

## Notice of Decision and Reasons for Decision

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Applicant: 'EU5'  
Agency: Suburban Rail Loop Authority  
Decision date: 6 September 2022  
Exemption considered: Section 33(1)  
Citation: 'EU5' and Suburban Rail Loop Authority (Freedom of Information)  
[2022] VICmr 214 (6 September 2022)

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FREEDOM OF INFORMATION – ownership of shares by executive officers – shareholding information of executive officers – personal affairs information of a third party – documents affecting personal privacy – disclosure 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.

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

I am satisfied the personal affairs information in the documents is exempt from release under section 33(1).

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

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  
6 September 2022

## Reasons for Decision

### Background to review

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

Pursuant to the Freedom of Information Act 1982, I seek access to the following:

- Details of shares held by executive level staff of the Suburban Rail Loop Authority (SRLA)
- An index of all briefs from the Suburban Rail Loop Authority (SRLA) to Minister [named], from 1 January 2021 to the date of this request

Where a discrete document does not exist, yet the information requested could be generated in the form of a report, I request the production of a document pursuant to s19 of the Act.

Please note that personal information of non-executive staff and third parties, such as names and addresses, is not required. Accordingly, documents can be edited to redact such information.

3. In its decision letter dated 16 June 2022, the Agency identified seven documents falling within the terms of the Applicant's request and refused access to one document in part and six documents in full under sections 30(1), 33(1) and 35(1)(b).
4. The Agency's decision letter sets out the reasons for its decision.

### Review application

5. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
6. The Applicant seeks review of documents containing details of shares held by the Agency's executive level officers. Accordingly, this review relates to specific information in Documents 1 to 6.
7. I have examined a copy of the documents subject to review.
8. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
9. I have considered all communications and submissions received from the parties.
10. 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.
11. 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 33(1) – Personal affairs information of a third party***

12. A document is exempt from release 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 (a **third party**);<sup>1</sup> and
- (b) such disclosure would be 'unreasonable'.

*Do the documents contain the personal affairs information of third parties?*

- 13. Information relating to a third party'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 be reasonably determined.<sup>2</sup>
- 14. A document will disclose a third party's personal affairs information if it is capable, either directly or indirectly, of identifying that person. As disclosure under the FOI Act does not place restrictions or conditions on an Applicant's use or dissemination of a document, this is to be interpreted by the capacity of any member of the public to potentially identify a third party.<sup>3</sup>
- 15. The removal of a third party's name from a document may not necessarily remove the possibility of a third party being reidentified if a document is released under the FOI Act. This is particularly an issue where other information about a third party is publicly or otherwise available and can be used to reidentify a third party from seemingly 'deidentified' information released under the FOI Act.
- 16. Reidentification of a third party also presents as an issue where an applicant holds or has the capacity to acquire more detailed information or personal knowledge about a third party.<sup>4</sup>
- 17. The documents contain personal financial information of third parties, including whether they hold shares and the names of the relevant organisation in which the shares are held.
- 18. Therefore, I am satisfied the documents contain the personal affairs information of third parties for the purpose of section 33(1).

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

- 19. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the interest in protecting an individual's right to personal privacy in the circumstances.
- 20. In *Victoria Police v Marke*,<sup>5</sup> the Victorian Court of Appeal held there is 'no absolute bar to providing access to documents which relate to the personal affairs of others'. Further, 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'.<sup>6</sup> The Court further held, '[t]he protection of privacy, which lies at the heart of [section] 33, is an important right that the FOI Act properly protects. However, an individual's privacy can be invaded by a lesser or greater degree'.<sup>7</sup>
- 21. Whether or not an agency officer's personal affairs information is exempt from release under section 33(1) must be considered in the context of the particular circumstances of each matter.<sup>8</sup>

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

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

<sup>3</sup> *O'Sullivan v Department of Health and Community Services (No 2)* [1995] 9 VAR 1 at [14]; *Beauchamp v Department of Education* [2006] VCAT 1653 at [42].

<sup>4</sup> See for example, *Commissioner of State Revenue v Tucker (Review and Regulation)* [2021] VCAT 238 in which the FOI Applicant was an employee of the agency and sought financial information relating to the agency, agency officers and other third parties.

<sup>5</sup> [2008] VSCA 218 at [76].

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid* at [79].

<sup>8</sup> *Coulson v Department of Premier and Cabinet (Review and Regulation)* [2018] VCAT 229.

