

Notice of Decision and Reasons for Decision

Applicant:	'FY1'
Agency:	State Revenue Office
Decision date:	9 July 2025
Exemptions and provision considered:	Sections 33(1), 35(1)(b), 25 'FY1' and State Revenue Office (Freedom of Information) [2025] VICmr
Citation:	46 (9 July 2025)

FREEDOM OF INFORMATION – Victorian Homebuyer Fund – shared equity scheme – *First Home Owner Grant and Homebuyer Schemes Act 2000* (Vic) – market valuation report – independent evaluation of Applicant's property – Valuer-General Victoria report template – information obtained in confidence – personal affairs information of third parties – publicly available information – release not contrary to the public interest

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 differs from the Agency's decision and more information is to be released.

The document is to be released in accordance with the marked-up copy provided to the Agency with my decision.

Please refer to pages 7 to 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

9 July 2025

Reasons for Decision

Background to review

1. The Applicant made a request seeking access to:

... the valuation report or however such named document(s) which would have been provided to the SRO which indicates the valuation or appraisal of our home.
2. The Agency identified one document falling within the terms of the Applicant's request and refused access in full under sections 34(1)(b) 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 document subject to review which is a Market Valuation Report (the **Report**) prepared by a third party business undertaking.
5. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
6. I have considered relevant communications and submissions received from the parties.
7. 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.
8. 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.

OVIC initial view

9. During the review, OVIC staff provided the Agency with their initial view that an OVIC decision maker would be unlikely to find the Report exempt under section 34(1)(b). This was based on the assessment that the Report does not contain proprietary information that could be used by the business undertaking's competitors, no other information had been provided about how disclosure would expose the undertaking unreasonably to disadvantage, or what any such disadvantage may be, and the Report was based on a template developed by the Valuer-General Victoria (VGV).
10. OVIC staff also advised the Agency of their initial view that section 35(1)(b) does not apply to the Report because no argument had been made to explain why disclosing the document would inhibit the business undertaking from providing similar reports to the Agency in future.
11. In response, the Agency advised it no longer sought to pursue section 34(1)(b). As such, my

review has not further considered this exemption. The Agency maintained that the Report was exempt in full under section 35(1)(b). The Agency provided further information in support of this position which I confirm I have considered.

Review of exemptions

Section 35(1)(b) – Documents containing material obtained in confidence

12. For more information about section 35, see the FOI Guidelines.¹
13. A document may be exempt under section 35(1)(b) if two conditions are satisfied:
 - (a) disclosure would divulge information or matter
 - (i) communicated in confidence
 - (ii) by or on behalf of a person or a government to an agency or a Minister
 - (b) disclosure would be contrary to the public interest because the disclosure would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.
14. The exemptions in section 35 do not apply to information acquired by an agency or Minister from a business, commercial or financial undertaking, where the information relates to trade secrets or other matters of a business, commercial or financial nature. This type of information is considered under section 34.

Was the information obtained in confidence?

15. Whether information communicated by an individual to an agency was communicated in confidence is a question of fact.²
16. In doing so, it is necessary to consider the position from the perspective of the communicator, noting confidentiality can be expressed or implied from the circumstances of a matter.³
17. The Agency sought to obtain an independent evaluation report of the property from a suitably experienced and qualified evaluation company.
18. The Report produced is an important requirement for the Agency, enabling it to provide its services fairly and equitably. The Victorian Homebuyers Fund is a shared equity scheme that exists to assist Victorians purchase their own home, subject to the requirements and conditions set out under the scheme.⁴
19. Information obtained within the Report can be used in calculating amounts to be returned to the scheme. This may occur, for example, when a participant desires to make a lump sum payment to reduce the scheme's percentile share of ownership in their property. In this case,

¹ <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-35/>.

² *Ryder v Booth* [1985] VR 869, [883]; *XYZ v Victoria Police* [2010] VCAT 255, [264].

³ *XYZ v Victoria Police* [2010] VCAT 255, [265].

⁴ <https://www.sro.vic.gov.au/homebuyer>.

the conditions of engagement in the scheme require the participant to purchase a prescribed minimum percentage of the scheme's ownership, the resulting dollar amount being calculated from the market value of the property at this time.

20. I accept the Agency's advice that both it and third party business undertaking considered the Report was substantially provided and received in confidence.
21. Neither the Agency nor the third party expressed any objection to the release of the concluded valuation amount in its calculated form.
22. On the information before me, I accept the Report was provided to the Agency in confidence, save for the calculated valuation amount declared.

Would disclosure be reasonably likely to impair the ability of an agency to obtain similar information in the future?

23. The Report displays a general industry disclaimer. This disclaimer provides any relevant third party with general protection for any legitimate operating procedure or action performed during the valuation process.
24. While I accept the Report is based on a template, it is in fact prepared on the letterhead of the third-party business undertaking and includes a disclaimer in the footer, along with its contact details. As such, I consider it is reasonably likely that business undertakings that prepare valuations in future could include their preferred legal disclaimers.
25. I acknowledge it is possible the business undertaking that prepared the Report may not wish to provide valuations in the future, should the Report be released. I note the Agency needs to receive such valuations to perform certain roles and functions under the scheme. However, I do not consider release of this particular Report would have a broader impact on or impair the Agency's or the VGV's ability to obtain similar information from other companies that provide similar valuation services. Therefore, I do not consider disclosure in this case would be contrary to the public interest as I cannot see release would be reasonably likely to significantly impact the Agency's ability to obtain similar information needed to perform its functions associated with administering the Victorian Homebuyer Fund in accordance with the *First Home Owner Grant and Homebuyer Schemes Act 2000* (Vic).
26. This limb of the exemption has therefore not been met and I am not satisfied section 35(1)(b) applies to the Report.

