

Notice of Decision and Reasons for Decision

Applicant:	'EK1'
Agency:	Stonnington City Council
Decision date:	22 April 2022
Exemptions considered:	Sections 30(1), 33(1), and 38 in conjunction with section 125 of the <i>Local Government Act 2020</i> (Vic)
Citation:	'EK1' and <i>City of Stonnington (Freedom of Information)</i> [2022] VICmr 119 (22 April 2022)

FREEDOM OF INFORMATION – council documents – planning and permits – internal emails – personal affairs information – personal affairs information of agency officers – complaint handling – secrecy provision – *Local Government Act 2020* (Vic)

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 FOI request differs to the Agency's decision.

I am satisfied certain information in the documents is exempt under sections 30(1), 33(1) and 38 in conjunction with section 125 of the *Local Government Act 2020* (Vic) (**LG Act 2020**). However, in relation to some documents, I have determined to release further information to the Applicant where I am satisfied it is not exempt and is relevant to the terms of the Applicant's request.

Where I am satisfied it is practicable to provide the Applicant with an edited copy of a document with irrelevant and exempt information deleted in accordance with section 25, I have granted access to the document in part. Where it is not practicable to do so, access 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
22 April 2022

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to certain information.
2. The Agency wrote to the Applicant in accordance with section 25(A)(6), notifying of its intention to refuse to grant access to documents in accordance with the request under section 25A(1) on grounds the work involved in processing the request would substantially and unreasonably divert the resources of the Agency from its other operations.
3. Following consultation with the Agency, the Applicant amended the scope of their request to:
 1. Documents regarding the reasons for:
 - (a) the [removal], from the Plan of Subdivision [specified housing subdivision plan], of the word 'Resident' on the goods lift in the loading dock and the word 'resident' in the private lounge at [named location]; and
 - (b) the reasons for the renaming of the [number of] extra car spaces set aside for resident's visitors as 'Additional car spaces' in the same Plan of Subdivision.
 2. Correspondence relating to the [dated] investigation of [number of] planning breaches relating to [address], including advice between [Agency officer one] and [Agency officer two] and officers of other departments such as [Agency officer three] and [Agency officer four].
 3. Documents relevant to the outcome of [the Agency's] investigation into the signing of the 'wrong' Plan of Subdivision, being the Plan of Subdivision to which [the Applicant] claims the word 'Residential' is missing on the Loading Dock Goods Lift.
 4. Documents that indicate the responsible authority allowed [named third party] to take no further action in relation to the 3 compliance matters, being the planning breaches referred to in item 2.
 5. Documents relevant to why [named third party] and/or [named third party] failed to inform [the Applicant] about an application for review to the [Victorian Civil and Administrative Tribunal (VCAT)] in relation to [the Agency's] decision on the 3 compliance matters referred to in item 2.
4. With respect to point 2 of the Applicant's request, the Agency submits the alleged breaches of the planning permit form the subject of three main complaints made by the Applicant, which were:
 - (a) a loading dock in the building was not available for residential use;
 - (b) a resident's lounge was converted into an office; and
 - (c) the requirement to pay for access to a basement carpark.
5. The Agency identified 58 documents falling within the terms of the Applicant's request and granted access to three documents in full and refused access to 26 documents in part and five documents in full under sections 30(1) and 33(1). The Agency released 24 documents to the Applicant outside the FOI Act. The Agency's decision letter sets out the reasons for its decision.

Review application

6. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
7. I have examined a copy of the documents subject to review.
8. The Applicant and Agency were invited to make a written submission under section 49H(1) in relation to the review.

9. I have considered all communications and submissions received from the parties.
10. Alongside their review application, the Applicant raised concerns regarding the adequacy of document searches conducted by the Agency in response to their FOI request. OVIC addressed these concerns as part of this review.
11. During the course of my review, a number of additional documents were identified by OVIC staff as being within scope of the Applicant request and were provided a copy of the documents by the Agency for review.
12. While the Agency submitted these additional documents do not fall within the scope of the request, it agreed to release the documents in full, with the exception of one document.
13. While I note the views of the Agency, I consider the documents fall within the scope of the request and have been considered as part of this review. These documents are listed as further pages in Document 29 and Documents 35 to 38 in the Schedule of Documents in **Annexure 1**.
14. 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.
15. 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.

New Local Government Act

16. In undertaking a review under section 49F, I am also required by section 49P to make a fresh or new decision. This means my review does not involve determining whether the Agency's original decision is correct, but rather I am required to ensure my fresh decision is the 'correct or preferable decision'.¹ This involves ensuring my decision is correctly made under the FOI Act and any other relevant applicable law in force at the time of making my fresh decision.
17. On 24 October 2020, the LG Act 2020 commenced. The secrecy provision in section 125 of the LG Act 2020 replaces the secrecy provision in the former *Local Government Act 1989* (Vic).
18. Section 125 of the LG Act 2020 changes the way a council must process certain FOI requests as it prohibits the disclosure of 'confidential information', which includes personal affairs information in documents held by a council.
19. Therefore, it is appropriate for me to first consider whether the documents subject to review are exempt under section 38 of the FOI Act in conjunction with section 125 of the LG Act 2020.

Review of exemptions

Section 38 – Secrecy provision

20. A document is exempt under section 38 if the following three requirements are met:
 - (a) there is an enactment in force;

¹ *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577 at 591.

