

Notice of Decision and Reasons for Decision

Applicant:	'EV4'
Agency:	Victorian WorkCover Authority
Agency reference:	D20/5764
Our reference:	C/21/00642
Decision date:	19 September 2022
Exemptions considered:	Sections 30(1), 33(1), 34(1)(b), 34(4)(a)(ii)
Citation:	'EV4' and <i>Worksafe</i> (Freedom of Information) [2022] VICmr 222 (19 September 2022)

FREEDOM OF INFORMATION – Board Meeting Minutes – Agenda – business affairs information – disclosure likely to expose unreasonably to disadvantage – trade or commerce – financial nature

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.

On the information before me, I am not satisfied the exemptions in sections 33(1), 34(1)(b) and 34(4)(a)(ii) apply to the documents. I am satisfied that some of the information exempted by the Agency under sections 34(1)(b) and 34(4)(a)(ii) is instead exempt under section 30(1).

As I am satisfied it is practicable to edit the documents to delete irrelevant information, I have decided to grant access to the documents in part.

A copy of the document indicating exempt information will be provided to the Agency for the purpose of it preparing a document for release to the Applicant in accordance with this decision.

My reasons for decision follow.

Sven Bluemmel
Information Commissioner

19 September 2022

Reasons for Decision

Background to review

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

WorkSafe Board agendas and minutes since 1 January 2019.
2. In its decision, the Agency identified 27 documents falling within the terms of the Applicant's request. It decided to grant access to nine documents in full and 18 documents in part. The Agency relied on the exemptions under sections 30(1), 32(1), 33(1), 34(1)(b) and 34(4)(a)(ii) to refuse access to information in the documents. The Agency's decision letter sets out the reasons for its decision.

Review application

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. The Applicant indicated they sought review of the information exempted under sections 34(1)(b) and 34(4)(a)(ii), and section 33(1) in relation to the names of external consultants from a specified firm. My review is therefore of the Agency's decision to apply those exemptions only.
5. I have examined copies of the documents subject to review.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered all communications and submissions received from the parties.
8. In undertaking my review, I have had regard to the object of the FOI Act, which is to create a general right of access to information in the possession of the Government or other public bodies, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.
9. I note Parliament's intention the FOI Act must be interpreted so as to further the object of the Act and any discretions conferred by the Act must be exercised, as far as possible, so as to facilitate and promote the disclosure of information in a timely manner and at the lowest reasonable cost.

Review of exemptions

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

10. 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**);¹ and
 - (b) such disclosure would be 'unreasonable'.

¹ Sections 33(1) and (2).

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

11. Information relating to an individual'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.²
12. 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.³
13. The Applicant is seeking review of the decision to exempt the names of external consultants from a specified firm. I am satisfied the names of the third parties is personal affairs information for the purposes of the FOI Act.

Would disclosure of the personal affairs information be unreasonable?

14. Consideration of whether disclosure would be unreasonable involves balancing the public interest in the disclosure of official information with the personal interest in privacy in the particular circumstances of a matter.
15. The nature of disclosure of a document under the FOI Act is unconditional and unrestricted, which means an applicant is free to disseminate widely or use a document as they choose.⁴
16. I note the decision of *Victoria Police v Marke*,⁵ in which the Victorian Court of Appeal 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'. 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 to a lesser or greater degree'.⁶
17. In determining whether disclosure of personal affairs information in the documents would be unreasonable, I have considered the following factors:
 - (a) the nature of the personal affairs information and the circumstances in which the information was obtained;
 - (b) the Applicant's interest in the information, and whether their purpose for seeking the information is likely to be achieved;
 - (c) whether any public interest would be promoted by release of the information;
 - (d) whether the individuals to whom the information relates object, or would be likely to object, to the release of the information;
 - (e) the likelihood of further disclosure of the information, if released; and

² Section 33(9).

³ *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].

⁴ *Victoria Police v Marke* [2008] VSCA 218 at [68].

⁵ *Ibid* at [76].

⁶ *Ibid* at [79].

