

Notice of Decision and Reasons for Decision

Applicant:	'EX8'
Agency:	City of Melbourne
Decision date:	19 December 2022
Exemptions considered:	Sections 29(1)(b), 30(1), 33(1), 35(1)(b)
Citation:	'EX8' and City of Melbourne (<i>Freedom of Information</i>) [2022] VICmr 245 (19 December 2022)

FREEDOM OF INFORMATION – council documents – local government – whether a local government agency is a 'government of the State' – Future Melbourne Committee – Sister City Relationship — communications with foreign States – international relations – Saint Petersburg, Russia – internal deliberations – public interest considerations – *Interpretation of Legislation Act 1984* (Vic) – *Constitution Act 1975* (Vic)

All references to legislation in this document are to the *Freedom of Information Act 1982* (Vic) (**FOI Act**) unless otherwise stated.

Notice of Decision

I have conducted a review under section 49F of the Agency's decision to refuse access to documents requested by the Applicant under the FOI Act.

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

While I am satisfied certain information is exempt from release under sections 30(1) and 33(1), I am not satisfied information is exempt from release under sections 29(1)(b) or 35(1)(b).

Where I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with irrelevant and exempt information deleted in accordance with section 25, access to a 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 December 2022

Reasons for Decision

Background to review

1. On 21 April 1989, an agreement was formed between the cities of Melbourne and Saint Petersburg, Russia (then Leningrad) for cooperation in the fields of economy, culture, sports, education and exchange exhibitions and information on activities of local authorities.¹ This agreement formed a Sister City Relationship between Melbourne and Saint Petersburg.
2. On 1 March 2022, the Agency's Future Melbourne Committee unanimously determined to publish a statement on its website, announcing its decision to suspend its sister city relationship with Saint Petersburg for an indefinite period and to condemn Russia's invasion of Ukraine.²
3. The Agency subsequently published on its website:

Russia launched a large-scale invasion of Ukraine on 24 February 2022.

On 1 March 2022, the City of Melbourne determined that it would suspend its sister city relationship with St Petersburg, Russia, for an indefinite period.

The City of Melbourne stands with the people of Ukraine, the people of St Petersburg, and victims of war everywhere. We condemn the acts of violent aggression by the Russian Government.

All Council support for activities by civic, cultural and community organisations requiring cooperation with the government of St Petersburg, and all formal cooperation between the governments of the sister cities, is suspended.³

4. This review concerns the Applicant's request to the Agency seeking access to:

All City of Melbourne documents, correspondence, meeting Application notes and minutes in relation to the "sister city" relationship between Melbourne and St Petersburg which were produced from [date range].
5. In further correspondence with the Agency, the Applicant advised they do not seek access to any individual's contact details; however, they otherwise seek access to personal affairs information.
6. The Agency identified 11 documents falling within the terms of the Applicant's request and granted access to two documents in full, and refused access to one document in part and eight documents in full under sections 29(1)(b), 30(1), 33(1) and 35(1)(b). The Agency's decision letter sets out the reasons for its decision.

Review application

7. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
8. I have examined a copy of the documents subject to review.

¹ City of Melbourne, *Management report to Council – Melbourne St Petersburg sister city connection – Agenda item 6.8, 25* (February 2014) at <https://www.melbourne.vic.gov.au/about-council/committees-meetings/meeting-archive/meetingagendaitemattachments/638/11287/feb14%20ccl%20agenda%20item%206.8%20melbourne%20st%20petersburg%20sister%20city%20connections.pdf>.

² City of Melbourne, *Future Melbourne Committee Minutes Meeting Number 29* (1 March 2022) at <https://www.melbourne.vic.gov.au/about-council/committees-meetings/meeting-archive/MeetingAgendaItemAttachments/970/MAR22%20FMC1%20MINUTES%20CONFIRMED.pdf>.

³ City of Melbourne, *International connections* at <https://www.melbourne.vic.gov.au/business/grow-business/international-opportunities/international-connections/Pages/international-connections.aspx?k=st+petersburg&type=web>.

9. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
10. I have considered all communications and submissions received from the parties.
11. 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.
12. 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.

