

Notice of Decision and Reasons for Decision

Applicant:	'DL8'
Agency:	Holmesglen Institute
Decision date:	10 August 2021
Exemptions considered:	Sections 30(1), 33(1), 35(1)(b)
Citation:	'DL8' and Holmesglen Institute (Freedom of Information) [2021] VICmr 234 (10 August 2021)

FREEDOM OF INFORMATION – workplace relations – employee grievance – employee complaint – workplace investigation – external consultant – procedural fairness – meeting notes – investigation report – matter in the nature of opinion, advice and recommendation – factual information – release not contrary to the public interest – personal affairs information of agency officers – confidential information – not provided in confidence

All reference 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 not satisfied Documents 34 and 40 are exempt under sections 30(1), 33(1) or 35(1)(b). Therefore, Document 34 is to be released in full.

As I am satisfied it is practicable to provide the Applicant with an edited copy of Document 40 with irrelevant information deleted in accordance with section 25, I have determined to grant access to this document in part.

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
10 August 2021

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to certain documents.
2. Following consultation with the Agency, the Applicant clarified the initial terms of their request.

[Original content redacted - In summary, the Applicant sought access to a complete copy of an external report commissioned by the Agency in response to their employee grievance about procedural fairness in a disciplinary process, as well as all other documentation related to the Agency's disciplinary process, including specific meeting notes, hand-written notes, emails and text messages and all other sources of information generated by Agency staff as well as individuals external to the Agency who were involved in process.]
3. In its decision, the Agency identified 38 documents falling within the terms of the Applicant's request and granted access to 16 documents in full and refused access to 22 documents in full relying on the exemptions under sections 30(1), 33(1) and 35(1)(b).
4. The Agency clarified 40 documents were identified from its searches, however, two documents are duplicates, resulting in 38 unique documents. The Agency's decision letter sets out the reasons for its decision.

Review

5. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
6. On [date], the Applicant stated they seek review of Documents 34 and 40 only. Accordingly, all other documents are outside the scope of this review.
7. I have examined copies of the two documents subject to review.
8. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
9. I have considered all communications and submissions received from the parties.
10. 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.
11. 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 30(1) – Internal working documents

12. 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
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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.

13. The exemption does not apply to purely factual material in a document.¹
14. The term 'officer of an Agency' is defined in section 5(1). It includes a member of an agency, a member of an agency's staff, and any person engaged by or on behalf of an agency, whether or not the provisions of the *Public Administration Act 2004* (Vic) apply.

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?

15. Document 34 is a report authored by a third party who was engaged by the Agency to conduct an independent review into a workplace investigation involving alleged conduct by the Applicant.
16. In these circumstances, I am satisfied the consultant was engaged by the Agency for this purpose and is an 'officer' of the Agency for the purposes of the FOI Act.
17. Document 40 is a combination of an email and attachment of notes from a meeting the Applicant and other Agency officers attended regarding the workplace investigation. I am satisfied the document was prepared by Agency officers.
18. In its decision, the Agency states:

The disclosure of the documents would disclose opinion, advice and recommendation of [Agency] officers that was exchanged in the course of and for the purposes of the deliberative processes involved in the production of the report.
19. I am satisfied the documents contain information that is factual in nature for the purposes of section 30(3). For example, Document 34 contains background information, report methodology, legal precedent, and an outline of significant events from the workplace investigation. Document 40 is a summary of a meeting including what participants, including the Applicant, stated at the meeting.
20. While I consider a significant amount of information in the documents does not amount to opinion, advice or recommendation, for the purpose of this decision, I have further considered the remaining requirements of section 30(1) below.

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?

21. The term 'deliberative process' has been interpreted widely. In *Re Waterford and Department of Treasury (No. 2)*,² the Commonwealth Administrative Appeals Tribunal (AAT) held:

... "deliberative processes" [is] wide enough to include any of the processes of deliberation or consideration involved in the functions of an agency... In short, ... its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.
22. I am satisfied the documents were created in the course of the deliberative processes involved in the functions of the Agency, namely as a public sector employer investigating a workplace grievance involving an employee.

¹ Section 30(3).

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?

23. The term 'deliberative process' has been interpreted widely. In *Re Waterford and Department of Treasury (No. 2)*,² the Commonwealth Administrative Appeals Tribunal (AAT) held:

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24. I am satisfied the documents were created in the course of the deliberative processes involved in the functions of the Agency, namely as a public sector employer investigating a workplace grievance involving an employee.

