

Notice of Decision and Reasons for Decision

Applicant:	'CZ9'
Agency:	Yarra Ranges Shire Council
Decision date:	11 May 2021
Exemptions considered:	Sections 30(1), 32(1), 33(1), 35(1)(a) and 38 in conjunction with section 125 of the <i>Local Government Act 2020</i> (Vic)
Citation:	'CZ9' and Yarra Ranges Shire Council (<i>Freedom of Information</i>) [2021] VICmr 127 (11 May 2021)

FREEDOM OF INFORMATION – Emails – documents prepared for legal proceedings – legal privileged – confidential information – *Local Government Act 2020* (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 differs from the Agency's decision in that I have determined the majority of information to which the Agency refused access under sections 32(1) and 33(1) is exempt under section 38 in conjunction with section 125 of the *Local Government Act 2020* (Vic).

I am also satisfied information in the documents is exempt under sections 30(1) and 35(1)(a).

However, in some cases I am satisfied certain information is not exempt under sections 30(1) and 32(1) and is to be released to the Applicant.

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
11 May 2021

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to the following documents:
 1. Documents containing instructions, directions or orders given by Council's officers to Council's contractors, including [named business undertaking], in regards to works on [address] for the period from [date range].
 2. Records related to internal communication between Council officers, related to use of the parking area at [address] by waste collection vehicles for the period from [date range]; such records include minutes of meetings, written and electronic communication messages, hand notes, etc.
 3. Records related to communication between the Council officers and any third party, including minutes of meetings, written and electronic communication messages, hand notes, etc, related to use of the parking area at [address] by waste collection vehicles for the period from [date range].
 4. Three competitive quotes, as per provisions of the Council's procurement Policy, provided by surveying contractors for land surveying works on [address] in [date].
2. The Agency identified 126 documents falling within the terms of the Applicant's request. It decided to grant access to 55 documents in part and release 71 documents in full. The Agency also determined to release six documents outside the provisions of the FOI Act.
3. The Agency relied on the exemptions in sections 30(1), 32(1), 33(1) and 35(1)(a) to refuse access to documents. The Agency's decision letter sets out the reasons for its decision.

Review

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
6. I have considered all communications and submissions received from the parties.
7. 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.
8. 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.

New Local Government Act

9. In undertaking a review under section 49F, I am required by section 49P to make a fresh or new decision. This means my review does not involve determining whether the Agency's original decision is correct, but rather I am required to ensure my fresh decision is the 'correct or preferable

decision'.¹ This involves ensuring my decision is correctly made under the FOI Act and any other relevant applicable law in force at the time of making my fresh decision.

10. On 24 October 2020, the *Local Government Act 2020* (Vic) (**LG Act**) commenced. The secrecy provision in section 125 of the LG Act replaced the secrecy provision in the former *Local Government Act 1989* (Vic).
11. Section 125 of the LG Act changes the way a council must process certain FOI requests as it prohibits the disclosure of 'confidential information', which includes personal affairs information in documents held by a council.
12. Therefore, it is appropriate for me to first consider whether the documents subject to review are exempt under section 38 of the FOI Act in conjunction with section 125 of the LG Act.

Review of exemptions

Section 38 – Secrecy provision

13. A document is exempt under section 38 if the following three requirements are met:
 - (a) there is an enactment in force;
 - (b) the enactment applies specifically to the kind of information in a document; and
 - (c) the enactment prohibits persons, referred to in the enactment, from disclosing that specific kind of information (either absolutely or subject to exceptions or qualifications).
14. For section 38 to apply to a document, an enactment must be formulated with such precision that it specifies the actual information sought to be withheld.

Is there an enactment in force?

15. 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;
 - (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;

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

- (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;

16. 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?

17. The term 'confidential information' is defined in section 3 of the LG Act, which relevantly provides:

3 Definitions

...

- (e) legal privileged information, being information to which legal professional privilege or client legal privilege applies;
- (f) personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;

...

18. The definition of 'confidential information' in the LG Act, as set out above, overlaps with the exemptions under sections 33(1) and 32(1) of the FOI Act.

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

19. Section 33(1) provides a document is an exempt document if its disclosure:

- (a) would 'involve' the disclosure of information relating to the personal affairs of a person other than the Applicant (**personal information**);² and
- (b) such disclosure would be 'unreasonable'.