- (b) the enactment applies specifically to the kind of information in a document; and
 - (c) the enactment prohibits persons, referred to in the enactment, from disclosing that specific kind of information (either absolutely or subject to exceptions or qualifications).
21. For section 38 to apply to a document, an enactment must be formulated with such precision that it specifies the actual information sought to be withheld.

Is there an enactment in force?

22. Section 125 of the LG Act 2020 provides:

125 Confidential information

- (1) Unless subsection (2) or (3) applies, a person who is, or has been, a Councillor, a member of a delegated committee or a member of Council staff, must not intentionally or recklessly disclose information that the person knows, or should reasonably know, is confidential information.
Penalty: 120 penalty units.
- (2) Subsection (1) does not apply if the information that is disclosed is information that the Council has determined should be publicly available.
- (3) A person who is, or has been, a Councillor, a member of a delegated committee or a member of Council staff, may disclose information that the person knows, or should reasonably know, is confidential information in the following circumstances—
 - (a) for the purposes of any legal proceedings arising out of this Act;
 - (b) to a court or tribunal in the course of legal proceedings;
 - (c) pursuant to an order of a court or tribunal;
 - (d) in the course of an internal arbitration and for the purposes of the internal arbitration process;
 - (e) in the course of a Councillor Conduct Panel hearing and for the purposes of the hearing;
 - (f) to a Municipal Monitor to the extent reasonably required by the Municipal Monitor;
 - (g) to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
 - (h) to a Commission of Inquiry to the extent reasonably required by the Commission of Inquiry;
 - (i) to the extent reasonably required by a law enforcement agency.

23. I am satisfied the LG Act 2020 is an enactment in force for the purpose of section 38 and the first requirement for this exemption is met.

Does the enactment apply specifically to the kind of information in the documents?

24. The term ‘confidential information’ is defined in section 3 of the LG Act 2020, and includes under subsection 3(1)(f), ‘personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs’.
25. The definition of ‘confidential information’ in the LG Act 2020, overlaps with the exemption under section 33(1) and the definition of ‘personal affairs information’ under section 33(1) of the FOI Act, which provides a document is exempt from release if:

- (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 (**third parties**);² and
- (b) such disclosure would be ‘unreasonable’.

Do the documents contain ‘personal information’ for the purposes of section 125 of LG Act?

- 26. In determining whether the documents contain ‘personal information’ about a third party, and whether disclosure of this information would be unreasonable in the circumstances, I have had regard to similar considerations that arise under section 33(1) of the FOI Act.
- 27. Information relating to a person’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.³
- 28. A document will disclose a third party’s personal affairs information if it is capable, either directly or indirectly, of identifying that person. As the nature of disclosure under the FOI Act is unrestricted and unconditional, this is to be interpreted by reference to the capacity of any member of the public to identify a third party.⁴
- 29. A third party’s opinion or observations about another person’s conduct can constitute information in relation to the personal affairs of a third party.⁵
- 30. The term ‘personal information’ may encompass a broad range of information concerning an individual, for example, their name, address, their correspondence with a council or details about their property, family, employment or other personal details.
- 31. The documents subject to review are emails and attachments between the Agency and other third parties, and include the following personal affairs information: names, email addresses, signatures, initials, telephone numbers and comments made by third parties.
- 32. I am satisfied disclosure of the documents would involve disclosure of information that falls within the definition of ‘personal information’ for the purposes of section 3(1)(f) of the LG Act 2020.

Would release of the ‘personal information’ be unreasonable in the circumstances?

- 33. In relation to section 33(1), the concept of ‘unreasonable disclosure’ involves determining whether the public interest in the disclosure of an individual’s personal affairs information in official documents of an agency is outweighed by the interest in protecting personal privacy of an individual in the circumstances. I see this concept as similarly applicable to my consideration of whether certain information constitutes ‘confidential information’ for the purposes of the LG Act 2020.
- 34. In *Victoria Police v Marke*,⁶ 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’.⁷

² Sections 33(1) and (2).

³ Section 33(9).

⁴ *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].

⁵ *Re Richardson v Business Licensing Authority* [2003] VCAT 1053, cited in *Davis v Victoria Police (General)* [2008] VCAT 1343 at [43]. *Pritchard v Victoria Police (General)* [2008] VCAT 913 at [24], *Mrs R v Ballarat Health Services (General)* [2007] VCAT 2397 at [13].

⁶ [2008] VSCA 218 at [76].

⁷ *Ibid.*

35. In determining whether disclosure of the personal information of third parties in the documents would be unreasonable, I have considered the following factors:

(d) The nature of the information and the circumstances in which it was obtained

The personal information obtained and collected by the Agency in the context of its responsibility for the management of planning and permit matters.

The personal information concerning Agency officers is not sensitive and concerns them carrying out their usual employment duties and responsibilities as employees of the Agency.

I accept it is reasonably likely the relevant Agency officers would expect their personal information in the documents will be used and disclosed in connection with the Agency's handling of planning and permit matters and may be released to a third party under the FOI Act in connection with such matters.

(e) 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 applicant seeks access to a document is a relevant consideration in determining whether disclosure would be unreasonable.⁸

The Applicant submits their interest in third party information relates to an ongoing legal dispute.

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

In the absence of any information to suggest the public interest would be promoted by the release of the personal affairs information of third parties in the documents, I consider its disclosure would serve the Applicant's personal interests only.

