

Notice of Decision and Reasons for Decision

Applicant:	'DU2'
Agency:	Department of Health
Decision date:	15 October 2021
Exemptions considered:	Sections 28(1)(c), 28(1)(d), 29(1)(a), 29(1)(b), 30(1), 32(1), 33(1)
Citation:	'DU2' and Department of Health (Freedom of Information) [2021] VICmr 309 (15 October 2021)

FREEDOM OF INFORMATION – COVID-19 pandemic – Chief Health Officer (CHO) – public health directions – public health orders – Minister for Health – briefing – legal advice – *Public Health and Wellbeing Act 2008* (Vic)

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.

My decision on the Applicant's request differs from the Agency's decision.

I am satisfied Documents 2 to 6 are exempt in full under section 32(1) and certain information in Document 7 is exempt under section 28(1)(d). However, I am not satisfied Documents 1 and its attachments or Document 7 are exempt under section 30(1), or that Document 7 is exempt under sections 28(1)(c), 29(1)(a) or 29(1)(b).

In relation to the personal affairs information of senior Agency executives and the Chief Health Officer, I am satisfied this information is not exempt under section 33(1).

Accordingly, Document 1 and its attachments are to be released in full and, as I am satisfied it is practicable to provide the Applicant with an edited copy of Document 7, access to this document is granted in part in accordance with section 25.

The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

15 October 2021

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to the following documents:

All briefs provided to the Minister for Health or the Chief Health Officer supporting the Public Health Orders that came into effect at 11.59pm on Friday 12 February [2021] that instituted a five-day lock down and any attachments to those briefs. Please note that personal information of non-executive staff, such as names and addresses, is not required.

2. The Agency identified 176 pages of documents falling within the terms of the Applicant's request and refused access to the documents in part. The Agency relied on sections 30(1), 32(1) and 28(1)(c) to refuse access to the documents. The Agency's decision letter sets out the reasons for its decision.

Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. During the review, the Agency advised it also relies on the exemptions in sections 29(1)(a) and 29(1)(b) to refuse access to Document 7.
5. I have examined copies of the documents subject to review.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered all communications and submissions received from the parties.
8. 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.
9. 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.

Review of exemptions

Section 28(1) – Cabinet documents

10. Section 28(7)(a) defines 'Cabinet' as including a committee or sub-committee of Cabinet.
11. In *Ryan v Department of Infrastructure*,¹ the Victorian Civil and Administrative Tribunal (**VCAT**) observed:

It has been said that a document is not exempt merely because it has some connection with Cabinet, or is perceived by departmental officers or others as being of a character that they believe ought to be regarded as a Cabinet document or because it has some Cabinet "aroma" around it. Rather, for a document to come within the Cabinet document exemption, "it must fit squarely within one of the four exemptions [(now five)]" in section 28(1) of the Act.

¹ (2004) VCAT 2346 at [33].

Section 28(1)(c) – A copy, draft or extract from a Cabinet document

12. Section 28(1)(c) provides a document is an exempt document if it is a copy or a draft of, or contains extracts from, a document referred to in sections 28(1)(a), 28(1)(b) or 28(1)(ba).
13. A document will be a copy if it is a reproduction of the document, for example, a photocopy.
14. A draft is a 'preliminary version' of a document, for example, a Cabinet submission. A document will not be a draft document simply because it was created before the relevant Cabinet document finalised, or because there is information common to each of the draft and final documents. The draft document must be an actual draft of a document created for submission to the Cabinet for its consideration. It also may be marked with 'draft' and not a document or documents of 'different kinds prepared by different agencies'.²
15. My decision in relation to section 28(1)(c) is set out in the Schedule of Documents in **Annexure 1**.