20. Information relating to the 'personal affairs' of a person 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.³

21. The Agency exempted from release certain information in Documents 38-41 and 53-55. These documents are email communications between the Agency and external parties. The exempted information includes:

- (a) name, postal address and signature of a third party;
- (b) a non-work email address of an Agency officer;
- (c) direct mobile numbers of third parties; and
- (d) personal statements provided by a third party concerning their private affairs.

22. I am satisfied this information constitutes 'personal information' for the purposes of section 3(f) of the LG Act.

² Sections 33(1) and (2).

³ Section 33(9).

Would release of the 'personal information' in the document be unreasonable?

23. In relation to section 33(1), the concept of 'unreasonable disclosure' involves determining whether the public interest in disclosure of an individual's 'personal affairs information' in an official document is outweighed by the interest in protecting the personal privacy of an individual in the circumstances.
24. The Victorian Court of Appeal has held there is 'no absolute bar to providing access to documents which relate to the personal affairs of others'.⁴ 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'.
25. In determining whether disclosure of the personal information would be unreasonable, the Agency consulted with relevant third parties to obtain their views on disclosure of their personal information to the Applicant. I note some individuals objected to the disclosure of their personal information. Copies of these responses were provided for my consideration.
26. Having considered the information before me, I am satisfied it would be unreasonable to release the personal information exempted by the Agency, for the following reasons:
 - (a) I consider the Applicant is able to read and interpret the documents without the inclusion of this information. Further, the personal information does not add any material value to the documents.
 - (b) The Applicant has not provided me with any information on how disclosure of the personal information withheld would serve the public interest. Rather, I consider the Applicant's interest in the documents would serve a private interest only.
 - (c) I am satisfied the personal affairs information in the documents is not available to the public or otherwise available to the Applicant.
27. Accordingly, I am satisfied it would be unreasonable to disclose the personal information of third parties, particularly where they do not wish to have their personal information disclosed. Therefore, I am satisfied personal information in the documents is 'confidential information' for the purposes of the LG Act.

Section 32(1) – Legal professional and client privilege

28. Section 32(1) provides a document is an exempt document 'if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege or client legal privilege'.
29. A document will be subject to legal professional privilege and exempt under section 32(1) where it contains a confidential communication:⁵
 - (a) between the client (or the client's agent) and the client's professional legal advisers, that was made for the dominant purpose of obtaining or providing legal advice or is referable to pending or contemplated litigation;
 - (a) between the client's professional legal advisers and third parties, that was made for the dominant purpose of pending or contemplated litigation; or

⁴ *Victoria Police v Marke* [2008] VSCA 218 at [76].

⁵ *Graze v Commissioner of State Revenue* [2013] VCAT 869 at [29]; *Elder v Worksafe Victoria* [2011] VCAT 1029 at [22]. See also *Evidence Act 2008* (Vic), section 119.

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

30. The term 'client professional privilege' is a reference to Part 3.10, Division 1 of the *Evidence Act 2008* (Vic). There are minor differences between the scope of client legal privilege and professional legal privilege.

31. The purpose of legal privilege is to ensure a client can openly and candidly discuss legal matters with their legal representative and seek legal advice:

The rationale of this head of privilege, according to traditional doctrine, is that it promotes the public interest because it assists and enhances the administration of justice by facilitating the representation of clients by legal advisers, the law being a complex and complicated discipline. This it does by keeping secret their communications, thereby inducing the client to retain the solicitor and seek his advice, and encouraging the client to make a full and frank disclosure of the relevant circumstances to the solicitor.⁶

32. 'Purpose' in the phrase 'dominant purpose' means the purpose that led to the creation of the document or the making of the communication.⁷

33. Material gathered by the lawyer or the client in preparation for litigation is privileged as if it were a confidential communication between the lawyer and the client even if it is not such a communication.⁸

34. I am satisfied documents are 'legal privileged information' as they demonstrate either:

- (a) a communication between officers of the Agency and the Agency's legal advisers in the context of seeking instruction regarding pending legal proceedings or legal proceedings in progress;
- (b) a communication between officers of the Agency and the Agency's legal advisers in the context of seeking instructions in relation to a claim received from the Applicant; or
- (c) documents prepared by the Agency or counsel briefed by the Agency in connection with legal proceedings.

35. Accordingly, I am satisfied the information identified as exempt by the Agency under section 32(1) is information to which professional legal privilege or client legal privilege applies. Therefore, I am satisfied information in the documents is 'confidential information' for the purposes of the LG Act.