Preliminary view and intention to make a fresh decision

13. On [date], the Agency was provided with my preliminary view in relation to the merits of the review application and likely decision that would be made should the matter proceed to a formal decision. The preliminary view set out the following matters:
 - (a) section 29(1)(b) does not apply to Victorian local government agencies; and
 - (b) while the internal correspondence between Agency officers is likely to be exempt from release under section 30(1), correspondence to and from the city of Saint Petersburg is unlikely to be exempt from release under sections 29(1)(b), 30(1) or 35(1)(b).
14. The Agency was invited to consider making a fresh decision at its own initiative, release further information or provide a further submission in response to the preliminary view.
15. On [date], the Agency notified OVIC that it intended to reconsider its original decision and make a fresh decision in this matter.
16. The Agency was required to make its fresh decision by [date]. On [date], the Agency notified OVIC that it decided not to make a fresh decision in this matter as it disagreed with OVIC's interpretation of the exemptions as set out in the preliminary view and sought to undertake consultation with third parties.
17. As the Agency decided not to make a fresh decision, I recommenced the review based on the Agency's original decision in accordance with section 49MA(3).

Review of exemptions

Section 29(1)(b) – Documents containing matter communicated by any other State

18. Section 29(1)(b) provides:
 - (1) A document is an exempt document if disclosure under this Act would be contrary to the public interest and disclosure—
 - (b) would divulge any information or matter communicated in confidence by or on behalf of the government of another country or of the Commonwealth or of any other State or Territory to the government of the State or Territory or a person receiving a communication on behalf of that government.
19. Section 29(2) provides in deciding whether a document is exempt from release under section 29(1), if practicable, an agency must, seek the views of the other State on whether the document should be disclosed.

Does section 29(1)(b) apply to a local government agency?

20. Section 29(1)(b) is concerned with communications between a government of another country, or the Commonwealth government or a State or Territory government, with the 'government of the State or Territory' including a person receiving it on behalf of that government.
21. For section 29(1)(b) to apply to the documents subject to review, I must be satisfied the phrase 'the government of the State' includes a Victorian local government agency.
22. The phrase 'government of the State' is not defined in the FOI Act.
23. This phrase 'the government of the State' is to be construed by reference to the purpose of the provision.⁴ The purpose of section 29(1)(b) is to protect and maintain international and interstate relations.
24. Section 38 of the *Interpretation of Legislation Act 1984* (Vic) states that the term 'State' in all Acts and subordinate instruments means the 'State of Victoria', unless the contrary intention appears.
25. The *Constitution Act 1975* (Vic) describes local government as a 'distinct' tier of government. This means local government is a separate level of government from that of the State and Commonwealth governments.
26. Based on the analysis above, I am satisfied the phrase 'government of the State' in section 29(1)(b), applies to the State of Victoria and does not include a Victorian local government agency. Accordingly, section 29(1)(b) does not apply to the Agency.
27. For completeness, I will consider the remaining requirements of the exemption under section 29(1)(b).

Would disclosure divulge information communicated in confidence by or on behalf of the government of another country?

28. In considering whether the information was communicated in confidence to the Agency, I have considered the content of the communications and the surrounding context.
29. The information to which the Agency refused access under section 29(1)(b) is correspondence received from representatives of the city of Saint Petersburg in response to a letter sent by the [the Agency] advising of the Future Melbourne Committee's decision to suspend the Sister City Relationship for an indefinite period.
30. The Agency did not consult with persons representing the city of Saint Petersburg and I accept it was not practicable to do so in the circumstances of this matter.
31. On the matter of confidentiality, the Agency submits:

As noted in the decision letter, the context of the request and the circumstances in which the documents were generated makes it abundantly clear that the St. Petersburg Government would expect the Council to treat its information confidentially and have no anticipation whatsoever that its information would be made available to an external party. This has implications not only for managing relations between the Council and St. Petersburg but with foreign governments more broadly particularly where those governments communicate with the Council openly and in good faith on such sensitive political matters.

The confidence which the representatives of foreign governments place in the Council would be significantly undermined if there was any perception that it might disclose their information under the FOI Act and potentially make it available to the world at large.

