

12 March 2026

'GH8'

Copy provided to the Building and Plumbing Commission

By email only

Dear 'GH8',

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

Agency:	Building and Plumbing Commission
Exemptions and provisions considered:	Sections 25, 30(1), 31(1)(a), 32(1), 33(1), 34(1)(b), 35(1)(a), 35(2)
Citation:	'GH8' and Building and Plumbing Commission (<i>Freedom of Information</i>) [2026] VICmr 14 (12 March 2026)

FREEDOM OF INFORMATION – complaints – compliance – investigations of alleged noncompliance – regulatory action – enforceable undertaking – deed

Thank you for your request for review of a decision made by the Building and Plumbing Commission (the **Agency**) to refuse you access to information you requested under the *Freedom of Information Act 1982* (Vic) (the **FOI Act**).

I confirm I have conducted a review of the Agency's decision and made a fresh decision on 12 March 2026 under section 49P of the FOI Act.

I have decided to release more information in the documents to you.

This letter sets out my decision.



If you are not satisfied with my decision, you have **60 days** from the date you receive this letter to apply to the Victorian Civil and Administrative Tribunal (**VCAT**) for its further review. See pages 7 to 8 for more information.

Background

Your request sought access to the following regarding Complaint [number]:

- the complaint file made by two individuals against [third party]
- any undertaking given, prepared or produced by the Agency or [the third [party] in relation to the complaint.

The Agency's decision letter states it located 40 documents in response to your request and decided to:

- release 24 documents in full
- release 1 document in part
- refuse access to 15 documents in full.

The Agency relied on exemptions under sections 30(1), 31(1)(a), 32(1), 33(1), 34(1)(b) and 35(1)(a) of the FOI Act to refuse access to information in the documents.

Your lawyers have sought a review of the Agency's decision on your behalf.

Reasons for decision

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

Sections of the FOI Act considered

- Section 25 of the FOI Act – Partial access to a document may be provided when:
 1. a document contains exempt or irrelevant information
 2. it is practicable to provide access to an edited copy with exempt or irrelevant information removed and
 3. the applicant wishes to receive an edited copy.
- Section 30(1) of the FOI Act – To be exempt under section 30(1), three conditions must be satisfied:
 1. 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 and

2. the matter was created during the deliberative process of an agency, Minister, or the government's functions and
 3. disclosure of the matter would be contrary to the public interest.
- Section 31(1)(a) of the FOI Act – Section 31(1)(a) exempts documents where disclosure would be reasonably likely to prejudice, in a particular instance:
 - the investigation of a breach or possible breach of the law or
 - enforcement or proper administration of the law.

In relation to the enforcement or proper administration of the law, a document is exempt under section 31(1)(a) if two conditions are satisfied:

- the information relates to the enforcement or proper administration of the law in a particular instance and
 - release of the information would or would be reasonably likely to prejudice the enforcement or proper administration of that law.
- Section 32(1) of the FOI Act – Section 32(1) exempts documents subject to legal professional privilege or client legal privilege. Both legal professional privilege and client legal privilege cover confidential communications:
 - providing legal advice (**advice privilege**) and
 - prepared for current or anticipated litigation or court proceedings (**litigation privilege**).¹

The confidential communication needs to be for the dominant purpose of obtaining or providing legal advice (advice privilege) or the client being provided with legal services about a current, anticipated or pending legal proceeding, where the client is or may be a party (litigation privilege).

- Section 34(1)(b) of the FOI Act – A document or information is exempt under section 34(1)(b) if three conditions are satisfied:
 1. the document or information was acquired from a business, commercial, or financial undertaking and
 2. the information relates to matters of a business, commercial or financial nature and

¹ See *Esso Australia Resources Ltd v Federal Commissioner of Taxation* [1999] HCA 67 and *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* [2002] HCA 49.

3. disclosure of the information is likely to expose the undertaking unreasonably to disadvantage (based on matters listed in section 34(2) of the FOI Act and any other relevant considerations).
- Section 35(1)(a) of the FOI Act – A document may be considered exempt under section 35(1)(a) if two conditions are satisfied:
 1. disclosure would divulge information or matter:
 - communicated in confidence
 - by or on behalf of a person or a government to an agency or a Minister and
 2. the information would be exempt matter if it were generated by an agency or a Minister.

Section 35(2) of the FOI Act provides section 35(1)(a) does not apply to information acquired by an agency from a business, commercial or financial undertaking, where the information relates to trade secrets or other matters of a business, commercial or financial nature.

Is information in the documents exempt under the FOI Act?

Is information in the documents exempt from release under section 30(1) of the FOI Act?

Yes, a small amount of information in Document 29 is exempt from release under section 30(1) of the FOI Act.