Section 28(1)(d) – Disclosure of any deliberation or decision of the Cabinet

16. Section 28(1)(d) provides a document is an exempt document if its disclosure would involve the disclosure of any deliberation or decision of the Cabinet, other than a document by which a decision of the Cabinet was officially published.
17. A document will be exempt under section 28(1)(d) if there is evidence the Cabinet discussed, considered or made a decision or took action in relation to options presented to the Cabinet in the document.³
18. A 'decision' means any conclusion as to the course of action the Cabinet adopts whether or not it is a conclusion as to a final strategy or as to how a matter should proceed.⁴
19. Where a decision or the recommendation of the Cabinet is made public, disclosure of information as to the outcome of the Cabinet's decision (for example, to approve a major public project) will not disclose a decision or deliberation of the Cabinet for the purposes of section 28(1)(d).⁵
20. My decision in relation to section 28(1)(d) is set out in the Schedule of Documents in **Annexure 1**.

Sections 29(1)(a) and 29(1)(b) – Documents containing matter communicated by any other State

21. As stated above, the Agency now seeks to rely on sections 29(1)(a) and 29(1)(b) to refuse access to Document 7.
22. Section 29(1)(a) provides a document is an exempt document if its disclosure under the FOI Act:
 - (a) would be contrary to the public interest; and
 - (b) its disclosure would prejudice relations between the State and the Commonwealth or any other State or Territory.
23. Section 29(1)(b) provides a document is an exempt document if its disclosure under the FOI Act:
 - (a) would be contrary to the public interest; and

² *Asher v Department of Infrastructure* (2006) 25 VAR 143; [2006] VCAT 1375 at [27].

³ *Smith v Department of Sustainability and Environment* (2006) 25 VAR 65; [2006] VCAT 1228 at [23].

⁴ *Della-Riva v Department of Treasury and Finance* (2005) 23 VAR 396; [2005] VCAT 2083 at [30].

⁵ *Honeywood v Department of Innovation, Industry and Regional Development* (2004) 21 VAR 1453; [2004] VCAT 1657 at [26].

- (b) disclosure would divulge any information or matter communicated in confidence by or on behalf of the government of another country or of the Commonwealth or of any other State or Territory to the government of the State or Territory or a person receiving a communication on behalf of that government.

24. In determining whether a document is exempt from release under subsection 29(1), if practicable, an agency or Minister must:

notify any of the following that are relevant that the agency or Minister has received a request for access to the document—

- i. another agency or Minister;
- ii. an agency of another country or the Commonwealth or another State or a Territory;
- iii. an authority of another country or the Commonwealth or another State or a Territory; and

seek the view of that agency, authority or Minister as to whether the document should be disclosed.

25. The Agency advised it did not consult with the Commonwealth government in relation to disclosure of the document. However, based on consultation undertaken in relation to a similar document, the Agency considers information in the document was provided confidentially, and that its disclosure would ‘substantially and negatively impact relations between the Commonwealth and states’.

26. The first limb of both sections 29(1)(a) and 29(1)(b) require that I determine whether disclosure of a document would be contrary to the public interest.

27. I have considered the following public interest factors:⁶

- (a) protecting uninhibited exchanges between the governments of Australia;
- (b) encouraging cooperative Federalism within Australia;
- (c) protecting processes that contribute to high quality policy development by the governments of Australia; and
- (d) ensuring the public have access to accurate and reliable information that gives a true indication of the basis for government policy.

28. Also relevant to my decision is the decision of *Patrick and Secretary, Department of Prime Minister and Cabinet*,⁷ in which Justice White of the Commonwealth Administrative Appeals Tribunal (**AAT**), observed in relation to the equivalent provision in the *Freedom of Information Act 1982* (Cth) and similar documents to this matter:

In my view, when regard is had to the nature of the minutes of the National Cabinet meeting (including the matters which they do not contain), the Prime Minister’s public statements concerning the decisions made at the meeting on 29 May 2020, and the apparent expectation of the National Cabinet participants that the Prime Minister would announce publicly the decisions made at the meeting, a finding that disclosure of the formal record of the decisions would cause damage to relations between the Commonwealth and a State would be inappropriate. I emphasise that, in forming that view, I have taken into account that the minutes do not reveal the contribution of any individual participant, any debate which may have occurred regarding each item or the considerations taken into account in relation to each item. In that circumstance, there is no reason to suppose that any participant in the National Cabinet, acting rationally, would feel some inhibition in his or her contributions to the debate at the National Cabinet by reason of the formal disclosure of the minutes of 29 May 2020.⁸

⁶ Included in *Millar v Department of Premier and Cabinet* (General) [2011] VCAT 1230 at [62].

