

Notice of Decision and Reasons for Decision

Applicant:	'EL5'
Agency:	Knox City Council
Decision date:	19 May 2022
Exemptions considered:	Sections 33(1), 34(1)(b) and 38 of the <i>Freedom of Information Act 1982</i> (Vic) in conjunction with section 54(1) of the <i>Food Act 1984</i> (Vic) and section 125 of the <i>Local Government Act 2020</i> (Vic)
Citation:	'EL5' and Knox City Council (<i>Freedom of Information</i>) [2022] VICmr 132 (19 May 2022)

FREEDOM OF INFORMATION – investigation – food safety – *Food Act 1984* (Vic) – *Local Government Act 2020* (Vic) – secrecy provision – business undertaking — disclosure would not expose business undertaking unreasonably to disadvantage – personal affairs information – information outside scope of review

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 in that I have decided to release additional information in the documents as I am not satisfied:

- (a) the information in the documents is exempt under section 38 of the FOI Act in conjunction with section 54(1) of the *Food Act 1984* (Vic) (**Food Act**);
- (b) certain information is exempt under section 38 in conjunction with section 125 of the *Local Government Act 2020* (Vic) (**LG Act**); and
- (c) all information deleted by the Agency as irrelevant is outside the terms of the Applicant's request.

Where I am not satisfied information is exempt under section 38, I am also not satisfied it is exempt under sections 33(1) and 34(1)(b) of the FOI Act.

However, I am satisfied certain information in the documents:

- (a) is exempt under section 38 in conjunction with section 125 of the LG Act and section 33(1); and
- (b) does not fall within the terms of the Applicant's request.

Where I am satisfied it is practicable to provide the Applicant with an edited copy of a document with irrelevant or exempt information deleted in accordance with section 25, access to the document is granted 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

19 May 2022

Reasons for Decision

Background to review

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

A copy of all correspondence sent by Knox City Council or employees thereof to the [named agency] in relation to [named business undertaking] (ABN [number]) between [date] and [date] and correspondence received from the [named agency] in response.

...

Please note that personal information of non-executive staff, such as names and addresses, is not required.

2. The Agency identified 40 documents falling within the terms of the Applicant's request and granted access to certain pages in part, and refused access to certain pages in full, relying on the exemptions under sections 35(1)(b) and 38 of the FOI Act in conjunction with section 54 of the Food Act.
3. [Redacted background information].

Review

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. During the review, the Agency advised that in the event the Information Commissioner is not satisfied the documents are exempt under section 38 in conjunction with section 54(1) of the Food Act, the Agency relies on the exemptions under sections 23, 31(1), 34(1)(b) and 35(1)(a) in conjunction with section 30(1).

Preliminary view provided to Agency

6. On 6 September 2021, OVIC provided a preliminary view to the Agency that the documents subject to review are not exempt from release under section 38 in conjunction with section 54(1) of the Food Act. However, it was suggested section 38 in conjunction with section 125 of the LG Act may apply. The Agency was invited to consider the preliminary view and advised OVIC that it remained of the view the documents are exempt under section 38 in conjunction with section 54(1) of the Food Act.
7. The Agency further advised that if the Information Commissioner is not satisfied the documents are exempt under section 38 in conjunction with section 54(1) of the Food Act, the Agency relies on the exemption under section 38 in conjunction with section 125 of the LG Act on grounds their disclosure would be reasonably likely to prejudice an investigation into an alleged breach of the law. In the alternative, the Agency also relies on the exemptions under sections 34(1)(b), 35(1)(a) and 35(1)(b).
8. Subsequently, the Agency advised OVIC that the grounds upon which it relied in its original decision on sections 23, 31(1), 34(1)(b), 35(1)(a) in conjunction with section 30(1) and section 38 in conjunction with section 125 of the LG Act, were no longer considered sufficient by the Agency. Further, its revised view was informed by the passage of time, the impact of the public release of information in the [identified] Report, media coverage and the outcome of consultation that confirmed disclosure of the documents would not be reasonably likely to prejudice a police investigation into an alleged breach of the law.
9. The Agency provided an alternate set of marked up documents for OVIC's consideration, with exemptions relied on by the Agency in the event the Information Commissioner is not satisfied the documents are exempt under section 38 in conjunction with section 54(1) of the Food Act.

10. The Agency advised it had identified additional pages relevant to the terms of the Applicant's request, and these additional pages form part of my review.
11. Finally, the Agency also advised it no longer relies on the exemption under section 38 in conjunction with section 54 of the Food Act in relation to the information exempted in Document 1, as the same information was released by the Agency in Document 10.
12. I have examined a copy of the documents subject to review.
13. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
14. I have considered all communications and submissions received from the parties.
15. 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.
16. 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.
17. 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'.¹ 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.

Review of exemptions

Section 38 – Documents to which secrecy or confidentiality provisions apply

16. A document is exempt under section 38 if:
 - (a) there is an enactment in force;
 - (b) that applies specifically to the kind of information contained in the documents; and
 - (c) the enactment must prohibit persons, referred to in the enactment, from disclosing that specific kind of information (either absolutely or subject to exceptions or qualifications).
17. The Agency relies on the exemption under section 38 in conjunction with section 54(1) of the Food Act.
18. I have also considered the application of section 38 in conjunction with section 125 of the LG Act, with respect to the information relating to the personal information of executive-level third parties and private commercial information provided by a business undertaking.

Section 54 of the Food Act

19. Section 54 of the Food Act provides:

54 Secrecy

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

- (1) Except as provided by subsection (2), an authorized officer shall not disclose information or publish a document or part of a document obtained by him in connexion with the administration of this Act unless the disclosure or publication is made—
 - (a) with the consent of the person from whom the information or document was obtained;
 - (b) in accordance with any Act or regulation; or
 - (ba) in connection with the administration of—
 - (i) this Act or the regulations; or
 - (ii) any other Act or regulation that applies to, or regulates, the premises or the activities at the premises to which the disclosure relates; or
 - (bb) to a person or body administering or enforcing—
 - (i) a corresponding law; or
 - (ii) a law that relates to the safety or suitability of food; or
 - (iii) the Aged Care Act 1997 of the Commonwealth; or
 - (iv) any other law of a State or the Commonwealth prescribed by the regulations; or
 - (bc) to prevent or lessen a serious threat to public health; or
 - (c) for the purposes of any proceedings under or arising out of this Act or a report of any such proceedings.

Penalty: For a first offence 60 penalty units, and for a second or subsequent offence 100 penalty units.

