

## Notice of Decision and Reasons for Decision

---

Applicant:	'GD5'
Agency:	Racing Victoria Limited
Decision date:	23 June 2025
Exemption and provision considered:	Sections 25A(5), 35(1)(b) 'GD5' and Racing Victoria Limited (Freedom of Information) [2025] VICmr 94
Citation:	(23 June 2025)

---

FREEDOM OF INFORMATION – Onsite Humane Euthanasia Program – information obtained in confidence

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 is the same as the Agency's decision.

I am satisfied all documents sought, as described in the Applicant's request, if they exist, would be exempt from release under section 35(1)(b), and there is no obligation for the Agency to grant access to an edited copy of a document in accordance with section 25.

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**

23 June 2025

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency on behalf of [name] seeking access to the following documents:

1. The names of all Thoroughbreds who were euthanised under the Onsite Humane Euthanasia Program (OHEP) during the 2023/2024 racing year (1 August 2023 to 31 July 2024). And, for each horse:
2. The date of their death, and
3. The reason for which they were euthanised.

2. The Applicant in their FOI request provided the following contextual information:

In relation to procedures for the OHEP, we understand the information we seek is contained in the following documents:

1) NOMINATION FORM (after an initial communication to Racing Victoria (RV) from the owner, this form is sent by RV to the owner who completes the details and returns it to RV. The form is then assessed by RV Welfare Department). CPR assumes this form contains the individual horse's name and the reason for their impending death. We are also aware this form will contain private information about owners, possibly trainers, veterinarians and other people. We do not want access to this information. We seek information only about the horse.

2) CONFIRMATION OF EUTHANASIA AND DECEASED HORSE REMOVAL FORM OR

3) CONFIRMATION OF DECEASED HORSE REMOVAL AND DISPOSAL FORM. Forms 2 and/or 3 will confirm the name of the euthanised horse and their date of death.

...

We request some information about the Onsite Humane Euthanasia Program (OHEP). This information will be used as part of our ongoing work to identify the number of Thoroughbred deaths that occur due to their involvement in the racing industry. Given the increasing importance of animal welfare to Australians, it is in the public interest that details of horse deaths in racing is known. Three documents relating to the Onsite Humane Euthanasia Program are cited on the RV website indicating they contain the information we are asking for. The forms are described in Question 10 above. We would be happy to receive the information we request in a summary (new) document. Once again, we are not seeking private information such as the names of owners, trainers, stewards, veterinarians or other personnel. We are only seeking details about the horses.

3. I understand from publicly available information that the Agency introduced the OHEP as part of its initiative to care for and support post racing thoroughbred horses. OHEP is for registered thoroughbreds where the decision to euthanise is for the best welfare outcome and has been made by the owner. The OHEP aims to enable owners and trainers to euthanise these horses

onsite at the horse's usual location or a veterinary hospital / clinic in circumstances where the cost of this procedure would otherwise be inhibitive.<sup>1</sup>

4. To participate in OHEP, the owner completes a nomination form for entry of the horse into the program. The nomination is then assessed by the Agency's equine welfare department.<sup>2</sup>
5. The Agency in its 2024 annual report released the number of horses that were euthanised as part of OHEP.<sup>3</sup>
6. In response to the Applicant's request, the Agency refused access to the requested documents, without processing the request, under section 25A(5) because it considered it was apparent from the nature of the documents described in the request that any such documents would be exempt under section 35(1)(b). The Agency's decision letter sets out the reasons for its decision.

### Review application

7. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
8. The Applicant and the Agency were invited to make written submissions under section 49H(2) in relation to the review. I have considered relevant communications and submissions received from the parties.

### OVIC's initial view and informal resolution steps

9. The Applicant in their review application stated they are open to amending their request to only seek access to:
  - (a) the reason for which each horse was euthanised and
  - (b) the age of the horse at euthanasia /death (in years).
10. The Applicant also stated in their review application that they do not seek any personal affairs information relating to the owners of each horse and suggested the Agency could consider creating a new document which contains the details now sought by the Applicant.
11. During the review, OVIC provided the Agency with an initial view that should this matter progress to a formal decision it is likely I would agree with the Agency's decision to refuse to process the request under section 25A(5) of the FOI Act, on the grounds that it is apparent from the nature of the request that all documents would be exempt from release under section 35(1)(b).
12. However, because I am required to perform my functions and exercise my powers under the FOI Act with as little formality and technicality as possible, OVIC invited the Agency to consider informally resolving this review without the need for a formal decision. Accordingly, OVIC

---

<sup>1</sup> <https://www.racingvictoria.com.au/equine-welfare/programs-initiatives/safety-net-program>

<sup>2</sup> <https://dxc-cdn.racing.com/api/public/content/rv-ohep-guide-627498.pdf?v=cf0bc904>

<sup>3</sup> <https://dxc-cdn.racing.com/api/public/content/rv-annual-report-2024-final-627315.pdf?v=3b5db53e>

sought the Agency's view as to whether the Agency would consider processing a new request based on the Applicant's proposed amended terms.

