

Notice of Decision and Reasons for Decision

Applicant:	'EW7'
Agency:	Victorian Building Authority
Decision date:	28 October 2022
Exemptions considered:	Sections 30(1), 31(1)(d), 32(1), 33(1)
Citation:	'EW7' and Victorian Building Authority (Freedom of Information) [2022] VICmr 235 (27 October 2022)

FREEDOM OF INFORMATION – investigations into municipal building practitioners – regulation and enforcement – *Building Act 1993* (Vic) – jurisdictional issues – complaints – Agency officer names – no objection to disclosure of personal affairs information

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.

While I am satisfied certain information in the documents is exempt from release under sections 32(1) and 33(1), I am not satisfied information is exempt from release under sections 30(1) or 31(1)(d).

Where 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.

Accordingly, my decision on the Applicant's request differs from the Agency's decision in that I have decided to release additional information where I am satisfied it is not exempt from release.

The Schedule of Documents in **Annexure 1** sets out my decision on each document.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
28 October 2022

Reasons for Decision

Background to review

1. The Applicant made complaints to a local council concerning alleged building issues with a property within the municipality.
2. Subsequently, the Applicant made an inquiry with the Agency, which advised the Applicant about lodging a complaint with the Agency.
3. Following the lodgement of a complaint, the Agency advised the Applicant that they did not have jurisdiction to investigate the complaint and which the Agency closed.
4. Following further consideration, the Agency investigated the complaint and notified the Applicant of the outcome of its investigation, specifically that there was insufficient evidence to substantiate any breaches against the relevant building practitioner and the investigation would be closed.
5. Subsequently, the Applicant made a request to the Agency seeking access to the investigation file concerning their complaint.
6. The Agency identified the requested file, which comprises 31 documents, and refused access to information in the documents under sections 30(1), 31(1)(d), 32(1) and 33(1), as set out in the Schedule of Documents in **Annexure 1**. The Agency's decision letter sets out the reasons for its decision.

Review application

7. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
8. I have examined a copy of the documents subject to review.
9. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
10. I have considered all communications and submissions received from the parties.
11. The Applicant advised OVIC they do not seek attachments that are already in their possession. Accordingly, these documents are not subject to review.
12. 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.
13. 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 30(1) – Internal working documents

14. 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.

15. The exemption does not apply to purely factual material in a document.¹

Do the documents 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?

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

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

18. 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.²

19. I am satisfied the documents were prepared by Agency officers and disclose deliberation that took place between those officers. However, the documents also contain information obtained or created during the investigation, for example, witness lists and a letter to the complainant, that are purely factual in nature. This is outlined further in the Schedule of Documents in **Annexure 1**.

Were the documents 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?

20. ‘Deliberative processes’ is interpreted broadly and includes any of the processes of deliberation or consideration involved in the functions of an agency, Minister or government.³

21. In *Re Waterford and Department of Treasury (No.2)*,⁴ the former Victorian 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.

¹ Section 30(3).

² *Mildenhall v Department of Education* (1998) 14 VAR 87 at 90.

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

⁴ [1984] AATA 67; (1984) 5 ALD 588; 1 AAR 1 at [58].

22. I am satisfied the documents were prepared in the course of, or for the purpose of, the deliberative processes of the Agency in its investigation of a complaint made under the *Building Act 1993* (Vic) (**Building Act**) in relation to a breach or possible breach of that Act or a Building Regulation.

Would disclosure of the documents be contrary to the public interest?

23. The Agency submits disclosure of the documents would be contrary to the public interest as it would diminish the effectiveness of the communication of final positions taken by the Agency in matters arising from investigations conducted under the Building Act into a registered practitioner. It submits:

...if the documents were released, the necessary context and nuanced understanding of the relevant matters will not exist, and that this may give rise to a material risk of the content and meaning of the matters documented to be misunderstood, misinterpreted, and potentially, manipulated to attribute different meaning.

24. In deciding 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.
25. In doing so, I have given weight to the following factors in the context of this matter:⁵
- (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
 - (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.
26. I accept a complaint made to the Agency against a registered building practitioner and any subsequent regulatory investigation are sensitive and personal in nature. Further, there is a public interest in maintaining the confidentiality of such investigations where disclosure of a document or information may inhibit the Agency from efficiently and effectively conducting a regulatory investigation in the future.
27. In managing a complaint and conducting an investigation under the Building Act, I also accept Agency officers are required to carefully deliberate on all relevant issues and evidence obtained in the

⁵ *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483 at 488.

exercise of its statutory functions and powers under that Act. Accordingly, it is desirable for Agency officers to be able to seek and exchange advice and opinions in an open and fulsome manner before determining an appropriate response or recommended course of action be taken.

