

## Notice of Decision and Reasons for Decision

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Applicant:	'EU3'
Agency:	Department of Jobs, Precincts and Regions
Decision date:	9 September 2022
Exemptions considered:	Sections 34(1)(b) and 34(4)(a)(ii)
Citation:	'EU3' and <i>Department of Jobs, Precincts and Regions</i> (Freedom of Information) [2022] VICmr 212 (9 September 2022)

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FREEDOM OF INFORMATION – Digital Skills and Jobs Program – government outsourcing – contract for the supply of services – contracting with private company – successful tender – tender – offer for services – project delivery

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.

I am not satisfied the documents are exempt from release under sections 34(1)(b) and 34(4)(a)(ii).

As I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with irrelevant personal affairs information deleted in accordance with section 25, access to the documents is granted either in part or in full.

Accordingly, my decision on the Applicant's request differs from the Agency's decision.

A marked-up copy of the documents in accordance with my decision has been provided to the Agency.

My decision on each document is set out in the Schedule of Documents in **Annexure 1**.

My reasons for decision follow.

Sven Bluemmel  
**Information Commissioner**

9 September 2022

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency for access to:
  - (a) the current contract with [company] for the operation of the Digital Skills and Jobs Program;
  - (b) the Tender or Request for Tender documents put out seeking an operator for the program; and
  - (c) [Company's] response to the Tender Process.
2. The Applicant's request concerns the Digital Skills and Jobs Program (the **Program**), which offers 12 weeks of training followed by a 12-week placement in a digital job with a Victorian business. Applicants are selected through a competitive recruitment process facilitated by [company].
3. In response to the request, the Agency identified 14 documents falling within the terms of the Applicant's request and granted access to five documents in full and refused access to eight documents in full under sections 34(1)(b) and one document in full under sections 34(1)(b) and 34(4)(a)(ii). 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.
5. The Applicant indicated they do not seek access to personal affairs information in the documents.
6. I have examined a copy of the documents subject to review.
7. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
8. I have considered all communications and submissions received from the parties.
9. 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.
10. 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.
11. 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.

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

## Review of exemptions

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

12. Section 34(1)(b) provides a document is an exempt document if its disclosure under the FOI Act would disclose information acquired by an agency (or a Minister) from a business, commercial or financial undertaking and:
  - (a) the information relates to other matters of a business, commercial or financial nature; and
  - (a) the disclosure of the information would be likely to expose the undertaking unreasonably to disadvantage.

#### *Was the information acquired from a business, commercial or financial undertaking?*

13. In *Thwaites v Department of Human Services*,<sup>2</sup> the Victorian Civil and Administrative Tribunal (**VCAT**) observed the phrase ‘information acquired’ in section 34(1) signifies the need for some positive handing over of information in some precise form.
14. The documents subject to review are a contract (Document 1) and a bundle of documents comprising of a response to a request for tender submitted by [company] (the **business undertaking**) (Documents 7 to 14).
15. Whether a contractual agreement constitutes ‘information acquired’ by an agency for the purposes of section 34(1) is not settled.
16. In *Thwaites v Metropolitan Ambulance Service*,<sup>3</sup> the former Administrative Appeals Tribunal of Victoria (**Tribunal**) held:

[The contracts between [agency] and the successful tenderers] do not so much consist of information acquired by the agency from a business, commercial or financial undertaking but rather constitute the record of the transaction between the parties. Such documents, recording the agreement as to the arrangements between the parties, are, in effect, the contractual outcome of negotiations. However, at the same time, they contain information of a business, commercial or financial nature.
17. In contrast, the Tribunal has also concluded a contract of itself, does not disqualify it from exemption under section 34(1) as a term of a concluded contract may include information of a business nature. To determine otherwise would ‘read down the subsection considerably’.<sup>4</sup>
18. Having considered the above issues, I consider that each case needs to be examined on its merits.
19. While I acknowledge Document 1 represents the outcome of concluded negotiations between the State and the business undertaking, for the purposes of this review, I accept it contains information acquired from the business undertaking within the terms of the agreement.
20. I accept the tender documents were acquired from the business undertaking.

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<sup>2</sup> (1999) 15 VAR 1.

<sup>3</sup> (1996) 9 VAR 427 at 473.

<sup>4</sup> *Hulls v Department of Treasury and Finance* (1998) 13 VAR 381; *Stewart v Department of Tourism, Sport and the Commonwealth Games* (2003) 19 VAR 363; [2003] VCAT 45 at [20].

