Exempt documents and information

Victorian public sector agencies are required to provide access to documents requested under the *Freedom of Information Act 1982* (Vic) (**FOI Act**) unless the document is exempt or contains exempt information.

More than one exemption may apply to a document, or the information contained in a document. A document containing exempt information can be edited to remove the exempt information if it is practicable for the agency to do so, and the person making the request agrees to accept an edited copy of the document.

A summary of each exemption in the FOI Act is provided below with an example of a document or information that may be exempt. Whether a document or information is exempt will always depend on the particular facts and circumstances of the matter.

Personal affairs information of other people – Section 33

Personal affairs information is any information or opinion about a person who can be identified, or whose identity can reasonably be determined. Personal information is exempt where it would unreasonably disclose information about a person, including a deceased person.

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| * The medical history of an individual who has not consented to you accessing their medical records.
* A report relating to an incident concerning a student at a school, where you do not have consent from the student or their parents/guardians to access the document.
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Information that is opinion, advice, recommendation, or shows consultation or deliberation – Section 30

In their daily work agency officers communicate with each other providing opinions, advice, and recommendations. They also engage in consultation and deliberation with each other and Ministers. This information is exempt if providing access would be contrary to the public interest. ‘Public interest’ is not defined in the FOI Act. It involves looking at whether it is necessary to protect an important broader interest or purpose that would be impaired or hindered if the information was disclosed.

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| * Internal correspondence between agency officers deliberating on the next steps in relation to management of a sensitive workplace dispute.
* The opinions or notes recorded by an interviewer during a recruitment or interview process.
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Information that has been provided in confidence to the agency – Section 35(1)(b)

Agencies receive confidential information in relation to their role and functions from external sources for a range of reasons. Information communicated to an agency in confidence will be exempt if its disclosure would be likely to impair the ability of the agency to obtain similar information in the future.

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| * A voluntary statement provided by a victim, witness, or accused person during the course of an investigation.
* A complaint made by a person to their local council about a neighbour who is not complying with a local law or regulation. For example, constructing a structure without a permit.
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A business’s commercial, financial or business information – Section 34(1)

When a government agency and a commercial business engage in a business transaction, commercial information of the business can be provided to the agency. The commercial, financial or business information of a business will be exempt if its disclosure would be likely to expose the business unreasonably to disadvantage

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| * The commercial, business or financial information provided to a government agency by a business as part of a request for tender to build government funded infrastructure, where the business is an unsuccessful tenderer.
* Information that would disclose a business’s trade secrets, such as its intellectual property or specific commercial or business strategies that, if disclosed, would provide its competitors with an unfair advantage or undermine the business’s market position.
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An agency’s commercial, financial or business information – Section 34(4)

Certain agencies are engaged in trade or commerce as a result of their commercial functions, for example, entering into commercial contracts. Information that is of a business, commercial or financial nature is exempt if providing access would be likely to expose the agency unreasonably to disadvantage.

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| * Where a government agency can demonstrate it is involved in trade or commerce, details regarding tender bids, where negotiations remain ongoing and an agreement is yet to be made.
* Details regarding the agency’s assessment of sensitive issues, for example workplace relations issues (redeployment or redundancy) for persons affected by a proposed agreement yet to be finalised.
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Information subject to legal privilege – Section 32

Agencies communicate with their lawyers for a range of reasons including obtaining legal advice on general matters, or advice in relation to current or anticipated legal proceedings. This information is subject to legal professional privilege or client legal privilege and is exempt from disclosure.

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| * Correspondence between an agency’s legal officer and a business unit of the agency that requests or provides legal advice.
* A report commissioned by an external lawyer to assist it in providing legal advice to an agency. For example, an expert’s report.
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Information that would prejudice an investigation or the enforcement of the law – Section 31(1)(a)

Information is generated by agencies when undertaking investigations into breaches of the law, enforcing the law, and administering the law. This information is exempt if its disclosure would prejudice an agency’s investigation or prejudice the enforcement or proper administration of the law.

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| * Reports or briefs relating to an ongoing investigation where the premature disclosure of documents could prejudice the outcome of the investigation.
* Information detailing how a particular type of investigation is conducted where the disclosure of the information could impact on or undermine the effectiveness of that type of investigation.
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Prejudice the trial of a person or adjudication of a case – Section 31(1)(b)

Agencies gather and create information that can relate to or be used in criminal, civil or administrative court cases and proceedings. This information is exempt from disclosure if it would prejudice the fair trial of a person, or the impartial adjudication of a particular case.