⁴ *Minogue v Department of Justice* [2004] VCAT 1194.

32. Having carefully reviewed the document and considered the surrounding circumstances of the communication, I am of the opinion there is no express or implied confidentiality in the letter sent from the [Agency] to Saint Petersburg, nor in Saint Petersburg's letter in response, despite the sensitive political context. For example, there is no request in either correspondence for the content to be held in confidence. Further, while I acknowledge the political context, the exchange of such letters means either agency would be at liberty to disclose the document or its contents more broadly or publicly, should it wish to do so.
33. Accordingly, I am satisfied the requirement under section 29(1)(b) that disclosure of the documents would divulge information communicated in confidence, is not met.
34. In any case, I will proceed to consider whether disclosure of the documents would be contrary to the public interest.

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

35. The Agency submits:

...the complexities of this matter centre around the circumstances in which the documents were generated or received, namely in the course of the Council managing its diplomatic relations with a foreign government in a highly politically sensitive context... In circumstances where the interests of so many community members are at stake and difficult to balance, it is absolutely imperative that the Council can engage in full and unimpeded communications on such matters without any concern those communications could be made available to the world at large and, therefore, undermine its ability to effectively manage diplomatic relations with foreign governments, and in the current circumstances what is clearly already a fragile relationship between the Council and St. Petersburg.

The difficult decision to suspend indefinitely the sister-city relationship with St. Petersburg and the independence required of the deliberative processes in formulating that decision would be significantly undone if the documents are disclosed... As noted in the decision letter, the context of the request and the circumstances in which the documents were generated makes it abundantly clear that the St. Petersburg Government would expect the Council to treat its information confidentially and have no anticipation whatsoever that its information would be made available to an external party. This has implications not only for managing relations between the Council and St. Petersburg but with foreign governments more broadly particularly where those governments communicate with the Council openly and in good faith on such sensitive political matters.

36. Sister City Relationships are a symbolic relationship but also form important international cultural, economic and trade relationships between cities.
37. The military conflict in Ukraine has significantly challenged Australia's diplomatic relationship with Russia. The Commonwealth Government has publicly condemned Russia's invasion of Ukraine and issued the following direction regarding bilateral engagements with Russia:

In its international engagement, the Australian Government is sending a clear signal to Russia and its supporters that Russia's actions will have severe political, economic and reputational consequences. The Australian Government urges all state, territory and local governments and public universities to put on hold existing bilateral cooperation with the Russian and Belarusian governments, including Russian and Belarusian subnational government entities, and to reconsider new engagement.⁵

38. Following Russia's invasion of Ukraine on 24 February 2022, many cities around the world have severed or suspended Sister City Relationships within Russia.⁶ In the context of severing or

⁵ Department of Foreign Affairs and Trade, *Invasion of Ukraine by Russia* at <https://www.dfat.gov.au/crisis-hub/invasion-ukraine-russia>.

⁶ New York Times, *Cities Move to Sever 'Sister City' Ties with Russian Governments*, Sophie Kasakove (18 March 2022) at <https://www.nytimes.com/2022/03/18/us/russian-government-sister-cities-ukraine.html>; The Guardian (Australia), *Friend or Foe? The UK cities cutting ties with Russian Twins*, Matthew Weaver (24 March 2022) at <https://www.theguardian.com/uk-news/2022/mar/23/uk-cities-cutting-ties-with-russian-twins>; The Japan Times, *Local government in Japan halt Russian sister city exchanges but bulk at severing ties* (20 March 2022) at <https://www.japantimes.co.jp/news/2022/03/20/national/sister-cities/>.

suspending these relationships during a time of military conflict, the act of doing so sends a strong message to the Russian government condemning its invasion of Ukraine.

