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Notice of Decision and Reasons for Decision

Applicant: 'FC7'
Agency: Major Transport Infrastructure Authority
Decision date: 21 April 2023
Exemption considered: Section 30(1)
Citation: 'FC7' and Major Transport Infrastructure Authority (Freedom of Information) [2023] VICmr 33 (21 April 2023)

FREEDOM OF INFORMATION – infrastructure planning – major transport infrastructure project – internal communications – early stages of planning process – disclosure contrary to the public interest

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 information in the documents is exempt from release under section 30(1), I am not satisfied all information to which the Agency refused access under section 30(1) is exempt from release.

As I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with irrelevant and exempt information deleted in accordance with section 25, access to these documents is granted in part. Other documents are to be released 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

21 April 2023

Reasons for Decision

Background to review

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

I seek access to the following documents held by Major Road Projects Victoria from 2017 to date relating to the intersection of Mickleham Road and Garibaldi Road, Greenvale providing access to the land at 1040-1090 Mickleham Road, Greenvale (the Subject Site) including but not limited to:

- internal file notes, communications, advice and correspondence in respect to the signalisation or proposed access to the Subject Site including assessment of the impact of the future development of that land and/or signalisation of the intersection of Mickleham Road and Garibaldi Road, Greenvale providing access to the proposed Providence Town Centre (the Centre)
- communications between Major Road Projects Victoria and/or Hume City Council and/or Department of Transport in respect to the future development of the Subject Site and signalisation of the intersection of Mickleham Road and Garibaldi Road, Greenvale providing access to the Centre
- any drawings and plans in respect to the Mickleham Road intersection with Garibaldi Road providing access to the land to the Centre
- any external advice received in respect to the Mickleham Road intersection with Garibaldi Road and the proposed access to the Centre from Mickleham Road and
- documents relating to Hume City Councils proposed Urban Design Framework for the Centre and the proposed access to the Subject Site in any Urban Design Framework from Mickleham Road.

The above request relating to the Subject Site should encompass all of the names by which the Subject Site is known and referred to, including but not limited to: - 1040-1090 Mickleham Road, Greenvale-1060-1090 Mickleham Road, Greenvale and - 1090 Mickleham Road, Greenvale.

The above request relating to the Centre should encompass all of the names by which the Centre is known and referred to, including but not limited to the Subject Site and: - Providence Town Centre - Providence Neighbourhood Activity Centre and - Greenvale North Neighbourhood Activity Centre.

2. Following consultation with the Agency, the Applicant excluded personal affairs information from their request.
3. The Agency identified 10 documents falling within the terms of the Applicant's request and granted access to five documents in full, two documents in part, and refused access in full to the remaining two documents. In determining to exempt certain information from the documents, the Agency applied section 30(1). The Agency's decision letter sets out the reasons for its decision.

Review application

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
6. I have considered all communications and submissions received from the parties.
7. 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.

8. 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 exemption

Section 30(1) – Internal working documents

9. 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.

10. 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?

11. 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.
12. 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
13. During the review, the Agency advised that following further consultation, it no longer sought to exempt certain information in the documents. The documents that remain subject to review are certain sections of Documents 3 and 4. The documents are email chains between agency officers and the Department of Transport.
14. The emails are brief; however, I agree they contain the opinion, advice and recommendations of Agency officers.

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?

15. The term 'deliberative process' is interpreted broadly and includes any of the processes of deliberation or consideration involved in the functions of an agency, Minister or government.³
16. In *Re Waterford and Department of Treasury (No.2)*,⁴ the former Victorian Administrative Appeals Tribunal held:

¹ Section 30(3).

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

³ *Brog v Department of Premier and Cabinet* (1989) 3 VAR 201 at [208]; ; *Re Waterford v Department of Treasury (No 2)* [1984] 1 AAR 1 at [58] .

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

... “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.

17. I am also satisfied they were prepared for the deliberative processes of the Agency, that of planning for a major project.

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

18. In deciding if release is 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: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.
19. I have determined that it would be contrary to the public interest to release certain information, for the following reasons:
- (a) while I am constrained from the information I can provide about the contents of the documents, because to do so would reveal exempt information, I consider it to be sensitive;
 - (b) the information appears in the early stages of the planning process;
 - (c) given the information in the documents is preliminary and brief commentary, I consider disclosure would likely only provide a part explanation that may mislead the public, and that the Agency would not be in a position to further explain its context; and

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

(d) certain factors of major projects are more sensitive than others, and while I agree it is generally in the public interest to disclose such matters, so that the community can be involved in the decision making processes, there are other matters where disclosure could have a detrimental impact on the project, and therefore disclosure would instead be contrary to the public interest.

20. The information identified by the Agency during the review is therefore exempt under section 30(1), with the remainder of the information no longer claimed exempt by the Agency is to be released.

