

Notice of Decision and Reasons for Decision

Applicant:	'FY8'
Agency:	Department of Families, Fairness and Housing
Decision date:	7 August 2025
Exemptions and provisions considered:	Section 25A(5) in conjunction with sections 31(1)(a), 31(1)(c), 33(1), 35(1)(b) and 38 under the <i>Freedom of Information Act 1982</i> (Vic) and sections 191(1) and 209(1) of the <i>Children, Youth and Families Act 2005</i>
Citation:	'FY8' and Department of Families, Fairness and Housing (Freedom of Information) [2025] VICmr 53 (7 August 2025)

FREEDOM OF INFORMATION – Child Protection documents – parent seeking access to documents about their child – refusal to process FOI request under section 25A(5)

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 is the same as the Agency's decision.

I am satisfied the requirements for the application of section 25A(5) are met in that all documents to which the Applicant seeks access, should any exist, would be exempt from release and it would not be practicable to provide the Applicant with an edited copy of one or more documents that removed exempt information.

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

7 August 2025

Reasons for Decision

Background to review

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

All documents relating to [named person] [DOB provided] [relationship to applicant] and [The Applicant] [DOB provided] of [address provided] Victoria. Specifically all documents/ recordings/ information available or held by DFFH and child protection services from [date range provided].
2. The Agency refused to grant access to the requested documents under section 25A(5) in conjunction with sections 31(1)(a), 31(1)(c), 33(1), 35(1)(b), and 38 in conjunction with sections 191(1) and 209(1) of the *Children, Youth and Families Act 2005* (the **CYF Act**). The Agency's decision letter sets out the reasons for its decision.
3. As permitted under section 25A(5), the Agency did not identify or locate the requested documents the subject of the Applicant's request. As such, the existence of the requested documents is not confirmed and references to the documents in this decision should not be taken as confirmation of their existence.

Review application

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
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.
8. 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].

Section 25A – Requests may be refused in certain cases

9. 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
 - (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.
10. 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.
11. Section 25A(5) may only be relied on in clear and limited circumstances.² Section 25A(5) must be interpreted and applied consistently with the FOI 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.³
12. The Agency has relied on section 25A(5) in conjunction with sections 31(1)(a), 31(1)(c), 33(1), 35(1)(b) and 38 in conjunction with sections 191(1) and 209(1) of the *Children, Youth and Families Act 2005 (CYF Act)*.

First element – apparent on the face of the request that all documents would be exempt

13. For section 25A(5) to apply, the first element is: it is apparent from the nature of the documents as described in the request that all of the documents to which the request is expressed to relate are exempt documents.
14. The nature of a document refers to the 'inherent or essential quality and character of the documents as described'.⁴ An agency or Minister cannot 'go behind the description of the documents in the request'.⁵
15. It must be objectively apparent from the face of the request that all requested documents are exempt by their nature (under one or more exemption).⁶
16. If one document out of multiple documents or classes of documents falling within a request would not be exempt, the agency or Minister cannot rely on section 25A(5) to refuse the request.⁷

² *Knight v Corrections Victoria* [2010] VSC 338, [58].

³ Section 3.

⁴ *Knight v Corrections Victoria* [2010] VSC 338, [39].

⁵ *Knight v Corrections Victoria* [2010] VSC 338, [38].

⁶ *Knight v Corrections Victoria* [2010] VSC 338, [38]–[39].

⁷ *Knight v Corrections Victoria* [2010] VSC 338, [40]; *Victorian Legal Services Commissioner v Grahame (No 2)* [2019] VCAT 1878.

17. It is apparent from the terms of the Applicant's request that they seek access to Child Protection documents concerning their child.
18. Accordingly, I am satisfied the essential quality of the documents, as described in the Applicant's request and as interpreted above, should any exist, would be documents relating to the Applicant's child and their involvement with the Agency in relation to any Child Protection matters.
19. For completeness of this consideration, I must consider whether the Child Protections records sought by the Applicant would be exempt under one or more exemptions. In this case, the Agency relies on sections 31(1)(a), 31(1)(c), 33(1), 35(1)(b) and 38 in conjunction with sections 191(1) and 209(1) of the CYF Act.