- (f) whether disclosure would, or would be reasonably likely to, endanger the life or physical safety of any person.⁷
18. I have decided it would not be unreasonable to release the names of the third parties for the following reasons:
- (a) The information is not sensitive as it relates to the third parties in their professional roles, including their association with a consultancy firm, which is publicly available information.
 - (b) External consultants should be aware that involvement in advising government agencies attracts additional transparency in the interests of accountability for their roles in advising government. Nor do I consider there is any sensitivity in identifying their involvement in advising the Agency.
 - (c) There is no information before me that the third parties concerned would be reasonably likely to object to disclosure of their names, as the Agency did not consult with them to obtain their views.
 - (d) There is no information before me to indicate disclosure of the personal affairs information is reasonably likely to endanger the life or physical safety of any person.⁸
19. On balance, I have determined the names of the external third parties in the documents are not exempt under section 33(1).

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

20. Section 34(1)(b) provides a document is an exempt document if its disclosure under the FOI Act would disclose information acquired by an agency (or a Minister) from a business, commercial or financial undertaking and:
- (a) the information relates to other matters of a business, commercial or financial nature; and
 - (b) the disclosure of the information would be likely to expose the undertaking unreasonably to disadvantage.
21. In *Thwaites v Department of Human Services*,⁹ the Victorian Civil and Administrative Tribunal (VCAT) observed the phrase ‘information acquired’ in section 34(1) signifies the need for some positive handing over of information in some precise form.
22. VCAT has also recognised the words ‘business, commercial or financial nature’ have their ordinary meaning.¹⁰
23. Section 34(2) provides:

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;

⁷ Section 33(2A).

⁸ Section 33(2A).

⁹ (1999) 15 VAR 1.

¹⁰ *Gibson v Latrobe CC* [2008] VCAT 1340 at [25].

- (c) whether the information could be disclosed without causing substantial harm to the competitive position of the undertaking; and
- (d) whether there are any considerations in the public interest in favour of disclosure which outweigh considerations of competitive disadvantage to the undertaking, for instance, the public interest in evaluating aspects of government regulation of corporate practices or environmental controls—

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

24. I have also had regard to the decision in *Dalla Riva v Department of Treasury and Finance*,¹¹ in which VCAT held documents are exempt under section 34(1)(b) if their disclosure would:
 - (a) give competitors of a business undertaking a financial advantage;
 - (b) enable competitors to engage in destructive competition with a business undertaking; and
 - (c) would lead to the drawing of unwarranted conclusions as to a business undertaking's financial affairs and position with detrimental commercial and market consequences.
25. The documents contain information acquired by the Agency from various business undertakings.
26. The documents contain information of a business and financial nature, such as information about contractual and commercial relationships, contract rates, values and terms, and other contract-related information.
27. The Agency advised it did not consult with the business undertakings as it was considered impracticable given the number of undertakings noted in the documents. This means there is no information before me concerning the views of the undertakings about how disclosure of its business, commercial or financial information in the documents would expose the undertakings unreasonably to disadvantage.
28. I note the Agency provided a detailed confidential submission to OVIC in relation to the application of section 34(1)(b) to each part of the documents that the exemption was applied. Given its view that this information is exempt, I will not further detail it here.
29. On the information before me, I have decided disclosure would not unreasonably expose the business undertakings to disadvantage for the following reasons:
 - (a) While it may be that the information is not generally known to competitors of the undertakings, the information in the documents relating to the exact contractual terms and services to be provided to the Agency is, for the most part, not detailed enough such that its disclosure would:
 - give the undertaking's competitors a financial disadvantage;
 - enable competitors to engage in destructive competition with the undertaking; or
 - would lead to the drawing of unwarranted conclusions as to the undertaking's financial affairs and position with commercial and market consequences.¹²

¹¹ [2007] VCAT 1301 at [33].

¹² *Dalla Riva v Department of Treasury and Finance (General)* [2007] VCAT 1301 at [33].

- (b) Because the Agency did not consult with the business undertakings, its submission describes the potential, rather than probable, impact of disclosure. I also consider that the impact of disclosure has been presumed without the perspective of the undertakings. To be satisfied section 34(1)(b) applies, I must be satisfied that the impact of disclosure is certain enough that I can determine that it is 'likely' the undertakings would be exposed unreasonably to disadvantage. I do not have such information before me.
- (c) In my view, little advantage could be gained by competitors from the information in the documents, and in any case, the Applicant is not a competitor of any of the undertakings.
- (d) Further, if any disadvantage were to occur to any of the business undertakings, I consider the public interest in disclosure outweighs that disadvantage.
- (e) The public interest weighs in favour of disclosure, as the information relates to the expenditure of public funds. In my view such business relationships should be subject public scrutiny to support government accountability for the efficacy and cost effectiveness of such arrangements. Promoting good governance, transparency and accountability in government decision making and oversight of the spending of public funds is strongly in the public interest;
- (f) Private companies entering into contracts with government agencies should reasonably expect a great degree of transparency and accountability given the use of public funds for goods and services.
- (g) For the reasons given above, I do not consider that the disclosure of the information would be likely to expose any undertakings unreasonably to disadvantage.

