

Notice of Decision and Reasons for Decision

Applicant:	'FW2'
Agency:	City of Whitehorse
Decision date:	15 May 2025
Exemptions and provision considered:	Sections 33(1), 25
Citation:	'FW2' and City of Whitehorse (Freedom of Information) [2025] VICmr 29 (15 May 2025)

FREEDOM OF INFORMATION – Audio recording – Telephone conversation – Local Council – complaint – customer service

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.

I am satisfied the document is exempt under section 33(1) and it is not practicable to provide a copy of the document to the Applicant with exempt information deleted.

Please refer to the end of my decision for information about review rights through the Victorian Civil and Administrative Tribunal (**VCAT**).

My reasons for decision follow.

Penny Eastman
Public Access Deputy Commissioner

15 May 2025

Reasons for Decision

Background to review

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

The recording discussed with [named council officer] – [position title].
2. The Applicant advised they did not require personal affairs information of third parties.
3. The Agency identified one document, a recording of a telephone conversation between the Applicant and Agency officers, falling within the terms of the Applicant's request. The Agency's decision letter, dated [date], sets out the reasons for its decision, stating

...we are unable to provide you with a copy of the voice recording as under Section 33 (2A) we will require the approval of the [the third party] that you spoke to who [redacted].

I'm more than happy to arrange a suitable time for you to come into Council's Offices at a time that suits you where we will provide you with a headset to enable you to listen the phone conversation.

Review application

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse to the document.
5. I have examined a copy of the document subject to review.
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.
10. In conducting a review under section 49F, section 49P requires that I make a new or 'fresh decision'. Therefore, my review does not involve determining whether the Agency's decision is correct, but rather requires my fresh decision to be the 'correct or preferable decision'.¹ This involves ensuring my decision is correctly made under the FOI Act and any other applicable law in force at the time of my decision.

¹ *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577, [591].

Scope of my review

11. The Applicant specified in their initial FOI request form that they do not seek access to personal affairs information.
12. Following this, the Agency asked the Applicant to clarify their request:

The total time which includes when you initially spoke to [an Agency officer], the on-hold time, and the conversation between yourself and [another Agency officer] is ten minutes. The conversation between yourself and [that Agency officer] is two minutes and twenty-four seconds. We are assuming that you are only wanting to listen to yourself and [that Agency officer], can you please clarify?
13. The Applicant confirmed that they were seeking to listen to the conversation between themselves and the [position title of an Agency officer] (the **Agency officer**).
14. Having considered this, I am satisfied the Applicant is seeking access to personal affairs information concerning the Agency officer and such information falls within the scope of my review.
15. The Applicant also specified in their initial request that they would not agree to receive an edited copy of the document with exempt or irrelevant information deleted.

Review of exemption

Section 33 – Documents affecting personal privacy of third parties

16. For more information about section 33, see the FOI Guidelines.²
17. Section 33(1) protects an individual's privacy where their right to privacy outweighs the public interest in disclosing their information.³ This will only occur when disclosing the individual's personal affairs information is unreasonable.
18. 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.

Does the document contain personal affairs information of another person?

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 health, private behaviour, home life, or personal or family relationships of individuals.⁵

² <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-33/>.

³ *Victoria Police v Marke* [2008] VSCA 218.

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].

20. 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.
21. 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.⁶
22. The document subject to this review contains the voice of the Agency officer who spoke with the Applicant, which is personal affairs information.

Would disclosure of the personal affairs information be unreasonable?

23. In determining whether disclosure of the personal affairs information would be unreasonable in the circumstances, I have considered the following factors:⁷

(a) The circumstances in which the information was obtained

In the circumstances of this matter, I consider the personal affairs information of the Agency officer was obtained by the Agency whilst they were undertaking their professional role.

The Applicant engaged the Agency to raise [an issue].

The content of the document sought by the Applicant is a recording of the Applicant speaking to the Agency officer, referenced in paragraph 13, in relation to [the Applicant's concern]. I am satisfied all parties involved were aware that their conversation was being recorded.

Due to the nature and content of the conversation with the Agency officer, the Applicant made a complaint, requesting if the Agency thought the Agency officer had acted professionally.