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

21. VCAT has also recognised the words ‘business, commercial or financial nature’ have their ordinary meaning.<sup>5</sup>
22. I accept the documents, which concern a tender for the provision of [description of] services for the Program, contains information relating to matters of a business, commercial and financial nature.

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

23. Section 34(2) provides that in deciding whether disclosure of information would expose an undertaking unreasonably to disadvantage, for the purposes of paragraph (b) of subsection (1), an agency or Minister may take account of any of the following considerations—
  - (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; and
  - (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—

and of any other consideration or considerations which in the opinion of the agency or Minister is or are relevant.

24. I have also had regard to the decision in *Dalla Riva v Department of Treasury and Finance*,<sup>6</sup> in which VCAT held documents are exempt under section 34(1)(b) if their disclosure would:
  - (a) give competitors of a business undertaking a financial advantage;
  - (a) enable competitors to engage in destructive competition with a business undertaking; and
  - (b) would lead to the drawing of unwarranted conclusions as to a business undertaking’s financial affairs and position with detrimental commercial and market consequences.
25. I consider the phrase ‘expose the undertaking unreasonably to disadvantage’ in section 34(1)(b), contemplates disclosure of documents under the FOI Act may expose a business undertaking to a certain measure of disadvantage. By the introduction of the word ‘unreasonably’ in section 34(1)(b), I consider Parliament determined this exemption applies where an undertaking would be exposed ‘unreasonably’ to disadvantage only, rather than where disclosure would result in any measure of exposure to disadvantage.
26. Accordingly, section 34(1)(b) contemplates a business undertaking may be exposed to a certain level of disadvantage. The question is whether any such disclosure would expose the undertaking unreasonably to disadvantage.
27. In determining whether disclosure of commercially sensitive information in a document would expose an undertaking unreasonably to disadvantage, if practicable, an agency must notify an undertaking and seek its views on disclosure.<sup>7</sup> The Agency consulted with the business undertaking, which advised the documents are commercially sensitive and proprietary. It also advised its negotiation of the new

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<sup>5</sup> *Gibson v Latrobe CC r* at [25].

<sup>6</sup> [2007] VCAT 1301 at [33].

<sup>7</sup> Section 34(3).

contract with the Agency is underway and disclosure of the existing contract information and tender response may be a commercial disadvantage to both parties.

28. The Agency submits:

Releasing any detail of a contract that is currently under negotiation would be detrimental to [the business undertaking] in that it would allow any competitors a chance to examine and understand their business, effectively giving those competitors the ability to undercut them on future projects, offer conditions that would be considered more favourably by the department, or give insight into business practices of the company. The fact that further dissemination of documents released under FOI is unrestricted is of particular concern in this instance.

...

The details of current contracts are not available to competitors during a tender process and therefore not generally available to competitors of [the business undertaking]. In the current situation of contract negotiations, the release of this information would substantially cause harm to [the business undertaking's] ability to negotiate contract conditions.

29. I have considered the decision in *Asher v Victorian WorkCover Authority*,<sup>8</sup> in which VCAT questioned whether disclosure of documents concerning a tender process conducted by the Victorian WorkCover Authority would expose the successful tenderer unreasonably to disadvantage. VCAT balanced public interest factors of accountability and transparency with other factors such as that the contract was non-exclusive and the undertaking's evidence that it would be disadvantaged in the marketplace for future tenders. VCAT concluded:

there is greater weight to be placed on the need for transparency and accountability than on the tenuous evidence that the company will be disadvantaged vis-à-vis its competitors. Although the information is not generally available to the company's competitors, that is only one of the factors for consideration and that factor by itself does not militate against disclosure.<sup>9</sup>

30. I have considered the business undertaking's view that the documents contain commercially sensitive and proprietary information.

31. I am satisfied disclosure would not be likely to expose the business undertaking unreasonably to disadvantage for the following reasons:

- (a) For the most part, I consider Document 1 contains standard industry and contract clauses reasonably expected to be included in such an agreement. In fact, many of the clauses are contained in the templated 'Agreement for the provision of services standing offer (sole entity multiple purchases)' published on the 'Buying for Victoria' website.<sup>10</sup> Neither the Agency nor the business undertaking provided evidence to demonstrate how disclosure of the concluded agreement terms would cause unreasonable disadvantage to the business undertaking's operations. Rather, I consider the nature of the document largely concerns each party's contractual responsibilities under the agreement.
- (b) Where Document 1 contains more specific information, such as in the Schedules, I consider it lacks substantive detail such that its disclosure would divulge particular commercial information that could reasonably expose the business undertaking to commercial, business, or financial detriment.
- (c) While I note certain information concerns financial information not generally known to competitors of the business undertaking, this is one factor for consideration only and is not determinative.