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| * Documents relating to an ongoing trial, where the premature disclosure of documents could result in witness or evidence contamination.
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Confidential sources of information in law enforcement – Section 31(1)(c)

Law enforcement agencies, including police, rely on confidential information provided by members of the public and other individuals. Information that would enable a person to establish the identity of a confidential source of information is exempt from disclosure.

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| * The identity of an individual such as a doctor or a teacher who makes a mandatory notification in relation to child protection concerns.
* The identity of an individual who voluntarily notifies an agency in relation to a crime they have witnessed.
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Methods for preventing, detecting, investigating, or dealing with breaches of the law – Section 31(1)(d)

Law enforcement agencies, including police, use various methods and procedures for preventing, detecting, investigating or dealing with unlawful activities. This information is exempt where it is not widely known, and its disclosure would prejudice the effectiveness of those methods or procedures.

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| * Documents detailing covert methods and procedures used by police when conducting criminal investigations.
* Documents detailing prisoner assessment factors when determining a prisoner’s security rating.
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Endanger the life or physical safety of persons engaged in law enforcement – Section 31(1)(e)

Certain information, if disclosed, can endanger the life or physical safety of law enforcement officers or individuals who provide confidential information to a law enforcement agency in relation to unlawful activities. This information is exempt from disclosure.

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| * Documents containing information that, if disclosed, could endanger the lives and safety of law enforcement officers like police officers or child protection workers.
* Information in documents that could reveal the identity or location of a person subject to lawful protection, if disclosed.
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Information related to Cabinet deliberations or decisions – Section 28

Most information relating to the decisions or deliberations of Cabinet are exempt from disclosure. This includes official records of any deliberation or decision, documents prepared for submission to Cabinet, and ministerial briefings on issues to be considered by the Cabinet.

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| * A Cabinet briefing document that was created for the purpose of being considered by Cabinet.
* A document that records, summarises or paraphrases a Cabinet decision or deliberation.
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A secrecy provision in another piece of legislation prohibits disclosure of information – Section 38

Legislation can contain provisions that prohibit the disclosure of specific information. These are called secrecy provisions. There will be a penalty or fine if this information is disclosed without authorisation or permission. Where a secrecy provision prohibits disclosure of information, the information is exempt.

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| * Documents relating to management and security of prisons and prisoners – *Corrections Act 1986.*
* Documents concerning involvement of Child Protection in relation to the wellbeing or safety of a child – *Children, Youth and Families Act 2005*.
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Documents relating to the Independent Broad-based Anti-corruption Commission – Section 31A

Information relating to investigations conducted by the Independent Broad-based Anti-corruption Commission (**IBAC**) are generally exempt from disclosure. This includes information that would prejudice an IBAC investigation, reveal confidential sources, or prejudice the effectiveness of methods or procedures used in its investigations.

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| * Any document created by an agency for the purpose of responding to an investigation of IBAC.
* Any document of an agency provided to IBAC for the purposes of assisting in an IBAC investigation.
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Information communicated by any other State – Section 29

The Commonwealth, States and Territories share information and are in constant communication. This information is exempt if disclosure would be contrary to the public interest and disclosure would prejudice relations between the Commonwealth, states or territories, or would divulge confidential information.

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| * A document that discloses preliminary policy advice provided by the Commonwealth to the State, where disclosure would prejudice ongoing relations and the State’s position.
* A document that discloses information communicated in confidence from one State, Territory or Commonwealth officer to another.
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Information affecting national security, defence or international relations – Section 29A

Information relating to national security, defence or international relations is generally highly confidential due to its sensitive nature. Such information is exempt from disclosure if it could damage the security, defence or international relations of the Commonwealth, or a States or Territory.

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| * Documents containing information about the security of the Commonwealth.
* Documents containing information relating to confidential international relations.
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Certain information held by Court Services Victoria – Section 29B

Court Services Victoria provides services and facilities to all of Victoria’s courts and the Victorian Civil and Administrative Tribunal. Information held by Court Services Victoria relating to the exercise of judicial or quasi-judicial functions of a court or the Victorian Civil and Administrative Tribunal is exempt.

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| * A briefing to a judicial officer relating to ongoing court proceedings.
* A document that records the making of Court Rules used for the exercise of a judicial or quasi-judicial function of a court.
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Information likely to adversely affect the economy or certain operations of an agency – Section 36

Certain information can have an adverse effect on the economy of Victoria if prematurely disclosed Certain information can also provide instructions to assist an agency in its negotiations, execute a contract, or litigation in relation to property and personnel management. This information is exempt from disclosure.

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| * Documents revealing consideration of a contemplated movement in bank interest rates.
* Documents relating to the sale or acquisition of land or property by the Crown which, if disclosed, would have an adverse effect on the economy.
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**Disclaimer:** The information in this document is general in nature and does not constitute legal advice.

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