28. Disclosure of this type of deliberative information would be contrary to the public interest where it would have a detrimental effect on the Agency's ability to conduct a thorough and efficient investigation, which in turn could compromise the proper outcome of any such process and the Agency carrying out its statutory obligations.
29. However, there is also a public interest in ensuring that complaints made to a regulatory agency are properly handled and investigated and there is sufficient transparency of an agency's complaint handling processes, including providing a complainant with information about the outcome of their complaint. In this case, I am of the view there is public interest in the community being informed about the way in which the Agency responds to complaints made under the Building Act and how it exercises its statutory functions under that Act. Although, I acknowledge the level of detail provided to a complainant may vary from case to case.
30. In corresponding with the Agency, the Applicant was initially provided with inconsistent information on whether the Agency had jurisdiction to investigate their complaint. With respect to the deliberative information in the documents, much of it concerns whether or not the Agency has jurisdiction to investigate the Applicant's complaint.
31. The outcome of their deliberation is evident as the Applicant received a letter from the Agency advising that there was insufficient evidence to substantiate a breach of the Building Act by the building practitioner.⁶ However, the letter does not provide any reasons for the Agency's decision.
32. In my view, disclosure of the deliberation undertaken by the Agency officers on jurisdiction would not be contrary to the public interest, rather, it would provide greater transparency so the Applicant can better understand the jurisdiction and status of their complaint.
33. While I note the Agency's concern that the documents could be misinterpreted, in my view, disclosure would inform the Applicant about how the Agency managed [the Applicant's] complaint, how it resolved the issue of jurisdiction and the full reasoning why the Agency considered there was insufficient evidence to substantiate their complaint. Nor do I consider disclosure of such information would compromise the Agency's ability to carry out or fulfil its statutory functions and obligations.
34. While I do not consider disclosure would lead to any misunderstanding, should the Agency remain concerned, it is open to the Agency to release the documents with any necessary additional information to eliminate or minimise any risk of the information being misinterpreted or misunderstood.
35. Finally, I acknowledge the Agency often relies on the cooperation of a complainant and registered practitioner subject to a complaint when conducting an investigation under the Building Act. However, in this particular matter, the practitioner consents to disclosure of the requested information, and therefore, disclosure of the Agency's deliberation of the practitioner's conduct will not inhibit the Agency from conducting future investigations with the cooperation of the parties in the future.
36. Accordingly, I am satisfied disclosure of the documents would not be contrary the public interest, and they are not exempt from release under section 30(1).
37. The Schedule of Documents in **Annexure 1** sets out my decision on section 30(1).

⁶ See Document 31 in the Schedule of Documents in **Annexure 1**.

Section 31(1)(d) – Disclosure of documents that would disclosure methods for preventing, detecting, investigating breaches of the law

38. Section 31(1)(d) provides (subject to section 31) a document is exempt if its disclosure would, or would be reasonably likely to, ‘disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures’.
39. The exemptions in section 31(1) do not apply to widespread and well known methods and procedures.⁷
40. ‘Reasonably likely’ means there is a real chance of an event occurring; it is not fanciful or remote.⁸
41. ‘Prejudice’ means to hinder, impair or undermine and includes actual prejudice as well as impending prejudice.⁹
42. The Agency submits disclosure of the documents would be reasonably likely to prejudice the effectiveness of the methods and procedures it uses when exercising its regulatory functions under the Building Act.
43. The Agency’s regulatory functions are set out in section 197 of the Building Act and include monitoring and enforcing compliance with the Building Act and related regulations.
44. For the purpose of this review, the documents concern the Agency’s regulatory functions in the context of an investigation of a potential breach of the Building Act.
45. The Agency submits it is important that it can investigate breaches or potential breaches of the Building Act without enabling persons or entities avoiding its regulatory activities by acquiring knowledge as to how it detects breaches or potential breaches or any particular areas in which the Agency is prioritising its regulatory efforts.
46. The Agency also submits that certain documents are summaries of the investigation into the Applicant’s complaint and were generated as part of the review and assessment of the complaint. In the Agency’s view, disclosure of such documents would disclose the procedures followed and criteria applied by the Agency in relation to investigating a registered practitioner.
47. While I agree it is important for the Agency to conduct efficient and effective regulatory investigations under the Building Act, I do not accept disclosure of the documents in this particular instance would enable registered practitioners to avoid detection by the Agency or its regulatory activities under the Building Act.
48. As noted above with respect to section 30(1), a significant amount of information in the documents relates to the Agency’s deliberations about its jurisdiction to investigate the Applicant’s complaint. In my view, such information and deliberation would not disclose a method or procedure used for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law.
49. Broadly speaking, I accept certain information in the documents disclose the Agency’s methods for its investigatory and compliance activities. However, I do not consider the information in the documents rises to a level that would be reasonably likely to prejudice the effectiveness of those methods. Further, I consider the type of information in the documents relates to what would be

⁷ XYZ v Victoria Police [2010] VCAT 255 at [177], citing *Re Lawless v Secretary to Law Department* (1985) 1 VAR 42 at 50.