- (2) A person does not commit an offence under subsection (1) if the information or the information contained in the document was publicly available before, or at the time, the information was disclosed or the document was published.
- ...
- (4) Notwithstanding subsection (1)(c), an authorized officer appearing as a witness in any proceedings under or arising out of this Act shall not be compelled to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

20. In summary, section 54(1) of the Food Act protects information obtained in connection with the administration of the Food Act.
21. Unauthorised disclosure of information acquired by a person or the Agency under the Food Act is an offence subject to a penalty, as set out above. The financial penalty associated with unauthorised disclosure of information acquired under the Food Act highlights Parliament's intention that such information be protected and not disclosed, except in limited circumstances.
22. The Agency's decision letter provides the following reasons for the application of section 38 in conjunction with section 54 of the Food Act:

Section 54 of the Food Act 1984 (the Food Act) states that an authorised officer shall not disclose information obtained by them in connexion with the administration of the Food Act unless in particular circumstances.

When determining whether the document was obtained by an authorised officer in connexion with the administration of the Food Act, I considered section 21 of the Food Act which details the powers of authorised officers. I have determined that any information relating to the inspections, complaints and investigations regarding premises and [redacted] at [named business undertaking] as well as examinations or images of any packages or samples are subject to section 54 Food Act and consequently exempt under section 38 of the FOI Act.

I have also had regard to a recent decision of the Victorian Information Commissioner ['CK5' and Victoria Police (Freedom of Information) [2020] VICmr 343 (9 December 2020)]. That decision clearly indicates that a secrecy provision does not have specify that the party in possession of the documents (in this case Council) is prohibited from disclosing the contents. It must only prohibit the person referred to in the

relevant legislation from disclosing information. I am satisfied that the exemptions are claimed with regard to information obtained by an officer duly authorised under the Food Act.[sic]

Consequently, I am satisfied that that the information claimed to be exempt under Section 38 is information of a kind that is protected by the Food Act.

Is there an enactment in force?

23. I am satisfied the Food Act is an enactment in force for the purposes of section 38.

Does the enactment apply specifically to the kind of information in the documents?

24. To satisfy the second requirement under section 38, the enactment must be formulated with such precision that it refers with particularity to the information'.² It is not sufficient for the enactment to be formulated in general terms that such it would encompass the information without expressly describing the information.
25. The Food Act sets out the Agency's functions and powers in connection with the investigation and enforcement of the Food Act. These include specific powers of authorised officers, as set out in section 21 of the Food Act, and include the power to make any investigations and enquires necessary to ascertain whether the provisions of the Food Act are being complied with, inspect premises, take photos and seize samples.
26. The documents subject to review include emails, photographs, a food safety training program, checklists, non-compliance notices, notice to correct non-conformances, and food safety audit reports. I am satisfied this information was created or obtained by authorised officers in connection with the administration of the Food Act and under the powers in section 21 of the Food Act.
27. In considering whether a prohibition to disclose 'information' obtained or received pursuant to the *Ombudsman Act 1973* (Vic) is a secrecy provision for the purposes of section 83 of that Act, Victorian Civil and Administrative Tribunal (**VCAT**) held in *Al-Hakim v Ombudsman*:³

... the effect of s.20 of the Ombudsman Act is to prohibit all persons (other than the complainant) from disclosing information that it obtained or received pursuant to the Act. The section makes blanket reference to "information" in such a manner as to suggest that it applies to any and all information obtained or received in connection with the functions exercised under the Ombudsman Act. To my mind, the language of s.20 contains no reference to the "kind" of information obtained and is materially different in this regard to the phrases which have been held to attract the exemption under s.38 of the Act...⁴

28. In *Frugtniet v Legal Services Board (Frugtniet)*,⁵ VCAT held:

The second secrecy provision refers to 'information acquired in the course of an investigation' [section 7.2.9(1) of the *Legal Profession Act 2004* (Vic)]. Virtually identical words in the former version of s 20 of the *Ombudsman Act 1973* were held to identify the information to be protected with sufficient specificity in *Deasey v Geschke*.⁶ In *Re Berryman v Department of Education*⁷ the Tribunal reached the same conclusion in relation to 'information collected during the course of the process' [relating to the

² *News Corp Ltd v National Competition & Securities Commission* (1984) 52 ALR 277 at 281.

³ (No 1) (2001) 18 VAR 102; [2001] VCAT 1972 at [37].

⁴ *Ibid* at [37]. See also *Woodford v Ombudsman* (2001) 18 VAR 64; [2001] VCAT 721 and *Lapidos v Ombudsman (No 1)* (1987) 2 VAR 82.

⁵ [2014] VCAT 1299 at [90]-[91].

⁶ Unreported decision of the AAT, per Hassett J, 11 November 1994.

⁷ Unreported, VCAT, per Macnamara DP, 4 February 1999.

handling of complaints against school teachers]. On the other hand, a different view was taken in *Lapidos v Ombudsman*⁸ and *Woodford v Ombudsman*.⁹

On balance, I find the protected information is described with sufficient specificity in s 7.2.9(1). Here, the overall effect of the provision is more specific than was the case in *Berryman*, for example, in that it is confined to information acquired by an investigator in the course of an investigation, rather than a wider group of persons involved in a more broadly defined 'complaints process'.

29. Having considered the operation of section 54(1) of the Food Act, I am not satisfied the class of information specified in section 54(1) is specific enough to meet the requirements of a secrecy provision for the purposes of section 38 of the FOI Act.
30. Rather, I consider section 54(1) operates generally as a confidentiality provision to prevent the unauthorised disclosure of information by Agency officers in carrying out their roles under the Food Act, rather than a secrecy provision that operates to prohibit disclosure of a specific kind of information associated with the Agency carrying out its functions and exercise of powers under the Food Act.
31. I am of the view section 54(1) of the Food Act can be distinguished from the secrecy provision considered in *Frugtniet*. Section 54(1) is a more broadly defined provision relating to a blanket reference to the administration of the Food Act rather than being confined to a specific kind of information, such as information acquired in the course of an investigation.
32. I consider section 54(1) of the Food Act is defined by context as it is concerned with disclosure of information obtained in the context of administering the Food Act and is not concerned with the specific content of a document.
33. Therefore, I am not satisfied section 54(1) of the Food Act is formulated with sufficient precision to identify information in the documents and does not constitute a secrecy provision.
34. Accordingly, given that I am not satisfied the second limb of section 38, I am not satisfied the documents sought by the Applicant are exempt from release under section 38 of the FOI Act in conjunction with section 54(1) of the Food Act.

Section 125 of the LG Act

Is there an enactment in force?

