumstances, I am of the view the complainant provided their personal affairs information to the Agency on the understanding it was being collected for the purpose of the Agency carrying out its functions. I consider it is reasonably likely the complainant would not expect their personal affairs information in the documents would be disclosed by the Agency under the FOI Act.

(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.¹³

During the review, the Applicant indicated they seek access to the documents to determine whether they will pursue further action against the Agency in relation to the way it conducted its investigation into the complaint.

I acknowledge the Applicant's interest in obtaining access to the information. However, this factor must be weighed against other relevant factors in an attempt to reconcile two important, but competing, objectives: the public interest in disclosure of information and the interest in protecting a third party's personal privacy.

On the information before me, I am unable to determine whether the Applicant's purpose for seeking access to the personal affairs information is likely to be achieved by disclosure.

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

As stated above, I acknowledge the Applicant's purpose for seeking access to the personal affairs information. However, I am not satisfied any public interest would be promoted by the disclosure of the complainant's personal affairs information to the Applicant.

Maintaining the confidentiality of 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 accordance with its regulatory and enforcement functions under relevant legislation and local laws.

Accordingly, I am of the view there is a broader public interest in members of the public being able to voluntarily provide their personal affairs information and make complaints to the Agency on a confidential basis which facilitates the Agency's ability to carry out its regulatory and enforcement functions efficiently and effectively.

On balance, I consider this broader public interest outweighs the Applicant's personal interest in the information. I am also not satisfied any public interest would be promoted by the disclosure of an Agency officer's personal affairs information in the particular documents.

¹³ *Victoria Police v Marke* [2008] VSCA 218 at [104].

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

The Agency advised it consulted with relevant third parties, as required under the FOI Act, and they objected to the release of their personal affairs information in the documents subject to review.

The Agency also consulted with Agency officers and certain of officers objected to the release of their personal affairs information and other officers did not provide a response.

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

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 complainants will be impacted should their personal affairs information be disclosed.

- (g) 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 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.¹⁴ There is no information before me to indicate this is a relevant factor.

39. In weighing up the above factors, on balance, I am satisfied it would be unreasonable to disclose the personal affairs information of third parties in the documents. In particular, I consider there is a broader public interest in individuals being able to voluntarily provide their personal affairs information to the Agency on a confidential basis which ensures the Agency is able to carry out its regulatory and enforcement functions. Accordingly, I am satisfied such information is exempt under section 33(1).
40. However, I am not satisfied it would be unreasonable to release the names and position titles of Agency officers who were directly involved or had responsibility for the handling of the complaint and any enforcement action taken. I consider this information reveals details of Agency officers merely performing their professional duties or responsibilities as public sector employees and does not relate to matters concerning their personal or private life. However, I have determined it would be unreasonable to release their telephone number and email addresses as this information is not generally available to the public. Nor do I consider any public interest would be promoted by its release in this case.
41. This view is consistent with the Victorian Supreme Court of Appeal decision of *Victoria Police v Marke* in which the Court held there is 'no absolute bar to providing access to documents which relate to the personal affairs of others', the personal privacy exemption 'arises only in cases of unreasonable disclosure', and '[w]hat amounts to unreasonable disclosure of someone's personal affairs will necessarily vary from case to case'.¹⁵

¹⁴ Section 33(2A).

¹⁵ [2008] VSCA 218 at [76].

42. My decision in relation to section 33(1) is set out in the Schedule of Documents at **Annexure 1**.

Section 31(1)(c)

43. In light of my decision certain information in the documents is exempt under sections 33(1) and 35(1)(b), it is not necessary for me to consider the application of section 31(1)(c) to the same documents.

Deletion of exempt or irrelevant information

44. 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.

45. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹⁶ 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 25.¹⁷

46. I have considered the information the Agency deleted from the documents as irrelevant. I am satisfied it falls outside the scope of the Applicant's request as it falls outside the terms of their request.

47. I have considered whether it is practicable to provide the Applicant with an edited copy of the documents with irrelevant and exempt information deleted from the documents in accordance with section 25. I am satisfied it is practicable to delete certain irrelevant and exempt information, as to do so would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

48. On the information before me, I am not satisfied certain information in the documents is exempt under sections 33(1) and 35(1)(b).