⁸ *Bergman v Department of Justice Freedom of Information Officer* [2012] VCAT 363 at [65], quoting *Binnie v Department of Agriculture and Rural Affairs* [1989] VR 836.

⁹ *Ibid*, Bergman at [66], referring to *Sobh v Police Force of Victoria* [1994] VicRp 2; [1994] 1 VR 41 (Nathan J) at [55].

reasonably expected by members of the public and can be inferred from documents already released to the Applicant.

50. In summary, I do not accept disclosure will impair the Agency's ability to effectively regulate the building industry in accordance with its statutory functions under the Building Act and related legislation.

Section 32(1) – Documents affecting legal proceedings

51. Section 32(1) provides a document is an exempt document 'if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege or client legal privilege'.

Legal Professional Privilege

52. A document will be subject to legal professional privilege and exempt under section 32(1) where it contains a confidential communication:¹⁰
- (a) between the client (or the client's agent) and the client's professional legal advisers, that was made for the dominant purpose of obtaining or providing legal advice or is referable to pending or contemplated litigation;
 - (b) between the client's professional legal advisers and third parties, that was made for the dominant purpose of pending or contemplated litigation; or
 - (c) between the client (or the client's agent) and third parties that was made for the purpose of obtaining information to be submitted to the client's professional legal advisers for the dominant purpose of obtaining advice on pending or contemplated litigation.

Client Legal privilege

53. A document will be subject to client legal privilege where it contains a 'confidential communication'¹¹ between:
- (a) the client (or the client's agent) and the client's professional legal advisers, that was made for the dominant purpose of obtaining or providing legal advice;¹² or
 - (b) the client and another person, which was made for the dominant purpose of the client being provided with professional legal services relating to a proceeding in which the client is or was a party.¹³
54. For convenience, I refer to 'legal professional privilege' and 'client legal privilege' as 'legal privilege' in this decision.
55. Legal privilege exists to protect the confidentiality of communications between a lawyer and a client. Privilege will be lost where the client has acted in a way that is inconsistent with the maintenance of that confidentiality – for instance where the substance of the information has been disclosed with the client's express or implied consent.¹⁴

¹⁰ *Graze v Commissioner of State Revenue* [2013] VCAT 869 at [29]; *Elder v Worksafe Victoria* [2011] VCAT 1029 at [22]. See also *Evidence Act 2008* (Vic), section 119.

¹¹ Defined in section 117 of the *Evidence Act 2008* (Vic) to mean communications made in circumstances where the Agency and its professional legal advisers were under an obligation not to disclose their contents.

¹² Section 118 of the *Evidence Act 2008* (Vic).

¹³ Section 119 of the *Evidence Act 2008* (Vic).

¹⁴ Sections 122(2) and 122(3) of the *Evidence Act 2008* (Vic) (for client legal privilege); *Mann v Carnell* (1999) 201 CLR 1 at [28] (for legal professional privilege).

56. The High Court of Australia has observed the importance of legal privilege:

The rationale of this head of privilege, according to traditional doctrine, is that it promotes the public interest because it assists and enhances the administration of justice by facilitating the representation of clients by legal advisers, the law being a complex and complicated discipline. This it does by keeping secret their communications, thereby inducing the client to retain the solicitor and seek his advice, and encouraging the client to make a full and frank disclosure of the relevant circumstances to the solicitor.¹⁵

57. Legal privilege extends to communications between a government agency and its inhouse lawyers, so long as the Agency's lawyers are sufficiently independent.¹⁶

58. The dominant purpose for which the confidential communication was made will determine whether the exemption applies.¹⁷

59. The Agency refused access to the Document 9 under section 32(1). It contains an email thread between Agency officers, and the originating email within the thread attaches a memorandum of legal advice. Information in other documents has also been exempted from release under section 32(1) where it contains a summary of the legal advice.

60. I am satisfied the originating email and the attached memorandum of legal advice in Document 9 is exempt from release under section 32(1) for the following reasons:

- (a) the email was sent between Agency officers and inhouse lawyers;
- (b) I am satisfied the communications were generated in the performance of its legal function, as distinct from the commercial activities of the Agency;
- (c) it is clear from the content of the documents that the communications were intended to be confidential;
- (d) the communications were made for the dominant purpose of the Agency obtaining professional legal services and advice; and
- (e) there is no information before me to indicate legal privilege has been waived.