The Agency formally acknowledged the Applicant's concerns about the Agency officer's conduct, apologised and said that it was not the standard expected by the Agency.

This resulted in the Applicant seeking access to a copy of the recording of their conversation with the Agency officer.

(b) The nature of the personal affairs information

The document is a telephone conversation between the Applicant and the Agency officer containing recorded voices and on hold messages. There is a brief engagement with another Agency officer prior to the Applicant's engagement with the relevant Agency

⁶ *Harrison v Victoria Police* [2022] VCAT 280, [153].

⁷ See <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-33/#would-disclosure-be-unreasonable> for more information.

officer, however, the Applicant specified they only sought to listen to their conversation with the latter officer.

I consider the voice of the Agency officer is sensitive in this matter, as this can be used to identify them, and due to the nature of the call and subsequent complaint made by the Applicant regarding the Agency officer's conduct.

(c) The extent to which the information is available to the public

This document is not readily available to the public.

(d) Whether any public or important interest would be promoted by release of the information

While I appreciate the Applicant's dissatisfaction at the service they received from the Agency officer, in my view a broader public interest would not be promoted by disclosure of the Agency officer's personal affairs information. Rather, I consider disclosure of this information would serve the Applicant's private interests only.

(e) 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.⁸

While there is no information before me that the Applicant intends to further disseminate the document if it was released to them, I must consider the effects broader disclosure of the personal affairs information in the document would have on the privacy of the Agency officer.

I am of the view it is reasonably likely the personal privacy of the Agency officer will be impacted should their personal affairs information be disseminated more broadly, if released under the FOI Act.

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

The Agency did not consult with the Agency officer. I have considered the Agency's internal consultation record that records why the Agency officer was not consulted and I agree it was not practicable in the circumstances.

I am of the view it is reasonably likely the Agency officer would object to their personal affairs information being released under the FOI Act given the nature and circumstances of the recorded conversation.

(g) Whether the disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person⁹

⁸ *Victoria Police v Marke* [2008] VSCA 218, [68]

⁹ Section 33(2A).

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.¹⁰

There is no information before me that disclosure would have this effect.

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.
25. Deciding whether it is ‘practicable’ to delete exempt or irrelevant information requires an agency or Minister to consider:
 - (a) the effort involved in making the deletions from a resources point of view;¹¹ and
 - (b) the effectiveness of those deletions – that is, whether the edited document still has meaning.¹²
26. Irrelevant information is information which is clearly outside the scope, or beyond the terms of the Applicant’s request. The Applicant specified they were only seeking to listen to their conversation with the relevant Agency officer. This starts from 0:06:30 to 0:08:57 in the document. Therefore, their initial conversation with another Agency officer, ‘on hold’ recordings, and the Applicant’s recorded feedback after the conversation is ‘irrelevant information’.
27. The Applicant specified in their request that they did not want access to an edited copy of the document with exempt or irrelevant information deleted.
28. In any case, it would not be practicable to edit the document between 0:06:30 and 0:08:57 to delete the Agency officer’s voice. In my view, it would be meaningless to only release the Applicant’s voice, as it is evident that their concern is with the Agency officer’s conduct during the call.

Conclusion

29. On the information before me, I am satisfied the voice of the third party (the Agency officer) is exempt from release under section 33(1).
30. As I am satisfied it not practicable to provide the Applicant with an edited copy of the document with exempt and irrelevant information deleted in accordance with section 25, access under the FOI Act is refused in full.

¹⁰ Section 33(2A).

¹¹ *Mickelburgh v Victoria Police* [2009] VCAT 2786, [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967, [82].

¹² *Honeywood v Department of Human Services* [2006] VCAT 2048, [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267, [140], [155]; *Re Hutchinson and Department of Human Services* (1997) 12 VAR 422.

Timeframe to seek a review of my decision

31. If the Applicant is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.¹³
32. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁴
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 the Applicant applies to VCAT for a review of my decision.¹⁵

¹³ Section 50(1)(b).

¹⁴ Section 52(5).

¹⁵ Section 50(3FA).