49. However, I am satisfied certain personal affairs information of third parties is exempt under section 33(1), certain information provided in confidence is exempt under section 35(1)(b) and information deleted by the Agency as irrelevant does not relate to the terms of the Applicant's request.

50. Where I am satisfied it is practicable to delete irrelevant or exempt information in a document in accordance with section 25, I have determined to grant access to that document in part.

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

Review rights

52. 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.¹⁸

53. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁹

¹⁶ *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].

¹⁷ *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].

¹⁸ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁹ Section 52(5).

54. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.²⁰
55. 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.
56. 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.²¹

Third party review rights

57. As I have decided to release information in the documents relating to the personal affairs information of third parties, if practicable, I must notify those persons of their right to apply to VCAT for a review of my decision to disclose their personal affairs information.²²
58. As I am satisfied it is practicable to notify the relevant third parties of their review rights, they will be notified of my decision and their right to apply to VCAT for a review²³ within 60 days from the date they are given notice of my decision.²⁴

When this decision takes effect

59. For that reason, my decision does not take effect until the 60 day review period for third parties expires.
60. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

²⁰ Section 52(9).

²¹ Sections 50(3F) and (3FA).

²² Section 49P(5).

²³ Section 50(3).

²⁴ Section 52(3).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1.	[date]	Internal allocation form	2	Released in part Sections 31(1)(c), 33(1), 35(1)(b)	Release in part Sections 33(1), 25 The document is to be released with the following information deleted in accordance with section 25, as it is exempt under section 33(1): <ul style="list-style-type: none"> the handwritten sentence at the bottom of the first page. 	<p>Section 33(1): The personal affairs information in this document comprises information from which a person's identity can reasonably be determined. I have determined it would be unreasonable to release this information as:</p> <ul style="list-style-type: none"> I am of the view, given the context in which it was recorded, the information is sensitive in nature as it relates to a complaint; the individual(s) concerned have objected to the release of their personal affairs information; and I do not consider there is any broader public interest that would be promoted by release of the information. <p>Accordingly, I am satisfied this type of information is exempt under section 33(1).</p> <p>Section 35(1)(b): As I have</p>

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p>determined certain information is exempt under section 33(1), it is not necessary to consider the application of section 35(1)(b) with respect to this document.</p> <p>Section 31(1)(c): As I have determined certain information is exempt under section 33(1) it is not necessary to consider the application of section 31(1)(c) with respect to this document.</p>
2.	[date]	Correspondence – 1 – Email to Agency	1	<p>Refused in full</p> <p>Sections 31(1)(c), 33(1), 35(1)(b)</p>	<p>Refuse in full</p> <p>Sections 33(1), 35(1)(b)</p>	<p>Section 33(1): I am satisfied information relating to the complainant and the detailed description of the complaint comprises the personal affairs information of a third party and its disclosure would be unreasonable. Accordingly, I am satisfied this type of information is exempt under section 33(1). Refer to comments for Document 1.</p> <p>Section 35(1)(b): I am satisfied information relating to the complainant and the detailed description of the complaint was provided to the Agency</p>

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p>with an expectation the complainant's confidentiality would be maintained. If details of complaints and complainants were to be routinely released under FOI, individuals would be deterred from providing complaint information to the Agency which I am satisfied would impair its ability to fully investigate complaints and perform its regulatory and enforcement statutory functions. Accordingly, I am satisfied this type of information is exempt under section 35(1)(b).</p> <p>Section 31(1)(c): Refer to comments for Document 1.</p>
3.	[date]	Correspondence – 2 – Email to Agency	1	<p>Refused in full</p> <p>Sections 31(1)(c), 33(1), 35(1)(b)</p>	<p>Refuse in full</p> <p>Sections 33(1), 35(1)(b), 25</p>	<p>The information in this document is duplicated in Document 2, except the reference number and Agency officer name in the top left corner of the document.</p> <p>Section 25: It is not practicable to delete the exempt information, leaving only the</p>

