

Notice of Decision and Reasons for Decision

Applicant:	'FZ1'
Agency:	Hume City Council
Decision date:	12 March 2025
Exemptions and provisions considered:	Sections 25 and 34(1)(b)
Citation:	'FZ1' and Hume City Council (Freedom of Information) [2025] VICmr 55 (12 March 2025)

FREEDOM OF INFORMATION – legal services – invoices – court outcomes – expose a business undertaking unreasonably to disadvantage – disclosure would be unreasonable

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. However, I am satisfied that certain information in the documents is exempt from release under section 34(1)(b).

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

12 March 2025

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to certain documents. Following consultation with the Agency, the Applicant clarified their initial request and sought access to:
 - 1) All invoices to City Safety from [name of law firm] between [date] and [date].
 - 2) All advice of outcomes from [law firm] of matters finalised between [date] and [date].
 - 3) A list of infringement numbers, issued by City Safety, that have been registered with Fines Victoria for enforcement under s 16 of the Fines Reform Act from [date] to present, not including parking offences.
2. The Applicant specified that they did not require draft documents, duplicates documents, commercial information relating to third parties or personal information relating to third parties.
3. They also clarified that point 2 of their request concerned court outcomes finalised by the law firm.
4. The Agency identified 177 pages of documents (**Document 1**) relevant to point 1 and one document (**Document 2**) was relevant to point 2 of the Applicant's request. No documents were located in relation to point 3.
5. The Agency released the documents to the Applicant in part under section 34(1)(b).
6. The Agency's decision letter sets out the reasons for its decision.

Review application

7. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
8. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
9. I have considered relevant communications and submissions received from the parties.
10. During the review, OVIC made enquiries with the Applicant as to whether they would agree to reduce the scope of this review. The Applicant confirmed they would be satisfied in receiving the total amounts listed in the invoices for each case and was agreeable to exclude itemised amounts, however, they sought access to any other business information in Document 1 that was exempted under section 34(1)(b).
11. During the review, the Agency identified that it did not provide the Applicant with all information relevant to point 2 of their FOI request and created an additional spreadsheet, which was released in part to the Applicant with irrelevant information deleted (**Document 3**).

12. The Applicant also confirmed they were not seeking review of Documents 2 and 3. As such, my review is of Document 1 only.
13. I have examined a copy of Document 1.
14. 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.
15. 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 exemption

Section 34(1)(b) – Business, commercial or financial information of an undertaking

16. Section 34(1)(b) provides a document is an exempt document if its disclosure under the FOI Act would disclose information acquired by an agency (or a Minister) from a business, commercial or financial undertaking and:
 - (a) the information relates to other matters of a business, commercial or financial nature; and
 - (b) the disclosure of the information would be likely to expose the undertaking unreasonably to disadvantage.
17. The Applicant's FOI request stated that they did not seek access to commercial information concerning third parties. While the invoices contain commercial information concerning a third party, I consider it was not the Applicant's intention to remove the invoices from the scope of their request when advising they did not seek access to commercial information. As such, I consider the invoices remain in scope despite containing commercial information.

Was the information acquired from a business, commercial or financial undertaking?

18. In *Thwaites v Department of Human Services*,¹ VCAT observed the phrase 'information acquired' in section 34(1) signifies the need for some positive handing over of information in some precise form.
19. Document 1 consists of invoices that the Agency acquired from a law firm (**the business undertaking**).

¹ (1999) 15 VAR 1.

Does the information relate to matters of a business, commercial or financial nature?

20. VCAT has also recognised the words ‘business, commercial or financial nature’ have their ordinary meaning.²
21. I accept the information contained in the invoices relate to matters of a business, commercial or financial nature.

Would disclosure of the information be likely to expose the undertaking unreasonably to disadvantage?

