

Our File: HCC24/320
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4 June 2024

John Johnson
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Dear John Johnson

Notice of decision – request for documents under the *Freedom of Information Act 1982* (Vic)

1. This letter contains my decision on behalf of Hume City Council in relation to your request for documents under the *Freedom of Information Act 1982* (Vic) (**FOI Act**).
2. In making my decision, I have considered the object of the FOI Act, which is to create a general right of access to information, limited only by exceptions and exemptions necessary to protect essential public interests, privacy, and business affairs.
3. My decision and reasons are provided below.

Background

4. On 17 March 2024 you requested:

“...all invoices that have been paid by Hume City Council to Town & Country Plumbing for all the jobs they have done for Hume. I would also like to know who requested these jobs and also is this company contracted by Hume City Council.”

On 24 March 2024 you paid the application fee and clarified your request as follows:

“I would require, business name, ABN number on the invoices, phone numbers and I would like to know who signed off on all of these invoices? And after all this has been asked then I would also like to still receive edited copies of all documents I have requested with information that may be exempt.”

On 2 April 2024 at 5.26pm you clarified the date range for point 1:

“the date range I require is from Town and Country Plumbings first job they ever did with council and all the way to the most recent job they done with Council.”

Point 1 was considered valid on 3 April 2024.

On 8 May 2024 you were advised:

Point 2 is a request for information. A request made under the Freedom of Information Act 1982 must be for information contained in documents. I note you requested information as opposed to documents. In response to your request for information, I confirm that various Council departments engage Town & Country Plumbing to undertake works, including Assets and Waste & Sustainability. I also confirm there is no executed contract between

Hume City Council and Town & Country Plumbing. I trust this information satisfies your request for point 2.

You were also advised that third party consultation was required.

On 8 May 2024 you advised:

“Looking forward to your response on the 20th of May in regards to point 1”

Documents relevant to your request

5. A thorough and diligent search for documents within the terms of your request was undertaken. The following searches were conducted:

Enquiries were made with Council’s Accounts Payable Department to confirm when Town and Country Plumbing’s first invoice was received. A search for all invoices was then conducted by Council’s Accounts Payable team and the Procurement team.

6. On this basis, we located 258 invoices dated between 1 July 2016 and 17 April 2024.

Decision on each document

7. I have decided to release all documents to you in part. A Table of Documents has been prepared which outlines the exemptions applied to each document.

Reasons for decision

8. In making my decision, I applied the following exemptions.

Section 33 – Documents affecting personal privacy

9. A document is exempt under section 33(1) of the FOI act if two conditions are satisfied:
 - a) Disclosure of the document under the FOI act would involve the disclosure of information relating to the personal affairs of a person other than an applicant. Under section 33(9) of the FOI Act, “information relating to the personal affairs of any person” includes information that identifies any person or discloses their address or location; or from which any person’s identity, address or location can be reasonably determined. It has also been held that information relates to an individual’s personal affairs if it concerns that person as an individual; and
 - b) Such disclosure would be “unreasonable”. The concept of “unreasonable disclosure” involves balancing the public interest in the disclosure of official information with the personal interest in privacy in the circumstances of a matter.

In relation to the first condition, I have assessed the documents and have determined they contain personal affairs information being house numbers where works were undertaken.

Regarding the second condition, and where release would be unreasonable, I have considered the following factors:

- The extent to which the information is available to the public;
- The nature of the information;
- The circumstances in which Council came to possess the information;
- The age of the documents.

In considering these factors, and others, I have determined that release would be unreasonable and as such the requirement of the second limb has been met and the material is exempt.

10. Section 34 – Documents relating to trade secrets etc.

- (1) A document is an exempt document if its disclosure under this Act would disclose information acquired by an agency or a Minister from a business, commercial or financial undertaking and the information relates to –
- a) ...
 - b) Other matters of a business, commercial or financial nature and the disclosure of the information would be likely to expose the undertaking unreasonably to disadvantage.

A document will be exempt under section 34(1)(b) if the following conditions are satisfied:

- a) The document contains information acquired by an agency from a business or financial undertaking;
- b) The information relates to matters of a business, commercial or financial nature (other than a trade secret); and
- c) Disclosing the information would be likely to expose the undertaking unreasonably to disadvantage.