35. Section 125 of the LG Act provides:

125 Confidential information

- (1) Unless subsection (2) or (3) applies, a person who is, or has been, a Councillor, a member of a delegated committee or a member of Council staff, must not intentionally or recklessly disclose information that the person knows, or should reasonably know, is confidential information.

Penalty: 120 penalty units.

- (2) Subsection (1) does not apply if the information that is disclosed is information that the Council has determined should be publicly available.
- (3) A person who is, or has been, a Councillor, a member of a delegated committee or a member of Council staff, may disclose information that the person knows, or should reasonably know, is confidential information in the following circumstances—
 - (a) for the purposes of any legal proceedings arising out of this Act;
 - (b) to a court or tribunal in the course of legal proceedings;

⁸ Unreported, AAT, per Mr AF Smith, 3 September 1987.

⁹ Unreported, VCAT per Preuss SM, 5 April 2001.

- (c) pursuant to an order of a court or tribunal;
- (d) in the course of an internal arbitration and for the purposes of the internal arbitration process;
- (e) in the course of a Councillor Conduct Panel hearing and for the purposes of the hearing;
- (f) to a Municipal Monitor to the extent reasonably required by the Municipal Monitor;
- (g) to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
- (h) to a Commission of Inquiry to the extent reasonably required by the Commission of Inquiry;
- (i) to the extent reasonably required by a law enforcement agency.

36. I am satisfied the LG Act is an enactment in force for the purpose of section 38.

Does the enactment apply specifically to the kind of information in the documents?

37. 'Confidential information' in section 125 of the LG Act is defined in section 3(1) of that Act to include:

...

- (f) personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;
- (g) private commercial information, being information provided by a business, commercial or financial undertaking that—
 - (i) relates to trade secrets; or
 - (ii) if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage;

...

38. I first consider whether the documents contain 'personal information', then 'private commercial information'.

Do the documents contain 'personal information' for the purposes of section 125 of the LG Act?

39. As stated above, the Applicant does not seek access to the personal affairs information of non-executive level third parties.

40. In determining whether the documents contain the 'personal information' of any person and whether disclosure of such information would be unreasonable, I have had regard to similar considerations that arise under section 33(1) of the FOI Act.

41. 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.¹⁰

42. 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.¹¹

¹⁰ Section 33(9).

¹¹ *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].

43. I accept the term 'personal information' may encompass a broad range of information concerning an individual, for example, their name, address and their telephone number.
44. I am satisfied the documents contain the personal information of third parties, including the names, position titles, telephone numbers, mobile numbers, email addresses and signatures of third parties and other information from which a third party's identity could reasonably be determined.

Would disclosure of the personal information be unreasonable?

45. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the interest in protecting the personal privacy of a third party in the particular circumstances.
46. It has been held there is nothing particularly sensitive about matters occurring or arising in the course of one's official duties and disclosure of this type of information is generally considered not unreasonable.¹²
47. I acknowledge the Applicant may know certain third parties mentioned in the documents. However, even where an applicant claims to know the names or identities of a third party, disclosure of personal affairs information may still be unreasonable.¹³
48. In *Victoria Police v Marke*,¹⁴ the Victorian Court of Appeal held there is 'no absolute bar to providing access to documents which relate to the personal affairs of others'. Further, 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'.¹⁵ The Court further held, '[t]he protection of privacy, which lies at the heart of [section] 33(1), is an important right that the FOI Act properly protects. However, an individual's privacy can be invaded by a lesser or greater degree'.¹⁶
49. In determining whether disclosure of the personal information would be unreasonable in the circumstances, I have considered the following factors:

(a) The nature of the personal information

The documents were created as part of a food safety investigation. The Agency has a variety of powers and responsibilities under the Food Act to respond to public health and food safety concerns. In these circumstances, I consider certain information in the documents is sensitive in nature.

(b) The extent to which the information is available to the public

The nature of disclosure under the FOI Act is unconditional and unrestricted, which means an applicant is free to disseminate widely or use a document as they choose once it is released.¹⁷

[Redacted background information]

I also acknowledge the names of certain third parties were published in the [named] Reports and [circumstances] into the closure of the business. I also acknowledge the name and contact details of some third parties are publicly available. This factor weighs in favour of disclosure of

¹² *Milthorpe v Mt Alexander Shire Council* [1996] VCAT 368.

¹³ *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 at [58]; *Akers v Victoria Police* [2003] VCAT 397.

¹⁴ [2008] VSCA 218 at [76].

¹⁵ *Ibid.*

¹⁶ *Ibid* at [79].

¹⁷ *Ibid* at [68].

the names, position titles and contact details of certain third parties who have already been named publicly.

I consider the effect of further dissemination of the personal information would have a greater impact on the personal privacy of those who have not been publicly named in the above online sources arising from [circumstances].

(c) The Applicant's interest in the information

The FOI Act provides a general right of access that can be exercised by any person, regardless of their motive or purpose for seeking access to a document. However, the reasons why an applicant seeks access to a document is a relevant consideration in determining whether disclosure would be unreasonable under section 33(1).¹⁸

I acknowledge the Applicant is [position description].

(d) Whether any public interest would be promoted by release of the personal affairs information

Where an applicant's motivation for seeking access to personal affairs information of a third party is more closely related to an applicant's personal interest or curiosity in obtaining the information without a broader public interest, access is more likely to be unreasonable.¹⁹

I consider granting access to the documents would promote the public interest in providing transparency concerning the Agency's role in carrying out its regulatory functions under the Food Act. I acknowledge there is significant public interest in the subject matter of the Applicant's FOI request, which is demonstrated [circumstances].

However, I am not satisfied a broader public interest would be promoted by releasing certain personal information of third parties, which I consider is sensitive in nature.

Accordingly, I have considered the likelihood of the personal information in the documents being further disseminated, if disclosed, and the effects broader disclosure of this information would have on the personal privacy of the relevant third parties.

(e) Whether the individuals to whom the information relates object, or would be likely to object, to disclosure of the information

The Agency consulted with certain third parties who objected to the release of their personal information.

I consider it is reasonably likely certain third parties would object to the disclosure of their personal information on grounds the information was recorded in a sensitive context.

In any case, while the view of a third party on disclosure is a relevant consideration, it is not determinative factor.

(f) Whether disclosure of the information would, or would be reasonably like to, endanger the life or physical safety of any person²⁰

There is no information before me to suggest this is a relevant factor in this matter.

50. In balancing the above factors, I have determined disclosure of certain personal information in the documents would not be unreasonable where it appears in the context of an individual's professional

¹⁸ *Victoria Police v Marke* [2008] VSCA 218 at [104].

