

## Notice of Decision and Reasons for Decision

---

Applicant:	'GA1'
Agency:	Maribyrnong City Council
Decision date:	19 June 2025
Exemption and provision considered:	Sections 33(1), 25
Citation:	'GA1' and Maribyrnong City Council (Freedom of Information) [2025] VICmr 64 (19 June 2025)

---

FREEDOM OF INFORMATION – local government – council documents – building plans – site survey – adequacy of search – personal affairs information

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 information contained within 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.

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**  
19 June 2025

## Reasons for Decision

### Background to review

1. On [date], the Agency accepted a request from the Applicant seeking access to the following documents:

I seek access to the following document(s) under *the Freedom of Information Act 1982*, dated/created between [dates]:

In reference to Planning Application: [application number] for [address in Victoria]

1. The planning application documents including registered land survey
  2. The building permit including registered land survey.
2. The Agency identified two documents falling within the terms of the Applicant's request and decided to grant access to both documents in part, exempting certain information 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. The Applicant advised OVIC of three issues they wanted to be addressed. These issues being:
  - 1) A decision to redact information in part, or exempt documents in full.
  - 2) A decision to not waive or reduce the application fee.
  - 3) A decision to defer access to a document until a later date.
5. Issue number 2 will be addressed independently from this review, with OVIC reference number [reference].
6. For issue number 3, in further correspondence, the Applicant clarified their request:

I would like to make an additional complaint regarding: *inadequate search for documents by an agency or Minister*
7. In accordance with section 61B(3), this concern will be addressed within this review.

### ***Applicant's concerns regarding adequacy of search and missing documents concerns***

8. The Applicant complained that the Agency had failed to identify all documents falling within the terms of their request, stating:

...if the agency (Maribyrnong City Council) have only provided 2 pages of the Building Permit, then this is incomplete and missing the majority of the contents attached to the Building Permit Application.

A building permit application should contain an attached copy of;

  - the approved planning permit application
  - the building plans

- licenced land surveys, etc.
9. In response to OVIC's enquiries, the Agency advised:
- (a) Documents that support the building permit were not part of the Applicant's original request. To obtain those documents the Applicant would need to make an additional FOI request.
  - (b) Some of the documents that support the building permit would be the planning permit and endorsed plans. These are available for a fee under the *Planning and Environment Act 1987* (Vic).
10. Section 14(1)(a) of the FOI Act states:
- (1) A person is not entitled to obtain access under this Part to—
    - (a) a document which contains information that is open to public access as part of a public register or is published on an Internet site that is owned or maintained by an agency or otherwise, whether or not that access is free of charge or subject to a fee or other charge;
11. Based on the Agency's response, I am satisfied the Agency:
- (a) undertook a thorough and diligent search for documents within the scope of the request;
  - (b) additional documents the Applicant is seeking can be provided either via another FOI request or
  - (c) are available for a fee and therefore subject to 14(1)(a) of the FOI Act.
12. Accordingly, I consider the Applicant's concern as listed under issue number 3 has been fully pursued and there is no need to make further enquiries or take further action under the FOI Act in relation to this particular concern.
13. It is open to the Applicant to make a new request for the building permit supporting documents, and to access other planning documents via the Agency's website.
14. Information on my review of the Agency's decision to refuse access to information in the documents located now follows which responds to issue 1 as raised by the Applicant.

***Initial view***

15. The Agency was provided with an initial view that certain information it exempted was not personal affairs information, or that it was information that would not be unreasonable to release.
16. In response the Agency provided a second set of marked up documents, but did not elect to make a fresh decision.

## Review of exemptions

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

17. For more information about section 33(1), see the FOI Guidelines.<sup>1</sup>
18. Section 33(1) protects an individual's privacy where their right to privacy outweighs the public interest in disclosing their information.<sup>2</sup> This will only occur when disclosing the individual's personal affairs information is unreasonable.
19. 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 individuals other than you?*

20. 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'.<sup>3</sup> This includes information relating to health, private behaviour, home life, or personal or family relationships of individuals.<sup>4</sup>
21. 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.
22. 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.<sup>5</sup>
23. I am satisfied the documents contain personal affairs information of third parties in the form of names, addresses, signatures and other information that can identify third parties. However, I am not satisfied all the information exempted by the Agency is personal affairs information. This includes an outline of the plan in Document 1, and information that I don't think could be used to identify a person in Document 2, including insurance and cost information.
24. Where I have decided the information is personal affairs, I have further considered whether it would be unreasonable to release it.

---

<sup>1</sup> <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-33/>.

<sup>2</sup> *Victoria Police v Marke* [2008] VSCA 218.

<sup>3</sup> *Hanson v Department of Education & Training* [2007] VCAT 123.

<sup>4</sup> *Re F and Health Department* (1988) 2 VAR 458, quoted in *RFJ v Victoria Police FOI Division* [2013] VCAT 1267 [103], [109].

<sup>5</sup> *Harrison v Victoria Police* [2022] VCAT 280, [153].

*Would disclosure of the personal affairs information be unreasonable?*

25. In determining whether disclosure of the personal affairs information would be unreasonable in the circumstances, I have considered the following factors:<sup>6</sup>
- (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
  - (g) whether disclosure of the information would or would be reasonably likely to endanger the life or physical safety of any person.
26. I have decided the release of most of the personal affairs information remaining in the documents would be unreasonable to release for the following reasons:
- (a) the information was collected by the Agency due to its regulatory functions
  - (b) in these circumstances I consider the people named in the documents would expect their information to remain private
  - (c) the information is not publicly available
  - (d) I do not consider any public or important interest would be served by its release.
27. In making this decision, I note there is no dispute as to the authenticity of the documents, and that other relevant information has been released to the Applicant.
28. I have decided to release a small amount of personal affairs information where I can see that it is publicly available information, this includes the address of the subject location, a mobile telephone number (that is publicly available) and PO Box address that relates more closely to a business than a person.
29. My decision in relation to section 33(1) is described in the marked-up copy of the documents provided to the Agency with this decision.

---

<sup>6</sup> See <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-33/#would-disclosure-be-unreasonable>.

## Section 25 – Deletion of exempt or irrelevant information

- 30. 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.
- 31. I have decided it is practicable for the Agency to delete the exempt information, because it would not require substantial time and effort, and the edited documents would retain meaning.

## Conclusion

- 32. I have decided that certain information in the documents is exempt under section 33(1); however, I have decided to release further information where it is not exempt.
- 33. My decision is described in the marked-up copy of the documents provided to the Agency with this decision.

## Timeframe to seek a review of my decision

- 34. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.<sup>7</sup>
- 35. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>8</sup>
- 36. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>9</sup>
- 37. Information about how to apply to VCAT is available online at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au). Alternatively, VCAT may be contacted by email at [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au) or by telephone on 1300 018 228.
- 38. 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.<sup>10</sup>

## Third party review rights

- 39. As I have determined to release documents that contain the personal affairs information of persons other than the Applicant, 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.<sup>11</sup>

---

<sup>7</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>8</sup> Section 52(5).

<sup>9</sup> Section 52(9).

<sup>10</sup> Sections 50(3F) and 50(3FA).

<sup>11</sup> Sections 49P(5), 50(3) and 52(3).

40. In this case, I am satisfied it is practicable to notify the relevant third parties of their review rights and confirm they will be notified of my decision as soon as possible post my decision.

**When this decision takes effect**

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