

Notice of Decision and Reasons for Decision

Applicant:	'GA4'
Agency:	Building and Plumbing Commission (formerly the Victorian Building Authority)
Decision date:	13 August 2025
Exemptions and provisions considered:	Sections 30(1), 31(1)(d), 34(1)(b)
Citation:	'GA4' and <i>Building and Plumbing Commission</i> (Freedom of Information) [2025] VICmr 67 (13 August 2025)

FREEDOM OF INFORMATION – full technical assessment report – complaint made by the Applicant – methods and procedures used by the Agency – irrelevant 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 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 the end of my decision for information about review rights through the Victorian Civil and Administrative Tribunal (**VCAT**).

My reasons for decision follow.

Penny Eastman
Public Access Deputy Commissioner

13 August 2025

Reasons for Decision

Background to review

1. On [date], the Applicant made a request to the Agency seeking access to a report in relation to a complaint they made.
2. On [date] and [date], the Applicant advised the Agency that it was 'welcome to exclude any personal information' from the report.
3. On [date], the Agency made a decision on the Applicant's request. The Agency identified one document falling within the terms of the Applicant's request and granted access to the document in part, exempting certain information under sections 30(1), 33(1) 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.
5. I have examined a copy of the document subject to review.
6. During the review, the Agency has also relied on section 34(1)(b) to exempt company names throughout the document. Accordingly, I will also consider the application of section 34(1)(b).
7. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
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.
11. 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, [591].

Review of exemptions

Section 30(1) – Internal working documents

12. Section 30(1) exempts documents that contain opinion, advice or recommendation, or consultation or deliberation, where disclosure would be contrary to the public interest. A document is not exempt simply because it is an internal working document.²
13. To be exempt under section 30(1), three conditions must be satisfied:
 - the document or information is matter in the nature of
 - opinion, advice or recommendation prepared by an agency officer or a Minister or
 - consultation or deliberation that has taken place between agency officers or Ministers
 - the matter was created during the deliberative process of an agency, Minister, or the government's functions
 - disclosure of the matter would be contrary to the public interest.
14. There are four circumstances where section 30(1) does not apply:
 - documents required to be made available for inspection and purchase under section 8
 - purely factual information
 - certain documents relating to adjudicative functions
 - documents more than 10 years old.
15. The term 'officer' is defined in section 5(1). It includes independent contractors, consultants and legal advisers engaged by an agency to carry out work or provide services.³
16. The document subject to review was prepared by an external consultant on behalf of the Agency.
17. With respect to the information exempted by the Agency on page 1, the information is instructions from the Agency to the consultant about what their report needed to address, rather than opinion, advice, recommendation, or consultation or deliberation. As such, it does not meet the first condition of section 30(1), set out above.
18. With respect to the information exempted by the Agency on page 2, the exempted information sets out the allegations made by the Applicant. It also is not opinion, advice, recommendation of an Agency officer, or consultation or deliberation between Agency officers. As such, the first condition of section 30(1) is not met.

² *Graze v Commissioner of State Revenue* [2013] VCAT 869, 25.

³ *Mees v University of Melbourne (General)* [2009] VCAT 782, [31].

19. Accordingly, information in the document is not exempt from release under section 30(1).

Section 31(1)(d) – Disclosure of methods for preventing, detecting, investigating breaches of the law

20. A document or information is exempt under section 31(1)(d) if two conditions are satisfied:

- disclosure of the information would, or would be reasonably likely to disclose methods or procedures for preventing, detecting, investigating, or dealing with breaches of the law
- release of the information would, or would be reasonably likely to prejudice the effectiveness of those methods or procedures.

21. The methods or procedures identified must not be widespread and well-known.⁴ Where methods or procedures are well known, then it is unlikely to cause prejudice to the effectiveness of those methods or procedures. This includes standard investigatory practices like conducting interviews or gathering evidence in a way that could be reasonably inferred from knowledge of the offence being investigated.

22. The Agency's decision states:

The document which is subject to your request are exempt pursuant to this provision of the Act. That is because the document was part of an investigation of the [Agency], and disclosure outside of the [Agency] of the methods and procedures used during an investigation would be reasonably likely to prejudice the effectiveness of future investigations of a breach or possible breach of the Building Act or Regulations, or prejudice the enforcement or proper administration of the Building Act or Regulations.

It is contrary to the public interest to release law enforcement documents which show details of methods of investigation. It is in the public interest that the [Agency] investigates a breach or possible breach of the law without prejudicing the investigation by releasing documents outside of the [Agency] which show investigation methods which may be used to hinder investigation of breaches in the future.