Section 31(1)(a) – Investigation, enforcement or proper administration of the law

20. Sections 31(1)(a) exempts documents where disclosure would be reasonably likely to prejudice, in a particular instance:
 - (a) the investigation of a breach or possible breach of the law, or
 - (b) the enforcement or proper administration of the law.
21. 'Would' is a high threshold and means that a result or effect will almost certainly come about. In contrast, 'would be reasonably likely to' is a slightly lower threshold that requires the chance to be real, but not fanciful or remote.⁸
22. 'Prejudice' means to hinder, impair or undermine and includes actual prejudice as well as impending prejudice.⁹
23. The words 'in a particular instance' qualify the words 'investigation of a breach of the law', 'proper administration' and 'enforcement'. This narrows the scope of this exemption to a specific:
 - (a) instance of a breach or possible breach of the law¹⁰ or
 - (b) aspect of investigations of breaches of the law or possible breaches of the law¹¹ or
 - (c) instance or aspect of the law being enforced or administered.¹²
24. The specific instance might be identifiable through the laying of charges, or specific conduct, events, incidents, or individuals.¹³
25. The Agency's decision letter states:

⁸ *Akers v Victoria Police* [2022] VCAT 979 [26] quoting *Binnie v Department of Agriculture and Rural Affairs* [1989] VR 836; *Tucker v Commissioner of State Revenue* [2019] VCAT 2018, [113(b)].

⁹ *Bergman v Department of Justice* [2012] VCAT 363, [66], referring to *Sobh v Police Force of Victoria* [1994] 1 VR 41, 55.

¹⁰ *O'Sullivan v Police Force (Vic)* (1986) 1 VAR 171, 175–176; *Lapidos v Office of Corrections (No 4)* (1990) 4 VAR 283.

¹¹ *Bergman v Department of Justice Freedom of Information Officer* [2012] VCAT 363 [69].

¹² *Ibid.*

¹³ *O'Sullivan v Police Force (Vic)* (1986) 1 VAR 171, 175–176; *Lapidos v Office of Corrections (No 4)* (1990) 4 VAR 283.

Release of certain information about a child protection matter is likely to prejudice the investigation or enforcement of the law, specifically in relation to the *Children, Youth and Families Act 2005* (Vic). Releasing information about child protection investigative processes would likely prejudice any follow up or investigation conducted by the department in relation to a concern about a child's wellbeing.

26. Parliament has determined strict parameters apply under the CYF Act as to what information can be released in relation to Child Protection matters.
27. I am satisfied any documents falling within the terms of the Applicant's request, should any exist, would have been prepared during and for the purpose of the Agency carrying out its Child Protection functions under the CYF Act. This role includes the type of monitoring and enforcement activities with which section 31(1)(a) is concerned.
28. I am satisfied that the documents requested by the Applicant would include information, that if disclosed, would be likely to prejudice an investigation by the Agency into a breach or possible breach of the law with respect to child safety and wellbeing concerns, or prejudice the enforcement and proper administration of the CYF Act in a particular instance.
29. Accordingly, on the information before me and given the nature of the requested documents, I am satisfied, should any documents exist, they would be exempt under section 31(1)(a).

Section 31(1)(c) – Disclosure of documents that would disclose a confidential source of information in relation to the administration of the law

30. A document or information is exempt under section 31(1)(c) if two conditions are satisfied:
 - (a) disclosure of the information would, or would be reasonably likely to disclose, or enable a person to ascertain the identity of a confidential source of information
 - (b) the confidential source has provided information in the context of the enforcement or administration of the law.

31. The Agency's decision letter states:

Child protection investigations are sensitive and confidential. During an investigation the department relies upon information gathered from various sources within the community, including children and their immediate families. The department has an obligation to protect the identity of a person who has made a report, regardless of whether any concerns are substantiated.

Examples of exempt information under this section include dates on which reports were made as well as identifying information regarding any person providing information during the investigation of a child protection matter.

32. I am satisfied any information obtained by the Agency from third parties during a Child Protection investigation would have been provided with an expectation of confidentiality.
33. Further, I am of the view any documents falling in the scope of the Applicant's request would contain information that would identify various individuals who, either directly or indirectly, provided information to Child Protection in confidential circumstances and in relation to the Agency's enforcement and administration of the CYF Act.

