

Notice of Decision and Reasons for Decision

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| Applicant: | 'FE6' |
| Agency: | Hume City Council |
| Decision date: | 25 May 2023 |
| Exemptions considered: | Sections 33(1), 25 |
| Citation: | 'FE6' and Hume City Council (Freedom of Information) [2023] VICmr 50 (25 May 2023) |

FREEDOM OF INFORMATION – personal affairs information – telephone bill – council communications – unreasonable disclosure – third party telephone numbers

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 a document requested by the Applicant under the FOI Act.

My decision on the Applicant's request is the same as the Agency's decision. I am satisfied the document is exempt from release under section 33(1).

Given my decision is the same as the Agency's decision and it granted access to the document in part in accordance with section 25, I consider it remains practicable to provide the Applicant with an edited copy of the document with exempt information deleted.

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

My reasons for decision follow.

Information Commissioner
Sven Bluemmel

25 May 2023

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to certain documents. Following consultation with the Agency, the Applicant clarified the initial request and sought access to:

“Pertaining to all [third party] communications on [date] you seek copies of:

(a) All emails and text messages that contain the word/s VACC (Victorian Automotive Chamber of Commerce); and

(b) A copy of the phone bill, listing all phone numbers sent and received.”
2. The Agency identified one document falling within the terms of the Applicant’s request and granted access to the document in part under section 33(1) and 25. The Agency’s decision letter sets out the reasons for its decision.

Concerns about the adequacy of document searches

3. During the review, the Applicant raised concerns about the adequacy of the Agency’s document searches in relation to their FOI request.
4. In accordance with section 61B(3), these concerns were dealt with by this review.
5. OVIC staff made further enquiries with the Agency to address the Applicant’s concerns. The outcome of those enquiries was communicated to the Applicant. In particular, the Agency provided the Applicant with a detailed submission in relation to the searches conducted and indicated that no further information or documents could be located under the terms of the Applicant’s FOI request.
6. Based on the Agency’s response, I am satisfied the Agency undertook a thorough and diligent search for the requested documents. Accordingly, I consider the Applicant’s concerns have been fully pursued and there is no need to make further enquiries or take further action under the FOI Act in relation to those particular concerns.

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 document 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. 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.

12. 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)– Documents affecting personal privacy of third parties

13. 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**);¹ and
 - (b) such disclosure would be 'unreasonable'.

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

14. 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 this may be reasonably determined.²
15. 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.³
16. Even where an applicant claims to know the identity of a third party, disclosure of their personal affairs information may still be unreasonable in the circumstances.⁴
17. The document is a telephone bill of a third party, containing a list of mobile telephone numbers, as well as calls received on a certain date from unknown third parties.
18. Accordingly, I am satisfied the document contains the personal affairs information of third parties.

Would disclosure of the personal affairs information be unreasonable?

19. 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.
20. In *Victoria Police v Marke*,⁵ 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

¹ Sections 33(1) and 33(2).

² Section 33(9).

³ *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].

⁴ *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 at [58]; *Akers v Victoria Police* [2003] VCAT 397 at [41].

⁵ [2008] VSCA 218 at [76].

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'.⁶ 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'.⁷

21. 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 and the circumstances in which the information was obtained

As described above, the document is a telephone bill of a third party that contains telephone numbers of other third parties from whom calls were received on a certain date. The Agency has released the telephone numbers that are already publicly available. However, I consider the telephone numbers of other third parties to be potentially sensitive as they can be directly contacted on their private contact details.

In these circumstances, I consider the personal affairs information of third parties was obtained by the Agency whilst undertaking their professional roles as Agency officers. However, having reviewed the document and noting the circumstances in which it was obtained by the Agency, I am of the view the third parties, whose information was effectively collected by the Agency, would not reasonably expect their personal affairs information would be disclosed to the Applicant under the FOI Act.

(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 under section 33(1).⁸

The Applicant did not provide a reason why they seek access to the personal affairs information of the third parties. I note the majority of information under the terms of the Applicant's FOI request was released to the Applicant by the Agency. In my view, disclosure of the remaining personal affairs information would not assist the Applicant in understanding the substance of the documents.