Having considered the Applicant's reasons for seeking access to the documents, I do not consider disclosure of the personal information relating to Agency officers would assist the Applicant.

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

Section 33(2B) requires that, in determining whether the disclosure of a document under the FOI Act would involve the unreasonable disclosure of information relating to the personal affairs of any person (including a deceased person), the agency must:

- (a) notify the person who is the subject of that information that the agency has received a request for access to the document;
- (b) seek that person's view as to whether disclosure of the document should occur; and
- (c) state that if the person consents to disclosure of the document, or disclosure subject to deletion of information relating to the personal affairs of the person, the person is not entitled to apply to the tribunal for review of a decision to grant access to that document.

⁸ Ibid at [104].

While the views of the third parties are a relevant factor, they are not determinative and must be considered in the context of other relevant factors.

The Agency consulted with the third parties whose personal information is contained in the documents and the consultation responses were provided to OVIC for consideration. I note certain persons consented to the disclosure of their personal information.

(d) The likelihood of further disclosure of information, if released

The nature of disclosure under the FOI Act is unconditional and unrestricted, which means an applicant is free to disseminate widely or use a document as they choose once it is released.⁹

Accordingly, I have considered the likelihood of the personal information in the documents being further disseminated and the effect this would have on the privacy of the third parties.

The Applicant's interest in the information reflects their intended use as part of legal proceedings. However, there is no information before me to indicate the documents will be disseminated more broadly than for this intended purpose.

(e) Whether the disclosure of information would, or would be reasonably likely to endanger the life or physical safety of any person¹⁰

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.

There is no information before me to suggest this is a relevant factor in this case.

36. In weighing the above factors, on balance, I am satisfied it would be unreasonable to disclose the personal information of third parties in these circumstances with the exception of the third parties who consented to disclosure in their consultation response provided to the Agency.
37. Therefore, I am satisfied the personal information in the documents is 'confidential information' of the purposes of the LG Act 2020 and this Act applies specifically to the kind of information in the documents.
38. As such, I am satisfied the second requirement for section 38 is met.

Is the Agency prohibited from disclosing the confidential information?

39. Having considered the operation of section 125, I am satisfied the Agency, its officers and councillors are prohibited from disclosing the 'confidential information', which in this case is the personal information. I further note a penalty applies to a person who discloses such information where they are otherwise not permitted to do so in accordance with this section.
40. As such, I am satisfied the third requirement for section 38 is met.

Conclusion in relation to section 38 and section 125 of the LG Act 2020

41. I am satisfied the personal information in the documents, which the Agency exempted from release under section 33(1), is exempt under section 38 in conjunction with section 125 of the LG Act 2020 as:

⁹ Ibid at [68].

¹⁰ Section 33(2A).

- (a) section 125 of the LG Act 2020 is an enactment in force;
- (b) the definition of 'confidential information' in subsection 3(1)(f) of the LG Act 2020 refers specifically to the personal information in the documents; and
- (c) section 125 of the LG Act 2020 prohibits Agency officers, specifically councillors and Council staff, from disclosing 'confidential information'.

42. Accordingly, I am satisfied information in the documents is exempt under section 38 in conjunction with section 125 of the LG Act 2020.

43. The Schedule of Documents in **Annexure 1** outlines my decision on the application of section 38.

Section 33(1) – Personal affairs information

44. Where I am satisfied section 38 applies to information exempted by the Agency under section 33(1), I am satisfied the same information is exempt under section 33(1).

Section 30(1) – Internal working documents

45. Section 30(1) has three requirements:

- (a) the document must disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister;
- (b) such matter must be made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government; and
- (c) disclosure of the matter would be contrary to the public interest.

46. The exemption does not apply to purely factual material in a document.¹¹

Were the documents prepared by an officer of the Agency?

47. The term 'officer of an Agency' is defined by section 5(1). It includes a member of an agency, a member of an agency's staff, and any person engaged by or on behalf of an agency, whether or not the person is subject to the *Public Administration Act 2004* (Vic).

48. I am satisfied the documents were prepared by Agency officers.

Do the documents disclose matter in the nature of opinion, advice or recommendation, or consultation or deliberation?

49. For section 30(1) to apply, a document must contain matter in the nature of opinion, advice or recommendation prepared by an officer of the agency, or consultation or deliberation between agency officers.

50. It is not necessary for a document to be in the nature of opinion, advice or recommendation. Rather, the issue is whether release of the document would disclose matter of that nature.¹²

51. Section 30(3) provides purely factual information is not exempt under section 30(1).

¹¹ Section 30(3).

¹² *Mildenhall v Department of Education* (1998) 14 VAR 87.

52. The documents exempted from release by the Agency under section 30(1) are Documents 26, 27 and 28, which are internal emails between Agency officers, and Documents 31 and 32, are undated draft letters prepared by the Agency.
53. Having reviewed the documents, I am satisfied certain information exempted by the Agency contain opinions, recommendations and deliberation by Agency officers in relation to planning matters.

Were the documents made in the course of, or for the purpose of, the deliberative processes involved in the functions of the Agency?