⁷ (Freedom of Information) [2021] AATA 2719 (5 August 2021).

⁸ *Ibid* at [267].

29. In this case, having carefully reviewed the content of Document 7, I have determined it would not be contrary to the public interest to release certain documents for the following reasons:
- (a) the document contains a substantial amount of publicly available information;
 - (b) the document contains information that is largely factual;
 - (c) the document does not appear to contain any individual contributions of any State or Territory, or the Commonwealth government provided in confidence to the Victorian government;
 - (d) I do not accept disclosure of this document would have a negative impact on future information sharing and communications between State, Territory and the Commonwealth governments;
 - (e) the document appears to be in final form and there is no information before me to indicate it does not provide an accurate account of the reasons for the Victorian government's decisions in respect of public health directions; and
 - (d) the document contains important information about the way the Victorian government responded to COVID-19, including the rationale for public health orders. I consider there is significant public interest in providing members of the community the ability to participate in such processes and to hold governments to account for the decisions it has made.
30. As I have determined disclosure of the document would not be contrary to the public interest, it is not necessary for me to consider the second limbs of the exemptions and whether disclosure of the document would prejudice relations between the State or Commonwealth, or divulge any information communicated in confidence by the Commonwealth to the State. Accordingly, I am satisfied Document 7 is not exempt under either section 29(1)(a) or 29(1)(b).
31. My decision in relation to sections 29(1)(a) and 29(1)(b) is set out in the Schedule of Documents at **Annexure 1**.

Section 30(1) – Internal working documents

32. Section 30(1) has three requirements:
- (a) the document must disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister;
 - (b) such matter must be made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government; and
 - (c) disclosure of the matter would be contrary to the public interest.
33. The exemption does not apply to purely factual material in a document.⁹
34. I must also be satisfied releasing this information is not contrary to the public interest. This requires a 'process of the weighing against each other conflicting merits and demerits'.¹⁰

⁹ Section 30(3).

¹⁰ *Sinclair v Maryborough Mining Warden* [1975] HCA 17; (1975) 132 CLR 473 at [485], adopted in *Department of Premier and Cabinet v Hulls* [1999] VSCA 117 at [30].

Do the documents disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister?

35. I am satisfied the documents disclose matter in the nature of advice, prepared by an Agency officer.

Were the documents made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government?

36. Further, I am satisfied the documents were prepared in the course of the deliberative processes of the Agency in relation to the issuing public health directions.

Would disclosure of the documents be contrary to the public interest?

37. In deciding if release is contrary to the public interest, I must consider all relevant facts and circumstances remaining mindful that the object of the FOI Act is to facilitate and promote the disclosure of information.

38. In deciding whether the information exempted by the Agency would be contrary to the public interest, I have given weight to the following relevant factors:¹¹

- (a) the right of every person to gain access to documents under the FOI Act;
- (b) the degree of sensitivity of the issues discussed in the documents and the broader context giving rise to the creation of the documents;
- (c) the stage of a decision or status of policy development or a process being undertaken at the time the communications were made;
- (d) whether disclosure of the documents would be likely to inhibit communications between Agency officers, essential for the Agency to make an informed and well-considered decision or participate fully and properly in a process in accordance with the Agency's functions and other statutory obligations;
- (e) whether disclosure of the documents would give merely a part explanation, rather than a complete explanation for the taking of a particular decision or the outcome of a process, which the agency would not otherwise be able to explain upon disclosure of the documents;
- (f) the impact of disclosing documents in draft form, including disclosure not clearly or accurately representing a final position or decision reached by the Agency at the conclusion of a decision or process; and
- (g) the public interest in the community being better informed about the way in which the Agency carries out its functions, including its deliberative, consultative and decision making processes and whether the underlying issues require greater public scrutiny.

39. The Agency submits Documents 1 and 7 would be contrary to the public interest to disclose for the following reasons:

They reveal high-level deliberative processes of government, and it would jeopardise the trust and confidence between public officials and a minister.