(c) Whether any public interest would be promoted by release of the personal affairs information

There is no information before me to suggest the public interest would be promoted by disclosure of the third parties' personal affairs information. Rather, I consider disclosure of this information would serve the Applicant's private interests only.

⁶ Ibid.

⁷ Ibid at [79].

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

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

As the FOI Act does not place any restrictions on an applicant's use or dissemination of documents obtained under FOI, this is to be interpreted by reference to the capacity of any member of the public to identify a third party.⁹

Accordingly, I have considered the likelihood of the personal affairs information in the document being further disseminated, if disclosed, and the effects broader disclosure of this information would have on the privacy of the relevant third parties.

I am of the view it is reasonably likely the personal privacy of the third parties will be impacted should their personal affairs information be disclosed.

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

The Agency advised it has consulted with relevant third parties regarding their views on disclosure of their personal affairs information, as required under section 33(2B) and provided a summary of their responses for my consideration. I note certain third parties objected to the release of their personal affairs information to the Applicant. Other third parties did not respond to consultation. The fact a person does not agree to the disclosure of their personal affairs information is a relevant consideration, but is not a determinative factor.¹⁰

(f) Whether disclosure of the information would or would be reasonably likely to endanger the life or physical safety of any person¹¹

In determining whether the disclosure of a document would involve the unreasonable disclosure of information relating to the personal affairs of any person, I must consider whether the disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person.¹² There is no information before me to indicate this is a relevant factor in this matter.

22. Having considered the above factors, I am satisfied disclosure of the personal affairs information would be unreasonable in the circumstances.

23. Accordingly, I am satisfied this information is exempt under section 33(1).

Section 25 – Deletion of exempt or irrelevant information

24. 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.

⁹ Ibid at [68].

¹⁰ Marke v Victoria Police (2007) 28 VAR 84; [2007] VSC 522 at [45], Marke v Victoria Police [2007] VCAT 747 at [22].

¹¹ Section 33(2A).

¹² Section 33(2A).

25. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹³ 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 25.¹⁴
26. I have considered the information the Agency deleted from the document as irrelevant. I agree it falls outside the scope of the Applicant's request as the information relates to a timeframe not specified in the Applicant's FOI request.
27. Given my decision is the same as the Agency's decision and it granted access to the document in part in accordance with section 25, I consider it remains practicable to provide the Applicant with an edited copy of the document with exempt information deleted.

Conclusion

28. On the information before me, I am satisfied certain information in the document is exempt from release under section 33(1).
29. As I am satisfied it is practicable to provide the Applicant with an edited copy of the document with irrelevant and exempt information deleted in accordance with section 25, access is granted in part.

Review rights

30. If the Applicant is not satisfied with my decision, they are entitled to apply to the Victorian Civil and Administrative Tribunal (**VCAT**) for it to be reviewed.¹⁵
31. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁶
32. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁷
33. 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.
34. 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.¹⁸

When this decision takes effect

35. My decision does not take effect until the Agency's 14 day review period expires.

¹³ *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].

¹⁴ *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], [155].

¹⁵ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁶ Section 52(5).

¹⁷ Section 52(9).

¹⁸ Sections 50(3F) and (3FA).

36. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

Annexure 1 – Schedule of Documents

| Document No. | Date of Document | Document Description | No. of pages | Agency Decision | OVIC Decision | OVIC Comments |
|---------------------|-------------------------|--------------------------------|---------------------|--|---------------------------------------|--|
| 1. | [Date] | Telephone Bill – [Third party] | 7 | Released in part Sections 33(1), 25 | Release in part Sections 33(1), 25 | <p>Section 33(1): I am satisfied it would be unreasonable to disclose the personal affairs information in this document for the reasons outlined in the Notice of Decision, above.</p> <p>Section 25: I am satisfied it is practicable to provide the Applicant with an edited copy of this document with exempt and irrelevant information deleted in accordance with section 25.</p> |