¹⁹ *Gunawan v Department of Education* [1999] VCAT 665.

²⁰ This is a mandatory factor to be considered under section 33(2A).

role, is not sensitive, and in many instances is publicly available information, including information released in the First and Second Reports. I also consider the public interest in disclosure outweighs an individual's right to privacy in the particular circumstances of this matter.

51. Therefore, I am satisfied such information is not 'confidential information' for the purposes of section 3(1)(f) of the LG Act.
52. However, I have determined the disclosure of certain personal information would be unreasonable where it would not assist in better understanding the Agency's decision making and is primarily personal in nature. Such information includes signatures of executive level third parties in certain documents. I am satisfied this information is 'confidential information' for the purposes of section 3(1)(f) of the LG Act.

Do the documents contain private commercial information for the purpose of section 125 of the LG Act?

53. The Agency submits that in the event certain information is not exempt from release under section 38 in conjunction with section 54(1) of the Food Act, the names of certain business undertakings are exempt under section 34(1)(b).
54. For completeness, I have also considered the exemption under section 38 in conjunction with section 125 of the LG Act in relation to information provided to the Agency by a third party business undertaking (**First Business Undertaking**) and documents, including audit reports (the **Reports**) provided to the First Business Undertaking by another third party business undertaking (**Second Business Undertaking**).
55. Having reviewed the documents, I am satisfied they contain information provided to the Agency by the business undertakings.
56. I note the threshold under section 3(1)(g) of the LG Act is higher than that in the FOI exemption under section 34(1)(b) as I must be satisfied disclosure of the relevant business, commercial or financial information would unreasonably expose a business undertaking to disadvantage. In comparison, section 34(1)(b) requires that I must be satisfied that any such exposure would be likely to expose the business undertaking unreasonably to disadvantage.
57. Based on the information before me, I am not satisfied disclosure of the private commercial information would expose the business undertakings unreasonably to disadvantage for the following reasons:
 - (a) The name and contact details of the business undertakings are publicly available. Also, certain information relating to the business undertakings was released [previously]. Therefore, this information is not commercially sensitive.
 - (b) The business undertakings operate in a highly regulated environment. In relation to the Reports prepared by the Second Business Undertaking, the instruments which auditing activities are based upon, the Australia New Zealand Food Standards Code and the Food Act, are publicly available.
 - (c) Where the Second Business Undertaking has produced the information, I am satisfied it is their factual observations and recommendations made in the course of applying these instruments. I do not consider this information to be commercially sensitive and therefore its disclosure would not expose the business undertaking unreasonably to disadvantage.
 - (d) While I acknowledge the preparation of the Reports requires relevant expertise, and the Reports contain information related to systems, externally engaged businesses and infrastructure specific to the subject of the audit, I do not consider this information is detailed

enough to expose them to disadvantage if their competitors were to gain access to the Reports.

- (e) Given the information in the documents relates to the Agency's management of a public health incident, there is a public interest in evaluating aspects of the Agency's regulation and enforcement of the Food Act for transparency and accountability purposes.

58. Therefore, I am not satisfied the information in the documents is 'confidential information' for the purposes of section 3(1)(g) of the LG Act.

Conclusion of assessment under section 38

59. I am not satisfied the second limb of the exemption under section 38 has been met in relation to section 54(1) of the Food Act.

60. I am satisfied section 38 applies to certain information in the documents as:

- (a) section 125 of the LG Act is an enactment in force;
- (b) the definition of 'confidential information' in section 3(1)(f) of the LG Act refers specifically to the relevant information in the documents; and
- (c) section 125 of the LG Act prohibits Agency officers, specifically councillors and council staff, from disclosing 'confidential information'.

61. Accordingly, I am satisfied certain information is exempt under section 38 in conjunction with section 125 of the LG Act, specifically signatures of executive-level third parties.

62. My decision in relation to section 38 is set out in the Schedule of Documents at **Annexure 1**.

Section 34(1)(b) – Business, commercial or financial information of a business undertaking

63. 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 undertaking and:

- (a) the information relates to other matters of a business, commercial or financial nature; and
- (b) the disclosure of the information would be likely to expose the business undertaking unreasonably to disadvantage.

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

64. In *Thwaites v Department of Human Services*,²¹ VCAT observed the phrase 'information acquired' in section 34(1) signifies the need for some positive handing over of information in some precise form.

65. I am satisfied certain information was acquired by the Agency from a business undertaking.

²¹ (1999) 15 VAR 1.

66. However, I consider certain information exempted by the Agency was generated by the Agency about a business undertaking or mutual information arising out of collaboration between the Agency and a business undertaking. I do not consider this type of information to be information acquired from a business undertaking and, therefore, the first limb of the exemption under section 34(1)(b) is not met with respect to this information.

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

67. VCAT has also recognised the words ‘business, commercial or financial nature’ have their ordinary meaning.²²
68. I am satisfied certain information in the documents relates to matters of a business nature. I am also satisfied the Reports broadly concern matters of a business or commercial nature, as they concern an audit of food safety conducted by the Second Business Undertaking, presumably for a fee.

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

69. 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.
70. I have also had regard to *Dalla Riva v Department of Treasury and Finance*,²³ in which VCAT held documents are exempt under section 34(1)(b) if disclosure would:
- (a) give the undertaking’s competitors a financial disadvantage;
 - (b) enable competitors to engage in destructive competition with the undertaking; and
 - (c) would lead to the drawing of unwarranted conclusions as to the undertaking’s financial affairs and position with commercial and market consequences.
71. 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.
72. 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 be likely to expose the

²² *Gibson v Latrobe CC* [2008] VCAT 1340 at [25].

²³ (General) [2007] VCAT 1301 at [33].

undertaking unreasonably to disadvantage.

73. 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.²⁴
74. The Agency consulted with the First Business Undertaking and the Second Business Undertaking. The First Business Undertaking consented to the release of its business information. The Second Business Undertaking objected to the release of its business information.
75. While a certain business undertaking objected to the release of its information, the views of a business undertaking are not determinative and are only one factor to be considered.
76. For the same reasons provided above in relation to section 38, I am not satisfied the disclosure of the relevant information would be likely to expose the Undertakings unreasonably to disadvantage. Accordingly, information in the documents is not exempt under section 34(1)(b).
77. My decision in relation to section 34(1)(b) is set out in the Schedule of Documents in **Annexure 1**.