23. Having carefully considered the exempted information, I consider that the methods and procedures used by the Agency in this instance align with standard investigatory practices which could reasonably be inferred from knowledge of the complaint being investigated. Disclosure of the information would unlikely prejudice investigations undertaken by the Agency, including the effectiveness any methods and procedures they generally use.

24. As such, section 31(1)(d) does not apply.

Section 34(1)(b) – business, commercial or financial information of a third party undertaking

25. A document or information is exempt under section 34(1)(b) if three conditions are satisfied:

- the document or information was acquired from a business, commercial, or financial undertaking
- the information relates to matters of a business, commercial or financial nature

⁴ XYZ v Victoria Police [2010] VCAT 255, [177].

- 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).
26. The Agency has applied this exemption over the names of companies within a section of the document titled 'Documents provided by the [Agency] and which were reviewed' and 'observation and discussion' sections throughout the document. For the purpose of this exemption, the companies are 'undertakings'.
 27. With respect to the first condition of section 34(1)(b), I am satisfied the information relating to the undertakings broadly reveals information that was obtained from the undertakings, and as such, the first condition is met.
 28. With respect to the second condition of section 34(1)(b), the information only broadly concerns business and commercial information, as it concerns the companies conducting their business. For examples, preparing drawings and designs for a project.
 29. With respect to the third condition of section 34(1)(b), I have considered the following:
 - The information was obtained in the context of a complaint made by the Applicant in relation to a building project.
 - The undertakings are named in the investigation report and therefore disclosure of the document would reveal that they are connected with an investigation undertaken by the Agency.
 - Disclosing the names of undertakings that were involved in the project, where complaints have been substantiated, could impact their reputation if the document was more widely distributed. Disclosing the document could cause some harm to the undertakings where the complaints were substantiated, however, I do not consider it would result in substantial or unreasonable harm to their competitive position.
 - Other undertakings named in the document were not subject to the complaints made by the Applicant, and as such, revealing their names in the document will not cause any disadvantage to them.
 30. On consideration of these factors, I have decided that disclosing the names of the undertakings would not likely expose the companies to unreasonable disadvantage. As such, section 34(1)(b) does not apply.

Section 25 – Deletion of exempt or irrelevant information

31. 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.
32. Deciding whether it is 'practicable' to delete exempt or irrelevant information requires an agency or Minister to consider:

- the effort involved in making the deletions from a resources point of view⁵ and
 - the effectiveness of those deletions – that is, whether the edited document still has meaning.⁶
33. Irrelevant information is information which is clearly outside the scope, or beyond the terms of the applicant's request.
34. The Applicant advised the Agency on two occasions that personal affairs information could be excluded. Accordingly, the personal affairs information in the document is to remain deleted as it is irrelevant information. Company email addresses, however, are not personal affairs information and such content is to be released.
35. The Agency has also redacted a statement of work as irrelevant information. I do not consider it is irrelevant information as it forms part of the report. It is also to be released with personal affairs information deleted. Names of companies, however, are to be released.
36. I have considered the effect of deleting irrelevant and exempt information from the document. In my view, it is practicable for the Agency to delete the irrelevant and exempt information.

Conclusion

37. On the information before me, I am not satisfied information in the documents is exempt from release under sections 30(1), 31(1)(d) or 34(1)(b).
38. As I am satisfied it is practicable to provide the Applicant with an edited copy of the document with irrelevant information deleted, access to the document is granted in part.

Directions on what is to be released in the document

- The information that the Agency exempted under sections 30(1) and 31(1)(d) on page 1 is to be released.
- The information exempted by the Agency on page 3 under sections 30(1) and 31(1)(d) is to be released.
- Company names throughout the document are to be released. A list of these names will be provided to the Agency separately. This includes the company name and CDB-U number in the 'Builder' section on page 1 and the 'Practitioner' section on pages 30, which are to be released.
- The email address on page 10 point 5 and page 18 point 5 is to be released.
- The statement of work is to be released with irrelevant personal affairs information deleted.

⁵ *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].

⁶ *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.

Timeframe to seek a review of my decision

- 39. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.⁷
- 40. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁸
- 41. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁹
- 42. 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.
- 43. 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.¹⁰

Third party review rights

- 44. I have decided to release the names of undertakings and an email address which the Agency refused access to under section 34(1)(b).
- 45. As such, those undertakings have a right to apply to VCAT for a review of my decision within 60 days of being notified of my decision.
- 46. I have decided that it is practicable to notify all but one of the business undertakings.
- 47. I confirm that OVIC will notify those undertakings of their review rights as soon as practicable.

When this decision takes effect

- 48. My decision does not take effect until the undertakings' review period expires. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

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

⁸ Section 52(5).

⁹ Section 52(9).

¹⁰ Sections 50(3F) and 50(3FA).