22. Therefore, it is necessary to consider ‘all matters relevant, logical and probative to the existence of conditions upon which the section is made to depend’.<sup>9</sup>
23. The Applicant was invited to make a submission as to why disclosure of the relevant personal affairs information would not be unreasonable and to provide any other relevant information as to the purpose for which the information is sought.
24. In their response, the Applicant referred to the Department of Transport’s *2020-2021 Annual Report*, specifically *Appendix 16: Additional Departmental information available on request*, which states:

In compliance with the requirements of the Standing Directions of the Minister for Finance, details in respect of the items listed below have been retained by the Department and are available on request, subject to the provisions of Freedom of Information Act 1982

....

- details of shares held by a senior officer as nominee or held beneficially in a statutory authority or subsidiary<sup>10</sup>

...

25. In determining whether disclosure of the shareholding information of the Agency’s six executive officers would be unreasonable in the circumstances, I have considered the following factors:

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

VCAT has accepted there is nothing particularly sensitive about matters occurring or arising out of the course of one’s official duties.<sup>11</sup> Subject to an agency demonstrating that special circumstances apply, it is generally not unreasonable to disclose personal affairs information of agency officers in official documents of an agency where it relates to those persons in their professional capacity.

However, the nature of the requested information concerns information concerning the financial affairs of the Agency executive officers. I accept this information is personal in nature.

I consider the obligation of a Victorian public servant to provide full disclosure when completing, what is arguably a mandatory declaration of their personal financial and non-financial interests. I also note the decision of *Garbutt v Department of Natural Resources and Environment*,<sup>12</sup> in which VCAT held that it would be unreasonable to disclose declarations as to financial interest after a person’s appointment.

The requested information was obtained by the Agency at the time of recruiting the executive officers for the purpose of conducting probity checks to ensure that any financial and other property ownership is disclosed to the Agency and considered in the context of identifying any perceived or actual conflicts of interest.

- (b) The Applicant’s interest in the information

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

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<sup>9</sup> [2008] VSCA 218 at [104].

<sup>10</sup> Department of Transport, *Annual Report: 2020-2021* (October 2021) at p 229.

<sup>11</sup> *Re Milthorpe v Mt Alexander Shire Council* (1997) 12 VAR 105.

<sup>12</sup> Unreported, VCAT, Davis M, 14 December 1998.

applicant seeks access to a document is a relevant consideration in determining whether disclosure would be unreasonable.<sup>13</sup>

I have also taken into consideration the FOI Act does not place restrictions on an applicant's use or dissemination of documents obtained under FOI, which means an applicant is free to disseminate widely or use a document disclosed to them as they choose.<sup>14</sup>

As stated above, when requested to provide information regarding the reasons for which the Applicant seeks access to the financial information of the six senior executive officers, they referred to references to this information in the Agency's annual report.

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

I acknowledge the Applicant's interest in seeking access to the document and the overall public interest in transparency and accountability in relation to identifying and managing any perceived or actual conflicts of interest for public sector employees.

I have reviewed the relevant information in the documents and note guidance published by the Victorian Public Sector Commission in relation to 'Conflict of interest guidance for organisations'.<sup>15</sup> On the information before me, I am not satisfied any public interest would be served by release of the requested personal affairs information in the documents.

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

Information in the document is not publicly available. Nor are such documents generally published or made publicly available in the case of public sector employees.

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

The Agency consulted with the relevant third parties and they objected to the release of their personal affairs information under the FOI Act.

(f) The likelihood of further disclosure of 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 Act. Accordingly, it is necessary to consider the likelihood and potential effects of further dissemination of a third party's personal affairs information if a document is released.

I have considered the likelihood of the personal affairs information being further disseminated by the Applicant, and the effects such disclosure would have on the personal privacy of the third parties given the nature of the information.

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

I must also consider whether disclosure of the personal affairs information would or would be reasonably likely to endanger the life or physical safety of any person.<sup>16</sup> The term 'any person'

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<sup>13</sup> *Victoria Police v Marke* [2008] VSCA 218 at [104].

<sup>14</sup> *Ibid* at [68].

<sup>15</sup> Victorian Public Sector Commission, *Conflict of interest guidance for organisations* at <https://vpssc.vic.gov.au/resources/conflict-of-interest-guidance-for-organisations/>.

<sup>16</sup> Section 33(2A).

is broad and extends to any relevant endangerment involving the safety of an applicant, a related third party or any other person. However, I do not consider this is a relevant factor.