Section 33(1) – Documents affecting the personal privacy of third parties

78. For completeness, I have also considered the application of section 33(1).
79. 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**);²⁵ and
 - (b) such disclosure would be ‘unreasonable’ in the circumstances.
80. My decision in relation to section 33(1) is the same as my decision above in relation to section 38, in that I am not satisfied disclosure of the personal affairs information of certain third parties would be unreasonable.
81. 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

82. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
83. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’²⁶ and the effectiveness of the deletions. Where deletions would render the document meaningless, they are not ‘practicable’, and release of the document is not required under section 25.²⁷
84. As stated above, the Applicant does not seek access to personal affairs information of non-executive level third parties. I consider certain information deleted by the Agency as irrelevant to be in scope of the Applicant’s request, as it relates to the personal affairs information of executive level individuals.

²⁴ Section 34(3).

²⁵ Sections 33(1) and 33(2).

²⁶ *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].

²⁷ *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].

85. I am satisfied certain information falls outside the scope of the Applicant's request as it is information recorded outside the date range specified in the Applicant's FOI request, information relating to the personal affairs information of non-executive level individuals and correspondence between the Agency and third parties that are not set out in the Applicant's FOI request.
86. I have also considered the effect of deleting irrelevant and exempt information from the documents in accordance with section 25. I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with exempt and irrelevant information deleted as it will not require substantial time and effort, and the edited documents will retain sufficient meaning for the Applicant.
87. My decision in relation to section 25 is set out in the Schedule of Documents in **Annexure 1**.

Conclusion

88. I am not satisfied:
- (a) the information in the documents is exempt under section 38 of the FOI Act in conjunction with section 54(1) of the Food Act;
 - (b) certain information is exempt under section 38 in conjunction with section 125 of the LG Act; and
 - (c) all information deleted by the Agency as irrelevant is outside the terms of the Applicant's request.
89. Where I am not satisfied information is exempt under section 38 in conjunction with section 125 of the LG Act, I am also not satisfied it is exempt under sections 33(1) and 34(1)(b) of the FOI Act.
90. I am satisfied certain information in the documents:
- (a) is exempt under section 38 in conjunction with section 125 of the LG Act and section 33(1) of the FOI Act; and
 - (b) does not fall within the terms of the Applicant's request.
91. Where I am satisfied it is practicable to provide the Applicant with an edited copy of a document with irrelevant or exempt information deleted in accordance with section 25, access is granted to a document in part.
92. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

Review rights

93. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.²⁸
94. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.²⁹
95. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of

²⁸ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

²⁹ Section 52(5).

Decision.³⁰

96. 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.
97. 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.³¹

Third party review rights

97. If I decide to disclose a document claimed to be exempt under sections 33(1) and 34(1)(b), 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.³²
100. On balance, I am satisfied it is practicable to notify certain relevant third parties of their review rights, and they will be notified of my decision and their right to apply to VCAT for a review³³ within 60 days from the date they are given notice of my decision.³⁴

When this decision takes effect

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

³⁰ Section 52(9).

³¹ Sections 50(3F) and 50(3FA).

³² Section 49P(5).

³³ Section 50(3), 50(3A) and 50(3AB).

³⁴ Section 52(3).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
1.	[date] to [date]	Email chain with attachments	2 (Excluding attachments)	Released in part Section 25 Formerly also refused under section 38	Release in part Section 25 The document is to be released with the following information remaining deleted in accordance with section 25: <ul style="list-style-type: none"> the email sent on[date]; and the personal affairs information of non-executive third parties. 	The attachments for Document 1 are in Documents 2 and 3. Section 25: I am satisfied certain information is irrelevant to the terms of the Applicant's request as it concerns information recorded outside the date range specified in the Applicant's request and it also relates to correspondence between Agency officers. The Applicant is not seeking access to personal affairs information relating to non-executive third parties. Therefore, this type of information is irrelevant and is to be deleted in accordance with section 25 as this information falls outside the scope of this review.
2.	[date]	Letter from [named agency]	2	Released in part Section 25	Release in part Section 25 The document is to be released with the personal affairs information of non-	Section 25: See comments for Document 1.

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
					executive third parties remaining deleted in accordance with section 25.	
3.	[date]	[title]	3	Released in full	Not subject to review	
4.	[date] to [date]	Email chain with attachments	2 (Excluding attachments)	Released in part Sections 38, 25	<p>Release in part</p> <p>Section 25</p> <p>The document is to be released with the following information deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the email sent on [date]; the personal affairs information of non-executive third parties. 	<p>The attachments for Document 4 are in Document 6.</p> <p>Section 25: See comments for Document 1.</p> <p>Section 38: For the reasons set out in the Notice of Decision above, I am not satisfied this document is exempt under section 38 of the FOI Act in conjunction with section 54(1) of the Food Act.</p>
5.	[date] to [date]	Email chain with attachment and link to additional information	4 (Excluding attachment and information in the	Released in part Sections 38, 25 Formerly also refused under sections	<p>Release in part</p> <p>Section 25</p> <p>The document is to be released with the following information remaining</p>	<p>The attachment for Document 5 is in Document 15.</p> <p>Document 5 includes a link to a OneDrive Cloud account. The Agency has provided OVIC with an explanation as to why the Agency</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
			document link)	31(1)(b), 35(1)(a) and 35(1)(b)	<p>deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the email sent on[date]; and the personal affairs information of non-executive third parties. 	<p>is unable to access the information in the link.</p> <p>I am satisfied with the Agency's explanation, and I do not consider any further action is required.</p> <p>Section 25: See comments for Document 1.</p> <p>Section 38: For the reasons set out in the Notice of Decision above, I am not satisfied this document is exempt under section 38 of the FOI Act in conjunction with section 54(1) of the Food Act or under section 38 of the FOI Act in conjunction with section 125 of the LG Act.</p> <p>Section 34(1)(b): For completeness, I have considered the exemption under section 34(1)(b). For the reasons provided in the Notice of Decision, above, I am not satisfied information in the document is exempt under section 34(1)(b).</p>
6.	[date]	Photographs & forms	25	Released in part	Release in part	Section 25: In relation to the personal affairs information of