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency’s Decision	OVIC Decision	OVIC Comments
						<p>reference number and Agency officer name on the top left corner of the document, as this would render the document meaningless.</p> <p>Section 33(1): Refer to comments for Document 2.</p> <p>Section 35(1)(b): Refer to comments for Document 2.</p> <p>Section 31(1)(c): Refer to comments for Document 1.</p>
4.	[date]	Correspondence – Email chain	2	<p>Refused in full</p> <p>Sections 31(1)(c), 33(1)</p>	<p>Release in part</p> <p>Sections 33(1), 35(1)(b), 25</p> <p>The document is to be released with the following information deleted in accordance with section 25:</p> <ul style="list-style-type: none"> • the name of the Agency’s FOI officer on the top left corner on the first page; • information which is exempt under sections 33(1) and 35(1)(b): <ul style="list-style-type: none"> - the email received by the 	<p>The information in the email received by the Agency on [date] is a duplicate of the information in Document 2.</p> <p>Section 25: In relation to the name of the Agency’s FOI officer, who printed this document on the top left corner on the first page, this information is irrelevant to the Applicant’s request and is to be deleted in accordance with section 25.</p> <p>Section 33(1): I am satisfied information relating to the</p>

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					<p>Agency on [date]; and</p> <ul style="list-style-type: none"> - the tenth to 25th word, inclusive, in the first sentence after the salutation in the email sent on [date]; • information which is exempt under section 33(1) in the email sent on [date]: <ul style="list-style-type: none"> - the name of the recipient of the email; - the name in the salutation; - the information in the subject line; and - the Agency officer's phone number and email address. 	<p>complainant and the detailed description of the complaint comprises the personal affairs information of a third party and its disclosure would be unreasonable. Accordingly, I am satisfied this type of information is exempt under section 33(1). Refer to comments for Document 1.</p> <p>I also consider it would be unreasonable to release the telephone number and email address of an Agency officer.</p> <p>However, I do not consider it would be unreasonable to disclose the name and position title of an Agency officer named in the document for the reasons set out above in my notice of decision. Further, I am not satisfied it would be unreasonable to release certain information relating to the action taken by the Agency in response to the complaint made by a third party.</p> <p>Section 35(1)(b): Refer to comments for Document 2.</p>

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						Section 31(1)(c): Refer to comments for Document 1.
5.	[date]	Correspondence – 1 – Letter from Agency	1	Refused in full Sections 31(1)(c), 33(1)	Release in part Sections 33(1), 25 The document is to be released with the following information deleted in accordance with section 25, as is exempt under section 33(1): <ul style="list-style-type: none"> the name and address of the addressee; the fifth to 15th word in the second paragraph; and the signature of the Agency officer. 	Section 33(1): Refer to comments for Document 4. Section 31(1)(c): Refer to comments for Document 1.
6.	[date]	Correspondence – 2 – Email from Agency	1	Refused in full Sections 31(1)(c), 33(1)	Release in part Sections 33(1), 25 The document is to be released with the following information deleted in accordance with section 25, as is exempt under section 33(1): <ul style="list-style-type: none"> the name of the recipient of the 	Section 33(1): Refer to comments for Document 4. Section 31(1)(c): Refer to comments for Document 1.

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					<p>email;</p> <ul style="list-style-type: none"> the name in the salutation; and the Agency officer's phone number and email address. 	
7.	[date]	Correspondence – 3 – Letter from Agency	1	<p>Refused in full</p> <p>Sections 31(1)(c), 33(1)</p>	<p>Release in part</p> <p>Sections 33(1), 25</p> <p>The document is to be released with the following information deleted in accordance with section 25, as is exempt under section 33(1):</p> <ul style="list-style-type: none"> the name and address of the addressee; the fifth to 15th word in the second paragraph; and the signature of the Agency officer. 	<p>This document is a duplicate of the information in Document 5.</p> <p>Section 33(1): Refer to comments for Document 4.</p> <p>Section 31(1)(c): Refer to comments for Document 1.</p>
8.	[date]	Correspondence – 3 – Email chain	1	<p>Refused in full</p> <p>Sections 31(1)(c), 33(1)</p>	<p>Release in part</p> <p>Sections 33(1), 35(1)(b), 25</p> <p>The document is to be released with the following information deleted in accordance with section 25:</p>	<p>The information in the email sent by the Agency on [date] is a duplicate of the information in Document 6.</p> <p>Section 33(1): Refer to comments for Document 4.</p>