22. Section 34(2) provides that in deciding whether disclosure of information would expose an undertaking unreasonably to disadvantage, for the purposes of paragraph (b) of subsection (1), an agency or Minister may take account of any of the following considerations—
- (a) whether the information is generally available to competitors of the undertaking;
 - (b) whether the information would be exempt matter if it were generated by an agency or a Minister;
 - (c) whether the information could be disclosed without causing substantial harm to the competitive position of the undertaking; and
 - (d) whether there are any considerations in the public interest in favour of disclosure which outweigh considerations of competitive disadvantage to the undertaking, for instance, the public interest in evaluating aspects of government regulation of corporate practices or environmental controls—
- and of any other consideration or considerations which in the opinion of the agency or Minister is or are relevant.
23. I have also had regard to the decision in *Dalla Riva v Department of Treasury and Finance*,³ in which VCAT held documents are exempt under section 34(1)(b) if their disclosure would:
- (a) give competitors of a business undertaking a financial advantage;
 - (b) enable competitors to engage in destructive competition with a business undertaking; and
 - (c) would lead to the drawing of unwarranted conclusions as to a business undertaking’s financial affairs and position with detrimental commercial and market consequences.
24. I consider the phrase ‘expose the undertaking unreasonably to disadvantage’ in section 34(1)(b) contemplates disclosure of documents under the FOI Act may expose a business undertaking to a certain measure of disadvantage. By the introduction of the word ‘unreasonably’ in section 34(1)(b), I consider Parliament determined this exemption applies where an undertaking would

² *Gibson v Latrobe CC* [2008] VCAT 1340, [25].

³ [2007] VCAT 1301, [33].

be exposed 'unreasonably' to disadvantage only, rather than where disclosure would result in any measure of exposure to disadvantage.

25. Accordingly, section 34(1)(b) contemplates a business undertaking may be exposed to a certain level of disadvantage. The question is whether any such disclosure would expose the undertaking unreasonably to disadvantage.
26. In determining whether disclosure of commercially sensitive information in a document would expose an undertaking unreasonably to disadvantage, if practicable, an agency must notify an undertaking and seek its views on disclosure.⁴
27. The exempt information contained in the invoices comprises of total amounts for legal services, unit prices for each service, unit quantities, the business undertaking's banking account information for payment and other names of businesses involved.
28. The Agency consulted with the business undertaking and I have viewed their response, noting the business undertaking objected to disclosure of the invoices, and in particular, the charge out rates and time recordings.
29. In its decision letter, the Agency stated:

I have determined it is probable that disclosure of the "Quantity", Unit Price", "Amount AUD", "Amount Due" and "Account Details" in invoices dated between [date] to [date] would expose the business entity unreasonably to disadvantage.

In forming this view, I considered among other things:

- (a) The nature of the information in the documents;
- (b) The circumstances in which the information was obtained or created;
- (c) The current or potential future relevance and sensitivity of the information
circumstances where there is an ongoing negotiation and potential future decision making;
- (d) The absence of any public interest in disclosure or non disclosure in circumstances where there is a public interest in:
 - i. Business entities operation in trade and commerce being able to compete effectively and efficiently;
 - ii. Business entities in trade and commerce being able to protect information which is valuable to it which it has accrued as a result of its operations
- (e) Disclosure would have the effect of the business entity suffering in a commercial or financial sense in terms of competitors obtaining an advantage and there not existing any level playing field in the competitive marketplace.
- (f) The information in question in is not generally available to competitors of the business entity.

⁴ Section 34(3).