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

25. In determining if disclosure of a document would be contrary to the public interest, I must consider all relevant facts and circumstances, remaining mindful the object of the FOI Act is to facilitate and promote the disclosure of information. In doing so, I have given weight to the following relevant factors:³

- (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 document and the broader context giving rise to the creation of the document;
- (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 document 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 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

² [1981] 1 AAR 1.

³ *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

- (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.
26. The fact a document is a draft or not a final version may be a relevant factor, but, it is not determinative as to whether its disclosure would be contrary to the public interest. Each document must be examined within its own context, irrespective of whether it is a draft or incomplete version.⁴
27. In its decision, the Agency listed the following additional factors relevant to its consideration of the public interest limb of section 30(1), stating:
- (a) It is likely that disclosure would lead to confusion, unnecessary debate or a mischievous interpretation due to the preliminary nature of the information contained in the documents and the fact the documents were created at a very early stage in the decision-making process. The information in the documents ultimately became irrelevant as the warning letter was revoked by [the Agency];
 - (b) Disclosure could prejudice the willingness of those providing information management and more senior officers at [the Agency] doing so in the future in similar circumstances;
 - (c) Disclosure may hinder the independence of officers in having proper and detailed consideration of matters if such preliminary opinions, advice and recommendations were disclosed to the public;
 - (d) Decision makers should be judged on the final decision and their reasons for it, not on what might have been considered or recommended by others in preliminary working documents;
 - (e) Documents containing preliminary views are of their very nature likely to contain omissions or errors and may need further refinement; and
 - (f) There is nothing in the documents which would constructively inform any current public concern or debate.
28. I acknowledge the above factors were stated collectively by the Agency in its decision for documents exempted under this provision and not specifically in response to Documents 34 and 40.
29. I acknowledge the Applicant has a strong interest in obtaining access to the documents and note their submission the subject of the documents has had an impact on their employment.
30. I consider the information in the documents is relevant to the Applicant only and note the documents subject to review relate to their alleged conduct and not the actions or conduct of others. I also consider Document 34 contains information reflected in other documents that was released to the Applicant as part of the Agency's decision.
31. I consider the Applicant has a right to know about the process followed by the Agency's independent investigator regarding a complaint made by the Applicant that they were not afforded procedural fairness in an Agency investigation into their alleged conduct. The Applicant should be able to make their own assessment as to whether the investigation was conducted in a fair and impartial manner.
- Further, I understand the recommendation arising from the investigation was accepted by the Agency and would be known to the Applicant.

⁴ *Penhalluriack v Glen Eira City Council* [2012] VCAT 370 at [25].

32. In *Howard v Treasurer*,⁵ the AAT held the more sensitive the issues involved in a communication, the more likely it will be the communication should not be disclosed.
33. I do not consider the documents contain overly sensitive information. In my view, any sensitivity in Document 40 is diminished by virtue of the Applicant's presence and participation at the meeting of which the document provides a record. In my view, the investigation report merely sets out relevant background information and objectively deals with the question of procedural fairness only and recommends options for the Agency to consider. Having reviewed the information exempted from release by the Agency, I do not accept its disclosure would impair the Agency's ability to undertake a similar review in the future.
34. I consider members of the public are capable of understanding documents are created at a particular point in time where actions may not have been completed or where a course of decision making is not ultimately pursued. In this instance, the investigation report was commissioned to inform and provide recommendations to the Agency on the Applicant's procedural fairness complaint.
35. I do not accept disclosure of the document 'could prejudice the willingness' of Agency officers in providing information to a workplace review or investigation or that its disclosure 'may hinder the independence of officers' in reviewing matters of this nature.
36. Rather, the Agency engaged an independent consultant to undertake a review in relation to procedural fairness, including a review of the Agency's workplace policies and other frameworks required as a public sector employer.
37. I note the Applicant's personal interest in seeking access to the documents. However, I consider there is a broader public interest in members of the public being able to better understand decisions made by government agencies, which directly affect them. This is consistent with the object of the FOI Act, which is to create a general right 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'.
38. If the Agency feels strongly the information will be misinterpreted by the Applicant, it can release additional information to inform their understanding of the documents.
39. Accordingly, I am not satisfied disclosure of the documents would be contrary to the public interest, and the documents are not exempt under section 30(1).
40. My decision regarding section 30(1) is set out in **Annexure 1**.