Document 29 contains an assessment and recommendation prepared by an Agency officer, which for the purposes of section 30(1) is matter in the nature of advice and recommendation.

The document was prepared during and for the purposes of the Agency's deliberative processes involved in its functions of managing complaints.

I am satisfied that it would be contrary to the public interest to disclose parts of Document 29 because it would provide insight into an aspect of how complaints are assessed that could potentially be used by the individuals who are the subject of complaints to avoid certain outcomes. This would be detrimental to ensuring the safety and health of people who use buildings, and protecting the rights of owners when there have been incomplete or defective building works, which is the purpose of the building regulatory framework.

Is information exempt from release under section 31(1)(a) of the FOI Act?

No, I am not satisfied any information in the documents is exempt from release under section 31(1)(a) of the FOI Act.

The documents disclose an action that was taken by the Agency to enforce and administer the *Building Act 1993* (Vic) and *Building Regulations 2018* (Vic) or other relevant legislation under which the Agency has jurisdiction (**building laws and regulations**).

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I am not satisfied that disclosing the information that the Agency exempted from the documents would, or would be likely to, prejudice the way in which the Agency enforces and administers the building legislation. In my view, disclosure will not result in any harm to the way in which the Agency enforces and administers the building laws and regulations.

I do not consider the documents include information that could be used by the Applicant, or other people, that would impact the way in which the Agency deals with complaints in the future.

I also do not consider the documents disclose information that regulated parties (such as building practitioners) could use to impair the way in which the Agency investigates and deals with complaints in relation to alleged breaches of building laws and regulations.

It is likely that the Agency will continue to undertake similar actions when dealing with noncompliance with building laws and regulations, and disclosure of the documents in this instance will not have any material impact on the Agency's use of this action.

Is information exempt from release under section 32(1) of the FOI Act?

No, information is not exempt from release under section 32(1) of the FOI Act.

The Agency applied this exemption to correspondence sent by an external lawyer who was not acting on behalf the Agency.

Correspondence from a client's lawyer to another person who is not the client or agent does not ordinarily attract legal professional privilege.

In this instance, there is no information before me to suggest that the communication was made for the dominant purpose of the client being provided with legal services in relation to a legal proceeding, or an anticipated legal proceeding to which the client is or might have been a party. I do not consider that the Agency intends to initiate legal proceedings for every complaint it receives. There is no indication in the documents that the Agency was intending to pursue legal proceedings in relation to the complaint to which the documents relate. As such, the document is not subject to litigation privilege.

The document is also not subject to advice privilege because the dominant purpose of the communication was not to provide their client with legal advice.

Therefore, section 32(1) of the FOI Act does not apply to Document 6.

Is information exempt from release under section 33(1) of the FOI Act?

Yes, I am satisfied information is exempt from release under section 33(1) of the FOI Act.

Your representative advised OVIC that you only require the name of the person(s) giving the undertaking. Therefore, I have only considered the application of section 33(1) to the name of the person(s) in the Deeds, excluding the names of Agency officers as they were not "giving the undertaking".

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The names of people other than yourself are 'personal affairs information'.

I have decided that it would not be unreasonable to release the name(s) of other people in the Deeds after consideration of the following factors which weigh both in favour and against disclosure:

- you are likely aware of the identity of the named person/s
- the level of seniority of the named person/s
- the documents relate to a complaint that you made
- the named person/s would reasonably likely have expected the documents would not be disclosed to other parties, and would expect them to have only been accessible to the Agency
- there is no information before me concerning the reasons why you are seeking access to names
- the likelihood that the person/s named would object to disclosure
- the impact that broader disclosure of the documents could have on the person/s named in the documents
- there is no public interest in disclosing the name/s
- disclosure will not endanger the life or physical safety of any person (which is a mandatory consideration).

On balance of these factors, I am satisfied that it would be unreasonable to disclose the name/s that you have requested.

Is information exempt from release under section 34(1)(b) of the FOI Act?

No, I am not satisfied that information is exempt from release under section 34(1)(b) of the FOI Act.

The documents contain information that was acquired from a third party business.

Information will 'relate to' matters of a business, financial or commercial nature if there is a sufficient or material connection or relationship between the information that would be disclosed by the disclosure of the documents and matters of a business, financial or commercial nature.²

The documents peripherally relate to matters of a business, commercial and financial nature, as while the dominant matter the documents concern is a complaint, the complaint concerns the way in which the third party conducted its business.

