

Notice of Decision and Reasons for Decision

Applicant:	'FT6'
Agency:	Hume City Council
Decision date:	12 February 2025
Exemption and provision considered:	Sections 33(1), 25
Citation:	'FT6' and Hume City Council (Freedom of Information) [2024] VICmr 64 (12 February 2025)

FREEDOM OF INFORMATION – internal floor plans – unreasonable disclosure of internal floor plans

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 and no further information is to be released.

Please refer to page 6 for information about review rights through the Victorian Civil and Administrative Tribunal (**VCAT**).

My reasons for decision follow.

Penny Eastman
Public Access Deputy Commissioner

12 February 2025

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to façade and floor plans for a specific address.
2. The Agency identified two documents falling within the terms of the Applicant's request and granted access to the façade plan in part, and refused access to the floor plan in full, exempting information under section 33(1). The Agency's decision letter sets out the reasons for its decision.

Review application

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. The Applicant advised they are seeking review of the decision to exempt the floor plan in full. I note only a small amount of information has been exempted from the façade plan.
5. I have examined a copy of the document subject to review, being the floor plans only.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered relevant communications and submissions received from the parties.
8. 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.
9. 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

10. For more information about section 33(1) see the [FOI Guidelines](#).
11. Section 33(1) protects an individual's privacy where their right to privacy outweighs the public interest in disclosing their information.¹ This will only occur when disclosing the individual's personal affairs information is unreasonable.
12. A document or information is exempt under section 33(1) if two conditions are satisfied:

¹ *Victoria Police v Marke* [2008] VSCA 218.

- (a) the document or information relates to the 'personal affairs' of a natural person (living or deceased); and
- (b) disclosure of that personal affairs information is unreasonable in all the circumstances.

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

- 13. The concept of personal affairs information is broad. Information will relate to the personal affairs of a person if it 'concerns or affects that person as an individual'.² This includes information relating to health, private behaviour, home life, or personal or family relationships of individuals.³
- 14. A document will indirectly disclose personal affairs information if it contains information from which any person's identity, address or location can reasonably be determined. This means that a document can be exempt under section 33(1) where the document itself does not contain personal affairs information, but its disclosure would reveal personal affairs information.
- 15. Personal affairs information can be revealed or indirectly disclosed by connecting or linking the information in the disclosed document with other information available to the applicant.⁴
- 16. The document contains the floor plans of a residential property. I am satisfied it contains the personal affairs information of a third party, being the owner of the property.

Consultation

- 17. The Agency consulted the third party who objected to disclosure of the document.

Would disclosure of the personal affairs information be unreasonable?

- 18. In determining whether disclosure of the personal affairs information would be unreasonable in the circumstances, I have considered the following factors:⁵
 - (a) the nature of the personal affairs information;
 - (b) the circumstances in which the information was obtained;
 - (c) the extent to which the information is available to the public;
 - (d) the applicant's interest in the information;
 - (e) whether any public or important interest would be promoted by release of the information;

² *Hanson v Department of Education & Training* [2007] VCAT 123.

³ *Re F and Health Department* (1988) 2 VAR 458, quoted in *RFJ v Victoria Police FOI Division* [2013] VCAT 1267 [103], [109].

⁴ *Harrison v Victoria Police* [2022] VCAT 280, [153].

⁵ See the [FOI Guidelines](#).

- (f) whether the individuals to whom the information relates object, or would be likely to object, to the release of the information;
 - (g) whether disclosure of the information would or would be reasonably likely to endanger the life or physical safety of any person.
19. The Applicant submits floor plans for residential properties are routinely published on the internet when for sale, and for a period after, during house inspections and at other times during the construction process. Homes are also routinely accessed by tradespeople who would become familiar with the floor plan.
20. The Applicant further advises that they believe disclosure is in the public interest as it relates to a potential breach of the law. In this case the Applicant believes their copyright over the plans has been infringed.
21. I have decided it would be unreasonable to disclose the personal affairs information in the document for the following reasons:
- (a) I understand that the floor plans of a person's house are not necessarily sensitive personal information, however, a person's home remains their private space, and they determine who can attend, and who can know the layout of their homes;
 - (b) I cannot see that the floor plan for this particular home is publicly available;
 - (c) the floor plans were only obtained by the Agency for the purposes of its regulatory duties as the local council;
 - (d) I acknowledge the Applicant's concerns, however in this instance I do not consider the FOI Act to be the appropriate mechanism to obtain the plans; if the Applicant is concerned about a breach of the law, they may consider taking legal action;
 - (e) in my view, the Applicant is pursuing a private, rather than a public interest and in these circumstances the public interest weighs in favour of maintaining the third party's personal privacy.
22. The document is therefore exempt under section 33(1).

Section 25 – Deletion of exempt or irrelevant information

23. 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.
24. 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.

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].

Where deletions would render a document meaningless, they are not 'practicable' and release of the document is not required under section 25.⁷

25. I have considered the effect of deleting exempt information from the document. In my view, it is not practicable for the Agency to do this as deleting the exempt information would render the document meaningless and devoid of the information the Applicant is specifically seeking.

Conclusion

26. On the information before me, I am satisfied the document is exempt from release under section 33(1).
27. As I am satisfied it is not practicable to provide the Applicant with an edited copy of the document with exempt information deleted in accordance with section 25, access is refused in full.

Timeframe to seek a review of my decision

28. If the Applicant to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.⁸
29. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁹
30. 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.
31. The Agency is required to notify the Information Commissioner in writing as soon as practicable if the Applicant applies to VCAT for a review of my decision.¹⁰

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], [155].

⁸ Section 50(1)(b).

⁹ Section 52(5).

¹⁰ Section 50(3FA).