54. The term 'deliberative process' is interpreted widely and includes any of the processes of deliberation or consideration involved in the functions of an agency, Minister or government.¹³

55. In *Re Waterford and Department of Treasury (No.2)*,¹⁴ the Administrative Appeals Tribunal held:

... "deliberative processes" [is] wide enough to include any of the processes of deliberation or consideration involved in the functions of an agency... In short, ...its thinking processes — the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

56. I am satisfied the documents were made in the course of the Agency's deliberative processes relating to the Agency's planning functions.

Would disclosure be contrary to the public interest?

57. In determining if disclosure of a document would be contrary to the public interest, I must consider all relevant facts and circumstances remaining mindful the object of the FOI Act is to facilitate and promote the disclosure of information. In doing so, I have given weight to the following relevant factors:¹⁵

- (a) the right of every person to gain access to documents under the FOI Act;
- (b) the degree of sensitivity of the issues discussed in the documents and the broader context giving rise to the creation of the documents;
- (c) the stage of a decision or status of policy development or a process being undertaken at the time the communications were made;
- (d) whether disclosure of the documents would be likely to inhibit communications between Agency officers, essential for the agency to make an informed and well-considered decision or participate fully and properly in a process in accordance with the Agency's functions and other statutory obligations;
- (e) whether disclosure of the documents would give merely a part explanation, rather than a complete explanation for the taking of a particular decision or the outcome of a process, which the Agency would not otherwise be able to explain upon disclosure of the documents;
- (f) the impact of disclosing documents in draft form, including disclosure not clearly or accurately representing a final position or decision reached by the Agency at the conclusion of a decision or process; and

¹³ *Brog v Department of Premier and Cabinet* (1989) 3 VAR 201 at 208.

¹⁴ [1984] AATA 67; (1984) 5 ALD 588; 1 AAR 1 at [58].

¹⁵ *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

- (g) the public interest in the community being better informed about the way in which the Agency carries out its functions, including its deliberative, consultative and decision-making processes and whether the underlying issues require greater public scrutiny.
58. Documents 26, 27 and 28 are emails between Agency officers with respect to matters relating to planning matters raised by the Applicant, including factual information about the building, the planning permit and related matters.
59. While these emails reflect the Agency's position in relation to a VCAT hearing concerning the planning permit, they also show the actions taken by the Agency in response to complaints made by the Applicant and its consideration of the issues underlying the Applicant's concerns.
60. I accept the Applicant's understanding of the ongoing matter is such that would understand these documents reflect a specific point in time and the documents may not reflect a final outcome or decision reached by the Agency.
61. In the circumstances of this matter, I am satisfied it would not be contrary to the public interest to disclose most of the remaining non-factual information which reveals Agency officers' deliberation of the Applicant's concerns in relation to the building. In my view, disclosure of this information is unlikely to have any adverse impact on Agency officers deliberating and recording similar information in the future.
62. However, I am satisfied disclosure of certain information, which is more sensitive in nature, would be reasonably likely to inhibit Agency officers from recording similar information in the future, which would be detrimental to the Agency's internal deliberative processes in responding to planning complaints and related permit matters.
63. Documents 31 and 32 are two draft letters prepared by the Agency in relation to the same planning permit compliance matters. These letters were not finalised and final versions were not prepared or issued by the Agency.
64. The Agency submits these documents relate to preliminary stages of its deliberations on the matter and reflect the need for it to be able to communicate internally with frankness and candour in carrying out its planning compliance functions. Having reviewed the documents, I consider the majority of the information is administrative and directive in nature and not contain substantive detail about issues relating to the building or related permit.
65. Nevertheless, while planning matters require a high degree of transparency and involvement by member of the community who may be affected by Council decisions, in my view, certain information within these documents would provide no further benefit to the Applicant or the public, given the administrative nature of the emails and the fact the Agency did not progress the draft letters noting the context of what appears to be a long-standing dispute between the Agency and the Applicant.
66. Accordingly, I am satisfied certain information in the documents is exempt from release under section 30(1).
67. The Schedule of Documents in **Annexure 1** outlines my decision on the application of section 30(1).

Section 25 – Deletion of exempt or irrelevant information

68. 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.
69. 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
70. The Agency determined certain information in Documents 1, 2 and at the start of Document 33 is irrelevant information for the purposes of section 25. In my view, the information is relevant to the Applicant’s request and in some instances has already been released elsewhere in documents. I am satisfied it is not irrelevant information.
71. Document 3 comprises a letter concerning several matters raised by third parties with the Agency and attaches several waste management planning documents for the property. The bundle of documents that comprise Document 3 were released to the Applicant in part. I am satisfied certain matters discussed in Document 3 fall outside the scope of the Applicant’s request and are irrelevant information for the purpose of section 25. In reviewing these documents, I have determined the first page of Document 3 falls within the scope of the request and, with the exception of a small amount of information, can be released.
72. I have considered the effect of deleting irrelevant and exempt information from the documents in accordance with section 25. I am satisfied it is practicable to delete such information from most of the documents as do so would not require substantial time and effort, and the edited documents would retain meaning. Where I am not satisfied it is practicable to do so, access to the relevant document is refused in full.
73. The Schedule of Documents in **Annexure 1** outlines my decision on the application of section 25.

Conclusion

74. On the information before me, I am satisfied information in the documents is exempt under sections 30(1), 33(1), and 38 in conjunction with section 125 of the LG Act 2020. However, I have determined to release further information in the documents where I am satisfied it is not exempt and is relevant to the terms of the Applicant’s request.
75. Where I am satisfied it is practicable to provide the Applicant with an edited copy of a document with irrelevant and exempt information deleted in accordance with section 25, I have granted access to the document in part. Where it is not practicable to do so, access is refused in full.
76. My decision in relation to each document is set out in the Schedule of Documents in **Annexure 1**.

