

Notice of Decision under section 49P of the *Freedom of Information Act 1982* (Vic)

Applicant:	'GE8'
Agency:	Hobsons Bay City Council (HBCC)
Decision date:	22 October 2025
Citation:	'GE8' and Hobsons Bay City Council (Freedom of Information) [2025] VICmr 105 (22 October 2025)

FREEDOM OF INFORMATION – planning permit matters – agency deliberation – legal advice

This letter sets out my decision on your application for a review of a freedom of information (FOI) decision made by Hobsons Bay City Council (the **Agency**).

My decision is to release further information in Document 1 and an attachment to Document 1.

Background

Your request to the Agency under the *Freedom of Information Act 1982* (Vic) (**FOI Act**) sought access to:

... the two (2) HBCC response documents to formal complaint [date] regarding the administration of the [named facility]. The two documents as described as per HBCC letter [officer name] [date].

- Internal review
- Independent external review

The Agency identified 3 documents falling within the terms of your request and granted access to 1 document in part and refused access to 2 documents in full. The Agency relied on sections 30(1), 33(1) and 32(1) of the FOI Act to refuse access to information in the documents. The Agency's decision letter sets out the reasons for its decision.

Relevant exemptions under the FOI Act

- Section 30(1) of the FOI Act – this section provides that information is exempt from release if it was prepared by an agency or minister and it contains:
 - opinion, advice or recommendation prepared by an agency officer, or consultation or deliberation that has taken place between agency officers or Ministers
 - the matter was created during the deliberative process of an agency or the government's functions and
 - disclosure of the matter would be contrary to the public interest.

- Section 33(1) of the FOI Act – this section provides that a document that contains personal affairs information of a person is exempt from release if disclosure of that personal affairs information is unreasonable in all the circumstances.
- Section 32(1) of the FOI Act – this section provides that documents subject to legal professional privilege or client legal privilege cannot be released.

Reasons for decision

I have conducted a review of the decision made by the Agency and made a fresh decision as follows under section 49P of the FOI Act.

In making my decision, I note that you advised me that you consent to the removal of personal information relating to third parties within the documents.

- **Document 1** – internal email (internal Review)

The Agency decided this document was exempt in full under sections 30(1) and 33(1) of the FOI Act.

The document is an email thread between Agency officers. The document is primarily factual in nature as it recounts the requirements of a planning permit application. However, it also includes advice from an Agency officer, and its overall purpose was for the Agency officers to deliberate matters concerning the planning permit.

I am satisfied this document was prepared for the purpose of the Agency's deliberative functions, being an internal review of the decision to grant the planning permit.

I am not satisfied that disclosure would be contrary to the public interest for the following reasons:

- the information is not particularly sensitive in nature
- disclosure of the document provides information in relation to the Agency's decision to grant a planning permit, the disclosure of which builds trust in the Agency and the wider Government
- it also demonstrates the Agency has undertaken a review of its decision and took the Applicant's concerns in relation to the planning permit seriously
- the document does not disclose any details that would impair the effectiveness of future decision-making processes.

Therefore, I am satisfied the third limb of section 30(1) of the FOI Act has not been satisfied as disclosure would not be contrary to the public interest.

I note you do not require access to personal affairs information. Accordingly, information that identifies individuals other than yourself is to remain redacted in accordance with section 25

of the FOI Act.

I am also satisfied that both attachments to the email thread in Document 1 fall within the scope of your request, as they were intended to be considered as part of the Agency's deliberation of the planning permit. As such, the first attachment to the email thread is to be released to you with the signature, name and position title of an Agency officer deleted. The second attachment is Document 3, discussed below.

- Document 2 – Legal advice

The Agency decided this document was exempt in full under section 32(1) of the FOI Act.

Document 2 is a letter to the Agency from its legal advisers. I am satisfied it is a confidential communication between a lawyer and their client, which was prepared for the dominant purpose of providing legal advice.

There is no information before me to suggest legal privilege has been waived.

It is not practicable to edit the document to delete information that is prohibited from release as the required deletions would make the document meaningless. As such, I have decided to refuse access to the document in full.

Therefore, I am satisfied that this document is exempt in full under section 32(1) of the FOI Act.

- Document 3 – Planning Application [number] Delegate Report

The Agency decided this document was exempt in part under section 33(1) of the FOI Act.

The information that the Agency redacted is the name of the planning permit applicant and the name and signature of an Agency officer.

As you do not seek access to personal affairs information, the information in this document is to remain redacted in accordance with section 25 of the FOI Act.

Your review rights

If you are not satisfied with my decision, you can apply to the Victorian Civil and Administrative Tribunal (VCAT) for it to be reviewed.



You have 60 days from the date you receive this decision to apply to VCAT.

Information about how to make an application to VCAT is available at www.vcat.vic.gov.au.

VCAT can also be contacted by email at admin@vcat.vic.gov.au or by telephone on 1300 018 228.

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The Agency may apply to VCAT for a review up to 14 days from the date it is given this decision.¹

OVIC will provide the Agency with marked-up copies of Document 1 and the first attachment to Document 1 showing the irrelevant information to be removed in line with my decision. If an application to VCAT is not made by the Agency within its 14 day time period, the Agency is required to release these documents to you in accordance with my decision.

Yours sincerely

Penny Eastman

Public Access Deputy Commissioner

¹ Section 52(9) of the FOI Act.

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