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
				<p>Sections 38, 25</p> <p>Formerly also refused under sections 31(1)(b), 35(1)(a) and 35(1)(b)</p>	<p>Section 25</p> <p>The document is to be released with the personal affairs information of non-executive third parties deleted in accordance with section 25.</p>	<p>non-executive third parties, see comments for Document 1.</p> <p>Section 38: See comments for Document 4.</p>
7.	[date]to [date]	Email chain with attachment	2 (Excluding attachment)	<p>Released in part</p> <p>Sections 25, 34(1)(b), 38</p> <p>Formerly also refused under sections 31(1)(b), 35(1)(a) and 35(1)(b)</p>	<p>Release in part</p> <p>Section 25</p> <p>The document is to be released with the following information remaining deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the email sent on [date]; and the personal affairs information of non-executive third parties. 	<p>The attachment for Document 7 is in Document 8.</p> <p>Section 25: See comments for Document 1.</p> <p>Section 38: See comments for Document 5.</p> <p>Section 34(1)(b): I am not satisfied the first limb of the exemption has been met. In any event, I am not satisfied that the release of the information would expose the business undertakings unreasonably to disadvantage. See comments for Document 5.</p>
8.	[date]	Letter to [named agency]	2	Released in part	Release in part	Section 25: In relation to the personal affairs information of

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
				<p>Section 25</p> <p>Formerly refused in full under section 35(1)(b)</p>	<p>Section 25</p> <p>The document is to be released with the personal affairs information of non-executive third parties remaining deleted in accordance with section 25.</p>	<p>non-executive third parties, see comments for Document 1.</p> <p>Section 38: For the reasons set out in the Notice of Decision above, I am not satisfied this document is exempt under section 38 of the FOI Act in conjunction with section 125 of the LG Act.</p> <p>Section 33(1): I have considered the exemption under section 33(1) for completeness.</p> <p>As described above in the Notice of Decision, considerations under section 33(1) in relation to 'personal affairs information' are largely the same as for 'personal information' under section 38 in conjunction with section 125 of the LG Act. For the reasons set out in the Notice of Decision, I do not consider it unreasonable to release the personal affairs information of an executive level third party.</p>
9.	[date] to [date]	Email chain with attachment	3	Released in part	Release in part	The attachment for Document 9 is in Document 8.

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
			(Excluding attachment)	Sections 25, 34(1)(b)	<p>Section 25</p> <p>The document is to be released with the following information remaining deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the email sent on [date]]; and the personal affairs information of non-executive third parties. 	<p>The emails sent on [date] at [date] and [time] are a duplicate of part of the information in Document 7.</p> <p>Section 25: See comments for Document 1.</p> <p>Section 38: See comments for Document 5.</p> <p>Section 34(1)(b): See comments for Document 7.</p>
10.	[date]	Email chain	2	Released in part Section 25	<p>Release in part</p> <p>Section 25</p> <p>The document is to be released with the personal affairs information of non-executive third parties remaining deleted in accordance with section 25.</p>	<p>The emails sent on [date] at [time] and [time] are a duplicate of part of the information in Document 1.</p> <p>Section 25: In relation to personal affairs information of non-executive level third parties, see comments for Document 1.</p>
11.	[date]	Letter to Agency	2	Released in part Section 25	<p>Release in part</p> <p>Section 25</p>	<p>Section 25: In relation to the personal affairs information of non-executive third parties, see comments for Document 1.</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
					The document is to be released with the personal affairs information of non-executive third parties remaining deleted in accordance with section 25.	
12.	[date]	[title]	3	Released in full	Not subject to review	
13.	[date] to [date]	Email chain	2	Released in part Sections 38, 25	Release in part Section 25 The document is to be released with the personal affairs information of non-executive third parties remaining deleted in accordance with section 25.	Section 25: In relation to the personal affairs information of non-executive third parties, see comments for Document 1. Section 38: See comments for Document 5. Section 34(1)(b): For completeness, I have considered the exemption under section 34(1)(b). See comments for Document 5.
14.	[date]	Email chain with attachment and link to additional information	3 (Excluding attachment and information)	Released in part Sections 38, 25 Formerly also refused under sections	Release in part Section 25 The document is to be released with the personal	The email sent on [date] at [time] is a duplicate of part of the information in Document 5. The attachment for Document 14 is in Document 15.

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
			in the document link)	31(1)(b), 35(1)(a) and 35(1)(b)	affairs information of non-executive third parties remaining deleted in accordance with section 25.	<p>Document 14 includes a link to a OneDrive Cloud account. See comments for Document 5.</p> <p>Section 25: In relation to the personal affairs information of non-executive third parties, see comments for Document 1.</p> <p>Section 38: See comments for Document 5.</p> <p>Section 34(1)(b): For completeness, I have considered the exemption under section 34(1)(b). See comments for Document 5.</p>
15.	[date]	[Type] Menu	1	Refused in full Section 38	Release in full	<p>Section 38: See comments for Document 5.</p> <p>Section 34(1)(b): For completeness, I have considered the exemption under section 34(1)(b). See comments for Document 5.</p>
16.	[date] to [date]	Email chain with attachment	2	Released in part Sections 38, 25	Release in part Section 25	The attachment for Document 16 is in Document 17.

