



Office of the Victorian
Information Commissioner

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Notice of Decision and Reasons for Decision

Applicant:	'CN7'
Agency:	Victorian Commission for Gambling and Liquor Regulation
Decision date:	19 January 2021
Exemption considered:	Section 35(1)(b)
Citation:	'CN7' and Victorian Commission for Gambling and Liquor Regulation (Freedom of Information) [2021] VICmr 15 (19 January 2021)

FREEDOM OF INFORMATION – complaints – information provided voluntarily – request by person being complained about

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.

My decision on the Applicant's request is the same as the Agency's decision.

I am satisfied section 35(1)(b) applies to points 6 (b) and (e) of the document.

As it is practicable to edit the document to delete irrelevant and exempt information, I have determined to grant access to the document in part.

My reasons for decision follow.

Sven Bluemmel
Information Commissioner

19 January 2021

Reasons for Decision

Background to review

1. The Applicant, via their representative, made a request to the Agency for access to the following documents:

A copy of the complaint by [third party] to the [Agency] dated [date] in relation to [named party], the [named] Hotel, the licensee of the liquor licence [number] or any occupier of the licensed premises located at [address] in the State of Victoria. 2. A copy of any written communications from [third party] to the [Agency] in relation to [named party], the [named] Hotel, the licensee of the liquor licence [number] or any occupier of the licensed premises located at [address] in the State of Victoria between the period [date] and [date].

2. In its decision, the Agency identified six documents falling within the terms of the Applicant's request. It decided to grant access to the documents in part. The Agency relied on sections 33(1) and 35(1)(b) to refuse access to parts of the documents. 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. During the review, the Applicant confirmed they seek review of the information the Agency claimed exempt under section 35(1)(b) in one document only, being correspondence dated [date].
5. I have examined 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.
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.
9. 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.

Review of exemptions

Section 35(1)(b)

10. 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.

11. The Agency advised it consulted with the third party who authored the document.
12. I note the third party did not object to a majority of their correspondence being provided to the Applicant; however, considered a small amount of the information was exempt from release under section 35(1)(b).
13. The Agency submits:
 - (a) The third party's response to its consultation indicates they considered the information was provided to the Agency as a complaint about the Applicant.
 - (b) It is common in licence applications for information from objectors that is relevant to the licence application to be provided to the parties involved, but this is not the case with complaints about licensees that are handled through the complaints process.
 - (c) The particular information in the document was communicated in confidence.
 - (d) A function of the [Agency] is to regulate the liquor industry, a part of which includes receiving and investigating complaints made voluntarily about licensed premises and liquor licensees. There is a public interest in ensuring that the [Agency] maintain its ability to receive confidential information from members of the public on a voluntary basis, such as the information the third party communicated to the [Agency]. This type of information enables the [Agency] to carry out investigation and enforcement functions.

Was the matter provided in confidence?

14. I am satisfied the information in the document was provided to the Agency in confidence for it to consider as part of its complaint handling functions.

Would disclosure impair the ability of the Agency to obtain similar information in the future?

15. I note that in this instance, most of the information sought by the Applicant has been released to them, including most of the document subject to this review. The information claimed by the Agency as exempt under section 35(1)(b) is two dot points (points 6 (b) and (e)) identifying specific compliance related concerns.
16. The Agency's statutory functions require it to administer and ensure compliance with certain legislation. I accept the Agency relies on information provided by third parties and complainants on a voluntary basis, often in the form of a complaint to carry out its regulatory 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.
17. I consider if details of complaints 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.¹ 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.
18. While I acknowledge the Applicant has an interest in accessing 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. I note that the information already released by the Agency allows the Applicant to know and understand the nature of the complaint and to respond in an informed manner.

¹ *Ryder v Booth* [1985] VR 869

19. Therefore, I am satisfied disclosure of certain information in the document 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.
20. The information identified by the Agency is therefore exempt under section 35(1)(b).

Deletion of exempt or irrelevant information

21. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable for the agency or Minister to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
22. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'² 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 25.³
23. The Applicant is not seeking personal affairs information in the document. This information is therefore irrelevant to the request.
24. I have considered the effect of deleting irrelevant and exempt information from the document. In my view, it is practicable for the Agency to delete the irrelevant and exempt information, because it would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

25. On the information available, I am satisfied section 35(1)(b) applies to part of the document, being points 6 (b) and (e) of the document.
26. As it is practicable to edit the document to delete irrelevant and exempt information, I have determined to grant access to the document in part.
27. The document is therefore to be released with irrelevant and exempt information deleted in accordance with section 25.
28. My decision on the Applicant's request is the same as the Agency's decision.

Review rights

29. 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.⁴
30. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁵
31. 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.

² *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

³ *Honeywood v Department of Human Services* [2006] VCAT 2048 [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140], [155].

⁴ Section 50(1)(b).

⁵ Section 52(5).

32. The Agency is required to notify the Information Commissioner in writing as soon as practicable if an application to VCAT for a review of my decision is made.⁶

⁶ Sections 50(3F) and (3FA).