61. The remainder of the email thread is deliberation between Agency officers following on from the legal advice.

62. A document prepared by a client that expresses their own expressions of knowledge or belief following receipt of legal advice will not be subject to legal privilege unless it is a record of summary of the legal advice.¹⁸

63. I am satisfied part of the remaining emails within the thread contain a summary of the advice, and such information is exempt from release under section 32(1).

64. I am also satisfied summaries of the legal advice on other documents subject to review are exempt from release under section 32(1).

65. However, the remaining correspondence between Agency officers in Document 9 contains their own opinions arising from the legal advice, and in my view, is not a summary of the advice nor can details

¹⁵ *Grant v Downs* [1976] HCA 63; (1976) 135 CLR 674 at [19].

¹⁶ *Waterford v The Commonwealth* [1987] HCA 25 at [4] (per Mason and Wilson JJ) and at [5] to [6] (per Brennan J).

¹⁷ *Esso Australia Resources Ltd v Commissioner of Taxation* (1999) 201 CLR 49.

¹⁸ *Re City Parking Pty Ltd and City of Melbourne* (1996) 10 VAR 170 at 196-197, citing *Standard Chartered Bank of Australia v Antico* (1993) 36 NSWLR 87 at 91.

of the advice be inferred. In my view, such information is not a summary of the legal advice obtained. Therefore, I am not satisfied this information is exempt from release under section 32(1).

66. Accordingly, I am satisfied only certain information in Document 9 is exempt from release under section 32(1).

67. The Schedule of Documents in **Annexure 1** sets out my decision in relation to section 32(1).

Section 33(1) – Documents affecting personal privacy of third parties

68. 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 (a **third party**);¹⁹ and
- (a) such disclosure would be ‘unreasonable’.

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

69. 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.²⁰

70. A document will disclose a third party’s personal affairs information if it is capable, either directly or indirectly, of identifying that person and this is to be interpreted by reference to the capacity of any member of the public to identify a third party.²¹

71. The personal affairs information to which the Agency refused access under section 33(1) includes the names and contact details of third parties, including Agency officers, officers of a local council and members of the public.

Would disclosure of the personal affairs information be unreasonable?

72. The concept of ‘unreasonable disclosure’ involves balancing the public interest in the disclosure of official information with the personal interest in privacy in the particular circumstances of a matter.

73. In *Victoria Police v Marke*,²² 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’.²³ The Court further held, ‘[t]he protection of privacy, which lies at the heart of [section] 33(1), is an important right that the FOI Act properly protects. However, an individual’s privacy can be invaded by a lesser or greater degree’.²⁴

74. In determining whether disclosure of the personal affairs information would be unreasonable in the circumstances, I have considered the following factors:

- (a) the nature of the personal affairs information;

¹⁹ Sections 33(1) and 33(2).

²⁰ Section 33(9).

²¹ *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].

²² [2008] VSCA 218 at [76].

²³ *Ibid.*

²⁴ *Ibid* at [79].

- (b) the circumstances in which the information was obtained;
- (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 release of the personal affairs information;
- (e) the likelihood and effects of disclosure of information, if released;
- (f) whether the individuals to whom the information relates object, or would be likely to object, to the release of the information;²⁵ and
- (g) whether disclosure of the information would or would be reasonably likely to endanger the life or physical safety of any person.²⁶

Personal affairs information of the practitioner subject of the Applicant's complaint

- 75. The relevant information was provided to and documented by the Agency for the sole purpose of investigating the Applicant's complaint in accordance with its statutory functions under the Building Act. In such circumstances, I consider the personal affairs information of the practitioners appears in an investigative context and is sensitive in nature.
- 76. However, despite the sensitive context in which the information was obtained, I have placed weight on the views of the third party to whom the complaint and documents relate. The Agency consulted with them to seek their view on disclosure of documents containing their personal affairs information. The third party did not object to disclosure of documents containing their personal affairs information. Accordingly, there is no information before to suggest disclosure in this instance would impact the public interest in maintaining confidentiality of information provided by, or to, persons subject to a complaint from a member of the public, such that the Agency's investigative processes would be inhibited in future.
- 77. In such circumstances, I am not satisfied disclosure of their personal affairs information is unreasonable in the circumstances and therefore, such information is not exempt from release under section 33(1).