34. Accordingly, I am satisfied that the documents would include information that is exempt from release under section 31(1)(c).

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

35. 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.

Would the documents be likely to contain personal affairs information of other individuals?

36. 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’.¹⁴ This includes information relating to health, private behaviour, home life, or personal or family relationships of individuals.¹⁵
37. 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.
38. 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.¹⁶
39. The requested documents would include information that identifies and relates to third parties, including the Applicant’s child, Child Protection staff, and any other external third parties who may have provided information to the Agency or been involved in any relevant investigation that may occurred.

Would disclosure of the personal affairs information be unreasonable?

40. The concept of ‘unreasonable disclosure’ involves balancing the public interest in the disclosure of official information with the protection of an individual’s personal privacy in the circumstances.
41. In determining whether disclosure of the personal affairs information would be unreasonable in the circumstances, I have considered the following factors:¹⁷
- (a) The nature of the personal affairs information

Any personal affairs information contained within the requested documents would be highly sensitive.

¹⁴ *Hanson v Department of Education & Training* [2007] VCAT 123.

¹⁵ *Re F and Health Department* (1988) 2 VAR 458, quoted in *RFJ v Victoria Police FOI Division* [2013] VCAT 1267 [103], [109].

¹⁶ *Harrison v Victoria Police* [2022] VCAT 280, [153].

¹⁷ See <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-33/#would-disclosure-be-unreasonable>.

(b) The circumstances in which the information was obtained

I am of the view any third party who provided personal affairs information to the Agency would have done so on the understanding the information was collected for the primary purpose of the Agency carrying out its Child Protection functions under the CYF Act.

Information gathered by the Agency would have been done so under the understanding of it being strictly-in-confidence by both the communicator and the Agency.

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

Information held by the Agency is not available for greater public consumption and/or dissemination. The Agency operates under strict rules and regulations regarding how it obtains, stores and uses information it has gathered when discharging its functions under the CYF Act.

(d) The Applicant's interest in the information

I accept the Applicant has a genuine interest in the information requested.

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

I consider the public interest lies in ensuring the protection and wellbeing of children through ensuring the Agency can receive sensitive and personal information and conduct investigations under the CYF Act in connection with its Child Protection functions.

There is no public or important interest promoted by release of the information in the circumstances of this matter.

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

Given the nature of the requested documents and the sensitive and personal affairs information that would be contained in such documents, I am satisfied certain third parties named or identifiable from such documents would be reasonably likely to object to the release of their personal affairs information.

(g) Whether disclosure of the information would or would be reasonably likely to endanger the life or physical safety of any person¹⁸

I am unable to discount that disclosure of information in the documents, should any exist, could lead to a situation where that individual's personal safety, either in fact or through genuine personal concern, becomes endangered.

(h) Whether the disclosure would increase the risk to a primary person's safety from family violence¹⁹

¹⁸ Section 33(2A).

¹⁹ Section 33(2AB).

I am unable to discount whether disclosure of the documents, should any exist, would increase the risk to a primary person's safety from family violence.

42. On consideration of the above factors, I am satisfied that disclosure of personal affairs information of third parties in the documents, should any exist, would be unreasonable. Accordingly, I am satisfied that the documents, should any exist, would be exempt from release under section 33(1).

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

43. 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.

Was the information obtained in confidence?

44. Whether information was communicated in confidence is a question of fact,²⁰ determined from the perspective of the communicator.²¹
45. The Agency receives sensitive and personal information when conducting investigations under the CYF Act in connection with its Child Protection functions. In these circumstances, I am satisfied that information provided to the Agency in the context of a Child Protection matter would have been in confidence.

Would disclosure impair the ability of the Agency to obtain similar information?

46. In determining whether disclosure would be contrary to the public interest, I must consider whether disclosure of a document, should any exist, would be reasonably likely to impair the Agency's ability to obtain similar information in the future.
47. The term 'impair' is not defined in the FOI Act. However, case law suggests:
- (a) the degree of impairment must go beyond a trifling or minimal impairment²²
 - (b) there must be an actual impairment to the ability of the agency to obtain similar information in the future²³

²⁰ *Ryder v Booth* [1985] VR 869, 883.

