

Notice of Decision and Reasons for Decision

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| Applicant: | 'FZ8' |
| Agency: | City of Casey |
| Decision date: | 6 June 2025 |
| Exemptions and provision considered: | Sections 33(1), 34(1)(b), 25 |
| Citation: | 'FZ8' and City of Casey (Freedom of Information) [2025] VICmr 62 (6 June 2025) |

FREEDOM OF INFORMATION – council documents – building plans and drawings – external building plans – section 33(1) personal affairs information – business, commercial or financial information of an undertaking

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 fresh 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 Schedule of Documents in **Annexure 1** sets out my decision.

Please refer to page 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

6 June 2025

Reasons for Decision

Background to review

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

I am requesting to get some documents (Plans, Permits and Drawings) of the pergola with fire wall constructed [address in Victoria provided between specified dates].
2. When submitting their request, the Applicant consented to 'personal details and/or irrelevant information be removed' from any documents located in response to their request.
3. The Agency identified eight pages of engineering drawings (the **document**) and refused access to all pages in full under section 31(1)(a) and 31(1)(d). The Agency's decision letter sets out the reasons for its decision.

Review application

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access to the document.
5. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
6. Following receipt of the Agency's submission, OVIC staff provided the Agency with their initial view that section 31 would not apply to the document.
7. Section 49M(1) permits an agency to make a fresh decision on an FOI request during a review. On [date], the Agency made a fresh decision to refuse access in the document under section 33(1) in full.
8. The Applicant did not agree with the Agency's fresh decision and, as required by section 49MA(2), I proceeded with my review on the basis of the fresh decision.
9. I have examined a copy of the document subject to review.
10. I have considered relevant communications and submissions received from the parties.
11. 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.
12. 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.
13. 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.

Review of exemptions

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

14. For more information about section 33(1) see the FOI Guidelines.²
15. 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.
16. 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 other individuals?

17. 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
18. 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.
19. 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
20. The requested document shows information and drawings titled “Standard Notes”, “Site Plan”, “Timber Deck Plan”, “Roof Plan”, “Elevation (A, B & C)”, “Section (1 & 2)”, “Deck Framing Plan” and “Roof Framing Plan”. These pages all show external features (outside and some of which would be publicly visible), including measurements and construction requirements, of the building project.
21. Where there is reference to an existing building, it is labelled as “Existing Residence” and shows the outline of the building from either a “Site Plan” (topographic) or “Elevation” (side-on)

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

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].

viewpoint. There are no internal features of the “Existing Residence” displayed within the document.

22. The document, titled “Architectural and Engineering Drawings,” contains personal affairs information on each page consisting of an individual’s name in a box titled “Client”, which is assumed to be the owner of the property, as well as in a box titled “Project” which is assumed to contain the private address of the “Client.” It also contains personal affairs information of persons who prepared or certified the document, such as their name, initials and building practitioner number.
23. The Applicant specified when submitting their FOI request to the Agency that they consented to ‘personal details’ being deleted. Therefore, I am satisfied all the information described above, that specifically identifies third parties, is irrelevant information that the Applicant consented to be removed.
24. I am satisfied that plans for a third party’s property constitute personal affairs information, as they concern and affect the third party. It can be inferred that the Applicant intended this information to be included in the scope of their FOI request.

Consultation

25. The Agency is required to consult with affected third parties, unless it is not reasonably practicable to do so.
26. There is no information before me regarding any consultation having taken place between the Agency and a third party, however, for the purposes of this review it will be assumed any third party would reasonably likely object to their personal affairs information being released.

Would disclosure of the personal affairs information be unreasonable?

27. 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

The personal affairs information relates to a third party’s dwelling and there is an important right to privacy in relation to one’s dwelling. However, there are no internal plans for the dwelling, which would be more sensitive in nature in comparison to the external plans to which the document concerns. I do not consider plans relating to external parts of a dwelling to be sensitive, particularly where they would be visible to neighbouring properties.

(b) The circumstances in which the information was obtained

The document was obtained by the Agency as part of its obligations under relevant building and planning laws.

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

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

On the information before me, I understand the document is not publicly available.

(d) The Applicant's interest in the information

During consultation with the Agency, the Applicant revealed their request for the information was to assist with identification and resolution to issues arising during the construction period and after completion of the building project. Specifically, the Applicant advised in their request that their neighbour built a pergola and fire wall on the zero boundary without the Applicant's consent.

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

There is no public or important interest to promote from release of the particular information contained in the document, noting it is merely engineering drawings. Rather, disclosure would primarily serve the Applicant's interest.

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

As stated, it is reasonable to assume the property owner would object to their personal affairs information being released, given the document concerns their dwelling and the circumstances in which the document was obtained by the Agency.

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

There is no information before to suggest this factor is relevant in this matter.

28. On balance of the above factors, I am not satisfied it would be contrary to the public interest to disclose the external plans. As such, I am not satisfied the document is exempt under section 33(1).