Review rights

77. 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

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).

78. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁹
79. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.²⁰
80. 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.
81. 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

82. As I have decided to disclose documents the Agency determined are exempt from release under section 33(1), if practicable, I must notify any relevant person about their right to apply to VCAT for a review of my decision.
83. In considering the meaning of 'practicable' in relation to other sections of the FOI Act, VCAT has stated the following:

The use of the word 'practicable' in the legislation to my mind connotes a legislative intention to apply common sense principles. 'Practicable' is not a term of art or a term of precise meaning.

.... The use of the word indicates there should be imported into the process the exercise of judgment by the agency concerned. It does not allow for the conclusion that because a task is possible, it must, ergo, be undertaken.²²

84. VCAT also considers the possibility of an unnecessary intrusion into the lives of third parties is relevant when assessing the practicability of notifying them.²³
85. As this information has already been released to the Applicant by the Agency, I am satisfied notifying the relevant third party is unnecessary and is not practicable in the circumstances.

When this review takes effect

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

¹⁹ Section 52(5).

²⁰ Section 52(9).

²¹ Sections 50(3F) and 50(3FA).

²² *Re Schubert and Department of Premier and Cabinet* (2001) 19 VAR 35 at [45].

²³ *Coulston v Office of Public Prosecutions Victoria* [2010] VCAT 1234 at [42].

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
1.	[date]	Email chain	6	Released in part Section 25	Release in part Section 25	<p>Section 25: I am not satisfied the information the Agency considered is irrelevant to the terms of the Applicant’s request.</p> <p>However, I am satisfied the name at the top left corner of the document concerns the person who printed the document and is not relevant to the terms of the request.</p> <p>I am satisfied it is practicable to provide the Applicant with an edited copy of the document with irrelevant information deleted in accordance with section 25.</p> <p>Section 38: I am satisfied it is not unreasonable to release the name of a third party in the email as the Agency released this information elsewhere in the document.</p>
2.	[date]	File note	1	Released in part Sections 33(1), 25	<p>Release in part Sections 38, 33(1), 25</p> <p>This document is to be released, except for the names and email addresses of third parties copied into the emails, which are exempt under sections 33(1) and</p>	<p>Section 38: With the exception of the generic email address which has been disclosed elsewhere in the documents, I am satisfied the information exempted by the Agency under section 33(1) is ‘confidential information’ and exempt under section 38 in conjunction with section 125 of the LG Act 2020.</p> <p>Section 33(1): The information that I am satisfied is exempt under section 38 is also exempt under section 33(1).</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
					38 and are to be deleted in accordance with section 25.	<p>Section 25: The information deleted by the Agency as irrelevant information describes the actions taken by the Agency in response to the Applicant's complaint with respect to the loading dock. I am satisfied that this information is relevant to the Applicant's request and is to be released to the Applicant.</p> <p>I am satisfied it is practicable to provide the Applicant with an edited copy of the document with exempt information deleted in accordance with section 25, as the edited document would retain meaning. Accordingly, the document is exempt in part.</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
3.	[date]	Letter with attachments	62	Released in part Section 25	Release in part Section 25 This document is to be released to the Applicant in accordance with the marked-up copy of this document provided to the Agency with this decision.	<p>Section 25: With the exception of bullet points two, four and five, I am not satisfied the information that the Agency considered to be irrelevant information on page 1 of Document 3 is irrelevant to the request, as it raises matters concerning the residential use of the loading dock. The remainder of the document remains outside the scope of the request and is irrelevant information.</p> <p>I am satisfied it is practicable to provide the Applicant with an edited copy of the document with irrelevant information deleted in accordance with section 25. Accordingly, access to the document is granted in part.</p> <p>Sections 33(1) and 38: I am not satisfied the name and contact details of the Agency officer is exempt under sections 33(1) or 38, as this information has already been released to the Applicant in other documents.</p>
4.	[date]	Letter	2	Released in full	Not subject to review	This is an attachment to Document 29.
5.	[date]	Email thread	3	Released in full Section 25	Not subject to review	Note: The Agency deleted the name of the Agency officer who printed the email, which I am satisfied is irrelevant information that is to remain deleted in accordance with section 25.

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
6.	[date]	Letter	1	Released in part Section 33(1)	Release in part Sections 33(1), 38, 25 The names and email addresses of third parties that were exempted by the Agency are to remain deleted in accordance with section 25, except for the group email address which is to be released.	Section 38: See comments for Document 2. Section 33(1): See comments for Document 2. Section 25: I am satisfied it is practicable to provide the Applicant with an edited copy of the document with exempt information deleted in accordance with section 25.
7.	[date]	Letter	2	Released in part Section 33(1)	Release in part Sections 33(1), 38, 25 The document is to be released, except for the name of the third party that was exempted by the Agency, which is to remain deleted in accordance with section 25.	This is an attachment to Document 8. Section 38: I am satisfied the information exempted by the Agency under section 33(1) is 'confidential information' and exempt under section 38 in conjunction with section 125 of the LG Act 2020. Section 33(1): See comments for Document 2. Section 25: See comments for Document 6.
8.	[date]	Email	2	Released in part	Release in part Sections 33(1), 38, 25	Section 38: See comments for Document 7. Section 33(1): See comments for Document 2.

