

Notice of Decision and Reasons for Decision

Applicant:	'EJ7'
Agency:	Hume City Council
Decision date:	20 April 2022
Exemption and provision considered:	Sections 33(1), 25
Citation:	'EJ7' and Hume City Council (<i>Freedom of Information</i>) [2022] VICmr 116 (20 April 2022)

FREEDOM OF INFORMATION – voice recording – audio recording – recorded telephone call – personal affairs information – resources to provide an edited copy of a document

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.

I am satisfied that certain information in the documents is exempt under section 33(1). However, I have determined to release additional information in the documents, namely the audio that relates solely to the Applicant.

As I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with exempt information deleted in accordance with section 25, access is granted 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
20 April 2022

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to:

documents on the phone call between [Name] and Council person / building department, who I requested to speak with on the [date] around [time] to [time]. I was told the call was taped.
2. The Agency identified two documents falling within the terms of the Applicant's request and refused access to both documents in full under section 33(1).
3. The Agency's decision letter sets out the reasons for its decision.

Review application

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. I have examined a copy of the documents 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 33(1) – personal affairs information of third parties

10. 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; and
 - (b) such disclosure would be 'unreasonable' in the circumstances.

Does the document contain the personal affairs information of individuals other than the Applicant?

11. Information relating to the 'personal affairs' of a person 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.¹

¹ Section 33(9).

12. The documents subject to review are audio recordings of telephone calls between the Applicant and two Agency officers.
13. I am satisfied the recordings contain information capable of identifying persons other than the Applicant, including the names and voices of Agency officers.
14. Accordingly, I am satisfied the documents contain the personal affairs information of third parties for the purpose of section 33(1).
15. The documents also contain the personal affairs of the Applicant including their voice. Where the recordings contain the Applicant's voice only, and are not intertwined with the voices of the Agency officers, I am satisfied this information is not exempt from release under section 33(1).

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

16. Determining whether disclosure of a third party's personal affairs information would be unreasonable involves balancing the public interest in the disclosure of official information held by a government agency with the interest in protecting an individual's personal privacy in the circumstances.²
17. The FOI Act does not place any conditions or restrictions on the further disclosure of a document released under the FOI Act.³
18. The proper application of section 33(1) involves consideration of 'all matters relevant, logical and probative to the existence of conditions upon which the section is made to depend'.⁴
19. Whether or not an agency officer's personal affairs information is exempt under section 33(1) must be considered in the context of the particular circumstances of each matter.⁵
20. In determining whether disclosure of the third parties' personal affairs information would be unreasonable in this matter, I have given consideration to the following factors:⁶
 - (a) the nature of the personal affairs information;
 - (b) the circumstances in which information was obtained by the Agency;
 - (c) the Applicant's interest in the information and whether their purpose for seeking the information is likely to be achieved;
 - (d) whether any public interest would be promoted by the release of the information;
 - (e) whether any individuals to whom the information relates object, or would be likely to object to the release of the information;
 - (f) the likelihood of further disclosure of the information if released;
 - (g) the likelihood disclosure would cause distress or anxiety to individuals it relates to; and
 - (h) whether disclosure of the information or would be reasonably likely to endanger the life or physical safety of any person.

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

³ *Victoria Police v Marke* [2008] VSCA 218 at [68].

⁴ [2008] VSCA 218 at [104].

⁵ *Coulson v Department of Premier and Cabinet (Review and Regulation)* [2018] VCAT 229.