Conclusion on the application of section 38

36. I am satisfied section 38 of the FOI Act applies to the personal information of third parties and legally privileged information in the documents as I am satisfied:

- (a) section 125 of the LG Act is an enactment in force;
- (b) subsections 3(e) and 3(f) of the LG Act refer specifically to 'personal information' and legal privileged' information in the documents; and

⁶ *Grant v Downs* (1976) 135 CLR 674 at [19].

⁷ *Carnell v Mann* (1998) 89 FCR 247 at 253.

⁸ *Dingle v Commonwealth Development Bank of Aust* (1989) 23 FCR 63 at [66].

- (c) section 125 of the LG Act prohibits Agency officers, specifically councillors and council staff, from disclosing 'confidential information'.

- 37. Accordingly, I am satisfied the personal information and legally privileged information in the documents, which the Agency determined is exempt under sections 32(1) and 33(1), is exempt under section 38 in conjunction with section 125 of the LG Act.
- 38. As I am satisfied section 38 applies to the personal and legal privileged information in the documents, it is not necessary for me to also consider the application of sections 32(1) and 33(1) to the same information.

Sections 35(1)(a) and 30(1)

Section 35(1)(a)

- 39. A document is exempt under section 35(1)(a) 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) the information would be exempt matter if it were generated by an agency or Minister.
- 40. The Agency has applied section 35(1)(a) to information communicated to it by its insurance company, which concerned advice in relation to Tribunal proceedings. The Agency submit that had the information it received been generated by the Agency it would be exempt matter under section 30(1).

Section 30(1)

- 41. 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;
 - (a) 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
 - (b) disclosure of the matter would be contrary to the public interest.
- 42. The exemption does not apply to purely factual material in a document.⁹
- 43. In deciding whether information in the documents exempted by the Agency would be contrary to the public interest, I have given weight to the following relevant factors:¹⁰
 - (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;

⁹ Section 30(3).

¹⁰ *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

- (d) whether disclosure of the documents would be likely to inhibit communications between agency officers, essential for the Agency to make an informed and well considered decision or participate fully and properly in a process in accordance with the Agency's functions and other statutory obligations;
- (e) whether disclosure of the documents would give merely a part explanation, rather than a complete explanation for the taking of a particular decision or the outcome of a process, which the Agency would not otherwise be able to explain upon disclosure of the documents;
- (f) the impact of disclosing documents in draft form, or documents where their disclosure would not clearly or accurately represent a final position or decision reached by the Agency at the conclusion of a decision making or other 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.

44. In relation to section 30(1), the Agency submits:

...[Content redacted]

...

One of the main basis for the exemption of the material is the purpose for which the material was provided, during litigation it is common for a variety of options to be considered, most of which will not be pursued.

As the material was communicated in the course of and for the purposes of the decision making functions of Yarra Ranges Council in response to a court proceeding, and based on the reasons outlined, I consider release of the material would be detrimental to the public interest and as such is exempt.

45. In relation to section 35(1)(a), the Agency submit:

The document exempted in part under this provision contains opinion from an officer of the Council's Insurance Company and [context redacted].

Again, in considering the exemption of the material a number of factors were deliberated:

- The degree of sensitivity of the issues involved; and
- The stage at which the opinion was provided

In consideration of these factors and others, I have determined release to be detrimental to the public interest.

46. My decision in relation to section 35(1)(a) and section 30(1) is set out in the Schedule of Documents at **Annexure 1**.

Section 25 – Deletion of exempt or irrelevant information

- 47. 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.
- 48. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹¹ and the effectiveness of the deletions. Where

¹¹ *Mickelburgh 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].

deletions would render a document meaningless, they are not 'practicable', and release of the document is not required under section 25.¹²

49. I have considered the effect of deleting irrelevant and exempt information from the documents. I am satisfied it is practicable to delete the exempt information as to do so would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

50. On the information before me, I have determined the majority of information to which the Agency refused access under sections 32(1) and 33(1) is exempt under section 38 in conjunction with section 125 of the LG Act.
51. I am satisfied information in the documents is exempt under sections 30(1) and 35(1)(a).
52. However, in some cases I consider the information is not be exempt under sections 30(1) and 32(1).
53. As it is practicable to edit the documents to delete exempt and irrelevant information, I have determined to grant access to the documents in part.
54. My decision in relation to each document is set out in the Schedule of Documents at **Annexure 1**.