39. With respect to the Future Melbourne Committee's decision to suspend the Sister City Relationship between the cities of Melbourne and Saint Petersburg, Councillors on that Committee voted unanimously to suspend the relationship and in doing so, 'condemn[ed] the acts of violent aggression by the Russian Government'. The [Agency's] letter to the city of Saint Petersburg was sent after the Future Melbourne Committee Meeting.
40. In light of the above context, the Committee's decision to suspend the Sister City relationship was neither unexpected nor controversial. In my view, and based on the information before me, disclosure of the correspondence from the city of Saint Petersburg in response to the decision to suspend the Sister City Relationship is unlikely to further undermine diplomatic relations between the cities.
41. With respect to the specific content in the city of Saint Petersburg's letter in response, it does not reveal information that Russian representatives have not otherwise communicated publicly with respect to the war in Ukraine.⁷
42. Further, I consider there is a public interest in the outcome of a decision of this nature, concerning the City of Melbourne and made by the Future Melbourne Committee, being accessible to the public given the representation of the City of Melbourne on behalf of its ratepayers and central business district businesses and traders. Public access to such communications is a key part of democratic and open government. As stated above, while I acknowledge the political sensitivities of the war in Ukraine and the impact on the relationship between the cities of Melbourne and Saint Petersburg, I do not consider the public interest would be served by maintaining secrecy over such documents.
43. Accordingly, I am satisfied the requirement under section 29(1)(b) that disclosure of the documents would be contrary to the public interest is not met and the documents are not exempt from release under section 29(1)(b).
44. The Schedule of Documents in **Annexure 1** outlines my decision in relation to section 29(1)(b).

Section 30(1) – Internal working documents

45. Section 30(1) has three requirements:
 - (a) the document must disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister;
 - (b) such matter must be made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government; and
 - (c) disclosure of the matter would be contrary to the public interest.
46. The exemption does not apply to purely factual material in a document.⁸

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?

⁷ British Broadcasting Corporation, *Why did Russia invade Ukraine and has Putin's war failed?* Paul Kirby (16 November 2022) at <https://www.bbc.com/news/world-europe-56720589>.

⁸ Section 30(3).

47. For the requirements of section 30(1) to be met, a document must contain matter in the nature of opinion, advice or recommendation prepared by an agency officer, or consultation or deliberation between agency officers.
48. It is not necessary for a document to be in the nature of opinion, advice or recommendation. Rather, the issue is whether release of the document would disclose matter of that nature.⁹
49. The exempted information is communications between Agency officers concerning the drafting of a letter to the city of Saint Petersburg advising of the decision to suspend the Sister City Relationship, and correspondence between Agency officers following receipt of the city of Saint Petersburg's reply.
50. I am satisfied the documents disclose matter in the nature of opinion, and consultation and deliberation between 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. The term 'deliberative process' is interpreted broadly and includes any of the processes of deliberation or consideration involved in the functions of an agency, Minister or government.¹⁰

52. In *Re Waterford and Department of Treasury (No.2)*,¹¹ the former Victorian Administrative Appeals Tribunal held:

... "deliberative processes" [is] wide enough to include any of the processes of deliberation or consideration involved in the functions of an agency... In short, ...its thinking processes — the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

53. I am satisfied the documents were made in the course of, and for the purpose of, the deliberative processes involved in the Agency's consideration of its international agreements with a Sister City concerning deliberation and a decision made by the Future Melbourne Committee.

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

54. 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.
55. In deciding whether the information exempted by the Agency would be contrary to the public interest, the following are relevant considerations:¹²
 - (a) the right of every person to gain access to documents under the FOI Act;
 - (b) the degree of sensitivity of the issues discussed in the documents and the broader context giving rise to the creation of the documents;
 - (c) the stage of a decision or status of policy development or a process being undertaken at the time the communications were made;
 - (d) whether disclosure of the documents would be likely to inhibit communications between Agency officers, essential for the agency to make an informed and well-considered decision or

⁹ *Mildenhall v Department of Education* (1998) 14 VAR 87 at 90.

¹⁰ *Brog v Department of Premier and Cabinet* (1989) 3 VAR 201 at 208.

¹¹ [1984] AATA 67; (1984) 5 ALD 588; 1 AAR 1 at [58].