Disclosure of the information would be likely to expose an undertaking to disadvantage if that disclosure:

- Would give a competitor of the undertaking a competitive financial advantage
- Would enable that competitor to engage in destructive competition with the undertaking
- Would lead to the drawing of unwarranted conclusions as to the undertaking's financial affairs and position with commercial and market consequences

I have determined that in all circumstances, it is probable, that disclosure of the unit price and amount of the invoices dated between 1 July 2021 to 17 April 2024 would expose the business entity unreasonably to disadvantage.

In forming this view I considered among other things:

- a) The nature of the information in the documents;
- b) The circumstances in which the information was obtained or created;
- c) The current or potential future relevance and sensitivity of the information in circumstances where there is an ongoing negotiation and potential future decision making;
- d) The absence of any public interest in disclosure or non disclosure in circumstances where there is a public interest in:
 - i) Business entities operating in trade and commerce being able to compete effectively and efficiently;
 - ii) Business entities in trade and commerce being able to protect information which is valuable to it which it has accrued as a result of its operations.
- e) Disclosure would have the effect of the business entity suffering in a commercial or financial sense in terms of competitors obtaining an advantage and there not existing any level playing field in the competitive marketplace.
- f) The information in question is not generally available to competitors of the business entity.

Deletion of exempt or irrelevant information

11. Section 25 of the FOI Act requires an agency to grant access to an edited copy of a document containing exempt or irrelevant information if it is practicable for the agency to delete that information, and if the applicant is agreeable to receiving an edited copy.
12. Determining what is 'practicable' requires us to consider the effort involved in making the relevant deletions and the effectiveness of those deletions – that is, whether editing the document would render it meaningless.
13. The name and signature of council officers has been removed from the documents as it is irrelevant to your request. Upon discussion with Council's Procurement Officer we established that the name and signature on the invoice was confirmation that services had been delivered.

Reverse FOI

14. Although I have determined to release the documents to you, where a decision has been made to disclose commercial information, section 34(3A) of the Act requires me to contact the affected third parties and advise them of their right to have the decision reviewed. The Act provides for a person to appeal to the Victorian Civil and Administrative Tribunal (VCAT) against a decision to disclose their business information.
15. Until the provided 60 days expires and VCAT confirms that there have not been any appeals lodged in relation to this matter, the documents released cannot be provided. If the matter does not proceed to VCAT the documents will be forwarded to you.

Charges

16. Charges apply in accordance with section 22 of the Act in relation to search time and photocopying. The amounts are set in the Freedom of Information (Access Charges) Regulations 2014.

17. The charges for processing this request have been set at:

Type of charge	How the charge was calculated		
	No. of hours	Cost per hour	Sub-total
Searching for documents	1	\$23.80	\$23.80
Total			\$23.80

The person who calculated this charge is John Thomas, Authorised Freedom of Information Officer. An invoice will be provided to you.

18. The documents will be emailed to you after payment of the access charges has been received and the appeal period has expired.

Your rights

19. If you are dissatisfied with any aspect of my decision, you may, under section 49A(1) of the Act, apply to the Information Commissioner for a review.

20. Your application must be made within 28 days after receipt of this decision.

21. As I noted previously, I cannot release the documents to you until the expiry of the 60-day third party appeal period. If you believe you will be unsatisfied with my decision you should make an application to the Information Commissioner to preserve your review rights.

22. The Office of the Victorian Information Commissioner's (OVIC) website has a review form you may download, which contains more information about the review process and what you can expect. OVIC's contact details are:

Office of the Victorian Information Commissioner
 PO Box 24274
 Melbourne VIC 3001
 Email: enquiries@ovic.vic.gov.au
 Phone: 1300 00 6842 (1300 00 OVIC)

More information

23. If you have any questions about this decision, please contact me on 03 9205 2200 or by email at contactus@hume.vic.gov.au .

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Thomas', with a long horizontal flourish extending to the right.

John Thomas
Authorised Freedom of Information Officer