

Notice of Decision and Reasons for Decision

Applicant:	'GA5'
Agency:	Victorian Managed Insurance Authority
Decision date:	5 February 2025
Exemption considered:	Section 34(1)(b)
Citation:	'GA5' and Victorian Managed Insurance Authority (Freedom of Information) [2025] VICmr 68 (5 February 2025)

FREEDOM OF INFORMATION – Domestic Building Insurance – contract amount – franchise agreement

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 is the same as the Agency's decision and no further information in the document is to be released.

I am satisfied certain information in the document is exempt from release under section 34(1)(b).

The Agency has provided the Applicant with an edited copy of the document with exempt information deleted.

Please refer 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

5 February 2025

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to a table detailing all Domestic Building Insurance issued for a specified builder (the **undertaking**) for a specified period of time.
2. The information was sought in the following format:

Address	Contract Amount	Date issued	Type of construction (new/reno)
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3. The Agency produced one document in response to the Applicant's request, being a table with information formatted as requested by the Applicant, which it released in part exempting certain information under section 34(1)(b). 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. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered relevant communications and submissions received from the parties.
8. 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.
9. 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 exemption

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

10. 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; and
 - (b) the information relates to matters of a business, commercial or financial nature; and

- (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 or information acquired from a business, commercial, or financial undertaking?

- 11. The Agency exempted information in the column with contract prices for building works at various properties after an issue date of [date]. The contract prices prior to that issue date, namely [date range], have been released to the Applicant. It appears that the Agency has exempted contract prices for any issue dates after the expiry of the Franchise Agreement in [month, year].
- 12. The contract price is information that the Agency would have acquired as part of the undertaking's application for Domestic Building Insurance from the business undertaking specified in the Applicant's request.

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

- 13. I am satisfied that contract prices relate to matters of a business, commercial and financial nature.

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

- 14. In considering whether disclosure will expose an undertaking to unreasonable disadvantage, an agency or Minister should, along with any other relevant consideration, have regard to 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; and
 - (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.
- 15. Other relevant considerations include whether disclosure would:
 - (a) give a competitor of the undertaking a competitive financial advantage;
 - (b) enable that competitor to engage in destructive competition with the undertaking; or

- (c) lead to unwarranted conclusions about the undertaking's financial affairs and position that result in commercial and market consequences.¹
16. The Agency's decision states it took the following matters into consideration:
- (a) the undertaking was a franchisee of [the Applicant] up until [month, year];
 - (b) the information is not generally available to competitors of the undertaking;
 - (c) the information may harm the undertaking's ability to negotiate future contracts of a similar nature;
 - (d) some of the information is relevant to a period during which the undertaking was not a franchisee of [the Applicant];
 - (e) the information may arm [the Applicant] with an ability to sue the undertaking in lieu of the process of discovery;
 - (f) the undertaking has not received a request for the information directly from [the Applicant]; and
 - (g) the undertaking's future dealings with the Agency for the purpose of obtaining insurance may be harmed if the undertaking is unable to freely disclose the information in confidence for this purpose.
17. The Applicant disclosed in their request to the Agency that the undertaking was a previous franchisee of [the Applicant] and that the franchise agreement expired in [month, year]. Their request also advises that after the expiration of the franchise agreement, [The Applicant] invoked its rights under the franchise agreement to conduct an audit to determine if there had been any noncompliance with regards to the undertaking reporting jobs to [the Applicant].
18. The Applicant submits the following in support of their review:
- (a) The date in which the franchise agreement expired is irrelevant, as the consent to exchange information between the undertaking and [the Applicant] survives the termination of the franchise agreement;
 - (b) [The Applicant] is not a competitor of the undertaking. [The Applicant] had a contractual relationship whereby the undertaking would receive leads from [the Applicant], which if resulted in contracts, the undertaking had an obligation to report the contract to [the Applicant] and pay fees agreed to under the franchise agreement.
 - (c) Any harm to the undertaking would only be due to their failure to report jobs, which was a specific obligation under the franchise agreement, to which they would then owe monies to [the Applicant]. The Applicant further states that if the undertaking has done this, the undertaking has thereby deprived [the Applicant] of the benefit of the contractual relationship.

¹ *Dalla-Riva v Department of Treasury and Finance* [2007] VCAT 1301, [33].

- (d) It is not relevant that certain information concerns periods where the undertaking was not a franchisee of [the Applicant]. The Applicant states they advised the Agency that 'Consent and Audit' rights survive the termination of the franchise agreement.
 - (e) If the undertaking has deprived [the Applicant] of the benefits of the contractual agreement, this should override the claim that disclosure would arm [the Applicant] with an ability to sue the undertaking in lieu of the discovery process.
 - (f) [the Applicant] is not under an obligation to request information directly from the undertaking and the undertaking has an obligation under the contractual agreement to provide the requested information.
 - (a) In relation to the Agency's view that disclosure would impact the undertaking's future dealing with the Agency, any harm to the undertaking would only be due to their failure to fulfil their obligations to [the Applicant]. The only harm is if the undertaking seeks to deprive [the Applicant] of the fees that were agreed under the franchise agreement.
19. On careful consideration, I am satisfied that disclosure of the contract prices would be likely to expose the undertaking unreasonably to disadvantage for the following reasons:
- (a) Contract prices for building works are not generally available to competitors of the undertaking. Disclosure of the contract prices could cause harm to the competitive position of the undertaking if obtained by competitors, for example, by being undercut on future construction projects of a similar nature.
 - (b) I note the Applicant's purpose for seeking the information, and it does not appear that their intention is to harm the competitive position of the undertaking in relation to potential future building works. However, I do not accept the Applicant's argument that [the Applicant] is not a competitor of the undertaking. [The Applicant] is a national [franchisor], and as such, I consider both [the Applicant] and its franchisees are competitors of the undertaking and could use the exempted information to harm the undertaking's competitive position if it were disclosed.
 - (c) Disclosure of information under the FOI Act has no conditions or restrictions. As such, the contract prices could be obtained by other competitors of the undertaking via further disclosure of the document, thereby exposing the undertaking to commercial disadvantage.
 - (d) While I note the Applicant's personal interest in obtaining the document due to their view that the undertaking may be depriving [the Applicant] of fees that were agreed to under a contract, this is not a public interest in favour of disclosure that would outweigh my necessary considerations under section 34(1)(b) of the likely competitive disadvantage to the undertaking if the contract prices were disclosed.
20. I also note that in making my decision, any legally binding agreement between [the Applicant] and the undertaking does not provide for an automatic right to disclosure of information under the FOI Act.
21. Therefore, I am satisfied the contract prices are exempt from release under section 34(1)(b).

Section 25 – Deletion of exempt or irrelevant information

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. Given my decision is the same as the Agency’s decision and it granted access to the document in part in accordance with section 25, I consider it remains practicable to provide the Applicant with an edited copy of the document with exempt information deleted.

Conclusion

25. On the information before me, I am satisfied certain information in the document is exempt from release under section 34(1(b)).
26. The Agency has provided the Applicant with an edited copy of the document with exempt information deleted. My decision is that no further information in the document is to be released.

Timeframe for the Applicant to seek a review of my decision

27. If the Applicant is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.⁴
28. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁵
29. 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.
30. 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.⁶

When this decision takes effect

31. My decision does not take effect until 14 days from the date it is provided to the parties. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

² *Mickelborough 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].

⁴ Section 50(1)(b).

⁵ Section 52(5).

⁶ Section 50(3FA).