Section 33(1) – Documents affecting personal privacy

41. The Agency also relies on the exemption in section 33(1) to refuse access to information in Document 40. I have also considered the application of this exemption to information in Document 34.
42. 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;⁶ and
 - (b) such disclosure would be 'unreasonable'.

⁵ (Cth) (1985) 7 ALD 626; 3 AAR 169.

⁶ Sections 33(1) and (2).

Do the documents contain the 'personal affairs information' of individuals other than the Applicant?

43. 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.⁷
44. Even where an applicant claims to know the identity of a third party, disclosure of their personal affairs information may still be unreasonable in the circumstances.⁸
45. A document will disclose a third party's personal affairs information if it is capable, either directly or indirectly, of identifying that person. As the nature of disclosure under the FOI Act is unrestricted and unconditional, this is to be interpreted by reference to the capacity of any member of the public to identify a third party.⁹
46. The information subject to review is the names, initials, position titles and views of Agency officers involved in the workplace investigation reviewed by the Agency's consultant. I note the Agency has released a large amount of similar information to the Applicant in documents not subject to review.
47. Having reviewed the documents, I am satisfied the documents contain the personal affairs information of Agency officers.

Would release of the personal affairs information be unreasonable in the circumstances?

48. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the protection of a third party's personal privacy in the circumstances.
49. Whether or not an agency officer's personal affairs information is exempt under section 33(1), must be considered in the context of each matter.¹⁰ Therefore, it is necessary to consider 'all matters relevant, logical and probative to the existence of conditions upon which the section is made to depend'.¹¹
50. The Agency submits the following points in support of its view disclosure of the personal affairs information of Agency officers would be unreasonable in this instance:
 - (a) the intention of the FOI act to extend as far as possible the right of access to documents;
 - (b) the balance sought to be drawn by Parliament in protecting the privacy of individuals other than the applicant;
 - (c) the nature of the information;
 - (d) the circumstances in which it is held by [the Agency];
 - (e) the views of the individuals concerned, who do not wish their information to be disclosed to you and potentially more widely;
 - (f) the likelihood that disclosure may cause the individuals concerned stress, anxiety or embarrassment; and
 - (g) whether disclosure would, or would be reasonably likely to, endanger the life or physical safety of any person under s 33(2A) of the FOI Act, even if irrelevant, as is the case here.

⁷ Section 33(9).

⁸ *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 at [58]; *Akers v Victoria Police* [2003] VCAT 397.

⁹ *O'Sullivan v Department of Health and Community Services (No 2)* [1995] 9 VAR 1 at [14]; *Beauchamp v Department of Education* [2006] VCAT 1653 at [42].

¹⁰ *Coulson v Department of Premier and Cabinet (Review and Regulation)* [2018] VCAT 229.

¹¹ [2008] VSCA 218 at [104].

51. Again, I acknowledge the above factors were relied upon collectively by the Agency in its decision and not specifically in relation to Documents 34 and 40.
52. I adopt the view expressed by the Victorian Court of Appeal in *Victoria Police v Marke*,¹² in which it was held there is 'no absolute bar to providing access to documents which relate to the personal affairs of others', and the exemption under section 33(1) 'arises only in cases of unreasonable disclosure' and '[w]hat amounts to an unreasonable disclosure of someone's personal affairs will necessarily vary from case to case'. Further, '[t]he protection of privacy, which lies at the heart of s 33(1), is an important right that the FOI Act properly protects. However, an individual's privacy can be invaded to a lesser or greater degree'.¹³
53. For the following reasons, I have determined it would not be unreasonable to disclose this information:
- (a) Generally, I agree that consistent with the Victorian Civil and Administrative Tribunal (**VCAT**) decision in *Coulson v Department of Premier and Cabinet (Coulson decision)*,¹⁴ whether an agency officer's personal affairs information is exempt under section 33(1) must be considered in the context of each matter.
 - (b) In the Coulson decision, the respondent's submission noted the fact non-executive officers were not the decision makers in relation to the case. Generally, I accept non-executive agency officers are unlikely to have authority to act on behalf of the agency and be accountable for its decision making and, therefore, should not necessarily be subject to the same level of public scrutiny as more senior agency officers.
 - (c) However, while the seniority of agency officers is a relevant consideration, this consideration is not determinative. Subject to an agency demonstrating that special circumstances apply, generally, I consider disclosure of agency officer names or position titles, regardless of their seniority, will not be unreasonable in where they are merely carrying out their usual duties or responsibilities as public servants.
 - (d) I consider the personal affairs information of Agency officers named in the documents is recorded in the context of their professional roles, rather than in their personal or private capacity.
 - (e) The personal affairs information is not particularly sensitive, and aspects have been released by the Agency elsewhere in the documents not subject to this review.
 - (f) I note certain Agency officers consented (and some did not respond) to the release of their personal affairs information to the Applicant following consultation conducted by the Agency. While the views of a third parties are relevant to my consideration of whether release is unreasonable, it is not determinative.
 - (g) On the information before me, I do not consider disclosure would, or would be reasonably likely to endanger the life or physical safety of any person.
54. Having weighed up the above factors, I have determined the personal affairs information of the Agency officers is not exempt under section 33(1).
55. My decision regarding section 33(1) is set out in **Annexure 1**.