13. In response, the Agency did not agree to accept the Applicant's amended terms to potentially resolve this review.
14. As such, I must proceed with my review on the basis of the Agency's decision to refuse to process the Applicant's request as per its original terms as detailed at paragraph 1.
15. 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.

#### Section 25A - Requests may be refused in certain cases

16. Section 25A(5) provides an agency may refuse to grant access to documents in accordance with an FOI request:
  - (a) if it is apparent from the nature of the request all documents sought would be exempt under the FOI Act and
  - (b) where it is not possible to provide the applicant with an edited copy of the documents with exempt information deleted, or it is clear the applicant does not seek an edited copy of the documents.
17. Importantly, an agency is not required to identify any or all documents relevant to a request or to specify any relevant exemption under which a particular document would be exempt.
18. The power under section 25A(5) is carefully circumscribed.<sup>4</sup> A decision maker must be satisfied the following three requirements are met, which operate to limit the application of section 25A(5):
  - (a) 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) It must be apparent all requested documents are exempt.
  - (c) It must be apparent from:
    - (i) the nature of the documents, as described in the request, no obligation would arise for the agency to grant access to an edited copy of a document in accordance with section 25 or
    - (ii) the request, or through consultation with the applicant, they would not wish to have access to an edited copy of the document.<sup>5</sup>

---

<sup>4</sup> *Knight v Corrections Victoria* [2010] VSC 338, [37]

<sup>5</sup> *Ibid.*

*Is the nature of the requested documents objectively apparent from the face of the request?*

19. For section 25A(5) to apply, the first element is: it is apparent from the nature of the documents as described in the request that all documents to which the request is expressed to relate are exempt documents.
20. The nature of a document refers to the 'inherent or essential quality and character of the documents as described'.<sup>6</sup>
21. The objective nature of the requested documents are documents relating to OHEP which include information about:
  - (a) the name of each horse euthanised under the OHEP
  - (b) the date of death for each horse euthanised under the OHEP
  - (c) the reason each horse was euthanised under the OHEP.

*Would all documents, as described in the request, be exempt?*

22. It must be objectively apparent from the face of the request that all requested documents are exempt by their nature (under one or more exemption).<sup>7</sup>
23. In refusing access to the requested documents under section 25A(5), the Agency considered the documents, should any exist, would be exempt from release under section 35(1)(b).

*Section 35(1)(b) – Information obtained in confidence*

24. A document may be exempt under section 35(1)(b) if two conditions are satisfied:
  - (a) disclosure would divulge information or matter
    - (i) communicated in confidence
    - (ii) by or on behalf of a person or a government to an agency or a Minister
  - (b) disclosure would be contrary to the public interest because the disclosure would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.

*Was the information obtained in confidence?*

25. Whether information was communicated in confidence is a question of fact,<sup>8</sup> determined from the perspective of the communicator.<sup>9</sup>

---

<sup>6</sup> Ibid, [38]-[39].

<sup>7</sup> Ibid, [37].

<sup>8</sup> *Ryder v Booth* [1985] VR 869, 883.

<sup>9</sup> *XYZ v Victoria Police* [2010] VCAT 255, [265]; *Barling v Medical Board of Victoria* [1992] 5 VAR 542, 561-562.

26. In doing so, it is necessary to consider the position from the perspective of the communicator, noting confidentiality can be expressed or implied from the circumstances of a matter.<sup>10</sup>
27. I consider the third parties who submit a nomination form to participate in the OHEP do so with the expectation the information they provide would remain confidential, given the information they provide relates to sensitive equine welfare matters.
28. Accordingly, I am satisfied should any of the requested documents exist, they would divulge information communicated to the Agency in confidence.

*Would disclosure impair the ability of the Agency to obtain similar information?*

29. The term 'impair' is not defined in the FOI Act. However, case law suggests:
  - (a) the degree of impairment must go beyond a trifling or minimal impairment<sup>11</sup>
  - (b) there must be an actual impairment to the ability of the agency to obtain similar information in the future<sup>12</sup>
  - (c) it is not enough that individuals would be less candid than they otherwise might be<sup>13</sup> or would feel resentment at having their confidence betrayed<sup>14</sup>
  - (d) the necessary level of impairment will be made out if a significant minority of persons in the relevant group would be firmly resistant to providing similar information in the future<sup>15</sup>
  - (e) it is the agency that must be impaired from receiving information, not simply a reluctance on the part of a supplier to provide information<sup>16</sup>
  - (f) the existence of a statutory duty to provide information does not necessarily exclude the possibility that disclosure would be reasonably likely to impair an agency's ability to obtain similar information in the future, particularly where disclosure might impact the quality and quantity of any future information provided.<sup>17</sup> In comparison, an agency will not be impaired from obtaining a specific type of information in future, if there is legislation which compels a person to provide this type of information to the agency.<sup>18</sup>
30. The Agency in its decision stated:

---

<sup>10</sup> *XYZ v Victoria Police* [2010] VCAT 255, [265].