30. The information in the documents is therefore not exempt under section 34(1)(b).

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

31. Section 34(4)(a)(ii) provides a document is an exempt document if it contains, in the case of an agency engaged in trade or commerce, information of a business, commercial or financial nature that would if disclosed under the FOI Act be likely to expose the agency unreasonably to disadvantage.

Is the Agency engaged in trade and commerce?

- 32. Whether an agency is engaged in trade or commerce depends on the facts and circumstances of each case.¹³
- 33. VCAT has held 'the terms 'trade' and 'commerce' are not words of art; rather they are expressions of fact and terms of common knowledge'.¹⁴ It has adopted the view of the Federal Court of Australia that these terms are 'of the widest import'.¹⁵
- 34. The fact an agency's main functions or activities may be described as 'governmental' does not preclude it from relying on the exemption under section 34(4)(a)(ii).¹⁶
- 35. While the phrase 'trade and commerce' may be interpreted broadly,¹⁷ the High Court of Australia has determined 'trade and commerce' means 'dealings in the course of those activities or transactions which of their nature bear a trading or commercial character'.¹⁸

¹³ *Stewart v Department of Tourism, Sport and the Commonwealth Games* [2003] VCAT 45 at [41].

¹⁴ *Pallas v Roads Corporation (Review and Regulation)* [2013] VCAT 1967 at [33].

¹⁵ *Pallas v Roads Corporation (Review and Regulation)* [2013] VCAT 1967 at [34]; *Re Ku-Ring-Gai Co-operative Building Society (No 12) Ltd* (1978) 22 ALR 621 at [649].

¹⁶ *Stewart v Department of Tourism, Sport and the Commonwealth Games* (2003) 19 VAR 363; [2003] VCAT 45 at [41]; *Fyfe v Department of Primary Industries* [2010] VCAT 240 at [23].

36. The exemption in section 34(4)(a)(ii) is intended to apply where a public sector body conducts itself, or part of its operations, in a manner similar to a commercial entity. Whether an agency is engaged in trade or commerce depends on the facts and circumstances of each case.
37. The Agency applied section 34(4)(a)(ii) to the following types of information (list not exhaustive):
- (a) terms and value of contracts for certain obligations, projects or services;
 - (b) approved funding or financial expenditure amounts;
 - (c) certain rates of premiums or other services provided by the Agency,
 - (d) actuarial valuations and predictions;
 - (e) Executive staff remuneration;
 - (f) premium rate options;
 - (g) rationale for spending;
 - (h) details of commercial relationships; and
 - (i) investment objectives (being about returns on investment).
38. For the most part, I am not satisfied, in relation to the specific activities described in the documents, that the Agency is engaged in trade or commerce.
39. While I accept the Agency engaged third party businesses to provide professional advice or services for a commercial fee, I consider that engaging in such transactions, which the Agency undertakes in support of its statutory functions, does not result in the agency being engaged in commercial enterprise, nor is it engaged in competition to provide services.
40. If such activities were to be routinely considered as an agency being engaged in trade or commerce, there would be no meaningful distinction between commercial and governmental activities – as is clearly intended by the FOI Act. All public sector agencies engage third party businesses to supply goods and services. If this were all that is required for an agency to be considered to be engaged in trade or commerce, then all agencies would be engaged in trade or commerce in performing all of their governmental or public sector functions. This would render the qualification “in the case of an agency engaged in trade or commerce” redundant.
41. I also consider the interpretation of section 34(4)(a)(ii), as relied on by the Agency, would be unnecessarily broad and be in conflict with the object of the FOI Act, which is to provide the community access to documents limited only by exceptions in cases where essential public, private and business interests require protection.
42. However, I consider that a small amount of the information in the documents relates to the Agency being engaged in trade or commerce, being information about its investment strategies. I have therefore considered whether disclosure of information concerning the Agency’s investment strategies would be likely to expose the Agency unreasonably to disadvantage.