26. Having weighed up the above factors, on balance, I am satisfied disclosure of the personal affairs information would be unreasonable in the circumstances.
27. In particular, I have considered the purpose for which the information was obtained by the Agency from the third parties. Namely, to identify and, if relevant, manage any perceived or actual conflicts of interest. Therefore, the documents serve a particular purpose that is managed by the Agency and the relevant information is not otherwise publicly available. The information is personal in nature in that it relates to the private financial affairs of the third parties. While I acknowledge the third parties are senior Agency executive officers, I consider there is a strong basis for protecting their personal affairs information in the absence of the need for the information to be disclosed in order to serve a public interest.
28. Accordingly, I am satisfied the personal affairs information in the documents is exempt from release under section 33(1).

#### ***Sections 30(1) and 35(1)(b)***

29. Given my decision in relation to section 33(1), it is not necessary for me to also consider the application of sections 30(1) and 35(1)(b).

#### ***Section 25 – Deletion of exempt or irrelevant information***

30. Section 25 requires an agency to grant access to an edited copy of a document where it is practicable to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
31. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’<sup>17</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>18</sup>
32. I have considered the effect of deleting exempt information from the documents, and the information the Agency deleted from the documents as irrelevant which I agree falls outside the scope of the Applicant’s request.
33. I am satisfied it is not practicable to provide the Applicant with an edited copy of the document with exempt and irrelevant information deleted in accordance with section 25, as to do so would render the documents meaningless.

#### **Conclusion**

34. On the information before me, I am satisfied the requested information in the documents is exempt from release under section 33(1).
35. As I am satisfied it is not practicable to provide the Applicant with an edited copy of the documents with exempt and irrelevant information deleted in accordance with section 25, access to the documents is refused in full.
36. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

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<sup>17</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>18</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].

## **Review rights**

37. If the Applicant is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.<sup>19</sup>
38. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>20</sup>
39. Information about how to apply to VCAT is available online 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.
40. 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.<sup>21</sup>

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<sup>19</sup> Section 50(1)(b).

<sup>20</sup> Section 52(5).

<sup>21</sup> Sections 50(3F) and 50(3FA).

Annexure 1 – Schedule of Documents –

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.	[date]	[specified officer] Declaration of Private Interest (DoPI)	15	<b>Refused in full</b> Sections 25, 30(1), 33(1), 35(1)(b)	<b>Refuse in full</b> Sections 33(1), 25	<p><b>Section 33(1):</b> I am satisfied it would be unreasonable to disclose the personal affairs information in this document for the reasons outlined in the Notice of Decision above.</p> <p><b>Sections 30(1) and 35(1)(b):</b> Where I am satisfied the document is exempt from release under section 33(1), I have not considered the application of sections 30(1) and 35(1)(b).</p> <p><b>Section 25:</b> I am satisfied it is not practicable to provide the Applicant with an edited copy of this document with exempt and irrelevant information deleted in accordance with section 25.</p>
2.	[date]	[specified officer] DoPI	17	<b>Refused in full</b> Sections 25, 30(1), 33(1), 35(1)(b)	<b>Refuse in full</b> Sections 33(1), 25	<p><b>Section 33(1):</b> See comments for Document 1.</p> <p><b>Sections 30(1) and 35(1)(b):</b> See comments for Document 1.</p> <p><b>Section 25:</b> See comments for Document 1.</p>
3.	[date]	[specified officer] DoPI	15	<b>Refused in full</b> Sections 25, 30(1), 33(1), 35(1)(b)	<b>Refuse in full</b> Sections 33(1), 25	<p><b>Section 33(1):</b> See comments for Document 1.</p> <p><b>Sections 30(1) and 35(1)(b):</b> See comments for Document 1.</p> <p><b>Section 25:</b> See comments for Document 1.</p>



Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
4.	[date]	[specified officer] DoPI	12	<b>Refused in full</b> Sections 25, 30(1), 33(1), 35(1)(b)	<b>Refuse in full</b> Sections 33(1), 25	<b>Section 33(1):</b> See comments for Document 1. <b>Sections 30(1) and 35(1)(b):</b> See comments for Document 1. <b>Section 25:</b> See comments for Document 1.
5.	[date]	[specified officer] DoPI	15	<b>Refused in full</b> Sections 25, 30(1), 33(1), 35(1)(b)	<b>Refuse in full</b> Sections 33(1), 25	<b>Section 33(1):</b> See comments for Document 1. <b>Sections 30(1) and 35(1)(b):</b> See comments for Document 1. <b>Section 25:</b> See comments for Document 1.
6.	[date]	[specified officer] DoPI	15	<b>Refused in full</b> Sections 25, 30(1), 33(1), 35(1)(b)	<b>Refuse in full</b> Sections 33(1), 25	<b>Section 33(1):</b> See comments for Document 1. <b>Sections 30(1) and 35(1)(b):</b> See comments for Document 1. <b>Section 25:</b> See comments for Document 1.