¹² *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483 at 488.

participate fully and properly in a process in accordance with the Agency's functions and other statutory obligations;

- (e) whether disclosure of the documents would give merely a part explanation, rather than a complete explanation for the taking of a particular decision or the outcome of a process, which the Agency would not otherwise be able to explain upon disclosure of the documents;
- (f) the impact of disclosing documents in draft form, including disclosure not clearly or accurately representing a final position or decision reached by the Agency at the conclusion of a decision or process; and
- (g) the public interest in the community being better informed about the way in which the Agency carries out its functions, including its deliberative, consultative and decision making processes and whether the underlying issues require greater public scrutiny.

56. As noted above with respect to section 29(1)(b), the decision to suspend the Sister City relationship was neither unexpected nor controversial. Disclosure of the correspondence from the city of Saint Petersburg in response to the Future Melbourne Committee's decision is unlikely to undermine the relationship between the cities further given the nature of the war in Ukraine and the Australian Government's military support for Ukraine. Accordingly, I am not satisfied it would be contrary to the public interest to disclose the correspondence from the city of Saint Petersburg to the City of Melbourne.

57. With respect to the correspondence exchanged between Agency officers prior to and after the city of Saint Petersburg's response, I am satisfied its disclosure would be contrary to the public interest. In sensitive matters such as this, I consider there is a public interest in agencies being able to undertake a thorough and considered approach in its internal deliberation. There is nothing before me to suggest that the correspondence in this instance requires greater public scrutiny.

58. I consider the public interest is in transparency around the decision to suspend the Sister City Relationship and Saint Petersburg's response is fulfilled by release of the letters and in material publicly available, such as the recording of the Future Melbourne Committee meeting and related material and the Agency's statement published on its website.¹³

59. Accordingly, I am satisfied internal correspondence between Agency officers is exempt from release under section 30(1).

60. The Schedule of Documents in **Annexure 1** outlines my decision in relation to section 30(1).

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

61. 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**);¹⁴ and
- (b) such disclosure would be 'unreasonable'.

¹³ City of Melbourne, *Future Melbourne Committee 1 March 2022*, at <https://www.melbourne.vic.gov.au/about-council/committees-meetings/meeting-archive/Pages/Future-Melbourne-Committee-1-March-2022.aspx>; City of Melbourne, *International connections* at <https://www.melbourne.vic.gov.au/business/grow-business/international-opportunities/international-connections/Pages/international-connections.aspx?k=st+petersburg&type=web>.

¹⁴ Sections 33(1) and 33(2).

Do the documents contain personal affairs information of a third party?

62. 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.¹⁵
63. A document will disclose a third party's personal affairs information if it is capable, either directly or indirectly, of identifying that person. This is to be interpreted by reference to the capacity of any member of the public to identify a third party.¹⁶
64. The documents contain names and contact details for Agency officers and representatives of the city of Saint Petersburg. Such information is personal affairs information within the meaning of section 33(9).

Would disclosure of personal affairs information be unreasonable?

65. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the personal interest in privacy in the particular circumstances of a matter.
66. In *Victoria Police v Marke*,¹⁷ 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'.¹⁸ 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'.¹⁹
67. In determining whether disclosure of the personal affairs information would be unreasonable in the circumstances, I have considered the following factors:
 - (a) the nature of the personal affairs information;
 - (b) the circumstances in which the information was obtained;
 - (c) the Applicant's interest in the information and whether their purpose for seeking the information is likely to be achieved;
 - (d) whether any public interest would be promoted by release of the personal affairs information;
 - (e) the likelihood of disclosure of information, if released;
 - (f) whether the individuals to whom the information relates object, or would be likely to object, to the release of the information; and
 - (g) whether disclosure of the information would or would be reasonably likely to endanger the life or physical safety of any person.²⁰
68. With respect to personal affairs information of Agency officers, generally speaking, I consider there is nothing particularly sensitive about disclosing the identity of a Victorian public sector employee where their personal affairs information concerns or arises in the context of them performing their

¹⁵ Section 33(9).

¹⁶ *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].

¹⁷ [2008] VSCA 218 at [76].

¹⁸ *Ibid.*

¹⁹ *Ibid* at [79].