Personal affairs information of Agency officers

- 78. Generally speaking, I consider there is nothing particularly sensitive about disclosing the identity of Victorian public sector employees where their personal affairs information concerns or arises in the context of them performing their ordinary duties, is already known to an applicant or is publicly available. However, in matters of a sensitive or confidential nature, whether disclosure would be unreasonable needs to be carefully considered in all of the circumstances.
- 79. The documents subject to review are official documents of the Agency and provide a record of Agency officers carrying out their usual employment duties and responsibilities within a professional context, which in this instance is the handling of a complaint by a member of the public. The personal affairs information does not concern those persons in their private or personal capacity. In my view, the personal affairs information of the Agency officers is not particularly sensitive in the circumstances of the matter.
- 80. I note the Agency refused access to personal affairs information of an Agency officer who consented to disclosure of their personal affairs information. As mentioned above, I am satisfied disclosure in

²⁵ Section 33(2B).

²⁶ Section 33(2A).

such circumstances would not be unreasonable and therefore, is not exempt from release under section 33(1).

81. While I do not have information before me concerning the views of the officers, and they may object to disclosure, there is no information before me to suggest the Applicant intends to disseminate the personal affairs information, nor do I consider the Agency officers will receive criticism over their handling of the complaint.
82. Having carefully considered the circumstances of this matter, I am not satisfied it would be unreasonable to disclose personal affairs information of Agency officers who were involved in the assessment and general handling of the Applicant's complaint or whose information has already been disclosed to the Applicant, regardless of their seniority.
83. In some instances, I consider it would not be unreasonable to disclose direct contact details of Agency officers, where it appears in communications sent directly to the Applicant. Such information is already in the Applicant's possession and therefore there is no concern with releasing the same information under FOI. In relation to internal Agency communications, I consider it would be unreasonable to disclose direct contact details, as such information will not assist the Applicant with their understanding of the content of the communications.
84. With respect to the remaining Agency officers who only had peripheral involvement in handling the Applicant's complaint, I am satisfied disclosure would be unreasonable having considered the circumstances and content of the documents. Disclosure of their names will not assist with the Applicant's understanding of the Agency's handling of their complaints. Rather, this is fulfilled through release of the substantive content of the documents.
85. Therefore, I am satisfied certain personal affairs information of Agency officers is exempt from release under section 33(1).

Personal affairs information of other council staff and other third parties

86. The Agency refused access to information that was provided by the practitioner the subject of the complaint, including the personal affairs information of council staff and of persons connected with the property the subject of the Applicant's complaint to the council.
87. In the circumstances, I consider disclosure of these names will not assist the Applicant with their understanding of the Agency's investigation into their complaint or its decision making. In my view, there is no public interest in disclosure of the personal affairs information. Therefore, I am satisfied its disclosure would be unreasonable and is exempt from release under section 33(1).
88. Further, their personal affairs information is included in attached documents to the practitioner's written response to the allegations and therefore, the inclusion of their personal affairs information is for peripheral reasons.
89. However, in one instance, I have decided to disclose some personal affairs information relating to local council staff as it relates to their correspondence with the Applicant and I consider there are no factors weighing against disclosure in that instance. Therefore, I am satisfied this information is not exempt from release under section 33(1).
90. The Schedule of Documents in **Annexure 1** sets out my decision on section 33(1).

Section 25 – Deletion of exempt or irrelevant information

91. 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.
92. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’²⁷ 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 25.²⁸
93. I have considered the effect of deleting exempt information from the documents. In my view, it is practicable to delete the exempt information as to do so would not require substantial time and effort, and the edited documents would retain meaning.
94. The Schedule of Documents in **Annexure 1** sets out my decision on section 25.

Conclusion

95. On the information before me, while I am satisfied certain information in the documents is exempt from release under sections 32(1) and 33(1), I am not satisfied information is exempt from release under sections 30(1) or 31(1)(d).
96. Where 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.
97. The Schedule of Documents in **Annexure 1** sets out my decision on each document.

Review rights

98. 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.²⁹
99. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.³⁰
100. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.³¹
101. 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.
102. 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.³²

²⁷ *Mickelburgh 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].

²⁸ *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].

²⁹ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

³⁰ Section 52(5).

³¹ Section 52(9).

³² Sections 50(3F) and 50(3FA).

Third party review rights

103. As I have determined to release documents that contain the personal affairs information of persons other than the Applicant, if practicable, I am required to notify those persons of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.³³
104. In this case, I am satisfied it is practicable to notify the relevant third parties of their review rights and confirm they will be notified of my decision on the date of decision.
105. I note a third party who consents to disclosure of their personal affairs information is not entitled to apply to VCAT for review of a decision to grant access to their personal affairs information.³⁴

When this decision takes effect

106. My decision does not take effect until the third parties' 60 day review period expires.
107. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

³³ Sections 49P(5), 50(3) and 52(3).