¹⁷ *Re Ku-Ring-Gai Co-operative Building Society (No 12) Ltd* [1978] FCA 50; (1978) 36 FLR 134.

¹⁸ *Concrete Constructions (NSW) Pty Ltd v Nelson* (1990) 169 CLR 594 at 690, *Gibson v Latrobe City Council* [2008] VCAT 1340 at [35].

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

43. The provision contemplates disclosure of a document under the FOI Act may expose an agency to a certain measure of disadvantage, however, any such exposure must be unreasonable for section 34(4)(a)(ii) to apply.
44. In its decision, the Agency advises section 34(4)(a)(ii) has been applied to documents detailing its commercial arrangements and its 'investment strategies and resourcing considerations'. The Agency advises disclosure:

Some of the information to which s 34(4)(a)(ii) of the FOI Act has been applied discloses WorkSafe's approach to investing. Disclosing information of this kind could significantly challenge WorkSafe's ability to deliver some of its core statutory functions.

45. I am satisfied that disclosure of a small amount of specific information about the agency's investment strategies and objectives would be reasonably likely to expose the agency unreasonably to disadvantage. The agency invests in a competitive market and having its precise strategies and objectives available to that market may result in sub-optimal outcomes in the investment process.
46. I have therefore determined section 34(4)(a)(ii) applies to a small amount of information in the documents.

Section 30(1) – Internal working documents

47. 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; and
 - b) such matter must be made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government; and
 - c) disclosure of the matter would be contrary to the public interest.
48. The exemption does not apply to purely factual material in a document.¹⁹
49. I must also be satisfied releasing this information is not contrary to the public interest. This requires a 'process of the weighing against each other conflicting merits and demerits'.²⁰

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?

50. I am satisfied the documents disclose matter in the nature of advice, prepared by Agency officers.

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?

51. I am satisfied the documents were prepared in the course of the deliberative processes of the Agency in relation to internal deliberations on investment objectives, past, current at the time and ongoing contracts with third parties, program implementation updates and other related topics.

¹⁹ Section 30(3).

²⁰ *Sinclair v Maryborough Mining Warden* [1975] HCA 17; (1975) 132 CLR 473 at [485], adopted in *Department of Premier and Cabinet v Hulls* [1999] VSCA 117 at [30].

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

52. In deciding if release is contrary to the public interest, I must consider all relevant facts and circumstances remaining mindful that the object of the FOI Act is to facilitate and promote the disclosure of information.
53. In deciding whether the information exempted by the Agency would be contrary to the public interest, I have given weight to the following relevant factors:²¹
- (a) the right of every person to gain access to documents under the FOI Act;
 - (b) the degree of sensitivity of the issues discussed in the documents and the broader context giving rise to the creation of the documents;
 - (c) the stage or a decision or status of policy development or a process being undertaken at the time the communications were made;
 - (d) whether disclosure of the documents would be likely to inhibit communications between agency officers, essential for the agency to make an informed and well-considered decision or participate fully and properly in a process in accordance with the agency's functions and other statutory obligations;
 - (e) whether disclosure of the documents would give merely a part explanation, rather than a complete explanation for the taking of a particular decision or the outcome of a process, which the agency would not otherwise be able to explain upon disclosure of the documents;
 - (f) the impact of disclosing documents that contain deliberations on investments and business contracts and their dollar value, including disclosure not clearly or accurately representing a final position or decision reached by the agency at the conclusion of a decision or process as well as the disclosure of information that relates to investment or procurement decisions that are still current or imminent; and
 - (g) the public interest in the community being better informed about the way in which the agency carries out its functions, including its deliberative, consultative and decision-making processes in the expenditure of public funds.
54. I have determined disclosure of information relating to the Agency's normal business practices as well as details of previous agreements and contracts with third parties would not be contrary to the public interest for the following reasons:
- (a) The purpose of the documents is to record official decisions and motions passed by the Board of the Agency. While in some instances, the information refers to projects yet to be concluded, or proposals not yet adopted by the Agency, the information goes no further than providing a record of settlement, or highlights issues to be monitored, or sets out a deadline for future discussion. In such instances, it is difficult to accept release could be confusing or misleading to a reader.
 - (b) In some instances, the documents describe considerations and reasoning for entering into contracts. Where the contract or agreement has run its course or has been completed, I am of the view disclosure of this information would not have a negative impact on any future government or Agency negotiations about the matter.