¹² [2008] VSCA 218 at [76].

¹³ [2008] VSCA 218 at [79].

¹⁴ [2018] VCAT 229.

Section 35(1)(b) – Documents containing material obtained in confidence

56. The Agency relies on the exemption in section 35(1)(b) to refuse access to certain information in Document 34.
57. A document is exempt under section 35(1)(b) if two conditions are satisfied:
- (a) disclosure would divulge information or matter communicated in confidence by or on behalf of a person or a government to an agency or a Minister; and
 - (b) disclosure would be contrary to the public interest as it would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.

Was the information communicated in confidence?

58. In its decision, the Agency stated:

The confidential nature of the information is evident from the nature and content of the information and the circumstances in which it was provided to [the Agency].

...

[The Agency] relies on communications being made to it in frank and fearless manner in order to properly perform its functions, to assist it to make informed decisions and to take appropriate action where necessary. [The Agency] could not properly make decisions with respect to staff and management of staff if future confidentiality were not guaranteed to those communicating with it. If the documents were disclosed, there is a serious risk that such communications could diminish or dry up completely which would impede [the Agency's] efforts to effectively manage staff. If matters of poor performance, conduct and behaviour were unreported and unresolved this would result in an untenable situation of [the Agency] and would be detrimental to its reputation and the staff.

59. Document 34 contains large amounts of information that can be considered factual in nature, including quotations from the Applicant and other Agency officers already released by the Agency in their FOI decision.
60. There is nothing on the face of the documents to indicate the information was communicated in confidence. However, for the purposes of section 35(1)(b), a document need not be marked 'confidential' for the content to be considered information communicated in confidence.¹⁵
61. Document 34 was provided to the Agency by a consultant engaged on a remunerated basis to investigate a complaint of procedural fairness. As stated earlier at paragraph 14, I am satisfied the consultant is an 'officer' of the Agency for the purposes of the FOI Act. Accordingly, I am not satisfied the report was obtained by the Agency from the consultant in confidence.
62. Generally, section 35(1)(b) applies to information communicated to an agency from an external source rather than internal communications provided by an agency officer who is carrying out their usual duties and responsibilities. However, section 35(1)(b) may apply to information communicated in confidence between agency officers in certain circumstances. For example, where an agency officer provides confidential information to their public sector employer to assist in the investigation of a workplace incident or complaint.¹⁶ In my view, such circumstances do not apply in relation to the documents subject to review in this matter. That is, the documents do not contain any confidential information provided by other Agency officers to the Agency relating to the allegation.

¹⁵ *Williams v Victoria Police* [2007] VCAT 1194 at [75].

¹⁶ See *Sportsbet v Department of Justice* [2010] VCAT 8 at [71]-[78]; *XYZ v Victoria Police* [2010] VCAT 255 at [287]-[288]; and *Birnbaauer v Inner and Eastern Health Care Network* [1999] VCAT 1363 at [14]-[15].

63. Accordingly, I am not satisfied disclosure of the documents would divulge information or matter communicated in confidence by or on behalf of a person to an agency, and the document is not exempt under section 35(1)(b).
64. As I am not satisfied the information was communicated in confidence, it is not necessary to consider the second limb of the exemption. Therefore, I am not satisfied the documents are exempt under section 35(1)(b).
65. My decision regarding section 35(1)(b) is set out in **Annexure 1**.