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

29. The Agency did not rely on the exemption under section 34(1)(b). However, as I have decided section 33(1) does not apply to the document in full, section 34(1)(b) is a relevant exemption to consider.
30. A document or information is exempt under section 34(1)(b) if three conditions are satisfied:
- (a) the document or information was acquired from a business, commercial, or financial undertaking.
 - (b) the information relates to matters of a business, commercial or financial nature.
 - (c) disclosure of the information is likely to expose the undertaking unreasonably to disadvantage (based on matters listed in section 34(2) and any other relevant considerations).

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

31. The phrase ‘information acquired’ involves some positive handing over of information to an agency in a precise form.⁸
32. The actual document does not itself need to be acquired from an undertaking.⁹ It may also disclose relevant information acquired from the undertaking.¹⁰
33. The information can be acquired from an undertaking through a third party.¹¹
34. The document comprises of engineering drawings prepared by a third party business undertaking. The document itself was not obtained by the Agency directly from the third party business undertaking, however, the information itself discloses information acquired from the third party undertaking.

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

35. ‘Business’, ‘commercial’ and ‘financial’ should each be given their ordinary meaning.¹²
36. I am satisfied the engineering drawings relate to matters of a business nature, as they would have been produced for a fee for the client.

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

37. In considering whether disclosure will expose an undertaking to unreasonable disadvantage, I can consider, along with any other relevant consideration, the factors set out in section 34(2). These are:
 - (a) whether the information is generally available to competitors of the undertaking.
 - (b) whether the information would be exempt 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.
 - (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.
38. Other relevant considerations include whether disclosure would:
 - (a) give a competitor of the undertaking a competitive financial advantage.

⁸ *Thwaites v Department of Human Services* (1999) 15 VAR 1, 14.

⁹ *Gill v Department of Industry, Technology and Resources* (1985) 1 VAR 97, 106.

¹⁰ *Gill v Department of Industry, Technology and Resources* (1985) 1 VAR 97, 106; *Holbrook v Department of Natural Resources* (1997) 13 VAR 1, 8.

¹¹ *Re City Parking Pty Ltd* (1996) 10 VAR 170, [198].

¹² *Gibson v Latrobe CC* [2008] VCAT 1340, [25].

- (b) enable that competitor to engage in destructive competition with the undertaking.
 - (c) lead to unwarranted conclusions about the undertaking's financial affairs and position that result in commercial and market consequences.¹³
39. There is no information before me concerning the views of the third party business undertaking that created the document about its disclosure. In any case, I consider the business undertaking may have objected to the document being disclosed if it was consulted and I have factored this into my considerations below.
40. While the document would not be available to the undertaking's competitors, it is unlikely that the designs could be copied by a competitor because drawings are designed for a specific dwelling and purpose.
41. There is no information before me to support that disclosure of the document would have any detrimental impact on the third party business undertaking on business, commercial or financial terms.
42. Accordingly, I am satisfied that disclosing the document would not be likely to expose the third party business undertaking unreasonably to disadvantage.

Section 25 – Deletion of exempt or irrelevant information

43. 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.
44. 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;¹⁴ and
 - (b) the effectiveness of those deletions – that is, whether the edited document still has meaning.¹⁵
45. Irrelevant information is information which is clearly outside the scope, or beyond the terms of the Applicant's request.
46. The irrelevant information contained within the document relates to the stated request that no personal information was required. Therefore, the explicit personal information referred to in paragraph 22 is considered as irrelevant information under the terms of the request.

¹³ *Dalla-Riva v Department of Treasury and Finance* [2007] VCAT 1301, [33].

¹⁴ *Mickelborough 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].

¹⁵ *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.

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

Conclusion

48. On the information before me, I am not satisfied personal affairs information in the document is exempt from release under section 33(1). I am also satisfied the document is not exempt from release under section 34(1)(b).
49. As I am satisfied it is practicable to provide the Applicant with an edited copy of the document with irrelevant information deleted in accordance with section 25, access is granted in part.
50. The document is to be released in accordance with the marked-up version provided to the Agency with my decision.

Timeframe to seek a review of my decision

51. If either party to this review are not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.¹⁶
52. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁷
53. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁸
54. 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.
55. 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.¹⁹

Third party review rights

56. As I have determined to release a document in part which was refused by the Agency in full under section 33(1) and which contains business affairs information, if practicable, I am required to notify affected third party individuals or business undertakings of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.²⁰
57. In this case, I am satisfied it is practicable to notify relevant 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.

¹⁶ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁷ Section 52(5).

¹⁸ Section 52(9).

¹⁹ Sections 50(3F) and 50(3FA).

²⁰ Sections 49P(5), 50(3), and 52(3).

When this decision takes effect

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

Annexure 1 – Schedule of Documents

| Document No. | Date of document | Document Description | No. of pages | Agency Decision | OVIC Decision |
|--------------|------------------|----------------------|--------------|--------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | [Date] | Engineering Drawings | 8 | Refused in full Section 33(1) | Release in part Section 25 The document is to be released in accordance with the marked-up version provided to the Agency with my decision. |