²⁰ Section 33(2A).

ordinary duties, is already known to an applicant or is publicly available. However, it is necessary to look at the context within and purpose for which the personal affairs information is recorded. In matters of a sensitive nature, whether disclosure would be unreasonable needs to be carefully considered in all of the circumstance.

69. In this matter, the identity of Agency officers is not sensitive. However, much of the correspondence involves non-executive Agency officers, who are unlikely to have the authority to act on behalf of the Agency and be accountable for its decision making with respect to the decision to suspend the Sister City Relationship. It is publicly known the Future Melbourne Committee decided to suspend the Sister City Relationship and the Agency released the identity of the officer who informed Saint Petersburg of that decision, being the [specified person] (see **Document 11**).
70. Therefore, Agency officers who prepared the draft correspondence and who exchanged correspondence following receipt of Saint Petersburg's reply should not necessarily be subject to the same level of public scrutiny as those who were decision makers.
71. Further, as I have decided to disclose the letter received from the city of Saint Petersburg, albeit in part, and having considered that the substance of this letter has already been released to the Applicant, I consider the public interest in transparency and accountability regarding the Agency's decision to suspend the Sister City Relationship has been fulfilled without the need to disclose the personal affairs information of third parties.
72. I am satisfied that no further public interest will be promoted by release of personal affairs information in this matter. Rather, I consider disclosure of the personal affairs information would serve the Applicant's private interest only.
73. In determining whether the disclosure of a document would involve the unreasonable disclosure of information relating to the personal affairs of any person, I must consider whether the disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person.²¹ I do not consider this is a relevant factor in this matter.
74. In relation to the personal affairs information of Agency officers, although this information was recorded or obtained in the process of their professional duties, I consider it is reasonably likely they would object to the release of their personal affairs information on grounds the information was obtained in a sensitive context. However, as I do not have their views before me, I have not given significant weight to this factor.
75. On balance of these factors, I have determined it would be unreasonable to disclose the personal affairs information in the documents; and it is exempt from release under section 33(1).
76. The Schedule of Documents in **Annexure 1** outlines my decision in relation to section 33(1).

Section 35(1)(b) – Information obtained in confidence

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

²¹ Section 33(2A).

Was the information obtained in confidence?

78. Whether information communicated by an individual to an agency was communicated in confidence is a question of fact.²²
79. In doing so, it is necessary to consider the position from the perspective of the communicator, noting confidentiality can be expressed or implied from the circumstances of a matter.²³
80. Generally, section 35(1)(b) only to information communicated to an agency from an outside source applies, rather than from an officer within an agency. However, in certain circumstances, section 35(1)(b) may apply to confidential information communicated to an agency by an agency officer. For example, in the context of an internal complaint and investigations, or confidential communications between different parts of an agency.²⁴ I do not consider these circumstances apply with respect to the internal communications between Agency officers in the documents subject to review.
81. With respect to the correspondence from the city of Saint Petersburg, as explained above with respect to section 29(1)(b), I am not satisfied any intention in relation to confidentiality was expressed nor implied.
82. Accordingly, the first limb of section 35(1)(b) is not met. However, I will consider the second limb for completeness.

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

83. Section 35(1)(b) also requires I consider whether the Agency would be impaired from obtaining similar information in the future if the information were to be disclosed under the FOI Act. This involves considering whether others in the position of the communicator would be reasonably likely to be inhibited or deterred from providing similar information to the Agency in the future should the information be disclosed.
84. The public interest test in section 35(1)(b) is narrow. It is directed toward the impact release would have on an agency's ability to obtain the same type of information in the future. I note the exemption will not be made out if an agency's impairment goes no further than showing potential communicators of the information may be less candid than they would otherwise have been.²⁵
85. Given the context to which the correspondence was obtained by the Agency from Saint Petersburg, I am not satisfied Saint Petersburg would be inhibited or deterred from communicating similar information in the future should information be disclosed under FOI in this instance. As noted above, the content of the correspondence from the city of Saint Petersburg is neither unexpected nor controversial and does not reveal information that representatives of Russia have not otherwise been communicated publicly with respect to the war in Ukraine.
86. Accordingly, I am not satisfied the documents are exempt from release under section 35(1)(b).
87. The Schedule of Documents in **Annexure 1** outlines my decision in relation to section 35(1)(b).