21. My decision in relation to section 30(1) is set out in the Schedule of Documents at **Annexure 1**.

Section 25 – Deletion of exempt or irrelevant information

22. 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.

23. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁶ 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 25.⁷

24. I have considered the information the Agency deleted from the documents as irrelevant, being personal affairs information not sought by the Applicant. I agree it falls outside the scope of the Applicant's request as it is personal affairs information.

25. I consider it is practicable to delete the irrelevant and exempt information from the documents, as to do so would not render the documents meaningless.

Conclusion

26. On the information before me, While I am satisfied information in the documents is exempt from release under section 30(1), I am not satisfied all information to which the Agency refused access under section 30(1) is exempt from release.

27. As I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with irrelevant and exempt information deleted in accordance with section 25, access to these documents is granted in part. Other documents are to be released in full.

28. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

Review rights

29. 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.⁸

30. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁹

⁶ *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].

⁷ *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].

⁸ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁹ Section 52(5).

31. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁰
32. 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.
33. 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.¹¹

When this decision takes effect

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

¹⁰ Section 52(9).

¹¹ Sections 50(3F) and 50(3FA).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1	30/09/2020	Email DoT to MRPV dated 30 September 2020 (attachments are listed as 1A to 1E)	2	Released in part Sections 30(1), 25	Release in full	During the review the Agency advised it no longer sought to exempt this document.
1A	July 2018	Urban Design Framework Providence Town Centre July 2018 by Clarke Hopkins Clarke (without Appendices attached)	25	Released in full	Not subject to review	
1B	20/12/2019	Letter Urbis to DoT dated 20 December 2019	3	Released in full	Not subject to review	
1C	03/08/2018	Providence Town Centre 1040-1090 Mickleham Road, Greenvale Transport Master Plan Report 3 August 2018, by GTA Consultants for Pask Group	38	Released in part Section 25	Release in part Section 25	Section 25: The Applicant does not seek personal affairs information. I agree the information deleted by the Agency is personal affairs information and is therefore irrelevant to the request.
1D	01/08/2018	Urbis Providence Village, Greenvale Landscape Concept 1 August 2018	3	Released in full	Not subject to review	
1E	20/11/2019	Letter Department of Transport to Hume City Council dated 20 November 2019	2	Refused in full Section 30(1)	Release in full	During the review the Agency advised it no longer sought to exempt this document.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
2	15/09/2020	Email DoT to MRPV dated 15 September 2020 attaching zip folder (containing Document 1D, 1A and 1C) plus two documents (being Document 1E & Document 1B)	1	Released in part Section 25	Release in part Section 25	Section 25: See comments for Document 1C.
3	26/10/2020	Email DoT to MRPV dated 26 October 2020 attaching Document 5	3	Released in part Sections 30(1), 25	<p>Release in part Sections 30(1), 25</p> <p>The document is to be released with exempt and irrelevant information deleted in accordance with section 25.</p> <p>The exempt information is:</p> <ul style="list-style-type: none"> in the email dated 26/10/2020 at 3:02PM, the centre two lines of text, being the two lines of text after the first question mark. <p>The irrelevant information is:</p> <ul style="list-style-type: none"> the personal affairs information of third 	<p>During the review, the Agency advised it only claims information is exempt from release on page 1.</p> <p>Section 30(1): I have decided certain information is exempt under section 30(1), for the reasons described above.</p> <p>Section 25: See comments for Document 1C.</p> <p>Attachments: I note the email chain refers to attached documents. These are at documents 1A, 1C and Document 5.</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					parties in the document.	
4	27/10/2020	Email DoT to MRPV dated 27 October 2020	4	Refused in full Section 30(1)	<p>Release in part Sections 30(1), 25</p> <p>The document is to be released with exempt and irrelevant information deleted in accordance with section 25.</p> <p>The exempt information is:</p> <ul style="list-style-type: none"> • in the email dated 27/10/2020 6:58PM, the whole of the contents of the email, being four lines of text; • in the email dated 26/10/2020 7:51PM, the whole of the contents of the email, being two lines of text; and • in the email of 26/10/2020 at 3:02PM, the centre two lines of text, being the two 	<p>During the review the Agency advised it no longer claims pages 3 and 4 are exempt from release.</p> <p>Section 30(1): See comments for Document 3.</p> <p>Section 25: See comments for Document 1C.</p> <p>Attachment: The reference to an attachment in this document is at document 5.</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					<p>lines of text after the first question mark.</p> <p>The irrelevant information is:</p> <ul style="list-style-type: none"> the personal affairs information of third parties as contained in the document. 	
5	14 July 2020	Letter DoT to Hume City Council dated 14 July 2020	1	Refused in full Section 30(1)	Release in full	During the review the Agency advised it no longer maintains this document is exempt from release. Accordingly, it is to be released in full.