²¹ *Woodford v Ombudsman* [2001] VCAT 721, [95]; *XYZ v Victoria Police* [2010] VCAT 255, [265]; *Barling v Medical Board of Victoria* (1992) 5 VAR 542, 561-562.

²² *Ryder v Booth* [1985] VR 869, 880.

²³ *Birnbaumer & Davies v Inner & Eastern Health Care Network* [1999] VCAT 1363, [68] referring to *Ryder v Booth* [1985] VR 869

- (c) it is not enough that individuals would be less candid than they otherwise might be²⁴ or would feel resentment at having their confidence betrayed²⁵
 - (d) the necessary level of impairment will be made out if a significant minority of persons in the relevant group would be firmly resistant to providing similar information in the future²⁶
 - (e) it is the agency that must be impaired from receiving information, not simply a reluctance on the part of a supplier to provide information²⁷
 - (f) the existence of a statutory duty to provide information does not necessarily exclude the possibility that disclosure would be reasonably likely to impair an agency's ability to obtain similar information in the future, particularly where disclosure might impact the quality and quantity of any future information provided.²⁸ In comparison, an agency will not be impaired from obtaining a specific type of information in future, if there is legislation which compels a person to provide this type of information to the agency.²⁹
48. The Agency plays a significant role in administering and enforcing the CYF Act. I am of the view the information is of a nature that is essential for the Agency to be able to discharge its obligations and duties under the CYF Act.
49. If third parties who provide information to the Agency were made aware information regarding child safety and wellbeing concerns was to be routinely disclosed, I consider they would be unlikely to communicate similar information to the Agency in the future. This would be a significant and detrimental outcome that would reasonably impede the ability of the Agency to fulfil its Child Protection functions under the CYF Act and ensure the safety and wellbeing of children in Victoria.
50. Accordingly, I am satisfied the disclosure of such information in the requested documents, should any exist, would impair the Agency's ability to obtain similar information in the future, and therefore would be exempt under section 35(1)(b).

Section 38 – Documents to which secrecy provisions of enactments apply

51. Section 38 exempts documents where information in those documents is protected by a secrecy provision.
52. A document is exempt under section 38 if three requirements are met:
- (a) there is an enactment that is in force

²⁴ *Birnbauer & Davies v Inner & Eastern Health Care Network* [1999] VCAT 1363, [68]; approved in *Smeaton v Victorian WorkCover Authority* [2012] VCAT 1549, [69].

²⁵ *Sifredi v Medical Practitioners Board* [1999] VCAT 87 (affirmed on appeal *Medical Practitioners Board of Victoria v Sifredi* [2000] VSC 33);

²⁶ *Sifredi v Medical Practitioners Board* [1999] VCAT 87 (affirmed on appeal *Medical Practitioners Board of Victoria v Sifredi* [2000] VSC 33).

²⁷ *Kosky v Department of Human Services* [1998] VCAT 290, [22].

²⁸ See *Thwaites v Department of Health and Community Services* (1995) 8 VAR 361, 370; *Woodford v Ombudsman* [2001] VCAT 721, [99]-[101].

²⁹ *Barling v Medical Board (Vic)* (1992) 5 VAR 542, 565.

- (b) the enactment applies specifically to information contained in the document
- (c) the enactment prohibits specific persons from disclosing the specified information.

53. As stated above, the Agency relies on section 38 of the FOI Act in conjunction with sections 191(1) and 209(1) of the CYF Act.

Is there an enactment in force?

54. Sections 191(1) and 209(1) of the CYF Act are enactments in force.

Does the enactment apply specifically to the information in the requested documents?

55. Section 191 of the CYF Act provides:

- (1) If a report referred to in section 190(1) is made, a person (other than the person who made it or a person acting with the written consent of the person who made it) must not disclose to any person other than a protective intervener or a community-based child and family service in accordance with subsection (4)—
 - (a) the name of the person who made the report; or
 - (b) any information that is likely to lead to the identification of the person who made the report.

Penalty: 10 penalty units.

...