³⁴ Section 33(3AC).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.	[Date]	Investigations Referral – Building	6	Released in part Sections 30(1), 31(1)(d), 32(1), 33(1)	<p>Release in part Sections 32(1), 25</p> <p>The document is to be released in accordance with the following directions:</p> <p>(a) the information the Agency exempted under section 32(1) on pages 2 and 3 is exempt from release under section 32(1); and</p> <p>(b) the remainder of the document is to be released.</p>	<p>Section 30(1): I am not satisfied information in this document is exempt from release under section 30(1) for the reasons provided in the Notice of Decision above.</p> <p>Section 31(1)(d): I am not satisfied information in this document is exempt from release under section 31(1)(d) for the reasons provided in the Notice of Decision above.</p> <p>Section 32(1): I am satisfied information in the document is exempt from release under section 32(1) for the reasons provided in the Notice of Decision above.</p> <p>Section 33(1): I am not satisfied it would be unreasonable to disclose the personal affairs information of Agency officers in this document.</p> <p>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.</p>
2.	various	Attachment A1 – email chains	10	Released outside the FOI Act	Not subject to review	

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3.	various	Attachment 3 – email chains	12	Released outside the FOI Act	Not subject to review	
4.	undated	Attachment 4 – Building complaint	4	Released in full	Not subject to review	
5.	[Date]	Attachment 5	3	Released in part Section 33(1)	Release in full	Sections 33(1): This is a copy of letter addressed to the Applicant. It appears to be an attachment to Document 6. In such circumstances, it would not be unreasonable to disclose the name and signature of the Agency officer who authored the letter, as it is likely already in the Applicant's possession and such information was intended to be provided to the Applicant at the time in which it was drafted. Accordingly, I am satisfied the document is not exempt from release under section 33(1).
6.	[Date]	Attachment 6	4	Released in part Section 33(1)	Release in full	Sections 33(1): This is an email thread between the Applicant and an Agency officer. The exempted personal affairs information of the Agency is evidently already in the Applicant's possession and in such circumstances, there is no information before me to suggest disclosure of such information would be unreasonable in the circumstances.

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						Accordingly, the document is not exempt from release under section 33(1).
7.	[Date]	Attachment 7 – email thread with three attachments	17	Released in part Sections 30(1), 31(1)(d), 33(1)	Release in part Sections 33(1), 25 The document is to be released in accordance with the following directions: (a) the email address in the email signature of the Agency officer who sent the email dated [date] is exempt from release under section 33(1); and (b) the remainder of the document is to be released.	Section 30(1): See comments for Document 1. Section 31(1)(d): See comments for Document 1. Section 33(1): While I am not satisfied it would be unreasonable to disclose the identity of Agency officers in this document, I am satisfied it is unreasonable to disclose most direct contact details. It would not be unreasonable to disclose the direct telephone number of one of the Agency officers, as this information was disclosed to the Applicant in correspondence sent to the Applicant during the Agency's handling of [their] complaint. Section 25: See comments for Document 1.
8.	[Date range]	Attachment 8 – email thread and attachment	6	Refused in full Sections 30(1), 31(1)(d), 33(1)	Release in part Sections 32(1), 33(1), 25 The document is to be released in accordance with the following directions:	Section 30(1): See comments for Document 1. Section 31(1)(d): See comments for Document 1. Section 32(1): While the Agency did not apply section 32(1), I am satisfied the document contains references to legal

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					<p>(a) the telephone numbers and direct email addresses of Agency officers are exempt from release under section 33(1), except for the telephone number in the email signature in the email dated [date];</p> <p>(b) the last sentence of the second paragraph and the first sentence of the third paragraph in the email dated [date] is exempt from release under section 32(1); and</p> <p>(c) the remainder of the document is to be released.</p>	<p>advice which I am satisfied is exempt from release under section 32(1).</p> <p>Section 33(1): See comments for Document 7.</p> <p>Section 25: See comments for Document 1.</p>
9.	[Date]	Attachment 9 – Email thread with attached memorandum	7	<p>Refused in full</p> <p>Sections 30(1), 31(1)(d), 32(1), 33(1)</p>	<p>Release in part</p> <p>Sections 32(1), 33(1), 25</p> <p>The document is to be released in accordance with the following directions:</p> <p>(a) direct email addresses and direct telephone numbers of Agency officers are exempt from release under section 33(1);</p>	<p>Section 30(1): See comments for Document 1.</p> <p>Section 32(1): For the reasons provided in the Notice of Decision, above, only certain information in this document is exempt from release under section 32(1).</p> <p>Section 31(1)(d): See comments for Document 1.</p> <p>Section 33(1): See comments for Document 1. However, it would be unreasonable to disclose the direct contact details of the Agency officers and</p>

