



Office of the Victorian
Information Commissioner

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Notice of Decision and Reasons for Decision

Applicant:	'CT1'
Agency:	Western Region Water Corporation
Decision date:	4 March 2021
Exemption considered:	Section 33(1)
Citation:	'CT1' and Western Region Water Corporation (<i>Freedom of Information</i>) [2021] VICmr 64 (4 March 2021)

FREEDOM OF INFORMATION – transfer of land – property settlement documents – consent to disclose information under Freedom of Information (FOI) – third party consultation – personal affairs information – disclosure would be 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 documents requested by the Applicant under the FOI Act.

I am satisfied the documents are exempt under section 33(1).

As I am satisfied it is not practicable to provide the Applicant with an edited copy of the documents with exempt information deleted in accordance with section 25, access to the documents is refused in full.

Accordingly, my decision in this matter is the same as the Agency's decision.

My reasons for decision follow.

Joanne Kummrow

Public Access Deputy Commissioner

4 March 2021

Reasons for Decision

Background to review

1. The Applicant made an amended request to the Agency for access to:

The following documents on the phone conversation between [named third party] and an [Agency officer] in or about [month, year], about the owner of [address], the person[s] on title of the same property, accounts for the same property and settlement of the account from Western Water ('the phone conversation'):

1. Contemporaneous written record(s) of the phone conversation; and
 2. Documents that refer to what was discussed during the phone conversation.
2. The Agency identified two documents falling within the terms of the Applicant's request and refused access to both documents under the exemption in section 33(1). The Agency's decision letter sets out its reasons.

Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. I have examined copies of the documents subject to review. In summary, they relate to third party consultation with an individual undertaken on behalf of the Agency by its agent under the FOI Act.
5. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review. I note the subject matter of this request is linked to a previous FOI request made by the Applicant to the Agency.
6. I have considered all relevant communications received from the parties.
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 to further the object of the Act and that any discretions conferred by the Act must be exercised, as far as possible, to facilitate and promote the disclosure of information in a timely manner and at the lowest reasonable cost.

Review of exemptions

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' the disclosure of information relating to the 'personal affairs' of a person other than the Applicant;¹ and
 - (b) such disclosure would be 'unreasonable'.

¹ Sections 33(1) and (2).

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

10. Information relating to a person's 'personal affairs' includes, but is not limited to, information that identifies any person, or discloses their address or location. It also includes any information from which such information may be reasonably determined.²
11. Documents 1 and 2 contain the name and telephone number of a third party and the name of the Agency's agent who contacted the third party.
12. Accordingly, I am satisfied the documents contain the personal affairs information of a third party.

Would release of the personal affairs information be unreasonable in the circumstances?

13. 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 a third party in the circumstances.³
14. I adopt the view expressed by the Victorian Court of Appeal in *Victoria Police v Marke*,⁴ in which it was held there is 'no absolute bar to providing access to documents which relate to the personal affairs of others', and the exemption under section 33(1) 'arises only in cases of unreasonable disclosure' and '[w]hat amounts to an unreasonable disclosure of someone's personal affairs will necessarily vary from case to case'. Further, '[t]he protection of privacy, which lies at the heart of s 33(1), is an important right that the FOI Act properly protects. However, an individual's privacy can be invaded to a lesser or greater degree'.⁵
15. In determining whether disclosure of personal affairs information of the third party in the document would be unreasonable, I have considered the following factors in the context of this matter:

(a) The nature of the personal affairs information and the circumstances in which the information was obtained

I acknowledge the Applicant knows the name of the third party, who is named in their FOI request. However, even where an applicant claims to know the identity of a third party, disclosure of a third party's personal affairs information in a document under the FOI Act may still be unreasonable in the circumstances.⁶

The information was obtained by the Agency in carrying out its obligations under the FOI Act.

I consider certain personal affairs information in the documents is sensitive and personal in nature.

(b) The Applicant's interest in the information and whether their purpose for seeking access to 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 in the circumstances.⁷

² Section 33(9).

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

⁴ [2008] VSCA 218 at [76].

⁵ [2008] VSCA 218 at [79].

⁶ *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 at [58].

⁷ *Victoria Police v Marke* [2008] VSCA 218 at [104].

The Applicant did not provide OVIC with any reasons as to why they seek access to the personal affairs information in the documents.

In the context of an applicant seeking access to the name and contact details of a third party for the purposes of consultation under the FOI Act, I consider the Applicant's decision not to provide their reasons for seeking access is a material factor in my decision.

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

The Applicant did not provide any information as to any public interest that would be promoted by release of the personal affairs information in the documents.

In the circumstances, I am not satisfied there is a broader public interest that would be promoted by disclosure of the personal affairs information of the third parties in this instance. Rather, I consider the Applicant's interest in the information would serve a personal interest only.

Again, in the context of an applicant seeking access to the name and contact details of a third party for the purposes of consultation under the FOI Act, I consider the Applicant's decision not to provide any public interest factors for seeking access is a material factor in my decision.

(d) Whether the individuals to whom the information relates object, or would be likely to object, to the release of their personal affairs information

In its submission, the Agency advised it attempted to consult with the third party, but ultimately determined it was not practicable to do so.

While I note the third party consented to disclosure of their personal affairs information to the Applicant in a previous FOI matter, there is no information before me to confirm their views on release in this matter.

I also note the Applicant has not provided any information to show they have contact with the third party and sought their consent to seek access to their personal affairs information.

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

In determining if disclosure of a third party's personal affairs information would be unreasonable, I am required to consider whether disclosure of such information in a document would, or would be reasonably likely, to endanger the life or physical safety of any person.⁸ However, there is no information before me to suggest this is a relevant factor in this case.

16. Having weighed up the above factors, on balance, I am satisfied disclosure of the personal affairs information of third parties in the document would be unreasonable. Accordingly, I am satisfied it 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.

⁸ Section 33(2A).

18. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁹ 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 25.¹⁰
19. I have considered whether it is practicable to provide the Applicant with an edited copy of the documents with exempt information deleted in accordance with section 25. I am satisfied it is not practicable to delete the exempt information as to do so would render the documents meaningless.

Conclusion

20. On the information before me, I am satisfied the documents are exempt under section 33(1).
21. As I am satisfied it is not practicable to provide the Applicant with an edited copy of the documents with exempt information deleted in accordance with section 25, access to the documents is refused in full.

Review rights

22. If the Applicant is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.¹¹
23. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹²
24. 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.
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 decision¹³

⁹ *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].

¹⁰ *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].

¹¹ Section 50(1)(b).

¹² Section 52(5).

¹³ Section 50(3FA).