<sup>11</sup> *Ryder v Booth* [1985] VR 869, 880.

<sup>12</sup> *Birnbauer & Davies v Inner & Eastern Health Care Network* [1999] VCAT 1363, [68] referring to *Ryder v Booth* [1985] VR 869

<sup>13</sup> *Birnbauer & Davies v Inner & Eastern Health Care Network* [1999] VCAT 1363, [68]; approved in *Smeaton v Victorian WorkCover Authority* [2012] VCAT 1549, [69].

<sup>14</sup> *Sifredi v Medical Practitioners Board* [1999] VCAT 87 (affirmed on appeal *Medical Practitioners Board of Victoria v Sifredi* [2000] VSC 33);

<sup>15</sup> *Sifredi v Medical Practitioners Board* [1999] VCAT 87 (affirmed on appeal *Medical Practitioners Board of Victoria v Sifredi* [2000] VSC 33).

<sup>16</sup> *Kosky v Department of Human Services* [1998] VCAT 290, [22].

<sup>17</sup> See *Thwaites v Department of Health and Community Services* (1995) 8 VAR 361, 370; *Woodford v Ombudsman* [2001] VCAT 721, [99]-[101].

<sup>18</sup> *Barling v Medical Board (Vic)* (1992) 5 VAR 542, 565.

Racing Victoria's Equine Welfare team rely on horse owners being able to provide confidential information regarding the best welfare outcomes for thoroughbred horses in their care.

It is Racing Victoria's opinion that there is a confidentiality concern, given:

- a) often a connection between the horse name and the OHEP applicant; and
- b) in the event that there isn't, this may provide [the Applicant] with misinformation and is open to misinterpretation.

I consider there is a strong public interest in Racing Victoria maintaining their ability to obtain information from third parties for the purposes of ensuring members of the public are confident in using the OHEP service. I accept if such information were to be released under FOI, it would hinder the Equine Welfare team's advances in promoting and advocating OHEP to ensure that horses have a calm and peaceful end of life, whether in part due to chronic illness or other reasons, as nominees would be hesitant to nominate horses for the program due to a lack of confidentiality.

- 31. I acknowledge the sensitive and contentious nature of the information sought. Therefore, if such information were to be released, it would hinder the Agency's ability to obtain similar information in the future as thoroughbred owners would refuse to provide this information to the Agency in circumstances where they have concerns about their safety. This would, in turn, impact the Agency's equine welfare framework.
- 32. Having considered the information before me, I appreciate the work undertaken by [name]. However, in balancing the public interest factors, I am satisfied the public interest lies in the Agency being able to maintain the confidentiality of individuals who voluntarily provide information as part of OHEP.
- 33. Accordingly, I am satisfied that should any of the requested documents exist, they would be exempt from release under section 35(1)(b).

***Is it apparent that no obligation would arise for the agency to grant access to an edited copy of a document in accordance with section 25?***

- 34. It must be objectively apparent from the nature of the documents, as described in the request, that it would not be practicable to provide an edited copy of any of the documents, under section 25.<sup>19</sup>
- 35. 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.
- 36. I have carefully considered whether, hypothetically, it would be practicable to edit any relevant document/s to remove exempt and irrelevant information and release them in part to the Applicant.
- 37. In doing so, I have considered whether an edited copy of any relevant document/s could be provided to the Applicant, with only some information, such as the name of the owner and the name of the thoroughbred, removed. However, I am satisfied that an edited document in that

---

<sup>19</sup> *Knight v Corrections Victoria* [2010] VSC 338, [50].

form could not be provided to the Applicant, as the additional information sought by the Applicant, such as the reason for which the thoroughbred was euthanised, would also be exempt from release.

38. Therefore, given the nature of and specific terms of the request, and my assessment above, I am satisfied it would not be practicable to do this because the redactions would remove the key information sought by the Applicant and in effect render the document/s devoid of meaning. As such, I am satisfied the third requirement of section 25A(5) is met.

### Conclusion

39. On the information before me, I am satisfied all documents sought, as described in the Applicant's request, if they exist, would be exempt from release under section 35(1)(b) and there is no obligation for the Agency to grant access to an edited copy of a document in accordance with section 25.

### Timeframe to seek a review of my decision

40. If the Applicant to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.<sup>20</sup>
41. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>21</sup>
42. 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.
43. The Agency is required to notify the Information Commissioner in writing as soon as practicable if the Applicant applies to VCAT for a review of my decision.<sup>22</sup>

---

<sup>20</sup> Section 50(1)(b).

<sup>21</sup> Section 52(5).

<sup>22</sup> Section 50(3FA).