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
				Section 33(1)	The document is to be released, except for the names and email addresses that were exempted by the Agency, which are to remain deleted in accordance with section 25.	<p>Section 25: I am satisfied the name of the officer who printed the email is irrelevant information that is to remain deleted.</p> <p>See comments for Document 6.</p> <p>The attachments: The attachments are Document 7 and Document 10. Please see comments for Document 7 and Document 10.</p>
9.	[date]	Email	1	Released in part Section 33(1)	<p>Release in part</p> <p>Sections 33(1), 38, 25</p> <p>The information exempted by the Agency is to remain deleted in accordance with section 25, except for the general phone number in the email signature, which is to be released.</p>	<p>Section 38: With the exception of the publicly available Agency telephone number, I am satisfied the information exempted by the Agency under section 33(1) is 'personal information' and therefore exempt under section 38 of the FOI Act in conjunction with section 125 of the LG Act 2020.</p> <p>Section 33(1): See comments for Document 2.</p> <p>Section 25: See comments for Document 8.</p> <p>The attachment: The attachment is Document 10. See comments for Document 10.</p>
10.	[date]	Compliance Final Notice	1	Released in part Section 33(1)	<p>Release in part</p> <p>Sections 33(1), 38, 25</p>	<p>Section 38: See comments for Document 7.</p> <p>Section 33(1): See comments for Document 2.</p> <p>Section 25: See comments for Document 6.</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
					The document is to be released, except for the names and email addresses exempted by the Agency, which are to remain deleted in accordance with section 25.	
11.	[date]	Letter	2	Released in part Section 33(1)	<p>Release in part</p> <p>Sections 33(1), 38, 25</p> <p>The names and email addresses of third parties that were exempted by the Agency are to remain deleted in accordance with section 25, except for the group email address which is to be released.</p>	<p>This is an attachment to Document 29.</p> <p>Section 38: See comments for Document 2.</p> <p>Section 33(1): See comments for Document 2.</p> <p>Section 25: See comments for Document 6.</p>
12.	[date]	Letter	2	Released in part Section 33(1)	<p>Release in part</p> <p>Sections 33(1), 38, 25</p> <p>The names and email addresses of third parties that were exempted by the Agency are to remain deleted in accordance with section 25.</p>	<p>Section 38: See comments for Document 7.</p> <p>Section 33(1): See comments for Document 2.</p> <p>Section 25: See comments for Document 6.</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
13.	[date]	Email thread	1	Released in part Section 33(1)	Release in part Sections 33(1), 38, 25 The document is to be released, except for the names that were exempted by the Agency, which are to remain deleted in accordance with section 25.	Section 38: See comments for Document 7. Section 33(1): See comments for Document 2. Section 25: See comments for Document 8.
14.	[date]	Email thread	6	Released in part Section 33(1)	Release in part Sections 33(1), 38, 25 The information exempted by the Agency is to remain deleted in accordance with section 25, except for the name of the author of the email, which is to be released.	Section 38: As the name of the Agency officer who authored this document has already been released to the Applicant in other documents, I am satisfied it can be released for consistency and I am not satisfied it would amount to the unreasonable disclosure of their personal information in the circumstances. However, I am satisfied the remaining names and contact information of other Agency officers is personal information the disclosure of which would be unreasonable. Accordingly, I am satisfied this information is exempt under section 38 in conjunction with section 125 of the LG Act 2020. Section 33(1): See comments for Document 2.

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>Section 25: See comments for Document 8.</p> <p>The attachments: The attachments are Document 10 and Document 30. Please see comments for Document 10 and Document 30.</p>
15.	[date]	Email	2	Released in part Section 33(1)	<p>Release in part</p> <p>Sections 33(1), 38, 25</p> <p>The document is to be released, except for the names, email addresses and telephone numbers exempted by the Agency, which are to remain deleted in accordance with section 25.</p>	<p>Section 38: See comments for Document 7.</p> <p>Section 33(1): See comments for Document 2.</p> <p>Section 25: See comments for Document 8.</p>
16.	[date]	Email	2	Released in part Section 33(1)	<p>Release in part</p> <p>Sections 38, 25</p> <p>The document is to be released, except for the names and telephone numbers exempted by the Agency, which are to remain deleted in accordance with section 25.</p>	<p>Section 38: See comments for Document 7.</p> <p>Section 33(1): See comments for Document 2.</p> <p>Section 25: See comments for Document 8.</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
17.	[date]	Email thread	2	Released in part Section 33(1)	Release in part Sections 33(1), 38, 25 The information exempted by the Agency is to remain deleted in accordance with section 25, except for the name of the Agency officers copied into the email, which is to be released.	Section 38: See comments for Document 14. For the remainder of the exempted information, see comments for Document 7. Section 33(1): See comments for Document 2. Section 25: See comments for Document 8.
18.	[date]	Email	5	Released in part Section 33(1)	Release in part Sections 33(1), 38, 25 The information exempted by the Agency is to remain deleted in accordance with section 25, except for the name of the author of the email, which is to be released.	Section 38: See comments for Document 14. Section 33(1): See comments for Document 2. Section 25: See comments for Document 8.
19.	[date]	Email	3	Released in part	Release in part	Section 38: See comments for Document 17.