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<sup>8</sup> [2002] VCAT 369.

<sup>9</sup> Ibid at [35]-[36].

<sup>10</sup> See <https://www.buyingfor.vic.gov.au/goods-and-services-standard-contract-templates#contracts-for-the-supply-of-services>

- (d) In *Green v Department of Human Services*,<sup>11</sup> VCAT accepted disclosure of an undertaking's methodology, where its competitors do not use the same approach, would cause it unreasonable disadvantage because it would provide a ready-made starting point. I accept the tender documents contain information about the business undertaking's proposed methodology for the Program. However, I am not satisfied its disclosure would harm the ability of the business undertaking to negotiate with the Agency in relation to Tranche Two of the Program, negotiate other agreements with the State or other contracts of a similar nature or harm its competitive position.
- (e) In this instance, I do not accept disclosure would allow competitors to draw unwarranted inferences on the business undertaking's current and future projects given the information does not provide any insight into the undertaking's current or future business and financial affairs.
- (f) A key purpose of access to information under the FOI Act is to ensure dealings between government agencies and business undertakings are better able to be scrutinised. There is a public interest in favour of disclosure of the information sought to provide transparency and accountability around government procurement and tendering processes in the expenditure of public funds.
- (g) Where commercial entities engage with government, and where public funds are used to fund such projects, it is not unreasonable to expect greater transparency than a commercial entity would experience when dealing with other commercial entities and that information provided by a company to a government agency may be released under the FOI Act or other means.<sup>12</sup> The Invitation to Supply (Document 2) makes clear that information submitted to a government tender process may be subject to access under the FOI Act or other lawful means.<sup>13</sup>
- (h) I accept the release of commercial documents within a commercially competitive environment, may cause a certain measure of disadvantage. However, the test in regard to section 34(1)(b) is whether disclosure would be likely to expose a business undertaking unreasonably to disadvantage. This provision contemplates some disadvantage may be experienced by an entity that enters into a commercial agreement with government on behalf of the State. In this instance, there is not sufficient information to satisfy me any such disadvantage to which the business undertaking may be exposed would be unreasonable.
- (i) The FOI Act requires access be provided to information in the possession of government 'limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs' and that any discretion conferred by the FOI Act be exercised, as far as possible, to facilitate and promote the disclosure of information.<sup>14</sup> In my view, there is a strong public interest in transparency about the way in which the Government outsources its functions to private companies, particularly where this practice is becoming more commonplace. Therefore, I consider any disadvantage to which the business undertaking would likely be exposed due to disclosure of the document is outweighed by the public interest in favour of government transparency and accountability on the use of public funds.
- (j) I am satisfied the Applicant is not a competitor of the undertaking. Rather, the Applicant seeks access to the documents for personal reasons.

32. Accordingly, I am not satisfied the documents are exempt under section 34(1)(b).

33. My decision on section 34(1)(b) is further set out in the Schedule of Documents in **Annexure 1**.

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<sup>11</sup> [2014] VCAT 1233 at [25].

<sup>12</sup> This was noted by Deputy President Galvin in *Thwaites v Metropolitan Ambulance Services* (1996) 9 VAR 427 at [477].

<sup>13</sup> See clause 7.

<sup>14</sup> Section 3.