The documents contain sensitive information that has not been released publicly. Public release may lead to similar briefings being sanitised for public release, leaving out detailed evidence, data and/or

¹¹ *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

assessment. This would deprive future decision-makers of relevant information, jeopardising both the effectiveness of the deliberative process and, potentially, undermining the ability of a decision-maker to be satisfied of the relevant statutory criteria, jeopardising the validity of, or slowing decisions made to implement the Health Directions developed through this high-level process.

The possibility that documents might ultimately be published might affect the frankness and candour of those preparing them and ultimately negatively impact important decision making and government policy as public duties could not be discharged effectively should every document that relates to policy making be disclosed.

In addition to the high-levels of government involved in this process, we note that the subject-matter of both the briefing pack and these deliberations — the making of Emergency Directions — is a core element of Victoria's response to the COVID-19 pandemic, the Emergency Directions being the key means by which restrictions have been imposed on individuals, businesses and other facilities in order to limit the spread of COVID-19. The briefing pack, as the culmination of this process, can thus be seen as containing deliberative materials relating to the high level framing of government policy with respect to the COVID-19 pandemic.

Due to high-level of staff and government involved in the implementation of Health Directions that have imposed significant restrictions on the greater public, including individuals and businesses, the documents could be viewed as deliberative material relating to the high-level government policy with respect to the COVID-19 pandemic.

The public release of these documents may give the misleading impression that evidence, data or analysis not specifically outlined in the briefing was never taken into account as part of the deliberative process or decision-making. The CHO may have been informed on other aspects via daily briefings, meetings, as well as active participation in the development of the proposed Health Directions.

Information from the documents would reveal the content of information submitted to a committee of Cabinet for the purposes of its deliberations or the deliberations and decisions of Cabinet regarding the COVID-19 response and implementation of Health Directions.

We also point to the recent decision by the ACT Ombudsman in his review of ACT Health's decision regarding a freedom of information request by journalist, Sarah Curnow. The freedom of information request included various AHPPC and cabinet papers. The Ombudsman considered the public interest factors in favour of disclosure, but ultimately gave overriding weight to the competing public interest factors of the prevention of prejudice to intergovernmental relations, an agency's ability to obtain confidential information, and deliberative process of government. A copy of the ACT Ombudsman's decision can be found here -

https://www.ombudsman.act.gov.au/data/assets/pdf_file/0017/112670/Sarah-Curnow-and-ACT-Health-Directorate_ACTFOI.pdf

40. I have determined disclosure of Documents 1 or 7 would not be contrary to the public interest for the following reasons:
- (a) The documents describe the reasons for placing restrictions on the movements of members of the community, including in relation to sensitive matters, such as hospital visits; these decisions have a profound effect on the lives of Victorians.
 - (b) In these circumstances members of the community have a right to access documents that describe the background information considered, reasons, the legal basis for, and documents that record those decisions.
 - (c) The documents are in final form and support the public health directions that were ultimately made by the CHO and then made public.
 - (d) In circumstances where the documents are in final or at near final stage, I do not consider their disclosure would negatively impact on the ability of Agency officers to provide future similar advice given the responsibilities of public sector employees under the Public Sector Values, including to provide frank, impartial and timely advice to the Government (Responsiveness); making decisions and providing advice on merit and without bias, caprice, favouritism or self

interest (Impartiality); submitting themselves to appropriate scrutiny (Accountability); and making decisions and providing advice consistent with human rights (Human Rights).¹²

- (e) I do not accept disclosure of the documents could mislead the Applicant or members of the public. Rather, I consider members of the public are capable of understanding the role and powers of the Chief Health Officer (**CHO**) to make decisions and issue directions under the *Public Health and Wellbeing Act 2008* (Vic) (**PHW Act**).
- (f) I cannot see how the disclosure of the final versions of these documents could be misleading; members of the public are capable of understanding the Chief Health Officer will make their decisions based on relevant information and data obtained from a range of sources.
- (g) Significant parts of the documents contain publicly available information.
- (h) The Agency's submissions refer to a decision by the ACT Ombudsman made under the ACT Freedom of Information Act that held disclosure of certain documents relating to the COVID-19 pandemic in Victoria would prejudice intergovernmental relations.