In determining whether disclosing the documents would be likely to expose the third party business

² *Commissioner of State Revenue v Tucker* [2021] VCAT 238, [158], citing *J & G Knowles & Associates Pty Ltd v Commissioner of Taxation* [2000] FCA 196.

unreasonably to disadvantage, I have considered the following:

- The information was obtained by the Agency in the context of a complaint made on your behalf.
- The documents disclose the identity of the third party business and therefore disclosure of the documents would reveal that they are connected with a complaint and investigation undertaken by the Agency.
- Disclosing information that identifies the business could impact its reputation if the documents are more widely distributed. This could cause some harm to the third party business, however, I do not consider it would result in substantial or unreasonable harm to their competitive position.
- I do not have any information before me concerning the views of the third party business about releasing the documents, however, it is reasonable to assume that it would object to disclosure of the documents to you.

I have decided that while disclosure of the documents will disadvantage the third party business, it will not be likely to expose it unreasonably to disadvantage.

Is information exempt from release under section 35(1)(a) of the FOI Act?

No, information is not exempt from release under section 35(1)(a) of the FOI Act. The exemptions in section 35 do not apply to information acquired by an agency from a business, commercial or financial undertaking, where the information relates to trade secrets or other matters of a business, commercial or financial nature.

As stated above in relation to section 34(1)(b), the documents were acquired from a business, commercial or financial undertaking and concern matters of a business nature.

Can partial access to documents be provided?

Yes, the documents can be released to you in part.

I am satisfied that:

- The documents contain exempt and/or irrelevant information
- it is practicable to provide access to an edited copy with exempt or irrelevant information removed because the documents will retain meaning and
- you wish to receive edited copies.

The right to apply to VCAT for a review

If you are not satisfied with my decision, you can apply to VCAT for it to be reviewed.

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If you wish to seek review of my decision, you must make a review application to VCAT within 60 days from the date you are given notice of my decision.

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.

The Agency has 14 days to make an application to VCAT.

The third party business has 60 days to make an application to VCAT.

When will documents be released to you?

The Agency will release the documents to you if an application to VCAT is not made.

If no applications to VCAT are made, the Agency will release the documents to you 60 days after the third party is notified of its right to apply to VCAT.

Annexure 1 sets out my decision on each document.

Yours sincerely

Penny Eastman

Public Access Deputy Commissioner

Document	Date	Description	Pages	Agency Decision	OVIC Decision	Comments
6	[Date]	Email	2	Refused in full Sections 32(1), 33(1)	Release in part Section 25 This document is to be released with names and contact details deleted.	Section 32(1): The document is not exempt under section 32(1) of the FOI Act for the reasons explained above. Section 33(1): The Applicant does not seek review of the personal affairs information in this document. Section 25: It is practicable to edit this document to delete irrelevant information.
8	[Date]	Email	1	Refused in full Sections 31(1)(a), 33(1)	Release in part Section 25 This document is to be released with names, position title and contact details deleted.	Section 31(1)(a): I am not satisfied the document is exempt under section 31(1)(a) for the reasons explained above. Sections 33(1) and 25: See comments for Document 6.

					The email address of the Agency is not personal affairs information.	
8.1	[Date]	Letter	1	Refused in full Sections 31(1)(a), 33(1), 34(1)(b), 35(1)(a)	Release in part Section 25 The document is to be released with names, signatures, position titles and contact details deleted. The address in the subject line is to be released.	Section 31(1)(a): See comments for Document 8. Section 33(1): See comments for Document 6. Section 34(1)(b): I am not satisfied information is exempt under this section for the reasons explained above. Section 35(1)(a): I am not satisfied information is exempt under this section for the reasons explained above. Section 25: See comments for Document 6.
8.2	[Date]	Executed Deed (unsigned)	3	Refused in full Sections 31(1)(a), 33(1), 34(1)(b), 35(1)(a)	Release in part Sections 25, 33(1) The names, position titles and addresses are to remain deleted,	Section 31(1)(a): See comments for Document 8. Section 33(1): I am satisfied it would be unreasonable to disclose

					except for the address on page 3.	the name/s in this document for the reasons explained above. Section 34(1)(b): See comments for Document 8.1. Section 35(1)(a): See comments for Document 8.1. Section 25: It is practicable to edit this document to delete exempt and irrelevant information.
9	[Date]	Emails	1	Release in part Section 25	Release in full	The Agency indicated in its decision that this document had been released in full, however, the subject line has been redacted. I consider the subject line is relevant information and it is not exempt from release. The attachment was released to the Applicant in full.

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11	[Date]	Email	1	Release in part Section 25	Release in full	See comments for Document 9.
12	[Date]	Emails	1	Release in part Section 25	Release in full	See comments for Document 9.
16	[Date]	Email	1	Release in part Section 25	Release in full	See comments for Document 9.
19	[Date]	Emails	4	Release in part Section 25	Release in full	The Agency indicated in its decision that this document had been released in full, however, the subject line has been redacted. I consider the subject line is relevant information and it is not exempt from release. The attachment is Document 19.1.
19.1	[Date]	FOI Application form	2	Release in part Sections 31(1)(a) and 35(1)(a)	Release in part Section 25 No further information is to be released.	Section 31(1)(a): See comments for Document 8. Section 33(1): See comments for Document 6.

