

Notice of Decision and Reasons for Decision

Applicant:	'FV5'
Agency:	Victorian Building Authority
Decision date:	16 May 2025
Provision considered:	Section 25A(5)
Citation:	'FV5' and Victorian Building Authority (Freedom of Information) [2025] VICmr 23 (16 May 2025)

FREEDOM OF INFORMATION – entire building permit register – request includes personal details – applicant will not accept documents with personal details deleted – all information would be exempt

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 is the same as the Agency's decision and the request is not required to be processed.

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

16 May 2025

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to the following documents:
 - Entire Building Permit Register since 1993 including these details:
 - Building Permit Number
 - VBA Number
 - Address including street number
 - Builders Details
 - Relevant Building Surveyors Details
2. The Agency refused to process the request under section 25A(5) in conjunction with 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 and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
5. I have considered relevant communications and submissions received from the parties.
6. 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.
7. 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 25A(5)

8. An agency or Minister may refuse a request without processing it, if:
 - (a) it is apparent from the nature of the documents described in the request, that all of the documents are exempt;¹ and

¹ The exemptions are contained in Part IV – Exempt documents at <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/>.

- (b) the agency or Minister cannot provide access to an edited copy of any of the documents, or the applicant does not want to receive an edited copy of the documents.²
9. If section 25A(5) applies, it allows an agency or Minister to refuse the request without:
- (a) having identified any or all of the documents to which the request relates; and
 - (b) specifying, in respect of each document, the exemption(s) that make the document exempt.
10. An agency or Minister may only rely on section 25A(5) in clear and limited circumstances.³ An agency or Minister must interpret and apply section 25A(5) consistently with the Act's objects to extend, as far as possible, the right of the community to access government held information through a general right of access to documents.⁴
11. Establishing the elements of section 25A(5) is a heavy burden for agencies and Ministers. It can be difficult to establish that all documents captured by a request would be exempt, without searching for and inspecting the documents.⁵ It is also less likely that section 25A(5) will be established if multiple exemptions must be used to exempt all the documents captured by the request.
12. Before refusing a request under section 25A(5), an agency or Minister should engage with an applicant and help them to change their request so the agency or Minister can process it in the usual way under the Act.

First element – apparent on the face of the request that all documents exempt – section 25A(5)(a)

What is the nature of the documents?

13. The nature of a document refers to the 'inherent or essential quality and character of the documents as described'.⁶ An agency or Minister cannot 'go behind the description of the documents in the request'.⁷
14. The Applicant requested the 'entire building permit register' since 1993. While this is a large amount of information, the type of information that would be responsive to it is clear and consistent, for example by viewing some of the information sought here - <https://www.vba.vic.gov.au/about/reports-and-data>. I therefore consider it is possible to identify the nature of the information sought.
15. In clarifying their request, the Agency asked the Applicant if they are requesting the building permit data it publishes on its website with personal affairs information removed.

² As required by <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-25/>.

³ *Knight v Corrections Victoria* [2010] VSC 338, [58].

⁴ *Freedom of Information Act 1982* (Vic), section 3.

⁵ See *Knight v Corrections Victoria* [2010] VSC 338; 'CI6' and Court Services Victoria (Freedom of Information) [2020] VICmr 326.

⁶ *Knight v Corrections Victoria* [2010] VSC 338, [39].

⁷ *Ibid*, [38].

16. The Applicant responded that they are seeking personal affairs information. The Applicant advised they do not consider the names of registered builders or registered building surveyors to be personal affairs information.
17. In my view, it is objectively apparent the nature of the information sought by the Applicant, being all building permit data held by the Agency in a form that includes personal affairs information. That is, with additional personal affairs information from what the Agency already publishes.

Would the documents be exempt?

18. The Agency claims that it is apparent the information sought by the Applicant is exempt under section 33(1).
19. Section 33(1) protects an individual's privacy where their right to privacy outweighs the public interest in disclosing their information.⁸ This will only occur when disclosing the individual's personal affairs information is unreasonable.
20. 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.
21. I note the Applicant's contention that they are not seeking personal affairs information because that information is available on a public register.
22. However, I note that the Applicant is not just seeking their names, but the building permits that they are associated with.
23. In any case, the names of builders and building surveyors is personal affairs for the purposes of the FOI Act.
24. In deciding whether disclosure would be unreasonable, I have taken into account the following factors:
 - (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;

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

- (f) whether the individuals to whom the information relates object, or would be likely to object, to the release of the information; and
 - (g) whether disclosure of the information would or would be reasonably likely to endanger the life or physical safety of any person.
25. I have decided it would be unreasonable to disclose the personal affairs for the following reasons:
- (a) the personal affairs information is associated with building permits, some of which will be more sensitive than others;
 - (b) individuals provide their names in association with building permits for regulatory purposes, rather than for public release;
 - (c) I therefore consider it likely that the individuals concerned would object to disclosure;
 - (d) Noting the Applicant seeks information in the register dating from 1993, it would not be possible to consult with all the individuals to ask whether they would consent to the disclosure of their names;
 - (e) I do not consider any public purpose will be served by the disclosure of that volume of information;
 - (f) the Applicant has not identified any reasons for seeking such a large volume of information;
 - (g) while I note some of the information may be available from other sources (local councils) and at certain times, for example during consultation processes, it is not available in a form that releases all builders and building surveyors names associated with permits since 1993;
 - (h) in these circumstances, I consider the personal privacy of those individuals outweighs any public interest in disclosure.
26. I have therefore determined the information sought would be exempt under section 33(1).

Second element – no obligation to provide an edited copy of any document – section 25A(5)(b)

27. The second element in section 25A(5)(b) relates to providing access to edited copies of a requested document.
28. An agency or Minister can only apply section 25A(5) if:
- (a) it is not practicable to provide an edited copy of any of the documents that removes the exempt information;⁹ or

⁹ *Freedom of Information Act 1982* (Vic), sections 25(b) and 25A(5)(b)(i).

- (b) it is apparent from the request or through consultation by the agency or Minister with the applicant, that the applicant does not want access to an edited copy of the document that removes the exempt information.¹⁰

Applicant does not wish to have access to an edited copy – section 25A(5)(b)(ii)

- 29. I am satisfied the Applicant is specifically seeking information that is exempt, and has expressed the view that the documents cannot be edited to remove exempt information.
- 30. I am therefore satisfied the applicant does not wish to receive edited copies of documents falling within the terms of the request.

Did the Agency engage with the Applicant and help them to change their request so the Agency or Minister can process it in the usual way under the Act?

- 31. As described above, the Agency engaged with the Applicant to remove the grounds for refusing to process the request, suggesting that personal affairs information is removed from the request. However, the Applicant disagreed with the suggestion, advising that they are seeking personal affairs information.

Conclusion

- 32. On the information before me, I am satisfied the elements of section 25A(5) are satisfied as:
 - (a) it is apparent from the nature of the request that the information primarily sought by the Applicant is exempt under section 33(1);
 - (b) there is no obligation to provide an edited copy of the document, as the Applicant has specifically advised they do not agree to the deletion of exempt information;
 - (c) the Agency attempted to remove the grounds for refusal by seeking clarification of the request with the Applicant, however the Applicant did not agree.
- 33. The Agency is therefore not required to process the request.

Timeframe for the Applicant to seek a review of my decision

- 34. If the Applicant to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.¹¹
- 35. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹²
- 36. 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.

¹⁰ Freedom of Information Act 1982 (Vic), sections 25(c) and 25A(5)(b)(ii).

¹¹ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹² Section 52(5).

37. 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.¹³
38. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

¹³ Section 50(3FA).

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