²² *Ryder v Booth* [1985] VR 869 at [883]; *XYZ v Victoria Police* [2010] VCAT 255 at [264].

²³ *XYZ v Victoria Police* [2010] VCAT 255 at [265].

²⁴ See *Sportsbet v Department of Justice* [2010] VCAT 8 at [71]-[78], citing *Birnbauer v Inner and Eastern Health Care Network* (1999) 16 VAR 9; *XYZ v Victoria Police* [2010] VCAT 255 at [287]-[288].

²⁵ *Smeaton v Victorian WorkCover Authority* [2012] VCAT 1549 at [69], approving *Birnbauer v Inner and Eastern Health Care Network* [1999] 16 VAR 9.

Section 25 – Deletion of exempt or irrelevant information

88. Section 25 requires an agency to grant access to an edited copy of a document where it is practicable to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
89. 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 a document meaningless, they are not ‘practicable’ and release of the document is not required under section 25.²⁷
90. The Applicant advised the Agency they do not seek personal contact details of third parties. Such information is irrelevant information that is to remain deleted from the documents.
91. I have considered the effect of deleting irrelevant and exempt information from the documents. Where I am satisfied it is practicable to do so, as it would not require substantial time and effort, and the edited documents would retain meaning, access to a document is granted in part. Where it is not practicable to do so, access is refused in full.
92. The Schedule of Documents in **Annexure 1** outlines my decision in relation to section 25.

Conclusion

93. On the information before me, I am satisfied certain information is exempt from release under sections 30(1) and 33(1). However, I am not satisfied information is exempt from release under sections 29(1)(b) or 35(1)(b).
94. Where I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with irrelevant and exempt information deleted in accordance with section 25, access to the documents is granted in part.
95. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

Review rights

96. If either party to this review is not satisfied with my decision, they are entitled to apply to the Victorian Civil and Administrative Tribunal (**VCAT**) for it to be reviewed.²⁸
97. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.²⁹
98. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.³⁰
99. 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.
100. 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

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].

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

²⁹ Section 52(5).

³⁰ Section 52(9).

³¹ Sections 50(3F) and 50(3FA).

Third party review rights

101. As I have determined to release documents to which the Agency refused access under section 35(1)(b), 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.³²
102. I have decided notifying the relevant third parties of their review rights is not practicable in the circumstances.

When this decision takes effect

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

³² Sections 49P(5), 50(3AB) and 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]	Email thread with attachments	6	<p>Refused in full</p> <p>Sections 29(1)(b), 30(1), 33(1), 35(1)(b)</p>	<p>Release in part</p> <p>Sections 30(1), 33(1), 25</p> <p>The emails dated [dates] are to be released, with all personal affairs information deleted. The remaining emails within the thread are exempt from release under section 30(1) and are to remain deleted.</p> <p>The attachments are Documents 12 and 13. See directions for Document 12 and 13 below.</p>	<p>Section 29(1)(b): I am not satisfied the document is exempt from release under section 29(1)(b) for the reasons provided in the Notice of Decision above.</p> <p>Section 30(1): I am satisfied the document is exempt from release under section 30(1) for the reasons provided in the Notice of Decision above.</p> <p>However, I am satisfied it would not be unreasonable to release the correspondence sent to/from the city of Saint Petersburg for the reasons provided in the Notice of Decision above.</p> <p>Section 33(1): I am satisfied it would be unreasonable to disclose certain personal affairs information in the document. Accordingly, the relevant information is exempt from release under section 33(1).</p> <p>Section 35(1)(b): I am satisfied the document is not exempt from release under section 35(1)(b) for the reasons provided in the Notice of Decision above.</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						Section 25: Direct contact details is irrelevant information that falls outside the terms of the Applicant's request. I am satisfied it is practicable to provide the Applicant with an edited copy of this document with exempt and irrelevant information deleted in accordance with section 25.
2.	[Date]	Email thread	2	Refused in full Sections 29(1)(b), 30(1), 33(1), 35(1)(b)	Release in part Sections 30(1), 33(1), 25 The emails dated [dates] are to be released, with all personal affairs information deleted. The remaining emails within the thread are exempt from release under section 30(1) and are to remain deleted. The attachments are Documents 12 and 13. See directions for Document 12 and 13 below.	Sections 29(1)(b), 30(1), 33(1), 35(1)(b): See comments for Document 2.
3.	[Date]	Email thread	2	Refused in full Sections 30(1), 33(1)	Refused in full Section 30(1)	Section 30(1): I am satisfied the document is exempt from release under section 30(1) for the reasons