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					<p>(b) the name of the second person listed as the recipient of the email dated [date] is exempt from release under section 33(1);</p> <p>(c) the first 14 words in the first sentence of the email dated [date] is exempt from release under section 32(1);</p> <p>(d) the name of the second person listed as the recipient of the email dated [date], which is exempt from release under section 33(1);</p> <p>(e) the first sentence in the email dated [date] is exempt from release under section 32(1);</p> <p>(f) the email dated [date] is exempt from release under section 32(1);</p> <p>(g) the memorandum of legal advice is exempt from release under section 32(1); and</p> <p>(h) the remaining information is to be released.</p>	<p>personal affairs information of persons involved only in a peripheral capacity.</p> <p>Section 25: See comments for Document 1.</p>
10.	[Date]	Email thread	12	Released in part	Release in part	Section 33(1): The Agency officers whose information was exempted from this

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				Section 33(1)	<p>Sections 33(1), 25</p> <p>The document is to be released in accordance with the following directions:</p> <p>(a) the email address of the Agency officer who sent the email dated [date] is exempt under section 33(1) and is to remain deleted in accordance with section 25, throughout the email thread; and</p> <p>(b) all remaining information that was exempted by the Agency is to be released as it is not exempt.</p>	<p>document have each corresponded directly with the Applicant. I have decided it would only be unreasonable to disclose the direct email address of one of the Agency officers, as this information had not been disclosed to the Applicant during the officer's correspondence with the Applicant.</p> <p>Section 25: See comments for Document 1.</p>
11.	[Date]	Email thread in document 10 continued	7	Released outside the FOI Act	Not subject to review	
12.	Undated	Witness list	1	Refused in full Sections 30(1), 31(1)(d)	Release in full	<p>Section 30(1): This is factual information and is not exempt by virtue of section 30(3). Even if I were satisfied the first limb of section 30(1) were satisfied, I am not satisfied disclosure would be contrary to the public interest for the reasons provided in the Notice of Decision above.</p> <p>Section 31(1)(d): See comments for Document 1.</p>

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						Section 33(1): I note the Agency did not apply section 33(1) to the document and the third parties whose personal affairs information appears in this document did not object to disclosure of their personal affairs information.
13.	Undated	A – Evidence in Chief	4	Refused in full Sections 30(1), 31(1)(d)	Release in full	<p>Section 30(1): See comments for Document 1.</p> <p>Section 31(1)(d): See comments for Document 1.</p> <p>Section 33(1): See comments for Document 12.</p> <p>Section 25: See comments for Document 1.</p>
14.	[Date]	A1 – Certificate of Registrar	2	Released in part Section 33(1)	<p>Release in part Sections 33(1), 25</p> <p>No further information is to be released to the Applicant.</p>	<p>Section 33(1): The name and signature of the Agency officer who signed this document will not further assist the Applicant with their understanding of this document and the public interest would not be furthered by disclosure. In the circumstances, I am satisfied disclosure would be unreasonable.</p> <p>Section 25: See comments for Document 1.</p>
15.	[Date]	A2 – Email thread	10	Released outside the FOI Act	Not subject to review	

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16.	[Date]	A3 – Email thread	16	Released outside the FOI Act	Not subject to review	
17.	[Date]	A4 – Email thread	7	Released outside the FOI Act	Not subject to review	
18.	[Date]	A5 – Email thread	8	Released outside the FOI Act	Not subject to review	
19.	[Date]	A6 – Email thread		Released outside the FOI Act	Not subject to review	
20.	[Date]	A7 – Letter	3	Refused in full Sections 30(1), 31(1)(d), 33(1)	Release in full	<p>Section 30(1): This document, being a letter to a third party, does not satisfy the first limb of section 30(1). It does not contain information in the nature of advice, recommendation, opinion, or consultation or deliberation between Agency officers.</p> <p>Section 31(1)(d): See comments for Document 1.</p> <p>Section 33(1): The third party to whom this letter relates, and the Agency officer who authored the letter, do not object to disclosure. In these circumstances, I do not consider it would be unreasonable to disclose their personal affairs information.</p>