56. Section 190(1) of the CYF Act refers to reports made under section 183 (a report to a 'protective intervener' on reasonable grounds a child is in need of protection); section 184 (a mandatory report to the Secretary on reasonable grounds a child is in need of protection made by a person in the course of practicing their profession or carrying out the duties their office, position or employment); reports determined to be a protective intervention report under section 34; and reports under section 185 that a child is in need of therapeutic treatment.

57. 'Protective intervener' is defined in section 181 of the CYF Act and includes 'the Secretary' [of the Agency].

58. Section 209(1) of the CYF provides:

- (1) A protective intervener must not disclose to any person, other than to another protective intervener or to a person in connection with a court proceeding or to a person in connection with a review by VCAT—
 - (a) the name of a person who gave information in confidence to a protective intervener during the course of the investigation of the subject-matter of a protective intervention report; or
 - (b) any information that is likely to lead to the identification of a person referred to in paragraph (a)—

without the written consent of the person referred to in paragraph (a) or authorisation by the Secretary.

Penalty: 10 penalty units.

...

59. Parliament has determined strict parameters apply to what information can be disclosed in relation to Child Protection matters, including a prohibition on identifying a person who notifies the Agency about any Child Protection concerns (**a notifier**) and any subsequent Agency investigations into or action taken to address any concerns. The CYF Act also prohibits disclosure of any information likely to lead to the identification of a notifier, except in certain limited circumstances where disclosure is authorised.
60. These restrictions on the release of Child Protection information allow for Child Protection notifications made to the Agency and any related investigation to remain confidential. This supports the welfare and safety of children and notifiers. These restrictions apply to all persons, including a person who has been involved with Child Protection or a parent or guardian of a child seeking access to Child Protection documents.
61. I am satisfied the documents requested by the Applicant would contain information that would identify a notifier and any subsequent Agency investigations into or action taken to address any concerns regarding the safety and welfare of children.

Does the enactment prohibit specific persons from disclosing the specified information?

62. I am satisfied that sections 191(1) and 209(1) prohibits disclosure of the identity, or any information likely to lead to the identification of a notifier/reporter or any person who gives or has given information in confidence to the Agency for Child Protection purposes. This includes not only the report or record of confidential information itself, but also any subsequent documents created containing details of the report or associated confidential information.
63. There is no information before me to suggest that any of the exceptions that authorise disclosure of such information would apply in the circumstances of this matter.
64. Accordingly, on the information before me and having considered the terms of the Applicant's request, I am satisfied the relevant documents, should any exist, would contain information exempt under section 38 of the FOI Act in conjunction with sections 191(1) and 209(1) of the CYF Act.

Second element – no obligation to provide an edited copy of any document

65. The second element in section 25A(5)(b) relates to providing access to edited copies of a requested document.
66. If the first element is satisfied, 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 information³⁰ or
 - (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 information³¹
67. It must be objectively apparent from the nature of the documents, as described in the request, that it would not be practicable to provide an edited copy of any of the documents, under section 25.³²
68. If it is practicable to provide an edited copy of one document out of multiple documents falling within a request, the agency or Minister cannot rely on section 25A(5) to refuse the request.³³
69. Having considered the nature of the information sought in the requested documents, I am satisfied it would not be practicable to provide the Applicant with an edited copy of the documents with exempt information deleted in accordance with section 25, as to do so would render the documents, should any exist, meaningless.

Conclusion

70. I am satisfied the requirements for the application of section 25A(5) are met in that all documents to which the Applicant seeks access to, should any exist, would contain information exempt from release and it would not be practicable to provide the Applicant with an edited copy of one or more documents that removed exempt information.

Timeframe to seek a review of my decision

71. If the Applicant to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.³⁴
72. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.³⁵
73. 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.
74. 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.³⁶

³⁰ *Freedom of Information Act 1982* (Vic), sections 25(b) and 25A(5)(b)(i).

³¹ *Freedom of Information Act 1982* (Vic), sections 25(c) and 25A(5)(b)(ii).

³² *Knight v Corrections Victoria* [2010] VSC 338, [50].

³³ *Knight v Corrections Victoria* [2010] VSC 338, [50].

³⁴ Section 50(1)(b).

³⁵ Section 52(5).

³⁶ Section 50(3FA)

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