Review rights

55. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.¹³
56. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁴
57. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁵
58. 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.
59. 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.¹⁶

When this decision takes effect

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

¹² *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].

¹³ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁴ Section 52(5).

¹⁵ Section 52(9).

¹⁶ Sections 50(3F) and (3FA).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
1.	[Date]	Email	1	Released in part Section 30(1)	Release in part Section 30(1)	<p>Section 30(1): I consider the information in the document meets the requirements of the first two limbs of section 30(1). I am satisfied it would be contrary to the public interest to disclose this information as:</p> <ul style="list-style-type: none"> • it is preliminary in nature; • it relates to highly sensitive matters involving the Agency and its deliberative processes; • I accept there is a public interest in Agency officers being able to exchange views before providing an official response on such matters; and • the Applicant would be aware of the Agency's final position on the matter. <p>Accordingly, my decision is the same as the Agency's and the deleted information is exempt under section 30(1).</p>
2.	[Date]	Emails	3	Released in part Section 30(1)	Release in part Section 30(1)	See comments for Document 1.
3.	[Date]	Emails	7	Released in part	Release in part	See comments for Document 1.

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
				Section 30(1)	Section 30(1)	
4.	[Date]	Claim file	73	Released in part Section 30(1)	Release in part Section 30(1)	Section 30(1): I note the exempted information in the email relates to sensitive legal matters discussed at an early stage. I am satisfied disclosure of the deliberative information would be contrary to the public interest, particularly where it concerns ongoing matters in dispute. See comments for Document 1.
5.	[Date]	Email	5	Released in part Section 30(1)	Release in part Section 30(1)	See comments for Document 1.
6.	[Date]	Emails	6	Released in part Section 30(1)	Release in part Section 30(1)	See comments for Document 1.
7.	[Date]	Emails	4	Released in part Section 30(1)	Release in part Section 30(1)	See comments for Document 1.
8.	[Date]	Emails	6	Released in part Section 30(1)	Release in part Section 30(1)	See comments for Document 1.

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
9.	[Date]	Draft email	3	Released in part Section 30(1)	Release in full	Section 30(1): I note the document is a draft. I consider information in the document meets the first two limbs of section 30(1)(a). However, I note the email is drafted with an intention that it be sent to the Applicant. I consider this weighs against the information being highly sensitive in nature. I also believe much of this information would be known to the Applicant and therefore, I do not consider its disclosure would be contrary to the public interest.
10.	[Date]	Email	59	Released in part Section 32(1)	Release in part Section 38	Section 38: For the reasons set out in the Notice of Decision, I am satisfied the document is a communication between the Agency and its legal advisers and was prepared for the dominant purpose of obtaining or providing legal advice and services in connection with litigation. Therefore, I am satisfied the information exempted by the Agency is 'legal privileged' information under section 3(e) and consequently, is confidential information and exempt under section 38 of the FOI Act in conjunction with section 125 of the LG Act.

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
11.	[Date]	Email	3	Released in part Section 32(1)	Release in part Section 38	Section 38: I am satisfied the exempted information refers to legal advice provided to the Agency. See comments for Document 10.
12.	[Date]	Email	4	Released in part Section 32(1)	Release in part Section 38	See comments for Document 10.
13.	[Date]	Email	4	Released in part Section 32(1)	Release in part Section 38	See comments for Document 10.
14.	[Date]	Emails with attachment	62	Released in part Section 32(1)	Release in part Section 38	Section 38: I am satisfied the document concerns a communication between an officer of the Agency and its external legal adviser made for the dominant purpose of providing legal services in connection with apprehended litigation. I am therefore satisfied the information is confidential information and is exempt under section 38 in conjunction with section 125 of the LG Act.
15.	[Date]	Emails	5	Released in part Section 32(1)	Release in part Section 38	See comments for Document 10.

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
16.	[Date]	Emails	8	Released in part Section 32(1)	Release in part Section 38	See comments for Document 10.
17.	[Date]	Emails	10	Released in part Section 32(1)	Release in part Section 38	See comments for Document 10.
18.	[Date]	Emails	6	Released in part Section 32(1)	Release in part Section 38	See comments for Document 10.
19.	[Date]	Emails	5	Released in part Section 32(1)	Release in part Section 38	See comments for Document 10.
20.	[Date]	Emails	5	Released in part Section 32(1)	Release in part Section 38	See comments for Document 10.
21.	[Date]	Emails	16	Released in part Section 32(1)	Release in part Section 38	See comments for Document 10.
22.	[Date]	Emails	17	Released in part Section 32(1)	Release in part Section 38	See comments for Document 10.
23.	[Date]	Emails	21	Released in part	Release in part	See comments for Document 10.