Document No.	Date of Document	Document Description	No. of Pages (Excluding attachment)	Agency Decision	OVIC Decision	OVIC Comments
					<p>The document is to be released with the personal affairs information of non-executive third parties remaining deleted in accordance with section 25.</p>	<p>Section 25: I consider the email sent on [date] in scope, as this forms part of an email chain that falls within the terms of the Applicant's FOI request.</p> <p>I also consider the personal affairs information of the writer of the email sent on [date] in scope, as this third party is an executive level individual.</p> <p>In relation to the personal affairs information of non-executive third parties, see also comments for Document 1.</p> <p>Section 38: See comments for Document 5.</p> <p>Section 34(1)(b): For completeness, I have considered the exemption under section 34(1)(b). See comments for Document 5.</p> <p>Section 33(1): For completeness, I have considered the exemption under section 33(1), given that I consider the personal affairs information of a third party in</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
						scope. See comments for Document 8.
17.	[date]	Audit Report	10	<p>Refused in full</p> <p>Sections 38, 25</p> <p>Formerly also refused under section 34(1)(b)</p>	<p>Release in part</p> <p>Sections 38, 33(1), 25</p> <p>The document is to be released, except for the following information, which is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the signature, which is exempt under section 38 in conjunction with section 125 of the LG Act and section 33(1); and the personal affairs information of non-executive third parties, which is irrelevant information. 	<p>Section 25: I consider the personal affairs information of a third party [position title] in scope, as this third party is an executive level individual.</p> <p>In relation to the personal affairs information of non-executive third parties, see comments for Document 1.</p> <p>Section 38: I am satisfied the signature of a third party is 'confidential information' in accordance with 3(1)(f) of the LG Act and is exempt under section 38. In relation to the remaining information, see comments for Document 5.</p> <p>Section 34(1)(b): For completeness, I have considered the exemption under section 34(1)(b). See comments for Document 5.</p> <p>Section 33(1): For completeness, I have considered the exemption</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>under section 33(1). I am satisfied it would be unreasonable to release the signature of a third party, given that this information is not publicly available. Also, I do not consider this information would be relevant to the Applicant, considering the purpose to which the Applicant seeks access to the information.</p> <p>In relation to the remaining personal affairs information of the executive level third party, see comments for Document 8.</p>
18.	[date] to [date]	Email chain	2	Released in part Sections 38, 25	<p>Release in part Section 25</p> <p>The document is to be released with the personal affairs information of non-executive third parties remaining deleted in accordance with section 25.</p>	<p>The information in Document 18 is a duplicate of part of the information in Document 13.</p> <p>Section 25: In relation to the personal affairs information of non-executive third parties, see comments for Document 1.</p> <p>Section 38: See comments for Document 5.</p> <p>Section 34(1)(b): For completeness, I have considered the exemption under section</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
						34(1)(b). See comments for Document 5.
19.	[date] to [date]	Email chain with attachment	1 (Excluding attachment)	Released in part Section 25	<p>Release in part</p> <p>Section 25</p> <p>The document is to be released with the personal affairs information of non-executive third parties remaining deleted in accordance with section 25.</p>	<p>The attachment for Document 19 is in Document 20.</p> <p>Section 25: I consider the personal affairs information of a third party [position title] in scope, as they are an executive level third party.</p> <p>In relation to the personal affairs information of non-executive third parties, see also comments for Document 1.</p> <p>Section 38: See comments for Document 5.</p> <p>Section 34(1)(b): For completeness, I have considered the exemption under section 34(1)(b). See comments for Document 5.</p> <p>Section 33(1): For completeness, I have considered the exemption under section 33(1). See comments for Document 8.</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
20.	[date]	[Named business undertaking] Food Safety Program	331	<p>Refused in full</p> <p>Sections 38, 25</p> <p>Formerly also refused under sections 23(3), 31(1), 34(1)(b) and 35(1)(b)</p>	<p>Release in part</p> <p>Section 25</p> <p>The document is to be released with the personal affairs information of non-executive third parties remaining deleted in accordance with section 25.</p>	<p>Section 25: In relation to the personal affairs information of non-executive third parties, see comments for Document 1.</p> <p>Section 38: See comments for Document 5.</p> <p>Section 34(1)(b): For completeness, I have considered the exemption under section 34(1)(b). See comments for Document 5.</p>
21.	[date] to [date]	Email chain with attachments	<p>1</p> <p>(Excluding attachments)</p>	<p>Released in part</p> <p>Sections 38, 25</p> <p>Formerly also refused under section 34(1)(b)</p>	<p>Release in part</p> <p>Section 25</p> <p>The document is to be released with the personal affairs information of non-executive third parties remaining deleted in accordance with section 25.</p>	<p>The attachments for Document 21 are in Document 22.</p> <p>Section 25: I consider the personal affairs information of the writer of the email sent on [date] in scope. I also consider any reference to the writer of the email sent on [date] in the email sent on [date] in scope. I am satisfied this third party is an executive level individual.</p> <p>In relation to the personal affairs information of non-executive</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>third parties, see comments for Document 1.</p> <p>Section 38: See comments for Document 5.</p> <p>Section 34(1)(b): For completeness, I have considered the exemption under section 34(1)(b). See comments for Document 5.</p> <p>Section 33(1): For completeness, I have considered the exemption under section 33(1). See comments in Document 8.</p>
22.	[date]	Audit Report and Notice	11	<p>Refused in full</p> <p>Sections 38, 25</p> <p>Formerly also refused under section 34(1)(b)</p>	<p>Release in part</p> <p>Sections 38, 33(1), 25</p> <p>The document is to be released, except for the following information, which is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the signatures, which are exempt under section 38 in conjunction with 	<p>The report on pages 1 to 10 of Document 22 is a duplicate of Document 17.</p> <p>Section 25: I consider the personal affairs information of a third party [position title] in scope, as this third party is an executive level individual.</p> <p>In relation to the personal affairs information of non-executive third parties, see comments for Document 1.</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
					<p>section 125 of the LG Act and section 33(1); and</p> <ul style="list-style-type: none"> the personal affairs information of non-executive third parties, which is irrelevant information. 	<p>Section 38: See comments for Document 17.</p> <p>Section 34(1)(b): For completeness, I have considered the exemption under section 34(1)(b). See comments for Document 5.</p> <p>Section 33(1): For completeness, I have considered the exemption under section 33(1). See comments for Document 17.</p>
23.	[date]	Email chain	1	Released in part Sections 38, 25	<p>Release in part</p> <p>Section 25</p> <p>The document is to be released with the personal affairs information of non-executive third parties remaining deleted in accordance with section 25.</p>	<p>The email chain for Document 23 continues in Document 24.</p> <p>Section 25: In relation to the personal affairs information of non-executive third parties, see comments for Document 1.</p> <p>Section 38: See comments for Document 4.</p>
24.	[date] to [date]	Email chain	4 (Excluding attachments)	Released in part Sections 38, 25	<p>Release in part</p> <p>Section 25</p>	<p>The attachments for the email sent on [date] at [time] are in Document 25.</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
					<p>The document is to be released with the personal affairs information of non-executive third parties remaining deleted in accordance with section 25.</p>	<p>Section 25: I am satisfied the attachments in the email sent on [date] are out of scope.</p> <p>I consider the personal affairs information of the writer of the email sent on [date] in scope, as this third party is an executive level individual.</p> <p>In relation to the personal affairs information of non-executive third parties, see comments for Document 1.</p> <p>Section 38: See comments for Document 5.</p> <p>Section 34(1)(b): For completeness, I have considered the exemption under section 34(1)(b). See comments for Document 5.</p> <p>Section 33(1): For completeness, I have considered the exemption under section 33(1). See comments for Document 8.</p>
25.	Various dates		23	Refused in full	Release in part	Section 25: In relation to the personal affairs information of

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
		Temperature Data – [Third party business undertaking]		Section 38	Section 25 The document is to be released with the personal affairs information of non-executive third parties remaining deleted in accordance with section 25.	non-executive third parties, see comments for Document 1. Section 38: See comments for Document 5. Section 34(1)(b): For completeness, I have considered the exemption under section 34(1)(b). See comments for Document 5.
26.	[date]	Letter to [named agency]	2	Released in part Section 25 Formerly refused in full under section 35(1)(b)	Release in part Section 25 The document is to be released with the personal affairs information of non-executive third parties remaining deleted in accordance with section 25.	Document 26 is a duplicate of Document 8. Section 25: In relation to the personal affairs information of non-executive third parties, see comments for Document 1. Section 38: See comments for Document 8. Section 33(1): See comments for Document 8.
27.	[date] to [date]	Email chain	1 (Excluding attachments)	Released in part Section 25	Release in part Section 25	Document 27 is a duplicate of part of the information in Document 24.

