

Notice of Decision and Reasons for Decision

Applicant:	'FT3'
Agency:	Hobsons Bay City Council
Decision date:	27 January 2025
Exemptions considered:	Sections 30(1), 33 and 35(1)(b)
Citation:	'FT3' and Hobsons Bay City Council (Freedom of Information) [2025] VICmr 6 (27 January 2025)

FREEDOM OF INFORMATION – local government – council – complaint – dog attack – investigation – *Domestic Animals Act 1994* (Vic) – personal affairs information – information communicated in confidence – internal working documents

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.

My decision on the Applicant's request differs from the Agency's decision and more information is to be released.

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

Please refer to pages 7-8 for information about review rights through the Victorian Civil and Administrative Tribunal (**VCAT**).

My reasons for decision follow.

Penny Eastman
Public Access Deputy Commissioner

27 January 2025

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to documents relating to a dog attack which they alleged resulted in injury to the Applicant and their dog, and the death of the Applicant's cat.
2. The Agency identified 42 documents falling within the terms of the Applicant's request. The Agency granted access to 25 documents in full (8 of which were released outside the FOI Act) and 3 in part, and refused access to 14 documents in full. The Agency relied on the exemptions in sections 30(1), 33(1) and 35(1)(b). 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. I have examined a copy of the documents subject to review. My decision relates only to those documents that the Agency refused to release, either in whole or in part.
5. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review and they did so.
6. During the review, the Agency was provided with OVIC's preliminary view about the application of exemptions to certain documents and given an opportunity to respond.
7. I have considered relevant communications and submissions received from the parties, including the Agency's response to OVIC's preliminary view and its agreement to release further content which is reflected in the Schedule of Documents at **Annexure 1**.
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 30(1) – Internal working documents

10. The Agency refused one document in part on the basis that part of the document was exempt under section 30(1) (Document 34). The document is an internal document that outlines the investigation of the Applicant's complaint about the dog attack, including the evidence obtained and actions taken. The part exempted under section 30(1) outlines the options available to the Agency, and recommendations in relation to same.

11. To be exempt under section 30(1), three conditions must be satisfied:
- (a) the document or information is matter in the nature of:
 - (i) opinion, advice or recommendation prepared by an agency officer or a Minister; or
 - (ii) consultation or deliberation that has taken place between agency officers or Ministers; and
 - (b) the matter was created during the deliberative process of an agency, Minister, or the government's functions; and
 - (c) disclosure of the matter would be contrary to the public interest.
12. The exemption does not apply to purely factual material in a document.¹
13. I am satisfied most of the information exempted by the Agency is opinion, advice or recommendation prepared by an agency officer, however, certain information is factual in nature and therefore section 30(3) applies.
14. Further, I am satisfied the information was created during the deliberative processes of the agency, because it was created for the purpose of considering the evidence obtained in an investigation and deliberating on the Agency's options for dealing with the matter.

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

15. In deciding if release is contrary to the public interest, I must consider all relevant facts and circumstances remaining mindful that the object of the FOI Act is to facilitate and promote the disclosure of information. This requires a 'process of the weighing against each other conflicting merits and demerits'.²
16. In deciding whether the information exempted by the Agency would be contrary to the public interest, I have given weight to the following relevant factors:³
- (a) the right of every person to gain access to documents under the Act;
 - (b) the sensitivity of the issues involved and the broader context of how the document was created;
 - (c) the stage of a decision at the time the communications were made;
 - (d) whether disclosure of the document would be likely to inhibit communications between agency officers that are essential for the agency to make an informed and well-considered decision or for those officers to properly participate in a process of the

¹ Section 30(3).

² *Sinclair v Maryborough Mining Warden* [1975] HCA 17; (1975) 132 CLR 473 at [485], adopted in *Department of Premier and Cabinet v Halls* [1999] VSCA 117 at [30].

³ See *OVIC FOI Guidelines – Section 30(1)*

agency's functions (such as an audit or investigation, regulatory or law enforcement function);

- (e) the public interest in the community being better informed about an agency's deliberative, consultative and decision-making processes.
17. I have decided it would not be contrary to the public interest to disclose the information in the document because the options and recommendations are not particularly sensitive or controversial, and the investigation and any steps taken as a result of the investigation have by now concluded.
18. Content in Document 34 is therefore not exempt under section 30(1).

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

90. The Agency exempted 15 documents in full or in part on the basis of section 33(1). Many of the documents are photographs, and the remaining documents are written documents that contain a third party's name, address, telephone number and/or date of birth.
91. A document or information is exempt under section 33(1) if two conditions are satisfied:
- (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.

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

19. 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'.⁴ This includes information relating to person's identity, address or location, their private behaviour and home life.⁵
20. Some of the documents are photographs of a third party, some are of a third party's backyard, and one is of the contents of a third party's bin. Other documents contain the name, address, telephone number and date of birth of a third party. I am satisfied that these contain personal affairs information.
21. Some information exempted by the Agency is not personal affairs information, but is information that relates to an animal, such as an animal's registration and microchip details. This view was communicated to the Agency, which then agreed that this further information could be properly released to the Applicant.