I consider the circumstances in this matter and documents subject to review are significantly different to that case in that they were created by the Victorian government, and are being sought from the Victorian government, rather than being documents involving or created by other Australian governments. Accordingly, I do not consider these documents engage directly with intergovernmental relations.

- (i) Given the significance of the public health directions issued by the CHO under the PHW Act and the impact of the directions on the Victorian community, I consider there is a strong public interest in the documents, which contain factors that underpin the CHO's decision to issue the public health directions being disclosed.
- (j) I consider the public interest weighs in favour of the public having access to information that informed the exercise of the CHO's powers under the PHW Act and to make public health directions in the interests of transparency and public scrutiny. Further, I have given weight to the role public access to information has in building public trust, particularly during times of crisis.

41. As I have determined it would not be contrary to the public interest to disclose the documents, I am satisfied the documents are not exempt under section 30(1).

42. My decision in relation to section 30(1) is set out in the Schedule of Documents in **Annexure 1**.

Section 32(1) – Documents subject to legal privilege

43. Section 32(1) provides a document is an exempt document 'if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege or client legal privilege' (**legal privilege**).

44. A document will be subject to legal professional privilege and exempt under section 32(1) where it contains a confidential communication:¹³

- (a) between the client (or the client's agent) and the client's professional legal advisers, that was made for the dominant purpose of obtaining or providing legal advice or is referable to pending or contemplated litigation;

¹² Section 7(1) of the *Public Administration Act 2004* (Vic).

¹³ *Graze v Commissioner of State Revenue* [2013] VCAT 869 at [29]; *Elder v Worksafe Victoria* [2011] VCAT 1029 at [22]. See also section 119 of the *Evidence Act 2008* (Vic).

- (b) between the client’s professional legal advisers and third parties, that was made for the dominant purpose of pending or contemplated litigation; or
- (c) between the client (or the client’s agent) and third parties that was made for the purpose of obtaining information to be submitted to the client’s professional legal advisers for the dominant purpose of obtaining advice on pending or contemplated litigation.

Has legal privilege been waived?

45. Legal privilege exists to protect the confidentiality of communications between a lawyer and a client. Privilege will be lost where the client has acted in a way that is inconsistent with the maintenance of that confidentiality – for instance where the substance of the information has been disclosed with the client’s express or implied consent.¹⁴

46. In relation to the application of section 32(1), the Applicant submits:

...the Charter of Human Rights and Responsibilities assessments of the directions should not be exempt under a claim of S32(1) because such charter assessments are produced as part of an assessment required by the Public Health and Wellbeing Act and, to that extent, they are a policy instrument or policy advice and not legal advice pursuant to a specific case or legal advice pursuant to the powers held by the CHO [Chief Health Officer].

Instead, [the Applicant] contends, they are advice weighing and balancing certain policy settings on individual liberties. The CHO is required under the Public Health and Wellbeing Act to pay attention to the objects of the Act and the principles of the Act.

47. Documents 2 to 6 are memorandums of legal advice addressed to the CHO from the Agency’s Executive Director of Legal Services.

48. Each document contains the heading ‘subject to legal professional privilege’ and contains legal advice regarding the health directions being considered by the CHO.

49. I have considered the Applicant’s submission, however, given the nature of this exemption and the relevant legal test, I am not able to take the factors they identify into consideration.

50. I am satisfied the documents are confidential communications between the Agency and its legal representatives that were made for the purpose of providing legal advice.

51. Accordingly, I am satisfied the documents are exempt under section 32(1).

52. My decision in relation to section 32(2) is set out in the Schedule of Documents in **Annexure 1**.

Section 33(1) – Personal affairs information of third parties

53. The Applicant excluded from their request the personal affairs information of non-executive Agency officers, such as their names and addresses.

54. A document is exempt under section 33(1) 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 the Applicant (a **third party**);¹⁵ and
- (b) such disclosure would be ‘unreasonable’.

¹⁴ Sections 122(2) and 122(3) of the *Evidence Act 2008* (Vic) or *Mann v Carnell* (1999) 201 CLR 1 at [28].

¹⁵ Sections 33(1) and (2).