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					<ul style="list-style-type: none"> information which is exempt under sections 33(1) and 35(1)(b): <ul style="list-style-type: none"> the email received by the Agency on [date]; Information which is exempt under section 33(1) in the email sent by the Agency on [date]: <ul style="list-style-type: none"> the name of the recipient of the email; the name in the salutation; and the Agency officer's phone number and email address. 	<p>Section 35(1)(b): Refer to comments for Document 2.</p> <p>Section 31(1)(c): Refer to comments for Document 1.</p>
9.	[date]	Letter from Agency	1	Released outside of the FOI Act	Not subject to review	
10.	[date]	Internal correspondence	1	Released in part Sections 25, 31(1)(c), 33(1), 35(1)(b)	<p>Release in part</p> <p>Sections 33(1), 25</p> <p>The document is to be released with the following information deleted in accordance with section 25:</p> <ul style="list-style-type: none"> information the Agency determined 	<p>Section 25: The Agency determined certain information, namely, an email to the Agency's FOI officer on [date], does not fall within the terms of the Applicant's request. I am satisfied this information is irrelevant to the Applicant's request and is to remain deleted in accordance</p>

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					<p>is irrelevant; and</p> <p>information in the subject line in the email sent on [date], which is exempt under section 33(1).</p>	<p>with section 25.</p> <p>Section 33(1): Refer to comments for Document 1.</p> <p>Section 35(1)(b): Refer to comments for Document 1.</p> <p>Section 31(1)(c): Refer to comments for Document 1.</p>
11.	[date]	Inspection report	3	Released in full	Not subject to review	
12.	[date]	Correspondence – 1 – Email from Agency	1	<p>Refused in full</p> <p>Sections 31(1)(c), 33(1)</p>	<p>Release in part</p> <p>Sections 33(1), 25</p> <p>The document is to be released with the following information deleted in accordance with section 25, as it is exempt under section 33(1):</p> <ul style="list-style-type: none"> the name of the recipient of the email; the name in the salutation; and the Agency officer's phone number and email address. 	<p>Section 33(1): Refer to comments for Document 4.</p> <p>Section 31(1)(c): Refer to comments for Document 1.</p>
13.	[date]	Correspondence – 2 –	1	Refused in full	Release in part	Section 33(1): Refer to

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
		Letter from Agency		Sections 31(1)(c), 33(1)	<p>Sections 33(1), 25</p> <p>The document is to be released with the following information deleted in accordance with section 25, as is exempt under section 33(1):</p> <ul style="list-style-type: none"> the name and address of the addressee; and the signature of the Agency officer. 	<p>comments for Document 4.</p> <p>Section 31(1)(c): Refer to comments for Document 1.</p>
14.	[date]	Correspondence – 3 – Letter from Agency	1	<p>Refused in full</p> <p>Sections 31(1)(c), 33(1)</p>	<p>Release in part</p> <p>Sections 33(1), 25</p> <p>The document is to be released with the following information deleted in accordance with section 25, as is exempt under section 33(1):</p> <ul style="list-style-type: none"> the name and address of the addressee; and the signature of the Agency officer. 	<p>This document is a duplicate of the information in Document 13, except for one hand annotated amendment to the text and the reference number on the top left corner.</p> <p>Section 33(1): Refer to comments for Document 4.</p> <p>Section 31(1)(c): Refer to comments for Document 1.</p>
15.	[date]	Inspection report	6	<p>Released in part</p> <p>Sections 31(1)(c),</p>	<p>Release in part</p> <p>Sections 33(1), 25</p>	<p>Section 33(1): Refer to comments for Document 1.</p> <p>Section 35(1)(b): Refer to</p>