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
					<p>The document is to be released with the personal affairs information of non-executive third parties remaining deleted in accordance with section 25.</p>	<p>Section 25: I am satisfied the attachments in the email sent on [date] are out of scope.</p> <p>I consider the personal affairs information of the writer of the email sent on [date] in scope, as this third party is an executive level individual.</p> <p>In relation to the personal affairs information of non-executive third parties, see also comments for Document 1.</p> <p>Section 38: See comments in Document 5.</p> <p>Section 34(1)(b): For completeness, I have considered the exemption under section 34(1)(b). See comments for Document 5.</p> <p>Section 33(1): For completeness, I have considered the exemption under section 33(1). See comments for Document 8.</p>
28.	[date]	Audit Certificate of Compliance	2	Refused in full	Refused in full	Section 25: I consider Document 28 outside the date range

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
				Sections 38, 25	Section 25	specified in the Applicant's FOI request. Section 38: Given that I consider this document outside the scope of the Applicant's request, I have not considered the exemption under section 38 in conjunction with section 54(1) of the Food Act or section 125 of the LG Act.
29.	[date]	Audit Report	10	Refused in full Sections 38, 25 Formerly also refused under section 34(1)(b)	Release in part Sections 38, 33(1), 25 The document is to be released, except for the following information, which is to be deleted in accordance with section 25: <ul style="list-style-type: none"> the signature, which is exempt under section 38 in conjunction with section 125 of the LG Act and section 33(1); and the personal affairs information of non-executive third parties, 	The report in Document 29 is a duplicate of Document 17. See comments for Document 17 above.

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
					which is irrelevant information.	
30.	[date]	[Document type] – [Third party business undertaking]	1	Released in full	Not subject to review	
31.	[date]	Email chain with attachments	3 (Excluding attachments)	Released in part Sections 38, 25 Formerly also refused under section 31(1)(a) and 35(1)(b)	<p>Release in part</p> <p>Section 25</p> <p>The document is to be released with the following information remaining deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the email sent on [date] at [time]; and the personal affairs information of non-executive third parties. 	<p>The attachments for Document 31 are in Documents 32 and 33.</p> <p>The email chain in Document 31 continues in Document 34.</p> <p>Section 25: I consider the email sent on [date] at [time] irrelevant to the terms of the Applicant's request as it does not concern correspondence between the Agency and the [named agency]. However, in relation to the email sent on [date] at [time], I consider this email in scope, as this forms part of an email chain that falls within the terms of the Applicant's FOI request.</p> <p>In relation to personal affairs information of non-executive third parties, see comments for Document 1.</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>Section 38: See comments for Document 5.</p> <p>Section 34(1)(b): For completeness, I have considered the exemption under section 34(1)(b). See comments for Document 5.</p>
32.	[date]	Temperature Record from [third party business undertaking]	1	<p>Refused in full</p> <p>Section 38</p> <p>Formerly also refused under section 31(1)(a) and 35(1)(b)</p>	<p>Released in part</p> <p>Section 25</p> <p>The document is to be released with the personal affairs information of non-executive third parties deleted in accordance with section 25.</p>	<p>Section 25: In relation to the personal affairs information of non-executive third parties, see comments for Document 1.</p> <p>Section 38: See comments for Document 5.</p> <p>Section 34(1)(b): For completeness, I have considered the exemption under section 34(1)(b). See comments for Document 5.</p>
33.	[date]	[Document type] from [third party business undertaking]	1	Released in full	Not subject to review	

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
34.	[date]	Email	1	Released in part Sections 38, 25 Formerly also refused under section 34(1)(b) and 35(1)(b)	Released in part Section 25 The document is to be released with the personal affairs information of non-executive third parties deleted in accordance with section 25.	Document 34 is a continuation of the email chain in Document 31. Section 25: This email is not between the Agency and the [named agency]. However, given that this email is a continuation of the email chain in Document 31, I consider Document 34 in scope. In relation to personal affairs information of non-executive third parties, see comments for Document 1. Section 38: See comments for Document 5. Section 34(1)(b): For completeness, I have considered the exemption under section 34(1)(b). See comments for Document 5.
35.	[date]	[Type] menu	1	Refused in full Section 38	Release in full	Document 35 is a duplicate of Document 15. See comments for Document 15.

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
36.	[date] to [date]	Email chain with attachment and link to additional information	5 (Excluding information in the attachment and document link)	Released in part Section 25 Formerly also refused under sections 31(1)(b), 35(1)(a) and 35(1)(b)	Release in part Section 25 The document is to be released with the personal affairs information of non-executive third parties remaining deleted in accordance with section 25.	Document 36 is a part duplicate of Document 14. The attachment for Document 36 is in Document 15. Document 36 includes a link to a OneDrive Cloud account. See comments for Document 5. Section 25: In relation to personal affairs information of non-executive third parties, see comments for Document 1. Section 38: See comments for Document 8. Section 34(1)(b): For completeness, I have considered the exemption under section 34(1)(b). See comments for Document 5.
37.	[date]	Email from [named agency]	1	Released in part Section 25	Release in part Section 25 The document is to be released with the personal	Section 25: I consider the personal affairs information of the recipient of the email in scope, as this third party is an executive level individual.

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
					affairs information of non-executive third parties deleted in accordance with section 25.	In relation to the personal affairs information of non-executive third parties, see comments for Document 1. Section 38: See comments in Document 5. Section 33(1): For completeness, I have considered the exemption under section 33(1). See comments for Document 8.
38.	[date]	Email chain with attachments	1 (Excluding attachments)	Released in part Section 25	Release in part Section 25 The document is to be released with the personal affairs information of non-executive third parties remaining deleted in accordance with section 25.	The attachments for Document 38 are in Documents 39 and 40. Section 25: I consider the email received by the Agency on [date] at [time] in scope. In relation to the personal affairs information of the non-executive third parties, see also comments for Document 1.
39.	[date]	Letter from [named agency]	2	Released in part Section 25	Release in part Section 25	Section 25: In relation to the personal affairs information of the non-executive third parties, see comments for Document 1.

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
					The document is to be released with the personal affairs information of non-executive third parties remaining deleted in accordance with section 25.	
40.	[date]	[Type of information] Better Health Channel Information	3	Released in full	Not subject to review	