⁴ *Hanson v Department of Education & Training* [2007] VCAT 123.

⁵ *Re F and Health Department* (1988) 2 VAR 458, quoted in *RFJ v Victoria Police FOI Division* [2013] VCAT 1267 [103], [109].

Would disclosure of the personal affairs information be unreasonable?

22. 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.
23. In *Victoria Police v Marke*,⁶ the Victorian Court of Appeal said that 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'.⁷
24. I note that 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.⁸
25. In determining whether disclosure of the personal affairs information would be unreasonable in the circumstances, I have considered the following factors:⁹
 - (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; and
 - (f) whether the individuals to whom the information relates object, or would be likely to object, to the release of the information.
26. I consider that it would be unreasonable to release under the FOI Act photographs of a third party, their backyard, and the contents of their bin. While it is not clear on the face of the documents who the third party is, the Applicant and others with additional information would know.
27. I also consider it is unreasonable to release parts of documents containing the name, address, telephone number and date of birth of a third party. This is particularly so in the context of those documents coming into being in connection with an investigation of criminal offences. I consider it to be unreasonable even though the Applicant is likely aware of the identity of the third party.
28. I note that certain documents contain the names and signatures of other third parties that were not exempted by the Agency. The Agency confirmed that this was because those third

⁶ [2008] VSCA 218 at [76].

⁷ Ibid.

⁸ *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 at [58]; *Akers v Victoria Police* [2003] VCAT 397 at [41].

⁹ OVIC FOI Guidelines – Section 33(1)

parties consented to that information being disclosed. Accordingly, I have also decided that it is not unreasonable to disclose this information.

29. As such, I am satisfied that certain information in the documents is exempt from release under section 33(1), however, further information in certain documents is to be released to the Applicant.

Section 35(1)(b) – Information obtained in confidence

30. The Agency exempted two documents (Documents 27 and 28) in full on the basis they are exempt under section 35(1)(b). These documents are transcripts of interviews with a witness to the dog attack.
31. A document is exempt under section 35(1)(b) if two conditions are satisfied:
- (a) disclosure would divulge information or matter communicated in confidence by or on behalf of a person or a government to an agency or a Minister; and
 - (b) disclosure would be contrary to the public interest as it would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.

Was the information obtained in confidence?

32. Whether information communicated by an individual to an agency was communicated in confidence is a question of fact.¹⁰ Confidentiality can be express or implied from the circumstances.¹¹
33. The documents are records of two voluntary interviews conducted as part of an investigation into whether an offence had occurred in relation to the dog attack. While an interviewee may have some understanding that the records of interview may be used if the matter were to be prosecuted, I consider the information communicated during the interviews would have been otherwise communicated on the basis that they were confidential and the interviewees would expect they would not otherwise be disclosed.

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

34. Section 35(1)(b) also requires I consider whether the Agency would be impaired from obtaining similar information in the future if the information were to be disclosed under the FOI Act. This involves considering whether others in the position of the communicator would be reasonably likely to be inhibited or deterred from providing similar information to the Agency in the future should the information be disclosed.
35. I am of the view that if such documents were released under the FOI Act that there is a real possibility that the Agency would be impaired from obtaining similar information in the future, particularly given the voluntary nature of the interviews conducted.
36. Therefore, I am satisfied Documents 27 and 28 are exempt from release under section 35(1)(b).

¹⁰ *Ryder v Booth* [1985] VR 869 at [883]; *XYZ v Victoria Police* [2010] VCAT 255 at [264].

¹¹ *XYZ v Victoria Police* [2010] VCAT 255 at [265], referring to *Barling v Medical Board of Victoria* (1992) 5 VAR 542, 561-562.

Section 25 – Deletion of exempt or irrelevant information

37. 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.
38. I am of the view, which has been confirmed by the Agency, that it is practicable for the Agency to delete the exempt information, because it would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

39. On the information before me, I am satisfied certain information in the documents is exempt from release under sections 33(1) and 35(1)(b). I am not however satisfied section 30(1) applies to any content in the documents.
40. Where I am satisfied it is practicable to provide the Applicant with an edited copy a document with exempt information deleted in accordance with section 25, access to that document is granted in part. Where it is not practicable to provide an edited copy with exempt information removed, access is refused in full.
41. Additional information is to be released to the Applicant in Documents 22, 23, 34, 38 and 40.
42. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document. A marked-up copy of Document 34 showing the information to be released has also been provided to the Agency to assist.

Timeframe to seek a review of my decision

43. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.¹²
44. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹³
45. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁴
46. 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.
47. 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.¹⁵

¹² The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹³ Section 52(5).

¹⁴ Section 52(9).

¹⁵ Sections 50(3F) and 50(3FA).

Third party review rights

48. I have decided to disclose certain information in the documents that the Agency claimed exempt under section 33(1), however, I consider it is not practical to notify them of their review rights.