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
				Section 33(1)	Sections 33(1), 38, 25 The information exempted by the Agency is to remain deleted in accordance with section 25, except for the name of the Agency officer copied into the email, which is to be released.	Section 33(1): See comments for Document 2. Section 25: See comments for Document 6. The attachment: The attachment is Document 10. Please see comments for Document 10.
20.	[date]	Letter	2	Released in part Section 33(1)	Release in part Sections 33(1), 38, 25 The document is to be released, except for the name and email address that was exempted by the Agency, which is to remain deleted in accordance with section 25.	This is an attachment to Document 29. Section 38: See comments for Document 7. Section 33(1): See comments for Document 2. Section 25: See comments for Document 6.
21.	[date]	Email thread	3	Released in part Section 33(1)	Release in part Sections 33(1), 38, 25 The information exempted by the Agency is to remain deleted in accordance with section 25,	Section 38: See comments for Document 14. Section 33(1): See comments for Document 2. Section 25: See comments for Document 8.

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
					except for the name of the author of the email, which is to be released.	
22.	[date]	Planning Department Delegate Report	18	Released in full	Not subject to review Agency to release the additional pages located to the Applicant.	During the review this document was identified as an attachment to Document 29. The Agency also located four additional pages which it determined could be released to the Applicant in full. As the Applicant is yet to receive a copy of the additional pages, the Agency is required release those pages to the Applicant.
23.	[date]	VCAT application	8	Released in full	Not subject to review	This is an attachment to Document 25.
24.	[date]	Email	2	Released in part Section 33(1)	Release in part Sections 33(1), 38, 25 The document is to be released, except for the names that were exempted by the Agency, which are to remain deleted in accordance with section 25.	Section 38: See comments for Document 7. Section 33(1): See comments for Document 2. Section 25: See comments for Document 8. The attachment: The attachment is Document 35. See comments for Document 35.
25.	[date]	Email thread	2	Released in part	Release in part	Section 38: See comments for Document 7. Section 33(1): See comments for Document 2.

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
				Section 33(1)	<p>Sections 33(1), 38, 25</p> <p>The document is to be released, except for the names, telephone numbers and email addresses that were exempted by the Agency, which are to remain deleted in accordance with section 25.</p>	<p>Section 25: See comments for Document 8.</p> <p>The attachments: The attachments are Document 23 and Document 36. See comments for Document 23 and Document 36.</p>
26.	[date]	Email thread	5	<p>Refused in full</p> <p>Sections 30(1), 33(1)</p>	<p>Release in part</p> <p>Sections 30(1), 33(1), 38, 25</p> <p>This document is to be released to the Applicant in accordance with the marked-up copy of this document provided to the Agency with this decision.</p>	<p>Section 30(1): I am satisfied that some information in the document contains matter in the nature of consultation and deliberation to which disclosure of certain information would be contrary to the public interest. However, I have determined that large amount of material in this document is not exempt under section 30(1) for the reasons provided in the Notice of Decision, above.</p> <p>Section 38: I am satisfied it would not be unreasonable to release the name of a third party who consented to disclosure of information that identifies them, which I note is publicly available, or the name of a third party where their name has been released in other documents. Accordingly, this information is not exempt under section 38.</p> <p>For the remaining information that identifies third parties, see comments for Document 7.</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>Section 33(1): See comments for Document 2.</p> <p>Section 25: See comments for Document 6.</p>
27.	[date]	Email thread	5	<p>Refused in full</p> <p>Sections 30(1), 33(1)</p>	<p>Release in part</p> <p>Sections 30(1), 33(1), 38, 25</p> <p>This document is to be released to the Applicant in accordance with the marked-up copy of this document provided to the Agency with this decision.</p>	<p>Section 30(1): See comments for Document 26.</p> <p>Section 38: I am satisfied disclosure of name and contact information of the Executive Agency officer or the name of a third party where their name was released in other documents, would be unreasonable. I am also satisfied disclosure of Agency officers position titles recorded in the document in the context of these individuals carrying out their official duties would be unreasonable. Accordingly, this information is not exempt under 38.</p> <p>For the remaining information that identifies third parties, see comments for Document 26.</p> <p>Section 33(1): See comments for Document 2.</p> <p>Section 25: See comments for Document 6.</p>
28.	[date]	Email thread	4	<p>Refused in full</p> <p>Sections 30(1), 33(1)</p>	<p>Release in part</p> <p>Sections 33(1), 38, 25</p>	<p>Section 30(1): This document is linked to Documents 26 and 27. However, I am not satisfied it contains information to which disclosure would be contrary to the public interest for the reasons outlined in the Notice of Decision above.</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
					This document is to be released to the Applicant in accordance with the marked-up copy of this document provided to the Agency with this decision.	<p>Section 38: See comments for Document 27.</p> <p>Section 33(1): See comments for Document 2.</p> <p>Section 25: See comments for Document 6.</p>
29.	[date]	Planning compliance investigation report	2	Released in part Section 33(1)	<p>Release in part</p> <p>Sections 33(1), 38, 25</p> <p>The document is to be released, except for the names exempted by the Agency, which are to remain deleted in accordance with section 25.</p>	<p>Section 38: See comments for Document 7.</p> <p>Section 33(1): See comments for Document 2.</p> <p>Section 25: See comments for Document 6.</p> <p>The attachments: The attachments are Documents 4, 11, 20, 22, 31, 33, 37, 38, 39 and 40. See comments for Documents 4, 11, 20, 22, 31, 33, 37, 38, 39 and</p>
30.	[date]	Approved plans	3	Release in full	Not subject to review	
31.	[date]	Draft letter	2	Refused in full Section 30(1)	<p>Refuse in full</p> <p>Section 30(1)</p>	<p>This is an attachment to Document 29.</p> <p>Section 30(1): This is a draft letter to which the Agency confirmed there is no final version. In the circumstances of this matter, I consider it would be contrary to the public interest to disclose this draft letter for the reasons outlined in the Notice of Decision, above. Accordingly, I have determined it is exempt under section 30(1).</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
						Section 25: I am satisfied it is not practicable to delete exempt information from the document, as it would render the document meaningless. Access is refused in full.
32.	Undated	Draft letter	2	Refused in full Section 30(1) 33(1)	Refuse in full Section 30(1)	This is an attachment to Document 29. Section 30(1): See comments for Document 31. Accordingly, it is not necessary to consider the application of section 38. Section 25: See comments for Document 31.
33.	Undated	Planning Compliance Investigation Report	2	Released in part Section 25	Release in part Sections 33(1), 38, 25 This document is to be released, except for the names exempted by the Agency, which are to remain deleted in accordance with section 25.	This is an attachment to Document 29. Section 38: See comments for Document 7. Section 33(1): See comments for Document 2. Section 25: See comments for Document 2.
34.	[date]	Letter	37	Released in part Sections 38, 25	Release in part Sections 33(1), 38, 25	Section 38: See comments for Document 7. Section 33(1): See comments for Document 2.