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
				Section 32(1)	Section 38	
24.	[Date]	Emails	39	Released in part Section 32(1)	Release in part Section 38	See comments for Document 10.
25.	[Date]	Emails	10	Released in part Section 32(1)	Release in part Section 38	See comments for Document 10.
26.	[Date]	Email with attachments	66	Released in part Section 32(1)	Release in part Section 38	See comments for Document 10.
27.	[Date]	Emails with attachment	4	Released in part Section 32(1)	Release in part Section 38	See comments for Document 10.
28.	[Date]	Emails	4	Released in part Section 32(1)	Release in part Section 38	See comments for Document 10.
29.	[Date]	Emails with attachment	6	Released in part Section 32(1)	Release in part Section 38	See comments for Document 10.
30.	[Date]	Emails	5	Released in part Section 32(1)	Release in part Section 38	See comments for Document 10.

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
31.	[Date]	Emails	5	Released in part Section 32(1)	Release in part Section 38	See comments for Document 10.
32.	[Date]	Emails	6	Released in part Sections 32(1), 25	Release in part Sections 38, 25	Section 38: See comments for Document 10. Section 25: I am satisfied information contained on page 1 concerns matters irrelevant to the terms of the Applicant's request. Therefore, I am satisfied the deleted information is to remain deleted in accordance with the provision in section 25.
33.	[Date]	Emails	6	Refused in part Sections 32(1), 25	Release in part Sections 38, 25	Section 38: See comments for Document 10. Section 25: See comments for Document 32.
34.	[Date]	Emails	7	Refused in part Sections 32(1), 25	Release in part Sections 38, 25	Section 38: See comments for Document 10. Section 25: See comments for Document 32.
35.	[Date]	Emails	7	Refused in part Sections 32(1), 25	Release in part Sections 38, 25	Section 38: See comments for Document 10.

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
						Section 25: See comments for Document 32.
36.	[Date]	Emails with attachment	5	Released in part Section 32(1)	Release in full	Sections 38 and 32(1): The Agency exempted a link to the brief provided to counsel. I note the link is no longer valid or in use. While I am satisfied it is a communication between a client and a lawyer, I am not satisfied the exempted information divulges a request, or provides advice, or legal services. Accordingly, I am satisfied the document is not exempt under sections 38 or 32(1).
37.	[Date]	Email with attached submission	14	Released in part Section 32(1)	Release in full	Sections 38 and 32(1): The exempted information is contained in the Agency's submissions to [venue]. I note the Agency has released the majority of the submission to the Applicant. On the information before me, I do not consider the Agency has provided sufficient evidence to satisfy me the communication is a confidential communication between lawyer and client and that the dominant purpose of the document was to seek or provide legal advice. Further, as the submission was drafted to be served on both [venue] and the Applicant, and the substance of the

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
						document has already been disclosed, I consider any privilege is waived.
38.	[Date]	Email with attachment	2	Released in part Section 33(1)	Refuse in part Section 38	Section 38: For the reasons set out in the Notice of Decision, I am satisfied the exempted information is ‘personal information’ of an individual and consequently, is confidential information and exempt under section 38 of the FOI Act in conjunction with section 125 of the LG Act.
39.	[Date]	Emails	2	Released in part Section 33(1)	Refuse in part Section 38	See comments for Document 38.
40.	[Date]	Letter	2	Released in part Section 33(1)	Refuse in part Section 38	Section 38: The exempted information is a name, signature and a comment provided by a third party to the Agency, which concerns their private affairs. For the reasons set out in the Notice of Decision, I am satisfied the information is ‘personal information’ of an individual and consequently, is confidential information and exempt under section 38 of the FOI Act in conjunction with section 125 of the LG Act.
41.	[Date]	Letter	1	Released in part	Refuse in part	Section 38: I am satisfied the exempted information is ‘personal

