

Notice of Decision and Reasons for Decision

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| Applicant: | 'ER1' |
| Agency: | Department of Health |
| Decision date: | 29 June 2022 |
| Exemptions considered: | Sections 30(1), 32(1), 35(1)(b) |
| Citation: | 'ER1' and Department of Health (Freedom of Information) [2022] VICmr 182 (29 June 2022) |

FREEDOM OF INFORMATION – Therapeutic Goods (Declared Goods) Order – internal working documents – legal professional privilege – privilege not waived – information provided in confidence – disclosure not contrary to public interest – disclosure contrary to public interest – Food Safety code – Therapeutic Goods Administration

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.

I am satisfied certain information in the documents is exempt from release under sections 32(1) and 35(1)(b). However, I am not satisfied the documents are exempt under section 30(1).

Where I am satisfied it is practicable to provide the Applicant with an edited copy of a document with irrelevant and exempt information deleted in accordance with section 25, access to the document is granted in part. Where it is not practicable to do so, access is refused in full.

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

29 June 2022

Reasons for Decision

Background to review

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

All documents held by the DHHS relating to the product [name], the Therapeutic Goods (Declared Goods) Order made [date] ([reference number][)], and documents expressly relating to [company name], including (but not limited to):

- Reports
- Emails
- Correspondence
- Minutes or records of meetings
- Memoranda; and
- Diary entries.

The request excludes items already provided under the FOI request dated [date] by [company name] to the DHHS.

The request excludes the identity of advertisers in DHHS correspondence sent to those advertisers.

2. The Agency identified 141 pages of documents falling within the terms of the Applicant's request and refused access to the documents in part and in full under sections 30(1), 32(1), 33(1) and 35(1)(b).
3. The Agency's decision letter sets out the reasons for its decision.

Review application

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. The Applicant does not seek review of the personal affairs information of third parties that the Agency exempted from release under section 33(1). Therefore, this information is to remain deleted as it is irrelevant information for the purpose of section 25, which is discussed below.
6. I have examined a copy of the documents subject to review.
7. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
8. I have considered all communications and submissions received from the parties.
9. 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.
10. 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.
11. In conducting a review under section 49F, section 49P requires that I make a new or 'fresh decision'. Therefore, my review does not involve determining whether the Agency's decision is correct, but

rather requires my fresh decision to be the 'correct or preferable decision'.¹ This involves ensuring my decision is correctly made under the FOI Act and any other applicable law in force at the time of my decision.

Review of exemptions

Section 30(1) – Internal working documents

12. Section 30(1) has three requirements:

- (a) the document must disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister;
- (b) such matter must be made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government; and
- (c) disclosure of the matter would be contrary to the public interest.

13. Section 30(3) provides purely factual information is not exempt under section 30(1).

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?

14. 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.

15. The term 'officer of an Agency' is defined in section 5(1). It includes a member of the agency, a member of the agency's staff, and any person employed by or on behalf of the agency, whether or not they are subject to the *Public Administration Act 2004* (Vic).

16. 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.²

17. The Agency sought to exempt information from Documents 7, 22, 24, 26, 31, 38. These documents are email correspondence, draft letters and a briefing paper.

18. I am satisfied certain information in the documents, where it describes events that have taken place, is factual in nature and is not exempt from release under section 30(1) due to section 30(3).

19. However, I am satisfied the documents contain other information that constitutes the opinion, advice and recommendation of 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?

20. The term 'deliberative process' is broadly interpreted and includes any of the processes of deliberation or consideration involved in the functions of an agency, Minister or government.³

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

² *Mildenhall v Department of Education* (1998) 14 VAR 87.

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

21. In *Re Waterford and Department of Treasury (No.2)*,⁴ 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.

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

22. In determining if disclosure of a document would be contrary to the public interest, I must consider all relevant facts and circumstances remaining mindful the object of the FOI Act is to facilitate and promote the disclosure of information. In doing so, I have given weight to the following relevant factors:⁵
- (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 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.

23. In relation to draft versions of Document 39, the Agency submits:

...the TGA redacted a part of the letter that constituted advice to the TGA. In situations such as these, where it appears the jurisdiction of multiple state and Commonwealth agencies overlap, it is essential that these agencies are able to have frank discussions in relation to the matter. The disclosure of the entire draft letter including the part the TGA redacted, would undermine this trust and thus inhibit discussions between agencies. This would be a detriment to the decision-making process for both agencies, as without a full, unencumbered exchange of advice and recommendations, this may result in a delay in decision making or in improper decisions being made.