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
					This document is to be released, except for the names exempted by the Agency and pages 174 to 203, which are to remain deleted in accordance with section 25.	Section 25: The information deleted by the Agency on grounds it is irrelevant information concerns planning permit information unrelated to the Applicant's request, which I am satisfied can be deleted without rendering the remainder of the document meaningless.
35.	[date]	VCAT Order	5	NA	Release in full	<p>This is an attachment to Document 24 that was located during the review.</p> <p>In its decision, the Agency considered the document to fall outside the terms of the Applicant's request. While the Agency remains of the view the document is irrelevant to the scope of the request, it has indicated should I disagree, it considers the document is not exempt.</p> <p>I am satisfied the attachment to Document 24 forms part of the covering email to which it is attached. Accordingly, it is to be released in full.</p>
36.	[date]	VCAT Application by Permit Applicant for review of a planning decision	13	NA	Release in full	<p>This is an attachment to Document 25 that was located during the review.</p> <p>In its decision, the Agency considered the document to fall outside the terms of the Applicant's request. While the Agency remains of the view the document is irrelevant to the scope of the request, it has indicated should I disagree, it considers the document is not exempt.</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
						I am satisfied the attachment to Document 25 forms part of the covering email to which it is attached. Accordingly, it is to be released in full.
37.	[date]	Email	1	NA	<p>Release in part</p> <p>Sections 33(1), 38, 25</p> <p>This document is to be released, except for the names, telephone number and email addresses to which the Agency marked up in the document, which are to be deleted in accordance with section 25.</p>	<p>This is an attachment to Document 29 that was located during the review.</p> <p>In its decision, the Agency considered the document falls outside the terms of the Applicant's request. While the Agency remains of the view the document is irrelevant to the scope of the request, it has indicated should I disagree, it considers the document should be released in part with certain information exempt under section 33(1).</p> <p>The document forms part of Document 29, being an attachment to the planning compliance investigation report. Therefore, I am satisfied the document falls within the terms of the Applicant's request.</p> <p>Section 38: See comments for Document 7.</p> <p>Section 33(1): See comments for Document 1.</p> <p>Section 25: See comments for Document 6.</p>
38.	[date]	VCAT practice direction	6	NA	Release in full	This is an attachment to Document 29 that was located during the review.

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>In its decision, the Agency considered the document to fall outside the terms of the Applicant's request. While the Agency remains of the view the document is irrelevant to the scope of the request, it has indicated should I disagree, it considers the document is not exempt.</p> <p>I am satisfied the document forms part of Document 29, being an attachment to the planning compliance investigation report. Therefore, the document falls within the terms of the Applicant's request.</p>
39.	[date]	Planning amendment application form	2	NA	Release in full	<p>This is an attachment to Document 29 that was located during the review.</p> <p>In its decision, the Agency considered the document to fall outside the terms of the Applicant's request. While the Agency remains of the view the document is irrelevant to the scope of the request, it has indicated should I disagree, it considers the document is not exempt.</p> <p>I am satisfied the document forms part of Document 29, being an attachment to the planning compliance investigation report. Therefore, the document falls within the terms of the Applicant's request.</p>
40.	[date]	Planning amendment application	6	NA	Release in full	<p>This is an attachment to Document 29 that was located during the review.</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>In its decision, the Agency considered the document to fall outside the terms of the Applicant's request. While the Agency remains of the view the document is irrelevant to the scope of the request, it has indicated should I disagree, it considers the document is not exempt.</p> <p>I am satisfied the document forms part of Document 29, being an attachment to the planning compliance investigation report. Therefore, the document falls within the terms of the Applicant's request.</p>