**Section 34(4)(a)(ii) – Information that would expose the Agency unreasonably to disadvantage**

34. Section 34(4)(a)(ii) provides a document is an exempt document if it contains, ‘in the case of an agency engaged in trade or commerce, information of a business, commercial or financial nature that would if disclosed under this Act be likely to expose the agency unreasonably to disadvantage’. A document is exempt under section 34(4)(a)(ii) if:
- (a) the agency is engaged in trade or commerce;
  - (b) the document contains information of a business, commercial or financial nature; and
  - (c) disclosure of which would be likely to expose the agency unreasonably to disadvantage.
35. Whether an agency is engaged in trade or commerce depends on the facts and circumstances of each case.<sup>15</sup>
36. VCAT has held ‘the terms ‘trade’ and ‘commerce’ are not words of art; rather they are expressions of fact and terms of common knowledge’.<sup>16</sup> VCAT has adopted the view of the Federal Court of Australia that these terms are ‘of the widest import’.<sup>17</sup> An agency may be regarded as being engaged in trade or commerce, even if the amount of trade or commerce engaged in is insignificant and incidental to the agency’s other functions.<sup>18</sup>
37. Further, an agency may be engaged in trade or commerce, even if profit is not one of its express statutory objectives.<sup>19</sup>
38. While the phrase ‘trade and commerce’ may be interpreted broadly,<sup>20</sup> it has been held trade and commerce must ‘of their nature, bear a trading or commercial character’.<sup>21</sup>
39. The fact an agency’s predominant activities may be described as ‘governmental’ does not preclude it from relying on the exemption under section 34(4)(a)(ii).<sup>22</sup>
40. The exemption in section 34(4)(a)(ii) is intended to apply where a public sector body conducts itself, or part of its operations, in a manner similar to a commercial entity.
41. I consider the exemption contemplates an agency may be exposed to a certain measure of disadvantage should information of a business, commercial or financial nature be disclosed. Therefore, I must be satisfied such disclosure would be likely to expose the Agency unreasonably to disadvantage and it is incumbent on an agency to provide evidence of this likely outcome.

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<sup>15</sup> *Stewart v Department of Tourism, Sport and the Commonwealth Games* [2003] VCAT 45 at [41].

<sup>16</sup> *Gibson v Latrobe CC (General)* [2008] VCAT 1340 (10 July 2008) at [33] and *Pallas v Roads Corporation (Review and Regulation)* [2013] VCAT 1967 at [33]-[34], citing *Re Ku-Ring-Gai Co-operative Building Society (No 12) Ltd* [1978] FCA 50; (1978) 36 FLR 134 at [44].

<sup>17</sup> *Ibid.*

<sup>18</sup> *Marple v Department of Agriculture* (1995) 9 VAR 29 at [47].

<sup>19</sup> *Thwaites v Metropolitan Ambulance Services* (1996) 9 VAR at [473].

<sup>20</sup> *Re Ku-Ring-Gai Co-operative Building Society (No 12) Ltd* [1978] FCA 50; (1978) 36 FLR 134.

<sup>21</sup> *Concrete Constructions (NSW) Pty Ltd v Nelson* [1990] HCA 17; (1990) 169 CLR 594 at 690; *Gibson v Latrobe CC (General)* [2008] VCAT 1340 at [35].

<sup>22</sup> *Stewart v Department of Tourism, Sport and the Commonwealth Games* (2003) 19 VAR 363; [2003] VCAT 45 at [41]; *Fyfe v Department of Primary Industries* [2010] VCAT 240 at [23].

*Is the Agency engaged in trade and commerce?*

42. The Agency submits:

VCAT has held that an agency which creates projects that requires the tendering out of elements of that project to the private sector, is engaged in trade or commerce.<sup>23</sup> More recently, VCAT determined that by engaging an external undertaking in a commercial contract, the agency can be seen as being engaged in trade or commerce.<sup>24</sup>

43. The matter of *Gibson v Latrobe CC* that is referred to by the Agency concerns commercial property transactions. VCAT decided the Council was engaged in trade and commerce where it tenders out to the private sector in relation to projects that arose from the development of the Moe Activity Centre Plan.<sup>25</sup> VCAT decided that as no contract had been awarded, the release of cost estimates for development proposals concerning a public library would be likely to have a detrimental effect on the tender process associated with any future decision to redevelop or relocate a public library.<sup>26</sup>

44. In *Commissioner of State Revenue v Tucker*,<sup>27</sup> VCAT accepted the State Revenue Office was engaged in trade or commerce when it engaged lawyers in commercial contracts to assist it with the respondent's legal matters.

45. I take the view described in *Pallas v Roads Corporation*,<sup>28</sup> that a government agency engaged in meeting its public functions it not engaged in trade or commerce, for example in relation to VicRoads:

In carrying out its road building functions the Corporation engages in Governmental activities rather than in trade or commerce...

Nor can it be said that VicRoads is engaged in trade or commerce in putting a road project out to tender or in awarding a contract which has been the subject of a tender process. No doubt the contracting process in a general sense is a manifestation of trade or commerce. The construction companies which might tender for and undertake the contract clearly are engaged in trade or commerce. That fact does not mean that the Corporation is. A consumer who purchases a consumer item from a department store is not, for that reason, engaged in trade or commerce, although the department store most certainly is and the sale transaction must be regarded as part of the processes of trade or commerce.<sup>29</sup>

46. In my view, whether information is governmental or relates to agency trade and commerce depends on the specific document and the purpose of that engagement.