⁶ *Ibid.*

21. The Agency advises it consulted with the relevant third parties regarding their views on disclosure of their personal affairs information, as required under section 33(2B) and provided a summary of their responses for my consideration. I note certain third parties objected to the release of their personal affairs information to the Applicant and one individual did not respond. The fact a person does not agree to the disclosure of their personal affairs information is a relevant consideration, but is not determinative.⁷
22. The information was acquired by the Agency in the course of the Agency officers carrying out their usual work duties and responsibilities in connection with the Agency's functions. In these circumstances, I consider the personal affairs information concerns the third parties in their professional roles rather than in their personal or private capacity.
23. 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.⁸
24. The Applicant did not provide any information as to why they seek access to the documents. Accordingly, it is unclear whether the release of the personal affairs information will assist them in fulfilling a particular purpose.
25. I am not satisfied any public interest would be served by the disclosure of the third parties' personal affairs information. Rather, I consider the public interest lies in protecting their personal privacy.
26. Having considered the Agency's submission, I am of the view disclosure of the personal affairs information in the recordings would be likely to cause the third parties distress or anxiety.
27. 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.⁹ The term 'any person' 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.
28. Having weighed up the above factors, on balance, I am satisfied disclosure of the third parties' personal affairs information in the documents would be unreasonable in the circumstances. Accordingly, I am satisfied this information is exempt from release under section 33(1). However, where the information relates solely to the personal affairs of the Applicant, I am not satisfied it is exempt under section 33(1).

Section 25 – Deletion of exempt or irrelevant information

29. 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.
30. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹⁰ 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 25.¹¹

⁷ *Marke v Victoria Police* (2007) 28 VAR 84; [2007] VSC 522 at [45], *Marke v Victoria Police* [2007] VCAT 747 at [22].

⁸ *Victoria Police v Marke* [2008] VSCA 218 at [104].

⁹ Section 33(2A).

¹⁰ *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].

¹¹ *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].

31. Having reviewed the audio recordings, I am satisfied it is practicable to grant access to an edited copy of the recordings as it will retain sufficient meaning in edited form and the effort involved in editing the documents will not be onerous from a resources point of view given the length of the recordings.
32. It is evident from this matter the Agency records telephone conversations for calls made to the Agency. In order to be able to facilitate the provision of a copy of an audio recording to a caller under the FOI Act (or outside the Act), it is necessary for the Agency to have a means of providing full or partial access to an audio recording.
33. The Agency advised it is unable to edit the recordings as it does not have editing software.
34. Professional Standard 9.1 requires an agency's principal officer to ensure their agency has the necessary resources and procedures in place to be able to meet their agency's statutory obligations under the FOI Act. This may include software or systems to enable agency officers to edit recordings or video footage requested as part of an FOI request. Access to relevant software to edit audio recordings is readily available and would involve a modest expense for the agency. Alternatively, it is open to the Agency to have a third party prepare an edited copy of the audio recordings in accordance with this decision.
35. Therefore, I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with exempt information deleted in accordance with section 25.

Conclusion

36. On the information before me, I am satisfied that certain information in the documents is exempt under section 33(1). However, I have determined to release additional information in the documents, namely the audio that relates solely to the Applicant.
37. As I am satisfied it is practicable to delete exempt personal affairs information from the documents in accordance with section 25, I have determined to grant access to the relevant recordings in part.

Review rights

38. 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.¹²
39. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹³
40. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁴
41. 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.
42. 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.¹⁵

When this decision takes effect

¹² The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹³ Section 52(5).

¹⁴ Section 52(9).

¹⁵ Sections 50(3F) and 50(3FA).

43. My decision does not take effect until the Agency's 14 day review period expires.
44. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.	[date]	Voice recording of telephone call with Applicant and Agency officer	MP4 [time]	Refused in full Section 33(1)	Release in part Sections 33(1), 25 The document is to be released except for the following information which is exempt under section 33(1) and is to be deleted in accordance with section 25: • Voice of Agency officer in the recording.	Section 33(1): I am satisfied it would be unreasonable to disclose the personal affairs information of the third party in this document for the reasons outlined in the Notice of Decision above. Section 25: I am satisfied it is practicable to provide the Applicant with an edited copy of this document with exempt deleted in accordance with section 25.
2.	[date]	Voice recording of telephone call with Applicant and Agency officer	MP4 [time]	Refused in full Section 33(1)	Release in part Sections 33(1), 25 The document is to be released except for the following information which is exempt under section 33(1) and is to be deleted in accordance with section 25: • Voice of Agency officer in the recording.	Section 33(1): See comments for Document 1. Section 25: See comments for Document 1.