30. I have considered VCAT's reasons in the *Coulson v Department of Premier and Cabinet*⁵ in which it determined that itemised lists of professional services in relation to legal fees were exempt under section 34(1)(b). This was on the basis that charge out rates identified in the documents could, if released, expose legal consultants to disadvantage in the open market.
31. I note VCAT has also found lawyers' invoices exempt under section 34(1)(b) in *Commissioner of State Revenue v Tucker* [2021] VCAT 238.
32. In this matter, I consider the business undertaking is in an open and competitive market and their pricing information is not generally available to its competitors. Disclosure of the individual itemised rates would expose the business undertaking to disadvantage as local government agencies are often consumers of legal services and this may give competitors a bidding advantage. In any case, the Applicant has removed the itemised charge out rates from the scope of my review.
33. In contrast, I am not satisfied that the exemption applies to information contained in the document that does not detail the itemised rates for various legal services, for example, totals amount charged.
34. Whilst I again acknowledge the legal industry is an open, competitive market, and government agencies often engage legal services, I consider disclosure of total amounts charged would not provide details about the cost for each service undertaken, or the approach to the legal matters along with the associated costs. I consider total amounts would not reveal confidential rates or services, and therefore, would not give competitors a bidding advantage. Therefore, I consider the total cost information set out in the document is not exempt under section 34(1)(b).
35. In the circumstances, I am also satisfied that section 34(1)(b) applies to the banking details of the business undertaking. I acknowledge billing information is commercial in nature, and I note that this information is not publicly available. I consider BSB and account details is sensitive information, to which banks generally advise should only be given to trusted sources due to the potential risk that it could be used by scammers to exploit individuals or businesses. As disclosure under the FOI Act is unrestricted and unconditional, if the business undertaking's banking details were to be further disseminated, could potentially be used to exploit the business undertaking by nefarious third parties and thereby expose the business undertaking unreasonably to disadvantage. As such, I am satisfied this information is exempt under section 34(1)(b).
36. I am also satisfied that section 34(1)(b) applies to the names of other businesses, as I consider this information was obtained as part of the business undertaking preparing briefs of evidence and providing other legal services. The relationship between the business undertaking and the other third-party business is private in nature and concerns information that is commercial in nature.
37. Accordingly, whilst I consider some information is to remain exempt under section 34(1)(b), as detailed above, I am not satisfied section 34(1)(b) applies to other information concerning the total amounts for the invoices.

⁵ (Review and Regulation) [2018] VCAT 229, [130]-[156].

Section 25 – Deletion of exempt or irrelevant information

38. 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.
39. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’⁶ and the effectiveness of the deletions. Where deletions would render a document meaningless, they are not ‘practicable’ and release of the document is not required under section 25.⁷
40. I consider certain information the Agency deleted from Document 1 is irrelevant. I agree it falls outside the scope of the Applicant’s request, as it is information that relates to the personal affairs information of third parties.
41. I have considered the effect of deleting irrelevant and exempt information from the documents. In my view, it is practicable for the Agency to delete the irrelevant and exempt information, because it would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

42. On the information before me, I am satisfied certain information in Document 1 is exempt from release under section 34(1)(b), however, I have decided to release additional information in the document to the Applicant.
43. As I am satisfied it is practicable to provide the Applicant with an edited copy of the document with irrelevant and exempt information deleted in accordance with section 25, access is granted in part.

Timeframe to seek a review of my decision

44. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.⁸
45. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁹
46. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁰

⁶ *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 at [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

⁷ *Honeywood v Department of Human Services* [2006] VCAT 2048 at [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140], [155].

⁸ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁹ Section 52(5).

¹⁰ Section 52(9).

47. 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.
48. 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.¹¹

Third party review rights

49. As I have determined to release documents that contain information of a business, financial, commercial nature relating to a business undertaking, if practicable, I am required to notify those persons of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.¹²
50. In this case, I am satisfied it is practicable to notify the business undertaking of its review rights and confirm it will be notified of my decision as soon as practicable.

When this decision takes effect

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

¹¹ Sections 50(3F) and 50(3FA).

¹² Section 50(3A).

Annexure 1 – Schedule of Documents

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision
1.	Various	Invoices	177	Released in part Section 34(1)(b)	Release in part Sections 34(1)(b) and 25 The following additional information is to be released in the document: (a) the monetary value provided in the invoices at 'TOTAL AUD'; and (b) the monetary value provided in the invoices at 'Amount due'.
2.	[Years]	Spreadsheet	Excel – multiple worksheets	Released in part Section 25	Not subject to review
3.	[Years]	Spreadsheet	Excel – multiple worksheets	Released in part Section 25	Not subject to review.