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
				33(1), 35(1)(b)	<p>The document is to be released with the following information deleted in accordance with section 25, as it is exempt under section 33(1):</p> <ul style="list-style-type: none"> the information on page one which identifies the third party individuals met on site by the Agency. 	<p>comments for Document 1.</p> <p>Section 31(1)(c): Refer to comments for Document 1.</p>
16.	[date] and [date]	Inspection report	5	Released in full	Not subject to review	
17.	[date] and [date]	Inspection report	10	Released in full	Not subject to review	
18.	[date]	Building Notice	2	Released outside the FOI Act	Not subject to review	
19.	[date]	Letter from Agency	1	Released outside the FOI Act	Not subject to review	
20.	[date]	Letter from Agency	2	Released outside the FOI Act	Not subject to review	
21.	[date]	Building Order	2	Released outside the FOI Act	Not subject to review	
22.	[date]	Email to Agency	1	Released outside	Not subject to review	

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
				the FOI Act		
23.	[date]	Internal correspondence - 1	2	Released in full	Not subject to review	
24.	[date]	Internal correspondence - 2	1	Released in part Section 25	Release in part Section 25 The document is to be released with the following information deleted in accordance with section 25: <ul style="list-style-type: none"> information the Agency determined is irrelevant. 	Section 25: Refer to comments for Document 10.
25.	[date]	File notes	2	Released in full	Not subject to review	
26.	[date]	Inspection report	7	Released in full	Not subject to review	
27.	[date]	Correspondence – Email to Agency	1	Refused in full Sections 31(1)(c), 33(1), 35(1)(b)	Refuse in full Sections 33(1), 35(1)(b)	Section 33(1): Refer to comments for Document 2. Section 35(1)(b): Refer to comments for Document 2. Section 31(1)(c): Refer to comments for Document 1.

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
28.	[date]	Internal allocation form	1	Released in full	Not subject to review	
29.	[date]	Amended Building Order	3	Released outside the FOI Act	Not subject to review	
30.	[date]	Email from Agency	1	Released outside the FOI Act	Not subject to review	
31.	[date]	Attachment to email from Agency	6	Released outside the FOI Act	Not subject to review	
32.	[date]	Attachment to email from Agency	1	Released outside the FOI Act	Not subject to review	
33.	[date]	Cancellation of Building Notice	1	Released outside the FOI Act	Not subject to review	
34.	[date]	Email to Agency	2	Released outside the FOI Act	Not subject to review	
35.	[date] and [date]	Correspondence – 1 – Email chain	1	Refused in full Sections 31(1)(c), 33(1), 35(1)(b)	Release in part Sections 33(1), 25 The document is to be released with the following information deleted in accordance with section 25:	The email sent on [date] is a duplicate of the information in Document 6. Section 25: The name of the Agency's FOI officer, who printed this document is on the

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					<ul style="list-style-type: none"> • The name of the Agency's FOI officer on the top left corner; and • Information which is exempt under section 33(1): <ul style="list-style-type: none"> - the name and email address of a third-party complainant in the email sent on [date]; - the name in the salutation; and - the Agency officer's phone number and email address. 	<p>top left corner of the document.</p> <p>I consider this information irrelevant to the Applicant's request and is to be deleted in accordance with section 25.</p> <p>Section 33(1): Refer to comments for Document 4.</p> <p>Section 35(1)(b): Refer to comments for Document 1.</p> <p>Section 31(1)(c): Refer to comments for Document 1.</p>
36.	[date]	Correspondence 2 – Email to Agency	1	<p>Refused in full</p> <p>Sections 31(1)(c), 33(1), 35(1)(b)</p>	<p>Refuse in full</p> <p>Sections 33(1), 35(1)(b)</p>	<p>Section 33(1): I consider any personal affairs information relating to the Applicant is intertwined with the personal affairs information of a third party and cannot be separated without rendering the document meaningless. Refer to comments for Document 2.</p> <p>Section 35(1)(b): Refer to comments for Document 2.</p> <p>Section 31(1)(c): Refer to comments for Document 1.</p>

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
37.	[date]	Internal meeting invitation	1	Released in full	Not subject to review	
38.	[date]	Cancellation of Building Order	1	Released outside the FOI Act	Not subject to review	
39.	Undated	Front page of file with sticker attached	1	Released in full	Not subject to review	
40.	Undated	Front page of file with sticker attached	1	Released in full	Not subject to review	