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						Section 25: See comments for Document 1.
21.	[Date]	A8 – Email thread with attachments	8	Released in part Section 33(1)	<p>Release in part Sections 33(1), 25</p> <p>The document is to be released in accordance with the following directions:</p> <ul style="list-style-type: none"> (a) the telephone numbers of the third party who sent the email dated [date] is to be released; (b) the same person's signature in the attached letter is to be released; and (c) the remaining personal affairs information exempted by the Agency is to remain deleted in accordance with section 25 as the information is exempt from release under section 33(1). 	<p>Section 33(1): I am not satisfied it would be unreasonable to disclose the personal affairs information of persons who consent to disclosure of their information.</p> <p>Section 25: See comments for Document 1.</p>
22.	[Date]	Building complaint	3	Released in full	Not subject to review	
23.	[Date]	Email thread	1	Released in part Section 33(1)	Release in part Sections 33(1), 25	Section 33(1): I am satisfied it would not be unreasonable to disclose the name and email address of one of the Agency officers whose information appears in

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					<p>The document is to be released in accordance with the following directions:</p> <ul style="list-style-type: none"> (a) the name and email address of the Agency officer who sent the email dated [date] is to be released; (b) the name of the second person who was copied into the email dated [date] is to be released throughout this document; and (c) the remaining personal affairs information that was exempted by the Agency is to remain deleted in accordance with section 25, as it is exempt from release under section 33(1). 	<p>this email thread. Although the Applicant was not a party to the thread, they have corresponded with the Agency officer directly and based on information released to the Applicant, their identity can be reasonably likely inferred.</p> <p>I am satisfied it would be unreasonable to disclose personal affairs information of Agency officers who did not have a substantive role in handling the Applicant's complaint and who did not correspond directly with the Applicant. However, where an Agency officer did have involvement, I am satisfied disclosure would not be unreasonable despite them not having direct contact with the Applicant.</p> <p>Section 25: See comments for Document 1.</p>
24.	[Date]	Continuation of the above email thread	22	Released outside the FOI Act	Not subject to review	
25.	[Date]	Email thread	5	Released in part Section 33(1)	Release in full	Section 33(1): For the reasons outlined in the Notice of Decision above, it would not be unreasonable to disclose the personal affairs information of Agency officers who corresponded directly with

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						the Applicant and where the information has already been disclosed to the Applicant as part of that correspondence. Accordingly, this document is not exempt from release under section 33(1).
26.	[Date]	Investigation File Summary	3	Refused in full Sections 30(1), 31(1)(d), 33(1)	Release in part Sections 32(1), 25 The document is to be released in accordance with the following directions: (a) the second sentence in the second paragraph on page 2, which is exempt under section 32(1); (b) the third last sentence on page 3 of the document is exempt from release under section 32(1); and (c) the remaining information in the document is to be released.	Section 30(1): See comments for Document 1. Section 31(1)(d): See comments for Document 1. Section 32(1): While the Agency did not apply section 32(1) to this document, it contains excerpts of the memorandum of legal advice. I am satisfied such information is exempt from release under section 32(1). Section 25: See comments for Document 1.
27.	[Date]	Two email threads	13	Released in part Section 33(1)	Release in full	Section 33(1): This is an email thread between the Applicant and the Agency. See comments for Document 25.

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28.	[Date]	Supervisor's Review	3	Refused in full Sections 30(1), 31(1)(d), 33(1)	Release in part Sections 32(1), 25 The document is to be released in accordance with the following directions: (a) the extract of the legal advice which appears as an italicised quote, is to be deleted from the document in accordance with section 25 as it is exempt from release under section 32(1); and (b) the remaining information in the document is to be released.	Section 30(1): See comments for Document 1. Section 31(1)(d): See comments for Document 1. Section 32(1): While the Agency did not apply section 32(1) to this document, it contains excerpts of the memorandum of legal advice. I am satisfied such information is exempt from release under section 32(1). Section 33(1): I am not satisfied information in the document is exempt from release under section 33(1) for the reasons provided in the Notice of Decision above. Section 25: See comments for Document 1.
29.	[Date]	Two email threads	19	Released in part Section 33(1)	Release in full	Section 33(1): This is an email thread between the Applicant and the Agency. See comments for Document 25.
30.	[Date]	Letter	1	Refused in full Sections 31(1)(d), 33(1)	Release in full	Section 33(1): The third party to whom this letter relates does not object to disclosure of this document. In these circumstances, I do not consider it would be unreasonable to disclose.

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						<p>The name of the Agency officer who authored the document is known to the Applicant and can be inferred based on information already released to the Applicant. Therefore, I am satisfied disclosure would not be unreasonable.</p> <p>Section 31(1)(d): The document does not disclose methods for preventing, detecting, investigating breaches of the law and an almost identical document has already been released to the Applicant. It is not exempt under section 31(1)(d).</p>
31.	[Date]	Letter to Applicant	1	Released outside the FOI Act	Not subject to review	