²¹ *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

- (c) In circumstances where the documents are in final stage, I do not consider their disclosure would negatively impact on the ability of Agency officers to provide future similar advice given the responsibilities of public sector employees under the Public Sector Values, including to provide frank, impartial and timely advice to the Government (Responsiveness); making decisions and providing advice on merit and without bias, caprice, favouritism or self interest (Impartiality); submitting themselves to appropriate scrutiny (Accountability); and making decisions and providing advice consistent with human rights (Human Rights).²²
 - (d) Further, I consider the public interest in the community being informed about the way in which the Agency performs its statutory function weighs in favour of releasing the information, particularly where the information would contribute to greater public scrutiny, and community participation in the implementation of projects.
 - (e) I do not accept disclosure of certain information in the documents could mislead the Applicant or members of the public. Rather, I consider members of the public are capable of understanding the role of the Agency to make decisions regarding the provision of services to the Agency by third parties.
 - (f) I am not persuaded that disclosure of these documents could be misleading; members of the public are capable of understanding the Agency will make decisions based on relevant information and data obtained from a range of sources.
55. I have however determined disclosure of information relating very specifically to the Agency's potential business practices including ongoing and future agreements and contracts with third parties would be contrary to the public interest for the following reasons:
- (a) The release of details relating to dollar amounts in ongoing and future contracts has the potential to compromise the agency's ability to obtain best value for money in the supply of specific services.
 - (b) The information relating to ongoing or future agreements between the agency and third parties includes forecasted amounts that may be subject to variation due to budgetary and policy changes. Should the amounts be disclosed I am satisfied it may negatively impact the agency's negotiating position in the future.
56. As I have determined it would be contrary to the public interest to disclose certain information, some of the information that was previously considered under sections 34(1)(b) and 34(4)(a)(ii) is instead exempt under section 30(1).
57. In relation to all other remaining information, I am not satisfied disclosure of this information would be contrary to public interest and is therefore not exempt under section 30(1).

Section 25 – Deletion of exempt or irrelevant information

58. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable for the agency or Minister to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
59. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'²³ and the effectiveness of the deletions. Where

²² Section 7(1) of the *Public Administration Act 2004* (Vic).

²³ *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

deletions would render the document meaningless, they are not 'practicable', and release of the document is not required under section 25.²⁴

60. As noted above, the Applicant only sought review of the information exempted under sections 34(1)(b), 34(4)(a)(ii) and 33(1) in relation to employees of a specified company, however I have determined certain information exempted under section 34 should instead be considered under section 30(1). The remaining information that was exempted by the Agency under sections 30(1), 32(1) and 33(1) is to remain deleted in accordance with section 25, as it is irrelevant information for the purposes of this review.
61. I am satisfied it is practicable to provide the Applicant with edited copies of documents with irrelevant information deleted, as it would not require substantial time or effort, and the edited documents will retain meaning.

Conclusion

62. On the information before me, I am satisfied the relevant information in the documents is not exempt under sections 33(1), 34(1)(b) and 34(4)(a)(ii).
63. As it is practicable to edit the documents to delete the irrelevant information in accordance with section 25, I have determined to release the documents in part.
64. A copy of the document indicating exempt information will be provided to the Agency for the purpose of it preparing a document for release to the Applicant in accordance with this decision.

Review rights

65. If either party to this review is not satisfied with my decision, they are entitled to apply to the VCAT for it to be reviewed.²⁵
66. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.²⁶
67. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.²⁷
68. 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.
69. 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.²⁸

Third party review rights

70. As I have determined to release documents that contain information of a business, financial, commercial nature relating to a business undertaking, and personal affairs information of third parties, if practicable, I am required to notify those persons of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.²⁹

²⁴ *Honeywood v Department of Human Services* [2006] VCAT 2048 [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140], [155].

²⁵ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

²⁶ Section 52(5).

²⁷ Section 52(9).

²⁸ Sections 50(3F) and (3FA).