55. Information relating to a person's 'personal affairs' includes information that identifies any person or discloses their address or location. It also includes any information from which such information may be reasonably determined.¹⁶
56. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the personal interest in privacy in the particular circumstances of a matter.
57. In determining whether the disclosure of a document would involve the unreasonable disclosure of information relating to the personal affairs of any person, I must consider whether the disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person.¹⁷ However, this is not a relevant factor in this matter.
58. The personal affairs in the documents is the names and position titles of two Agency senior executives.
59. The Agency did not consult with the third parties named in the documents in accordance with section 33(2B). While no reason was provided, I consider it likely the Agency determined consultation was not practicable in the circumstances.
60. Given the information in the documents is not sensitive, is publicly known, relates to the professional roles of the Agency officers and the executive roles held by the Agency officers, I am satisfied disclosure of the personal affairs information would not be unreasonable. Further, in the context of the documents subject to review, I consider disclosure of the personal affairs information is in the public interest as it enables the public to determine the public health orders are properly made under the PHW Act.
61. Accordingly, I am not satisfied the relevant personal affairs information in the documents is exempt under section 33(1).
62. My decision in relation to section 33(1) is set out in the Schedule of Documents in **Annexure 1**.

Section 25 – Deletion of exempt or irrelevant information

63. 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.
64. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹⁸ 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 25.¹⁹
65. I have considered the effect of deleting exempt information from the documents. In my view, it is practicable for the Agency to delete the exempt information from Document 7, because it would not require substantial time and effort, and the edited document would retain meaning.
66. My decision in relation to section 25 is set out in the Schedule of Documents in **Annexure 1**.

¹⁶ Section 33(9).

¹⁷ Section 33(2A).

¹⁸ *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 at [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

¹⁹ *Honeywood v Department of Human Services* [2006] VCAT 2048 at [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140] and [155].

Conclusion

67. I am satisfied Documents 2 to 6 are exempt in full under section 32(1) and certain information in Document 7 is exempt under section 28(1)(d). However, I am not satisfied Documents 1 and its attachments or Document 7 are exempt under section 30(1), or that Document 7 is exempt under sections 28(1)(c), 29(1)(a) or 29(1)(b).
68. In relation to the personal affairs information of senior Agency executives and the CHO, I am satisfied this information is not exempt under section 33(1).
69. Accordingly, Document 1 and its attachments are to be released in full and, as I am satisfied it is practicable to provide the Applicant with an edited copy of Document 7, access to this document is granted in part in accordance with section 25.
70. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

Review rights

71. If either party to this review is not satisfied with my decision, they are entitled to apply to the VCAT for it to be reviewed.²⁰
72. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.²¹
73. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.²²
74. Information about how to apply to VCAT is available online at www.vcat.vic.gov.au. Alternatively, VCAT may be contacted by email at admin@vcat.vic.gov.au or by telephone on 1300 018 228.
75. 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.²³

Third party review rights

76. I have decided to release documents that contain the personal affairs information of certain persons named in the documents, being their names and position titles. If practicable, I am required to notify those persons of their right to apply to VCAT for a review of my decision to release their personal affairs information within 60 days from the date they are given notice.²⁴
77. I am satisfied it is not practicable to notify those persons of my decision having regard to the type of information to be released, noting similar information has been released to the Applicant elsewhere in the documents, given the senior and public facing roles the individuals hold and the personal affairs information where it merely demonstrates these individuals performing their ordinary professional duties as public sector officials.

When this decision takes effect

78. My decision does not take effect until the Agency's 14 day review period expires.

²⁰ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

²¹ Section 52(5).

²² Section 52(9).

²³ Sections 50(3F) and (3FA).

²⁴ Sections 49P(5), 50(3A) and 52(3).

79. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
1.	[Date]	Briefing	17	Refused in full Section 30(1)	Release in full	<p>Section 30(1): I have determined the document is not exempt under section 30(1) for the reasons in the Notice of Decision above.</p> <p>Section 33(1): I have determined the personal affairs information in the document is not exempt under section 33(1) for the reasons in the Notice of Decision above.</p>
1. a	[Date]	Briefing Attachment A – Instrument of appointment	1	Refused in full Section 30(1)	Release in full	<p>Section 30(1): See comments for Document 1.</p> <p>Section 33(1): See comments for Document 1.</p>
1. b 1 - 5	[Date]	Briefing Attachment B1 – B5 Stay Safe Directions (Victoria) (No 14) ²⁵ Restricted Activity Directions (Victoria) (No 7) ²⁶ Hospital Visitor Directions (No 19)	62	Refused in full Section 30(1)	Release in full	<p>Section 30(1): Four of the five public health directions are publicly available documents. While I note each of these directions has been superseded, it is unclear why the Hospital Visitor Directions (19) is no longer publicly available. However, I consider it would have been publicly available at the time it was issued. As this information was publicly available, I am not satisfied it is exempt under section 30(1).</p>

²⁵ Available here: <https://www.dhhs.vic.gov.au/sites/default/files/documents/202102/Stay%20Safe%20Directions%20%28Victoria%29%20%28No%2014%29%20-%2012%20February%202021.pdf>

²⁶ Available here: <https://www.dhhs.vic.gov.au/sites/default/files/documents/202005/direction-restricted-activity-no-7-signed-2020-05-11.pdf>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
		Care Facilities Directions (No 21) ²⁷ Workplace Directions (No 19) ²⁸				
2.	Undated	Briefing Attachment C: Memorandum of legal advice – [Direction description]	18	Refused in full Section 32(1)	Refuse in full Section 32(1)	Section 32(1): I am satisfied the document is a confidential communication between the Agency and its legal representatives for the purposes of providing legal advice. Accordingly, I am satisfied it is exempt under section 32(1).
3.	Undated	Briefing attachment C3: Memorandum of legal advice – [Direction description]	13	Refused in full Section 32(1)	Refuse in full Section 32(1)	Section 32(1): See comments for Document 2.
4.	Undated	Briefing attachment C3: Memorandum of legal advice – [Direction description]	8	Refused in full Section 32(1)	Refuse in full Section 32(1)	Section 32(1): See comments for Document 2.
5.	Undated	Briefing attachment C4: Memorandum of legal advice – [Direction description]	8	Refused in full Section 32(1)	Refuse in full Section 32(1)	Section 32(1): See comments for Document 2.

²⁷ Available here: <https://www.dhhs.vic.gov.au/sites/default/files/documents/202102/Care%20Facilities%20Directions%20%28No%2021%29%20-%202012%20February%202021.pdf>

²⁸ Available here: <https://www.dhhs.vic.gov.au/sites/default/files/documents/202102/Workplace%20Directions%20%28No%2019%29%20-%202012%20February%202021.pdf>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
6.	Undated	Briefing attachment C5: Memorandum of legal advice – [Direction description]	8	Refused in full Section 32(1)	Refuse in full Section 32(1)	Section 32(1): See comments for Document 2.
7.	Undated	Briefing Attachment D: Update to CHO and attachments	32	Refused in full Section 28(1)(c)	<p>Release in part Sections 28(1)(d), 25</p> <p>The following information is exempt under section 28(1)(d) and is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> on page 12, the sentence beginning 'Following' to the comma in that sentence. 	<p>Section 28(1)(c): The Agency has not provided sufficient information to be satisfied this document is exempt under section 28(1)(c). In this regard, I note that:</p> <ul style="list-style-type: none"> the document is addressed to the CHO, who is not a member of the Cabinet nor of a subcommittee of the Cabinet; the document contains a significant amount of publicly available information; and the Agency has not provided any information as to which document of which it is a copy or an extract from or draft of in order to meet the requirements of section 28(1)(c). <p>Section 28(1)(d): I am satisfied certain information in the document discloses a decision or deliberation of a subcommittee of the Cabinet. Therefore, I am satisfied certain</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>information is exempt under section 28(1)(d).</p> <p>Sections 29(1)(a) and (b): I am not satisfied the document is exempt under sections 29(1)(a) or 29(1)(b) for the reasons in the Notice of Decision above.</p> <p>Section 25: I am satisfied it is practicable to provide the Applicant with an edited copy of the document with exempt information deleted in accordance with section 25.</p>