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						Section 25: This document has already been released to the Applicant in part.
21	[Date]	Emails	2	Refused in full Sections 31(1)(a), 33(1)	Release in part Section 25 The document is to be released with names, position titles and contact details deleted. The email address of the Agency is not personal affairs information.	Section 31(1)(a): See comments for Document 8. Sections 33(1): See comments for Document 6. Section 25: See comments for Document 6.
21.1	[Date]	Executed deed (unsigned)	3	Refused in full Sections 31(1)(a), 33(1), 34(1)(b), 35(1)(a)	Release in part Sections 25, 33(1) The names, position titles and addresses are to remain deleted, except for the address on page 3.	See comments for Document 8.2.
22	[Date]	Email	1	Refused in full Sections 31(1)(a), 33(1)	Release in part Section 25 This document is to be released with names,	Section 31(1)(a): See comments for Document 8. Section 33(1): See comments for Document 6.

					position titles and contact details deleted. The Agency's email address is not personal affairs information.	Section 25: See comments for Document 6.
22.1	[Date]	Letter	1	Refused in full Sections 31(1)(a), 33(1)	Release in part Section 25 This document is to be released with names, signatures and contact details deleted, however, the address in the subject line and the first paragraph of the letter is to be released.	Section 31(1)(a): See comments for Document 8. Section 33(1): See comments for Document 6. Section 25: See comments for Document 6.
24	[Date]	Email	1	Refused in full Sections 31(1)(a), 33(1)	Release in part Section 25 This document is to be released with names, position titles, and contact details deleted. The Agency's email address is not personal affairs information.	Section 31(1)(a): See comments for Document 8. Section 33(1): See comments for Document 6. Section 25: See comments for Document 6.
24.1	[Date]	Executed Deed (unsigned)	1	Refused in full	Release in part	See comments for Document 8.2.

				Sections 31(1)(a), 33(1), 34(1)(b), 35(1)(a)	Sections 25, 33(1) The names, position titles and addresses are to remain deleted, except for the address on page 3.	
25	Various	Emails	2	Refused in full Sections 31(1)(a), 33(1)	Release in part Section 25 This document is to be released with names, position titles and contact details deleted. The Agency's email address is not personal affairs information.	Section 31(1)(a): See comments for Document 8. Section 33(1): See comments for Document 6. Section 25: See comments for Document 6.
25.1	[Date]	Executed Deed (partly signed)	3	Refused in full Sections 31(1)(a), 33(1), 34(1)(b), 35(1)(a)	Release in part Sections 25, 33(1) The names, position titles, signatures and addresses are to remain deleted, except for the address on page 3.	See comments for Document 8.2.
26	[Date]	Email	1	Refused in full Sections 31(1)(a), 33(1)	Release in part Section 25	Section 31(1)(a): See comments for Document 8.

					This document is to be released with names, position titles and contact details deleted. The Agency's email address is not personal affairs information.	Section 33(1): See comments for Document 6. Section 25: See comments for Document 6.
26.1	[Date]	Executed deed	3	Refused in full Sections 31(1)(a), 33(1), 34(1)(b), 35(1)(a)	Release in part Sections 25, 33(1) The names, position titles, signatures and addresses are to remain deleted, except for the address on page 3.	See comments for Document 8.2.
27	Various	Emails	2	Refused in full Sections 31(1)(a), 33(1)	Release in part Section 25 This document is to be released with names, position title and contact details deleted. The Agency's email address is not personal affairs information.	Section 31(1)(a): See comments for Document 8. Section 33(1): See comments for Document 6. Section 25: See comments for Document 6.
27.1	[Date]	Letter	1	Refused in full	Release in part Section 25	See comments for Document 8.1.

				Sections 31(1)(a), 33(1), 35(1)(a)	This document is to be released with names, position titles, signatures and contact details deleted. The address in the subject line is to be released.
29	[Date]	Email	2	Refused in full Sections 30(1), 31(1)(a), 33(1)	Release in part Sections 30(1), 25 The names and contact details of people are to be deleted. The following tables are to be deleted: 4, 6, 8, 9 (out of the 10 tables). Section 30(1): I am satisfied some of the information in this document is exempt under section 30(1) for the reasons explained above. Section 31(1)(a): See comments for Document 8. Section 33(1): See comments for Document 6. Section 25: See comments for Document 8.2.