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

27. For more information about section 33(1), see the FOI Guidelines.⁵
28. Section 33(1) protects an individual's privacy where their right to privacy outweighs the public interest in disclosing their information.⁶ This will only occur when disclosing the individual's personal affairs information is unreasonable.

⁵ <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-33/>.

⁶ *Victoria Police v Marke* [2008] VSCA 218.

29. 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)
 - (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?

30. 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'.⁷ This includes information relating to health, private behaviour, home life, or personal or family relationships of individuals.⁸
31. 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.
32. 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.⁹
33. The Report contains personal affairs information of third parties:
- Page 1 includes contact information for the business undertaking, including the direct email and mobile phone number for an individual.
 - Page 6 contains details about other sold properties for comparison purposes.
 - Page 7 contains information about the valuer, including their signature, name and membership number
 - Page 8 contains a signature and a name of a senior public servant.

Would disclosure of the personal affairs information be unreasonable?

34. In determining whether disclosure of the personal affairs information would be unreasonable in the circumstances, I have considered the following factors:¹⁰
- (a) The nature of the personal affairs information

The information subject to redaction directly relates to the individuals who prepared and certified the document. Removal of this information does not detract or otherwise alter the substantive information provided in the report.

⁷ *Hanson v Department of Education & Training* [2007] VCAT 123.

⁸ *Re F and Health Department* (1988) 2 VAR 458, quoted in *RFJ v Victoria Police FOI Division* [2013] VCAT 1267 [103], [109].

⁹ *Harrison v Victoria Police* [2022] VCAT 280, [153].

¹⁰ See <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-33/#would-disclosure-be-unreasonable> for more information.

(b) The circumstances in which the information was obtained

The information was obtained as part of the necessities to administer a government scheme to assist home buyers. The Report was prepared on the VGV's behalf by the third party business undertaking. The personal affairs information contained within it does not affect the Report's findings or conclusions.

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

The information presented in the Report is a mix of specific site information and other publicly available information presenting recent similar sales of houses with similar features in the same suburb. The sale information regarding other properties is publicly available.

Certain names disclosed in the Report are publicly available.

(d) The Applicant's interest in the information

The Applicant is the owner of the property for which the valuation has been conducted. The valuation determines the financial liability/benefit the Applicant receives from sale of the property. It is therefore reasonable to consider the Applicant has a strong interest in being provided with the methodology and information used to arrive at the valuation in addition to the actual amount of the valuation.

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

There is no identifiable public interest in releasing the personal affairs information.

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

I consider the valuer who prepared the Report would be reasonably likely object to their personal affairs information being disclosed. However, it is unlikely that one of the third parties would object to disclosure of their name and signature, given their seniority. It is also unlikely that the third parties who owned the sold properties listed in the Report for comparison would object to disclosure of information relating to the sale of those properties, given the sale information is publicly available.

(g) Whether disclosure would endanger the life or physical safety of any person

This is a mandatory consideration under section 33(2A). I am satisfied it is not relevant in the circumstances of this matter.

35. On balance of the above factors, I am satisfied it would be unreasonable to disclose the personal affairs information of the valuer who prepared the Report, including the mobile and email address of a third party who represents the business undertaking. However, it would not be unreasonable to release the details concerning other properties within the Report, as this information is available online and does not directly identify an individual, and the name of an Agency officer given their seniority.

36. Accordingly, I am satisfied certain information in the Report is exempt under section 33(1).

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. 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 view¹¹
- (b) the effectiveness of those deletions – that is, whether the edited document still has meaning.¹²

39. The Agency deleted the contact information for the business undertaking that prepared the Report on the basis it is irrelevant information. I consider all information in the Report is relevant information.

40. I have considered the effect of deleting exempt information from the Report. In my view, it is practicable for the Agency to delete the exempt information, because it would not require substantial time and effort, and the edited Report would retain meaning.

Conclusion

41. On the information before me, I am satisfied certain personal affairs information in the Report is exempt from release under section 33(1). I am not however satisfied the Report is exempt from release under section 35(1)(b).

42. As I am satisfied it is practicable to provide the Applicant with an edited copy of the Report with exempt information deleted in accordance with section 25, access is granted in part.

Timeframe to seek a review of my decision

43. If either party to this review are not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.¹³

44. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁴

45. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁵

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.

¹³ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁴ Section 52(5).

¹⁵ Section 52(9).

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.¹⁶

Third party review rights

48. As I have determined to release a document claimed exempt under section 35(1)(b) and personal affairs information of third parties, if practicable, I am required to notify affected third parties of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.¹⁷
49. In this case, I am satisfied it is practicable to notify one of the third parties of their review rights and confirm they will be notified of my decision on the date of decision or as soon as possible thereafter.
50. I am satisfied it is not practicable to notify one third party of my decision to disclose their name, given it would be an unnecessary intrusion and they would be unlikely to object to disclosure of their name given their seniority.
51. It is also not practicable to notify the previous owners of the sold properties listed in the document for comparison purposes, as I also consider it would be an unnecessary intrusion and they are unlikely to object to the information being disclosed given the information relating to those properties is publicly available.

When this decision takes effect

52. My decision does not take effect until the third parties' 60 day review period expires. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

¹⁶ Sections 50(3F) for Agency and 50(3FA) for Applicant.

¹⁷ Sections 49P(5), 50(3), 50(3AB) and 52(3).

Annexure 1 – Schedule of Documents

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision
1.	[Date]	Market Valuation Report (House and Property)	8	Refused in full Sections 34(1)(b) & 35(1)(b)	Release in part Section 33(1) The document is to be released in accordance with the version provided to the Agency with my decision.