²⁹ Sections 49P(5), 50(3), 50(3A) and 52(3).

71. The relevant third parties will be notified of my decision and are entitled to apply to VCAT for a review within 60 days from the date they are given notice.

When this decision takes effect

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

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1.	Undated	Board Meeting Minutes – Table of Contents	1	Released in full	Not subject to review	
2.	28 February 2019	Board Meeting No. 308 – Minutes	16	Released in part Sections 25, 32(1), 33(1), 34(1)(b) and 34(4)(a)(ii)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	<p>Section 33(1): I am not satisfied the names of the two consultants exempted by the Agency under section 33(1) would be unreasonable to release for the reasons set out above in the Notice of Decision.</p> <p>Section 34(1)(b): The document contains information acquired by the Agency from a business undertaking and constitutes matters of a business or commercial nature. I am satisfied its disclosure would not be likely to expose the business undertaking unreasonably to disadvantage for the reasons provided in the Notice of Decision, above. Accordingly, the document is not exempt under section 34(1)(b).</p> <p>Section 34(4)(a)(ii): I am not satisfied the Agency is engaged in trade or commerce in relation to the information in the document. Rather, it is undertaking its governmental function. However, even if it were engaged in trade or commerce, I do not consider disclosure would be likely to expose the Agency unreasonably to disadvantage for reasons as set out in my decision</p>

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p>above. The information is therefore not exempt under section 34(4)(a)(ii).</p> <p>Section 25: The Applicant does not seek access to certain information in the documents, as outlined in the Notice of Decision above. This includes information the Agency determined exempt under sections 30(1) and 32(1), as well as personal affairs information under section 33(1) that does not relate to specific contractors employed at a named company. Such information is therefore irrelevant to the request and is to be deleted from the document.</p>
3.	26 March 2019	Board Meeting No. 309 – Minutes	13	<p>Released in part</p> <p>Sections 33(1), 34(1)(b) and 34(4)(a)(ii)</p>	<p>Release in part</p> <p>Sections 34(4)(a)(ii), 30(1), 25</p> <p>The document is to be released with the marked exempt and irrelevant information deleted in accordance with section 25.</p>	<p>Section 33(1): See comments for Document 2.</p> <p>Section 34(1)(b): See comments for Document 2.</p> <p>Section 34(4)(a)(ii): I am satisfied certain information relates to the Agency being engaged in trade or commerce. I consider disclosure of this information concerning the Agency's investment strategies would be likely to expose the Agency unreasonably to disadvantage.</p> <p>Section 30(1): As outlined above, I am</p>

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						satisfied certain information exempted by the Agency under section 34(4)(a)(ii) is exempt instead under section 30(1). Section 25: See comments for Document 2.
4.	23 May 2019	Board Meeting No. 310 – Minutes	19	Released in part Sections 33(1), 34(1)(b) and 34(4)(a)(ii)	Release in part Sections 30(1), 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 34(1)(b): See comments for Document 2. Section 34(4)(a)(ii): See comments for Document 2. Section 30(1): See comments for Document 3. Section 25: See comments for Document 2.
5.	21 June 2019	Board Meeting No. 311 – Minutes	15	Released in part Sections 33(1), 34(1)(b) and 34(4)(a)(ii)	Release in part Sections 30(1), 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 34(1)(b): See comments for Document 2. Section 34(4)(a)(ii): See comments for Document 2. Section 30(1): See comments for Document 3. Section 25: See comments for Document 2.
6.	27 August	Board Meeting No.	19	Released in part	Release in part	Section 33(1): See comments for

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
	2019	312 – Minutes		Sections 33(1), 34(1)(b) and 34(4)(a)(ii)	Sections 30(1), 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Document 2. Section 34(1)(b): See comments for Document 2. Section 34(4)(a)(ii): See comments for Document 2. Section 30(1): See comments for Document 3. Section 25: See comments for Document 2.
7.	24 October 2019	Board Meeting No. 313 – Minutes	21	Released in part Sections 32(1), 33(1), 34(1)(b) and 34(4)(a)(ii)	Release in part Sections 30(1), 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 34(1)(b): See comments for Document 2. Section 34(4)(a)(ii): See comments for Document 2. Section 30(1): I am satisfied certain information exempted by the Agency under sections 34(1)(b) and 34(4)(a)(ii) is exempt instead under section 30(1). Section 25: See comments for Document 2.
8.	11 December 2019	Board Meeting No. 314 – Minutes	17	Released in part Sections 33(1) and 34(4)(a)(ii)	Release in part Sections 30(1), 25 The document is to be released	Section 34(4)(a)(ii): See comments for Document 2. Section 30(1): See comments for