47. Where the Government enters into a contract on behalf of the State of Victoria with a private entity in exchange for the provision of services for the benefit of the public, it does not do so as an activity in the capacity of engaging in trade or commerce, but rather to fulfil its role to deliver governmental services, functions and deliver publicly funded projects on behalf of the community.

48. In this instance, while there is a contractual relationship between the Agency and the business undertaking, the Agency is not engaged in trade or commerce in contracting with the business undertaking, but rather carrying out its governmental functions in the delivery of the Program. For this reason, I do not consider that section 34(4)(a)(ii) can apply to the documents.

49. For completeness, I will consider the remaining limbs of section 34(4)(a)(ii).

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<sup>23</sup> *Gibson v Latrobe CC (General)* [2008] VCAT 1340 at [56].

<sup>24</sup> *Commissioner of State Revenue v Tucker* (Review and Regulation) [2021] VCAT 238 at [174].

<sup>25</sup> *Gibson v Latrobe CC (General)* [2008] VCAT 1340 at [56].

<sup>26</sup> *Ibid* at [67].

<sup>27</sup> *Commissioner of State Revenue v Tucker* (Review and Regulation) [2021] VCAT 238 at [174].

<sup>28</sup> *Pallas v Roads Corporation (Review and Regulation)* [2013] VCAT 1967.

<sup>29</sup> *Ibid* at [57]-[58].



*Does the document contain information of a business, commercial or financial nature?*

50. I accept Document 1 contains information of a business, commercial and financial nature.

*Would disclosure be likely to expose the Agency unreasonably to disadvantage?*

51. Whether disclosure is likely to expose an undertaking *unreasonably* to disadvantage depends on the particular facts and circumstances of the matter, considering the consequences that are likely to follow from disclosure of the information.

52. The provision contemplates that disclosure of a document under the FOI Act may expose the agency to a certain measure of disadvantage, and that any such exposure must be unreasonable.

53. The Agency submits:

In this instance, Tranche 2 of the contract is currently being negotiated between the department and [the business undertaking]. As there is no restriction on the further publication of documents released under the Act, the concern is that releasing such a document and its contents will affect the negotiation of ongoing contracts between the department and successful tender applicants. Releasing any details contained within the current contract would unduly influence the agency's capacity to compete in a competitive market for the buying of goods or services.<sup>30</sup>

Further, release of information of this kind effectively reveals the price at which the government is prepared to enter into a contract for service. Such disclosure removes the possibility of commissioning future work at a more competitive price by way of further tenders. This does a significant disservice to the Victorian public.

54. With respect to Document 1, even if I were to accept the Agency is engaged in trade or commerce, I do not consider it has demonstrated disclosure of the document would expose it unreasonably to disadvantage. The document represents its concluded negotiations with the business undertaking and does not reveal the process of negotiations between the State and the business undertaking.

55. Further, as the primary body responsible for managing the Program, the Agency is not subject to the same market forces or competition, as a commercial entity would be. As such, I consider it would be reasonably likely to overcome any exposure to disadvantage arising from disclosure of the document.

56. I also consider, in general terms, any contract depends on a number of factors including the subject of the contract, the bargaining power of the contracting parties and the existence of competitive pressures to obtain the benefit of the contract. I consider government agencies have considerable bargaining strength in the provision of services. In this case, I am not satisfied there is sufficient evidence before me to support the view that disclosure would impact the ability of the State government to attract future offers from private sector companies, or from continuing to enter into future negotiations in good faith, because the terms in which it did business would become publicly known. Ultimately, businesses will more likely than not be prepared to do business with government agencies where they consider it is in their commercial interests to do so.

57. Accordingly, I am not satisfied Document 1 is exempt under section 34(4)(a)(ii).

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

58. 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.

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<sup>30</sup> *Binnie v Department of Industry, Technology & Resources* (1986) 1 VAR 345 at [348].

59. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>31</sup> and the effectiveness of the deletions. Where deletions would render a document meaningless, they are not 'practicable' and release of the document is not required under section 25.<sup>32</sup>
60. Personal affairs information in the documents is irrelevant information for the purposes of this review, and is to be deleted in accordance with section 25 as the Applicant does not seek access to this information.
61. I have considered the effect of deleting irrelevant information from the documents. In my view, it is practicable for the Agency to delete the irrelevant information, because it would not require substantial time and effort, and the edited documents would retain meaning.

## Conclusion

62. On the information before me, I am not satisfied the documents are exempt from release under sections 34(1)(b) and 34(4)(a)(ii).
63. As I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with irrelevant personal affairs information deleted in accordance with section 25, access is granted in part or in full.
64. A marked-up copy of the documents in accordance with my decision has been provided to the Agency.
65. My decision on each document is set out in the Schedule of Documents in **Annexure 1**.

## Review rights

66. 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>33</sup>
67. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>34</sup>
68. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>35</sup>
69. 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.
70. 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>36</sup>

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<sup>31</sup> *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

<sup>32</sup> *Honeywood v Department of Human Services* [2006] VCAT 2048 [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140], [155].

<sup>33</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>34</sup> Section 52(5).

<sup>35</sup> Section 52(9).

<sup>36</sup> Sections 50(3F) and 50(3FA).

### ***Third party review rights***

71. As I have determined to release documents that contain information of a business, financial, commercial nature relating to a business undertaking, if practicable, I am required to notify the business undertaking of its right to seek review by VCAT of my decision within 60 days from the date they are given notice.<sup>37</sup>
72. In this case, I am satisfied it is practicable to notify the relevant third party of its review rights and confirm they will be notified of my decision on the date of decision.

### ***When this decision takes effect***

73. My decision does not take effect until the third parties' 60 day review period expires. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

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<sup>37</sup> Sections 49P(5), 50(3A) and 52(3).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of pages	Agency's Decision	OVIC Decision
1.	[Date]	Agreement for the provision of Services DJPR and [company]	54	<b>Refused in full</b> Sections 34(1)(b) and 34(4)(a)(ii)	<b>Release in part</b> Section 25 The document is to be released in accordance with the marked-up copy of the document provided to the Agency with this decision.
2.	[Date]	Invitation to Supply	53	<b>Released in full</b>	<b>Not subject to review</b>
3.	Undated	Agreement for the Provision of Services	53	<b>Released in full</b>	<b>Not subject to review</b>
4.	Undated	Schedule 3: Pricing	1	<b>Released in full</b>	<b>Not subject to review</b>
5.	Undated	Schedule 4: Requirements	6	<b>Released in full</b>	<b>Not subject to review</b>
6.	Undated	Schedule 5: Non-functional Requirements	1	<b>Released in full</b>	<b>Not subject to review</b>
7.	[Date]	[Company] to Agency Invitation for Digital Skills and Jobs Program – Provision of a Delivery Partner or Tranche One	61	<b>Refused in full</b> Section 34(1)(b)	<b>Release in part</b> Section 25 The document is to be released in accordance with the marked-up copy of the document provided to the Agency with this decision.
8.	[Date]	Local Industry Development Plan (LIDP) Acknowledgement	1	<b>Refused in full</b> Section 34(1)(b)	<b>Release in part</b> Section 25 The document is to be released in accordance with the marked-up copy of the document provided to the Agency with this decision.

Document No.	Date of Document	Document Description	No. of pages	Agency's Decision	OVIC Decision
9.	Undated	Schedule 2: LIDP – Standard Project	20	Refused in full Section 34(1)(b)	Release in part Section 25 The document is to be released in accordance with the marked-up copy of the document provided to the Agency with this decision.
10.	Undated	Schedule 4: Requirements	5	Refused in full Section 34(1)(b)	Release in full
11.	Undated	Schedule 5: Non-functional requirements	2	Refused in full Section 34(1)(b)	Release in full
12.	[Date]	Shortlisting Questions	14	Refused in full Section 34(1)(b)	Release in part Section 25 The document is to be released in accordance with the marked-up copy of the document provided to the Agency with this decision.
13.	[Date]	Best and Final Offer	7	Refused in full Section 34(1)(b)	Release in part Section 25 The document is to be released in accordance with the marked-up copy of the document provided to the Agency with this decision.
14.	[Date]	Best and Final Offer	8	Refused in full Section 34(1)(b)	Release in part Section 25

Document No.	Date of Document	Document Description	No. of pages	Agency's Decision	OVIC Decision
					The document is to be released in accordance with the marked-up copy of the document provided to the Agency with this decision.