Section 25 – Deletion of exempt or irrelevant information

66. 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.
67. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’¹⁷ 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 25.¹⁸
68. I have considered the information the Agency deleted from Document 40 as irrelevant information for the purposes of section 25. I agree it falls outside the terms of the Applicant’s request as it is duplicate information which the Applicant has received in another document which was released to them and they have agreed to exclude duplicate documents from their request.
69. I have considered the effect of deleting irrelevant information from Document 40. Given the Agency provided the Applicant with an edited copy of the document with irrelevant information deleted in accordance with section 25, access to this document is granted in part.

Conclusion

70. On the information before me, I am not satisfied Documents 34 and 40 are exempt under sections 30(1), 33(1) or 35(1)(b). Therefore, Document 34 is to be released in full.
71. As I am satisfied it is practicable to provide the Applicant with an edited copy of Document 40 with irrelevant information deleted in accordance with section 25, I have determined to grant access to this document in part.
72. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

Review rights

73. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.¹⁹
74. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.²⁰

¹⁷ *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].

¹⁸ *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].

¹⁹ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

²⁰ Section 52(5).

75. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.²¹
76. 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.
77. 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.²²

Third party review rights

78. As I have determined to disclose a document claimed to be exempt under section 33(1), if practicable, I must notify any person who has a right to apply to VCAT for a review of my decision of their right to do so.²³
79. In considering the meaning of 'practicable' in relation to other sections of the FOI Act, VCAT has stated the following:

The use of the word 'practicable' in the legislation to my mind connotes a legislative intention to apply common sense principles. 'Practicable' is not a term of art or a term of precise meaning.

.... The use of the word indicates there should be imported into the process the exercise of judgment by the agency concerned. It does not allow for the conclusion that because a task is possible, it must, ergo, be undertaken.²⁴

80. VCAT also considers the possibility of an unnecessary intrusion into the lives of third parties is relevant when assessing the practicability of notifying them.²⁵
81. In this case, I am satisfied notifying the relevant third parties would be an unnecessary intrusion for the following reasons:
 - (a) the nature of the information in the documents is not particularly sensitive or personal;
 - (b) the context in which the information was provided to the Agency, which was in the relevant third parties' professional capacity, rather than in their private or personal capacity; and
 - (c) information already provided to the Applicant.
82. On balance, given the unnecessary intrusion into the lives of the individuals, whose personal information appears in the documents, I am not satisfied it is practicable to notify those individuals of their right of review.

When this decision takes effect

83. My decision does not take effect until the Agency's 14 day review period expires.
84. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

²¹ Section 52(9).

²² Sections 50(3F) and (3FA).

²³ Section 49P(5).

²⁴ *Re Schubert and Department of Premier and Cabinet* (2001) 19 VAR 35 at [45].

²⁵ *Coulston v Office of Public Prosecutions Victoria* [2010] VCAT 1234 at [42].

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
[As only Documents 34 and 40 were subject to OVIC review, reference to all other documents has been removed for the Schedule of Documents in the published version.]						
34.	[date]	[Agency] Report [date]	11	Refused in full Sections 30(1), 35(1)(b)	Release in full	<p>Section 30(1): I am not satisfied the documents contain information that is exempt under section 30(1) for the reasons in the Notice of Decision above.</p> <p>Section 33(1): I am not satisfied the document contains information that is exempt under section 33(1) for the reasons in the Notice of Decision above.</p> <p>Section 35(1)(b): I am not satisfied the documents contain information that is exempt under section 35(1)(b) for the reasons in the Notice of Decision above.</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
40.	v	Emails and Meeting Notes – [Agency officer]	3	Released in part Sections 30(1), 33(1)	<p>Release in part</p> <p>Section 25</p> <p>This document is to be released with the following irrelevant information deleted in accordance with section 25.</p> <p><u>Irrelevant information</u></p> <p>All information on page one of the document the Agency deleted as ‘duplication’.</p>	<p>Section 30(1): I am not satisfied the documents contain information that is exempt under section 30(1) for the reasons in the Notice of Decision above.</p> <p>Section 33(1): I am not satisfied the document contains information that is exempt under section 33(1) for the reasons in the Notice of Decision above.</p> <p>Section 25: On 6 April 2021, the Applicant advised the Agency they do not seek duplicate documents. Therefore, this information is irrelevant information for the purpose of section 25.</p> <p>I am satisfied the information identified by the Agency on page 1 is a duplicate of part of Document 33 that has been released to the Applicant. Further, I am satisfied it is practicable to provide the Applicant with an edited copy of the document with irrelevant information deleted in accordance with section 25.</p>