

Notice of Decision and Reasons for Decision

Applicant:	'FZ9'
Agency:	Moorabool Shire Council
Decision date:	19 June 2025
Provision considered:	Section 25A(5)
Citation:	'FZ9' and Moorabool Shire Council (Freedom of Information) [2025] VICmr 63 (19 June 2025)

FREEDOM OF INFORMATION – Council documents – local government – major infrastructure project – Western Renewables Link – refusal to process request on grounds all documents, should any exist, would be exempt – not satisfied all documents would be exempt

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.

I am not satisfied the requirements for section 25A(5) are met and the Agency must make a new decision on the Applicant's request, not relying on section 25A(5).

Please refer to the end of the decision for information about further review rights through the Victorian Civil and Administrative Tribunal (**VCAT**).

My reasons for decision follow.

Penny Eastman
Public Access Deputy Commissioner

19 June 2025

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to the following documents:
 - All documents pertaining to:
 - meetings or discussions (or any records, notes and agendas);
 - agreements, donations, inducements, grants (and any other monetary matters);
 - submissions, papers or proposals to council (or considered at council meetings):
 - Relating to the Western Renewables Link or from [a third party].
 - The dates that are of interest are between [dates].
2. During the clarification process for the FOI request, the Agency directed the Applicant to certain documents which were accessible on their website.
3. For the remainder of documents, the Agency decided to apply section 25A(5), advising that based on the terms outlined in the request, it was evident that all documents would be exempt. While the Agency's decision letter did not specify the exemption it relied on, it is clear from their description of why the documents would be exempt that it decided all documents would be exempt under section 30(1).

Review application

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.

Initial view

6. OVIC staff provided the Agency with an initial view that it was likely section 25A(5) did not apply to the request, as there was likely information in the documents that could not be categorised as section 30(1) material, could be released as purely factual material under section 30(3), and edited copies could be provided to the Applicant. The Agency was invited to provide further submissions or consider making a fresh decision.
7. The Agency disagreed with the initial view, and provided further information to support its position.
8. I have considered relevant communications and submissions received from the parties.
9. 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.

10. 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 section 25A(5)

11. Section 25A(5) provides an agency may refuse to grant access to documents without having identified the documents falling within the terms of the request if it is apparent from the nature of the request that all the requested documents would be exempt from release under the FOI Act, and there is no obligation to provide the applicant with partial access to one or more documents in accordance with section 25.
12. The power in section 25A(5) is carefully circumscribed. A decision maker must be satisfied of the following three elements, which operate to limit its application:
 - (a) First, the exempt nature of the documents must be objectively apparent from the face of the request. Namely, the terms of the request as described by the applicant. The 'nature' of a document refers to its inherent or essential quality or character.
 - (b) Second, it must be apparent all documents in the request are exempt.
 - (c) Third, it must be apparent from:
 - (i) the nature of the documents, as described in the request, that no obligation would arise under section 25 for the agency to grant access to an edited copy of a document; or
 - (ii) the request or through consultation with the applicant that the person would not wish to have access to an edited copy of the document.¹
13. Section 25A(5) does not require an agency to identify any or all documents to which the request relates or to specify, in respect of each document, the relevant exemption under which a document is claimed to be exempt.
14. Accordingly, I am required to make my decision without having reviewed any of the requested documents, and in the absence of confirming whether any relevant documents may actually exist.

First element – what is the essential character of the documents?

15. The Applicant is seeking access to a broad range of Council documents, relating to a major infrastructure project..
16. I am satisfied the nature of the requested documents is objectively apparent from the specific terms of the Applicant's request. Accordingly, I am satisfied the first limb of section 25A(5) is met.

¹ *Knight v Corrections Victoria* [2010] VSC 338.

Second element – would all documents, as described in the request, be exempt from release?

17. In refusing access under section 25A(5), without having identified any or all of the documents sought, the Agency determined it was apparent that all of the requested documents sought, should any exist, would be exempt from release under section 30(1).
18. In its response to OVIC's initial view, the Agency provided a description of two types of documents that it considered fall within the scope of the Applicant's request. I will not describe these here as to do so may disclose information the Agency considers exempt. However, I have carefully considered the description of those documents and am not satisfied they would be exempt, in full, based on the description alone. That is, I consider a careful examination of those documents would be required to determine whether they are exempt from release under section 30(1). This would include whether there are public interest arguments that weigh in favour of disclosure.
19. I also note that these documents would not be the only ones falling within the terms of the request.
20. I also acknowledge the documents may contain exempt information. However, section 25A(5) requires that I must be satisfied that all documents falling within the terms of the request would be exempt.
21. For the reasons described above, as well as the fact that the request covers a broad range of documents, some of which are likely to contain factual information not exempt by way of section 30(3), I am not satisfied it is objectively apparent on the face of the request that *all* documents falling within the terms of the request would be exempt in their entirety, without having assessed each document on its merits.

Third element – is there scope to provide an edited copy of the documents requested?

22. 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.
23. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'² 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 25.³
24. In their FOI request, the Applicant consented to the provision of redacted documents. Further, in their application for review, the Applicant stated they are 'open to receipt of documents with

² *Mickelburgh 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].

³ *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].

redacted sections (to maintain any confidential amounts), to assist with providing a broader understanding of Council's consideration and engagement for the matter'.

25. Accordingly, I am satisfied there is scope to provide edited copies of any documents falling within the terms of the request.

Conclusion

26. In summary, I am not satisfied it is objectively apparent from the nature of the documents, as described in the Applicant's request, that all requested documents, if they exist, would be exempt in their entirety from release. Further, I am satisfied there is scope to provide an edited copy of the documents.
27. The effect of my decision is that the Agency is required to make a new decision on the request without relying on section 25A(5).

Time to seek a review of my decision

28. If the Agency is not satisfied with my decision, they are entitled to apply to the VCAT for it to be reviewed.⁴
29. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁵
30. 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.

When this decision takes effect

31. My decision does not take effect until the Agency's 14 day review period expires. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

⁴ Section 50(3D).

⁵ Section 52(9).