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
				Section 33(1)	Section 38	information' of an individual and for the reasons set out in the Notice of Decision unreasonable to release. As a consequence, the information is confidential information and exempt under section 38 of the FOI Act in conjunction with section 125 of the LG Act.
42.	[Date]	Email with attachments	64	Released in part Section 35(1)(a)	Release in part Section 35(1)(a)	Section 35(1)(a): I am satisfied the exempted information divulges information that was communicated to the Agency in confidence by an external party. I am satisfied this information is advice and opinion prepared for the deliberative processes of the Agency, namely its response to the Applicant's claims. Given it relates to sensitive legal matters at a preliminary stage, I am satisfied its release would be contrary to the public interest. The information is therefore exempt matter under section 30(1) and consequently, exempt under section 35(1)(a).
43.	[Date]	Emails with attachment	6	Released in part Sections 30(1), 32(1)	Release in part Section 30(1)	Section 38 and 32(1): On the information before me, I am not satisfied such communications were made for the dominant purpose for obtaining or providing legal advice.

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						<p>These emails are therefore not exempt under sections 38 or 32(1).</p> <p>Section 30(1): I am satisfied the exempted information meets the first two limbs of section 30(1)(a). Further, having considered the information, I am satisfied its disclosure would be contrary to the public interest as:</p> <ul style="list-style-type: none"> • it is preliminary advice and opinion; • it discusses sensitive matters, being its response and points of conjecture relating to the Applicant's[redacted] claim; and • the Applicant would be aware of the Agency's final position in the matter.
44.	[Date]	Emails	1	Released in part Sections 30(1), 32(1)	Release in part Section 30(1)	See comments for Document 43.
45.	[Date]	Email	5	Released in part Sections 30(1), 32(1)	Release in part Sections 38, 30(1)	Section 38: I am satisfied the information is a record of advice received by the Agency from its legal advisers. See comments for Document 10.

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						Section 30(1): See comments for Document 43.
46.	[Date]	Emails	2	Released in part Sections 30(1), 32(1)	Release in part Section 30(1)	See comments for Document 43.
47.	[Date]	Emails	2	Released in part Sections 30(1), 32(1)	Release in part Section 30(1) The first two sentences are not exempt and are to be released.	Section 30(1): I am satisfied the information meets the first two limbs of the exemption. I also consider it contains information that is factual in nature. In any case, I am not satisfied this information would not be contrary to the public interest to release. However, in relation to the remainder, see comments in Document 43.
48.	[Date]	Emails	5	Released in part Sections 30(1), 32(1)	Release in part Sections 38, 30(1)	Section 38: I am satisfied the information is a record of advice received by the Agency from its legal advisers. See comments for Document 10. Section 30(1): See comments for Document 43.
49.	[Date]	Emails	5	Released in part Sections 30(1), 32(1)	Release in part Sections 38, 30(1)	Section 38: I am satisfied the information is a record of advice received by the Agency from its legal

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
						advisers. See comments for Document 10. Section 30(1): See comments for Document 43.
50.	[Date]	Emails	31	Released in part Sections 30(1), 35(1)(a)	Release in part Sections 30(1), 35(1)(a)	Section 35(1)(a): See comments for Document 42. Section 30(1): See comments for Document 43.
51.	[Date]	Emails	34	Released in part Sections 30(1), 35(1)(a)	Release in part Sections 30(1), 35(1)(a)	Section 35(1)(a): See comments for Document 42. Section 30(1): See comments for Document 43.
52.	[Date]	Emails	64	Released in part Sections 30(1), 35(1)(a)	Release in part Sections 30(1), 35(1)(a)	Section 35(1)(a): See comments for Document 42. Section 30(1): See comments for Document 43.
53.	[Date]	Emails	3	Released in part Sections 32(1), 33(1)	Release in part Section 38	Section 38: The document comprises emails between the Agency and legal counsel. The Agency exempted advice sought by the Agency from its legal advisers as well as a mobile telephone number.

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
						For the reasons set out in the Notice of Decision I am satisfied the information is confidential information and exempt under section 38 of the FOI Act in conjunction with section 125 of the LG Act.
54.	[Date]	Emails	62	Released in part Sections 32(1), 33(1)	Release in part Section 38	<p>Section 38: The Agency exempted advice sought and obtained by the Agency from its legal advisers as well as a non-work email address.</p> <p>For the reasons set out in the Notice of Decision I am satisfied the information is confidential information and exempt under section 38 of the FOI Act in conjunction with section 125 of the LG Act</p>
55.	[Date]	Emails	10	Released in part Sections 35(1)(a), 33(1)	Release in part Section 38	See comments for Document 53.