

Notice of Decision and Reasons for Decision

Applicant:	'FZ4'
Agency:	Moorabool Shire Council
Decision date:	27 May 2025
Exemption and provision considered:	Sections 33(1) and 25
Citation	'FZ4' and Moorabool Shire Council (Freedom of Information) [2025] VICmr 58 (27 May 2025)

FREEDOM OF INFORMATION – Council documents – building plans – building permits – personal affairs information – unreasonable to disclose

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 no further information is to be released.

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

27 May 2025

Reasons for Decision

Background to review

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

Retaining wall permit, plans and building surveyor who approved/signed off on at [address] which has been built over the boundary. Need the building surveyors details to make insurance claim as per [name] advice.
2. The Agency identified 7 documents falling within the terms of the Applicant's request and refused access to all documents in full under 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. I have examined a copy of the documents subject to review. In addition to applying section 33(1), I note the Agency also refused access to certain content in the documents under section 25 as irrelevant to the Applicant's request. This was not referenced in the Agency's decision letter; however, I have also reviewed the Agency's application of section 25 in my decision.
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.
9. 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 at [591].

Review of exemptions

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

10. While I note the Applicant states they do not require the name of the builder, this is only a small amount of information subject to review. I have therefore considered whether all the information in the documents is exempt under section 33(1).
11. For more information about section 33(1) see the FOI Guidelines.²
12. 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.
13. 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.

Do the documents contain personal affairs information of other individuals?

14. 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
15. 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.
16. 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
17. The documents contain the names, addresses, phone numbers, email addresses and other personal information of third parties. The documents also contain residential building plans, that 'concern or affect' a third party. These documents are also personal affairs information given the broad definition described above.
18. I am satisfied the information identified by the Agency amounts to personal affairs information for the purposes of section 33(1).

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].

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

Consultation

19. The Agency is required to consult with affected third parties, unless it is not reasonably practicable to do so.
20. I have considered the consultation responses received by the Agency. I note that one third party agreed to the separate disclosure of their name and contact details and these details were shared with the Applicant directly in the Agency's decision letter.

Would disclosure of the personal affairs information in the documents be unreasonable?

21. In determining whether disclosure of the personal affairs information would be unreasonable in the circumstances, I have considered the following factors:⁷
 - (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;
 - (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.
22. In considering the above, the documents and submissions provided by both parties, I am satisfied disclosure of the personal affairs information contained in the documents would be unreasonable for the following reasons:
 - (a) The information contains structural plans and building permits, along with the addresses, names and other identifying details of third parties. The information was obtained by the Agency in connection with its statutory role and functions under planning and building laws.
 - (b) I acknowledge the Applicant's interest in seeking the documents as it relates to concerns regarding their property. However, based on the information before me I do not consider disclosure is likely to provide a resolution for the Applicant.
 - (c) I also consider that it likely the Applicant is familiar with some of the third parties, given the documents concern a neighbouring property. However, in the circumstances, I am not satisfied disclosure is appropriate, noting that maintaining the confidentiality around

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

the identity of an individual assists the Agency to maintain the trust of the community to keep sensitive and personal information confidential.

- (d) There is no evidence to suggest the personal affairs information in the documents is available to the public.
 - (e) I do not consider that any public interest will be served by its disclosure.
 - (f) The documents relate to a dispute the Applicant is having with their neighbours. In these circumstances, the sensitivity of the documents is heightened. For this reason, I consider disclosure is likely to cause distress to some of the third parties.
 - (g) In these circumstances I do not consider FOI to be an appropriate method of disclosure, where I cannot place any restrictions on the further dissemination of the documents.
23. Accordingly, I am satisfied that disclosure of the personal affairs information as identified by the Agency is exempt from release under section 33(1).

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;⁸ and
 - (b) the effectiveness of those deletions – that is, whether the edited document still has meaning.⁹
26. Irrelevant information is information, which is clearly outside the scope, or beyond the terms of the Applicant’s request.
27. I have considered the information the Agency deleted from the documents as irrelevant. I agree it falls outside the scope of the Applicant’s request as the information does not relate to the retaining wall.
28. I have considered the effect of deleting irrelevant and exempt information from the documents. In my view, it is not practicable for the Agency to delete the irrelevant and exempt information, because doing so would render the documents meaningless.

⁸ *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].

⁹ *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.

Conclusion

29. On the information before me, I am satisfied certain information in the documents is not relevant to the Applicant's request terms and the remaining information contained in the documents is exempt from release under section 33(1).
30. As I am satisfied it is not practicable to provide the Applicant with an edited copy of the documents with irrelevant and exempt information deleted in accordance with section 25, access is refused in full.

Timeframe for the Applicant to seek a review of my decision

31. If the Applicant to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.¹⁰
32. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹¹
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.¹²
35. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

¹⁰ Section 50(1)(b).

¹¹ Section 52(5).

¹² 50(3FA).