

## Notice of Decision and Reasons for Decision

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Applicant:	'GC9'
Agency:	Moonee Valley City Council
Decision date:	16 September 2025
Exemption and provision considered:	Sections 25 and 34(1)(b)
Citation:	'GC9' and Moonee Valley City Council (Freedom of Information) [2025] VICmr 89 (16 September 2025)

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FREEDOM OF INFORMATION – local government – calibration of noise limiters – external report – noise levels – noise at a venue

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**).

A marked-up copy of the document has been provided to the Agency reflecting my decision.

My reasons for decision follow.

Penny Eastman  
**Public Access Deputy Commissioner**

16 September 2025

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency seeking access to the following documents, which was later amended to seek access to:
  - (a) acoustic reports relating to [reference number provided]
  - (b) ...a document or email that confirms an acoustic logging device has been installed at the venue as required by the permit [reference numbers provided] along with copies of those log reports for the period [date range provided] ("the post VCAT decision period")
  - (c) documents held by Council regarding sounds or acoustic levels monitoring and/or testing regarding [reference number provided]
2. The Agency identified 21 documents falling within the terms of the Applicant's request and decided to:
  - (a) grant access to 3 documents in part with irrelevant information removed
  - (b) refuse access in full to 1 document under section 34(1)(b)
  - (c) refuse access to 17 documents in the form requested and instead allowed the Applicant to inspect the documents.
3. 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 to 1 document under section 34(1)(b). They did not want access to personal affairs information and consented to such information being deleted from the document.
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.

10. 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’.<sup>1</sup> 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.

#### **Attempted informal resolution by OVIC**

11. During the review, OVIC staff provided the Agency with their initial view that section 34(1)(b) would not be upheld and referred the Agency to a previous OVIC review decision of relevance.
12. The Agency disagreed with OVIC staff’s view and provided a further submission in support of its decision.

#### **Review of exemption**

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

13. 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
  - (b) the information relates to matters of a business, commercial or financial nature
  - (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 information acquired from a business, commercial or financial undertaking?*

14. The document is a report prepared by an external party into the calibration of noise limiters at a venue. On the information before me, it appears that the document was obtained by the Agency from the venue. I am satisfied both third parties are business undertakings.

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

15. The document concerns noise levels at a venue. The Agency’s decision letters states that the business undertaking was engaged by the venue in accordance with the requirements of a planning permit.
16. The content of the document does not strictly concern matters of a business, commercial or financial nature, as it merely reports on the test results. In any case, it relates to the commercial functions of the venue and therefore, I accept in these circumstances that the second requirement of section 34(1)(b) is met.

#### ***Consultation***

17. In deciding whether disclosure would expose an undertaking unreasonably to disadvantage, an

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<sup>1</sup> *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577, [591].

agency, if reasonably practicable, must consult with the business undertaking from which it acquired information.

18. The Agency consulted with the venue, and I have considered their view regarding the release of the document.
19. There is no information before me concerning the view of the business undertaking who produced the report. I have proceeded with my review on the assumption that it would not consent to the release of the document.

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

20. In considering whether disclosure will expose an undertaking to unreasonable disadvantage, I may have regard to the factors set out in section 34(2), along with any other relevant consideration. These are:
  - (a) whether the information is generally available to competitors of the undertaking
  - (b) whether the information would be exempt matter 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
  - (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.
21. By the inserting the word 'unreasonably' in section 34(1), it is my view, Parliament determined this exemption will apply only where a business undertaking would be exposed 'unreasonably' to disadvantage.
22. The phrase 'expose the undertaking unreasonably to disadvantage' contemplates disclosure of documents under the FOI Act may expose a business undertaking to a certain measure of disadvantage.
23. Having carefully considered the purpose and content of the document, I am not satisfied its disclosure under the FOI Act would be likely to expose the venue or the business undertaking that prepared the report unreasonably to disadvantage.
24. The document assesses noise levels at the venue at a particular time and does not contain proprietary, operational or commercial information about the venue. While the document was intended to be confidential, it does not contain information that would:
  - (a) give a competitor of the undertakings a competitive financial advantage
  - (b) enable that competitor to engage in destructive competition with the undertakings

- (c) lead to unwarranted conclusions about the undertakings' financial affairs and position that result in commercial and market consequences.<sup>2</sup>
25. While I note that there have been complaints by members of the community in relation to the venue, and media interest in the matter, this does not mean that disclosure of a document relating to noise levels at the venue would necessarily expose it to unreasonable disadvantage, having considered its content and purpose.
26. In respect to the business undertaking who prepared the report, I am satisfied the document does not disclose any specific technical methods or data that could reasonably be used by a competitor that would expose it to commercial disadvantage.
27. In this case, the Applicant is not a commercial competitor of the undertakings, and it appears their purpose for seeking the document is in relation to their concerns regarding noise levels at the venue, rather than for the purpose of obtaining a competitive advantage against the business undertakings.
28. Accordingly, I am not satisfied disclosing the document will expose the business undertakings unreasonably to disadvantage, and therefore, the document is not exempt from release under section 34(1)(b) of the FOI Act.

***Section 25 – Deletion of exempt or irrelevant information***

29. Section 25 requires an agency to grant access to an edited copy of a document where it is practicable to delete exempt and irrelevant information and the applicant agrees to receiving such a copy.
30. Deciding whether it is 'practicable' to delete exempt and irrelevant information requires an agency or Minister to consider:
- (a) the effort involved in making the deletions from a resources point of view<sup>3</sup> and
  - (b) the effectiveness of those deletions – that is, whether the edited document still has meaning.<sup>4</sup>
31. The Applicant did not seek access to personal affairs information in the document. Accordingly, the following information in the document is irrelevant information:
- names
  - a signature
  - contact details

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<sup>2</sup> *Dalla Riva v Department of Treasury and Finance* [2007] VCAT 1301, [33].

<sup>3</sup> *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].

<sup>4</sup> *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.

- a position title
- the photo of a residential property
- an image of an individual in a photograph.

32. I have considered the effect of deleting irrelevant information from the document. In my view, it is practicable for the Agency to delete irrelevant information, because it would not require substantial time and effort, and the edited document would retain meaning.

### Conclusion

33. On the information before me, I am not satisfied the document is exempt from release under section 34(1)(b).

34. As I am satisfied it is practicable to provide the Applicant with an edited copy of the document with irrelevant information deleted in accordance with section 25, access is granted in part.

35. The Agency will receive a marked-up copy of the document reflecting my decision.

### Timeframe to seek a review of my decision

36. 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>5</sup>

37. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>6</sup>

38. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>7</sup>

39. 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.

40. 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>8</sup>

### Third party review rights

41. As I have decided to release the document to the Applicant in part with irrelevant information deleted, I am required to notify third parties of their right to apply to VCAT for a review of my decision.<sup>9</sup>

42. In this case, OVIC will notify the third parties as soon as practicable.

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<sup>5</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>6</sup> Section 52(5).

<sup>7</sup> Section 52(9).

<sup>8</sup> Sections 50(3F) and 50(3FA)

<sup>9</sup> Sections 49P(5), 50(3A) and 52(3).

**When this decision takes effect**

- 43. My decision takes effect 60 days after the third parties are notified of my decision.
- 44. If a review application is made to VCAT, my decision will be subject to any VCAT determination.
- 45. If a review application is not made to VCAT, the Agency is required to release the document to the Applicant in accordance with my decision.