When this decision takes effect

49. My decision does not take effect until the 60 day review period expires. 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
7.	[Date]	Photo 6	1	Refused in full Section 33(1)	Refuse in full Section 33(1)	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. Section 25: It is not practicable to edit this document to delete exempt information as the required redactions would leave the document meaningless.
8.	[Date]	Photo 7	1	Refused in full Section 33(1)	Refuse in full Section 33(1)	Section 33(1): See comments for Document 7. Section 25: See comments for Document 7.
14.	[Date]	Photo 13	1	Refused in full Section 33(1)	Release in full	Section 33(1): I am not satisfied that the document contains any personal affairs information. OVIC's preliminary view about the release of additional information was communicated to the Agency and the Agency agreed.
15.	[Date]	Photo 14	1	Refused in full Section 33(1)	Refuse in full Section 33(1)	Section 33(1): See comments for Document 7.

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						Section 25: See comments for Document 7.
19.	[Date]	Photo 17	1	Refused in full Section 33(1)	Refuse in full Section 33(1)	Section 33(1): See comments for Document 7. Section 25: See comments for Document 7.
20.	[Date]	Photo 18	1	Refused in full Section 33(1)	Release in full	OVIC's preliminary view communicated to the Agency. The Agency considered the document could be released in part with the property redacted. Section 33(1): In this particular case, I do not consider the front of a property is personal affairs information where the property is visible from the street.
21.	[Date]	Photo 19	1	Refused in full Section 33(1)	Release in full	The document does not contain any personal affairs information. OVIC's preliminary view about the release of this document was communicated to the Agency and the Agency agreed.
22.	[Date]	Photo 20	1	Refused in full Section 33(1)	Release in part Section 33(1) The document is to be released with the name,	Only part of the document contains personal affairs information (name, address, phone number, date of birth, signature of third party).

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					address, phone number, date of birth and signature of third party deleted.	<p>OVIC's preliminary view was communicated to the Agency about the release of additional information and the Agency agreed.</p> <p>Section 33(1): I am satisfied it would be unreasonable to disclose certain 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 information deleted in accordance with section 25.</p>
23.	[Date]	Photo 21	1	Refused in full Section 33(1)	<p>Release in part Section 33(1)</p> <p>The document is to be released with the third party's name, address, mobile number, and the dog's last name deleted.</p>	<p>Only part of the document contains personal affairs information (third party's name, address, mobile number, and the dog's last name).</p> <p>OVIC's preliminary view was communicated to the Agency about the release of additional information and the Agency agreed.</p> <p>Section 33(1): See comments for Document 22.</p>

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						Section 25: See comments for Document 22.
24.	[Date]	Photo 22	1	Refused in full Section 33(1)	Refuse in full Section 33(1)	Section 33(1): See comments for Document 7. Section 25: See comments for Document 7.
25.	[Date]	Photo 23	1	Refused in full Section 33(1)	Refuse in full Section 33(1)	Section 33(1): See comments for Document 7. Section 25: See comments for Document 7.
26.	[Date]	Photo 24	1	Refused in full Section 33(1)	Refuse in full Section 33(1)	Section 33(1): See comments for Document 7. Section 25: See comments for Document 7.
27.	[Date]	Transcript of interview 1	8	Refused in full Section 35(1)(b)	Refuse in full Section 35(1)(b)	Section 35(1)(b): I am satisfied that the document is exempt under section 35(1)(b) for the reasons provided in the Notice of Decision, above. Section 25: See comments for Document 7.

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
28.	[Date]	Transcript of interview 2	17	Refused in full Section 35(1)(b)	Refuse in full Section 35(1)(b)	Section 35(1)b: See comments for Document 27. Section 25: See comments for Document 7.
34.	Undated	Summary of investigation	4	Released in part Sections 33(1) and 30(1)	Release in part Section 33(1) The document is to be released in accordance with the marked-up version provided to the Agency with my decision.	Section 33(1): See comments for Document 22. For completeness, I do not consider it would be unreasonable to disclose the names of Agency officers. Section 30(1): I am not satisfied that releasing this information would be contrary to the public interest. Section 25: See comments for Document 22.
38.	[Date]	Dangerous dog report DEECA	2	Released in part Section 33(1)	Release in full .	Section 33(1): The information redacted by the Agency, while being personal affairs information of a third party, was provided to the Agency directly by the Applicant in their report regarding a dangerous dog. As such, I do not consider it is unreasonable to release this information back to the Applicant.
40.	Undated	Declaration of menacing dog	2	Released in part Section 33(1)	Release in part Section 33(1)	Only part of the document contains personal affairs information (name and address of third party). The document

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					The name and address of the third party is to be redacted.	<p>contains the personal affairs information of another third party, being an Agency officer, but that person consented to their personal affairs information being released.</p> <p>OVIC's preliminary view was communicated to the Agency about the release of additional information and the Agency agreed.</p> <p>Section 33(1): See comments for Document 22.</p> <p>Section 25: See comments for Document 22.</p>