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					with irrelevant information deleted in accordance with section 25.	Document 3. Section 25: See comments for Document 2.
9.	5 February 2020	Board Meeting No. 314A – Minutes	4	Released in part Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 25: See comments for Document 2.
10.	25 February 2020	Board Meeting No. 315 – Minutes	22	Released in part Sections 33(1) and 34(4)(a)(ii)	Release in part Sections 34(4)(a)(ii), 30(1), 25 The document is to be released with the marked exempt and irrelevant information deleted in accordance with section 25.	Section 34(4)(a)(ii): See comments for Document 3. Section 30(1): See comments for Section 25: See comments for Document 2.
11.	19 March 2020	Board Meeting No. 316 – Minutes	10	Released in part Sections 30(1), 33(1) and 34(4)(a)(ii)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 33(1): See comments for Document 2. Section 34(4)(a)(ii): See comments for Document 2. Section 25: See comments for Document 2.

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
12.	28 May 2020	Board Meeting No. 317 – Minutes	24	Released in part Sections 33(1), 34(1)(b) and 34(4)(a)(ii)	Release in part Sections 30(1), 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 33(1): See comments for Document 2. Section 34(1)(b): See comments for Document 2. Section 34(4)(a)(ii): See comments for Document 2. Section 30(1): See comments for Document 7. Section 25: See comments for Document 2.
13.	30 June 2020	Board Meeting No. 318 – Minutes	18	Released in part Sections 33(1) and 34(4)(a)(ii)	Release in part Sections 30(1), 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 34(4)(a)(ii): See comments for Document 2. Section 30(1): See comments for Document 3. Section 25: See comments for Document 2.
14.	26 August 2020	Board Meeting No. 319 – Minutes	20	Released in part Sections 33(1) and 34(4)(a)(ii)	Release in part Sections 30(1), 25 The document is to be released with irrelevant information deleted in accordance with	Section 34(4)(a)(ii): See comments for Document 2. Section 30(1): See comments for Document 3. Section 25: See comments for

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
					section 25.	Document 2.
15.	28 February 2019	Board Meeting No. 308 – Agenda	6	Released in part Section 34(4)(a)(ii)	Release in full	Section 34(4)(a)(ii): See comments for Document 2.
16.	26 March 2020	Board Meeting No. 309 – Agenda	2	Released in full	Not subject to review	
17.	23 May 2019	Board Meeting No. 310 – Agenda	5	Released in full	Not subject to review	
18.	21 June 2019	Board Meeting No. 311 – Agenda	5	Released in full	Not subject to review	
19.	27 August 2019	Board Meeting No. 312 – Agenda	6	Released in full	Not subject to review	
20.	24 October 2020	Board Meeting No. 313 – Agenda	5	Released in part Section 33(1)	Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	Section 25: See comments for Document 2.
21.	11 December	Board Meeting No. 314 – Agenda	6	Released in full	Not subject to review	

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
	2019					
22.	25 February 2019	Board Meeting No. 315 – Agenda	7	Released in part Section 34(4)(a)(ii)	Release in part Sections 34(4)(a)(ii), 25 The document is to be released with the marked exempt and irrelevant information deleted in accordance with section 25.	Section 34(4)(a)(ii): See comments for Document 3.
23.	19 March 2020	Board Meeting No. 316 – Agenda	3	Released in part Section 33(1)	Release in full	Section 33(1): See comments for Document 2.
24.	28 May 2020	Board Meeting No. 317 – Agenda	6	Released in part Section 34(4)(a)(ii)	Release in full	Section 34(4)(a)(ii): See comments for Document 2.
25.	30 June 2020	Board Meeting No. 318 – Agenda	5	Released in full	Not subject to review	
26.	26 August 2020	Board Meeting No. 319 – Agenda	6	Released in full	Not subject to review	
27.	5 February 2020	Extra Ordinary Board Meeting No 314A - Agenda	2	Released in full	Not subject to review	