



Office of the Victorian
Information Commissioner

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Notice of Decision and Reasons for Decision

Applicant: 'CY7'
Agency: Department of Transport
Decision date: 3 May 2021
Exemption considered: Section 33(1)
Citation: 'CY7' and Department of Transport (Freedom of Information) [2021]
VICmr 116 (3 May 2021)

FREEDOM OF INFORMATION – payment request form – tax invoice – signatures – agency officer name – 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.

I am satisfied the personal affairs information of third parties in the document is exempt under section 33(1).

Accordingly, my decision on the Applicant's request is the same as the Agency's decision and a copy of the document is to be released in part with exempt information deleted in accordance with section 25.

My reasons for decision follow.

Joanne Kummrow

Public Access Deputy Commissioner

3 May 2021

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to the following documents:
 1. Documents around [date range], from [specific addressees] instructing [location] to suspend procurement process for the [specified position].
 2. Documents around [date range] to any other departments or units, with the same or similar instruction concerning other vacant positions.
 3. Any document akin to a Contract Completion Report, or Notice of Completion, or Assessment of Contract outputs, around [date range], [related to a specific matter linked to the Applicant] and signed by [named individual].
2. In its decision dated 19 October 2020, the Agency advised the Applicant the request was denied under section 27(1)(e) on grounds the documents sought 'do not exist or cannot be located'.

Complaint to OVIC

3. The Applicant lodged a complaint with OVIC in accordance with 61A(1) regarding the Agency's decision that no documents relating to the terms of the Applicant's request were located.
4. Following enquiries made by OVIC staff, the Agency advised it had undertaken an additional search for documents and located two documents falling within the terms of point 3 of the Applicant's request.
5. By email dated [date], the Agency notified the Applicant of its decision to grant access to one document in full and refuse access to one document in part under section 33(1). The Agency's email sets out the reasons for its decision.

Review

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 the Agency were invited to make a written submission under section 49H(2) in relation to the review.
9. I have considered all communications received from the parties.
10. In undertaking my review, I have had regard to the object of the FOI Act, which is to create a general right of access to information in the possession of the Government or other public bodies, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.
11. I note Parliament's intention the FOI Act must be interpreted so as to further the object of the Act and any discretions conferred by the Act must be exercised, as far as possible, so as to facilitate and promote the disclosure of information in a timely manner and at the lowest reasonable cost.

Review of exemptions

Section 33(1) – Personal affairs information of third parties

12. A document is exempt under section 33(1) if two conditions are satisfied:
- (a) disclosure of the document under the FOI Act would ‘involve’ the disclosure of information relating to the ‘personal affairs’ of a person other than the Applicant;¹ and
 - (b) such disclosure would be ‘unreasonable’.

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

13. Information relating to a person’s ‘personal affairs’ includes, but is not limited to, information that identifies any person, or discloses their address or location. It also includes any information from which such information may be reasonably determined.²
14. I am satisfied the information to which the Agency refused access is personal affairs information of individuals other than the Applicant (the **third parties**), being the signatures of two Agency officers and the name of one Agency officer.

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

15. The concept of unreasonable disclosure involves balancing the public interest in the disclosure of official information with the interest in protecting the personal privacy of a third party in the circumstances.³
16. The Supreme Court of Victoria Court of Appeal has held there is ‘no absolute bar to providing access to documents which relate to the personal affairs of others’, and the exemption under section 33(1) ‘arises only in cases of unreasonable disclosure’ and ‘[w]hat amounts to an unreasonable disclosure of someone’s personal affairs will necessarily vary from case to case’.⁴ The Court also stated, ‘[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 to a lesser or greater degree’.⁵
17. In determining whether disclosure of personal affairs information of the third parties would be unreasonable, I have considered the following factors in the context of this matter:
- (a) The nature of the personal affairs information and the circumstances in which the information was obtained

I consider the personal affairs information of the Agency officers is recorded in the context of their professional roles, rather than in their personal or private capacity.

Generally, I consider there is nothing particularly sensitive about disclosing the identity of Victorian public sector officers where such information merely concerns or represents those individuals performing their ordinary professional duties as public servants and the circumstances surrounding the information recorded is not sensitive. Nonetheless, this factor alone is not determinative of release and each case must be considered in its own context.

¹ Sections 33(1) and (2).

² Section 33(9).

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

⁴ [2008] VSCA 218 at [76].

⁵ [2008] VSCA 218 at [79].

From my review of the document, I am of the view the role of the certifying officer is administrative in that they were not directly involved in any decision making or outcome affecting the Applicant.

Further, the Agency released the name of the authorising officer to the Applicant.

(b) The Applicant's interest in the information, and whether their purpose for seeking the information is likely to be achieved

The FOI Act provides a general right of access that can be exercised by any person, regardless of their motive or purpose for seeking access to a document. However, the reasons why an applicant seeks access to a document is a relevant consideration in determining whether disclosure would be unreasonable in the circumstances.⁶

The Applicant did not provide any reasons as to why they seek access to the personal affairs information of third parties.

I also consider the Applicant is able to read and interpret the documents without the inclusion of the specific Agency officers name and the relevant signatures. Further, the personal affairs information does not add any material value to the document.

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

Having reviewed the document, I note the Agency disclosed all substantive information in the document to the Applicant except for certain personal affairs information.

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

In the circumstances, I am not satisfied there is an overriding public interest in the release of the personal affairs information in the document that outweighs the personal privacy of the third parties. Rather, I consider the Applicant's interest in the information would serve a personal interest only.

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

I have not been provided with any information from the Agency regarding the views of the third parties about the release of their personal affairs information to the Applicant.

However, I note the personal affairs information the Agency determined to be exempt is not widely available to the public or otherwise to the Applicant.

Whether the disclosure of information would, or would be reasonably likely to endanger the life or physical safety of any person⁷

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

18. Having weighed up the above factors, on balance, I am satisfied disclosure of the personal affairs information exempted by the Agency in the document would be unreasonable in the circumstances.

⁶ *Victoria Police v Marke* [2008] VSCA 218 at [104].

⁷ Section 33(2A).

Section 25 – Deletion of exempt or irrelevant information

19. 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.
20. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’⁸ 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 25.⁹
21. Given the Agency released an edited copy the document with personal affairs information deleted in accordance with section 25 and my decision in relation to section 33(1) is the same as the Agency’s decision, I am satisfied it is practicable to provide the Applicant with an edited copy of the document.

Conclusion

22. On the information before me, I am satisfied the personal affairs information of third parties in the document is exempt under section 33(1).
23. Accordingly, my decision on the Applicant’s request is the same as the Agency’s decision and a copy of the document is to be released in part with exempt information deleted in accordance with section 25.

Review rights

24. 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.¹⁰
25. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹¹
26. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹²
27. 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.
28. 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.¹³

⁸ *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].

⁹ *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].

¹⁰ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹¹ Section 52(5).

¹² Section 52(9).

¹³ Sections 50(3F) and (3FA).