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						provided in the Notice of Decision above. Section 25: See comments for Document 1.
4.	[Date]	Email thread with an attachment	3	Refused in full Sections 30(1), 33(1)	Refused in full Section 30(1)	Section 30(1): See comments for Document 1. Attachments: The attachment to the email dated [date] is Document 11 and I have considered the attachment in the comments for that document. The attachment to the email dated [date] is considered below, as it is the attachment to Document 5.
5.	[Date]	Email thread and attachment	2	Refused in full Sections 30(1), 33(1)	Refused in full Section 30(1)	Section 30(1): See comments for Document 3. Section 25: See comments for Document 1.
6.	[Date]	Email thread with attachments	6	Refused in full Sections 29(1)(b), 30(1), 33(1), 35(1)(b)	Released in part Sections 30(1), 33(1), 25 The email dated [date] is to remain deleted as it is exempt from release under section 30(1).	Sections 30(1): See comments for Document 1. However, I am satisfied the emails between the Agency and the city of Saint Petersburg would not be unreasonable for the reasons provided in the Notice of Decision.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					<p>The emails dated [dates] are to be released, with all personal affairs information deleted.</p> <p>The attachments are Documents 12 and 13. See directions for Document 12 and 13 below.</p>	<p>Section 33(1): See comments for Document 1.</p> <p>Section 25: See comments for Document 1.</p>
7.	[Date]	Email	1	Released in part Section 25	Released in part Section 25 No further information is to be released	Section 25: The Applicant advised the Agency they do not seek access to personal details. The information deleted in this document is part of an email address and telephone. Such information falls outside the scope of the Applicant's request.
8.	[Date]	Email and attachment	2	Released in part Section 25	Released in part Section 25 No further information is to be released	Section 25: See comments for Document 7.
9.	[Date]	Email thread and attachments	5	Refused in full Sections 30(1), 33(1)	Refused in full Section 30(1)	<p>Section 30(1): See comments for Document 3.</p> <p>Section 25: See comments for Document 1.</p>
10.	[Date]	Letter	1	Refused in full	Refused in full	Section 30(1): This is a draft letter. For the reasons outlined in the

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
				Sections 30(1), 33(1)	Section 30(1)	Notice of Decision above, I am satisfied this document is exempt from release under section 30(1). Section 25: See comments for Document 1.
11.	[Date]	Letter	1	Released in part Section 33(1)	Released in part Sections 33(1), 25 The document is to be released with personal affairs information deleted in accordance with section 25.	Section 33(1): See comments for Document 1. Section 25: See comments for Document 1.
12.	[Date]	Letter	2	Refused in full Sections 29(1)(b), 33(1), 35(1)(b)	Release in part Sections 33(1), 25 The document is to be released with personal affairs information deleted in accordance with section 25.	Sections 29(1)(b), 35(1)(b): For the reasons provided above in the Notice of Decision, I am not satisfied the document is exempt from release. Section 33(1): See comments for Document 1. Section 25: I am satisfied it is practicable to provide the Applicant with an edited copy of the document with exempt information deleted in accordance with section 25.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
13.	[Date]	Letter	2	<p>Refused in full Sections 29(1)(b), 33(1), 35(1)(b)</p>	<p>Release in part Sections 33(1), 25</p> <p>The document is to be released with personal affairs information deleted in accordance with section 25.</p>	<p>Sections 29(1)(b), 35(1)(b): See comments for Document 13.</p> <p>Section 33(1): See comments for Document 1.</p> <p>Section 25: See comments for Document 1.</p>