24. I am satisfied Documents 22 and 26 are draft versions of this letter and Document 16 appears to be an unredacted version of the final letter, which was released to the Applicant. I do not consider there are substantive differences between the draft and the final versions of the document. As the content of the draft documents is similar enough to avoid confusion resulting from substantial content

⁴ [1984] AATA 67; (1984) 5 ALD 588; 1 AAR 1 at [58].

⁵ *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

changes, and the additional content would contribute the Applicant's understanding about how the Agency communicated with an external Agency on the matter, I consider it would not be contrary to the public interest to release the draft versions.

25. My decision regarding section 30(1) is set out in the Schedule of Documents at **Annexure 1**.

Section 32(1) – Documents affecting legal proceedings

26. 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'.

Is this information subject to legal professional privilege?

27. A document will be subject to legal professional privilege and exempt under section 32(1) where it contains a confidential communication:⁶

- (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;
- (b) between the client's professional legal advisers and third parties, that was made for the dominant purpose of pending or contemplated litigation; or
- (c) 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.

28. The Agency has exempted a memorandum and emails under this provision. These documents were exchanged between the Legal Services Branch and Food Safety Unit of the Agency, in relation to the Agency's activities in determining the suitability of the Applicant's product to be regulated in a certain way.

29. The Agency submits:

The definition provided at section 117(1)(c) [of the *Evidence Act 2008* (Vic)] establishes that a 'client' includes the employer of a lawyer if the employer is the Commonwealth or a State or Territory, or a body established by a law of the Commonwealth or a State or Territory. This definition makes it clear that the department is in a client-lawyer relationship with the in-house lawyers in its employ.

30. I am satisfied a client-lawyer relationship exists between the Legal Services Branch and Food Safety Unit for the purposes of establishing legal professional privilege.

31. I am satisfied the memorandum is a confidential communication made for the dominant purpose of obtaining and receiving legal advice'.

32. Legal privilege will apply to a document prepared by the recipient of legal advice or an employee of the recipient, if it contains a written record of confidential legal advice provided by the recipient's legal advisor. The dominant purpose test is to be applied to the original communication and extends to notes without having to apply the dominant purpose test to the separate document recording the advice.⁷ This means, if an agency creates an internal document that records or discloses legal advice received by the Agency, legal privilege also will extend to that document.

⁶ *Graze v Commissioner of State Revenue* [2013] VCAT 869 at [29]; *Elder v Worksafe Victoria* [2011] VCAT 1029 at [22]. See also section 119 of the *Evidence Act 2008* (Vic).

⁷ *Standard Chartered Bank of Australia Ltd v Antico* (1995) 36 NSWLR 87 at [91]-[93].

33. I am also satisfied summaries of the memorandum contained in emails is also subject to legal professional privilege.

Has legal professional privilege been waived?

34. Legal privilege exists to protect the confidentiality of communications between a lawyer and a client. Privilege will be lost where the client has acted in a way that is inconsistent with the maintenance of that confidentiality – for instance where the substance of the information has been disclosed with the client’s express or implied consent.⁸

35. An implied waiver of privilege occurs when a positive act of a party is inconsistent with maintenance of confidentiality in the communication, irrespective that a waiver of privilege was not the subjective intention of the party.

36. The Applicant provided a copy of email correspondence from an Agency officer which disclosed the topic of the advice being sought.

37. Although I note this correspondence refers to the topic of the advice, as the advice did not exist at the time when the statements were made, I do not consider they constitute a waiver of privilege.

38. Accordingly, I am satisfied the information in the memorandum and associated email correspondence is exempt under section 32(1).

39. My decision in relation to section 32(1) is set out in the Schedule of Documents in **Annexure 1**.

Section 35(1)(b) – Information obtained in confidence by the Agency

40. The Agency denied access to a complaint from a member of the public under section 35(1)(b).

41. A document is exempt under section 35(1)(b) if two conditions are satisfied:

- (a) disclosure would divulge information or matter communicated in confidence by or on behalf of a person or a government to an agency or a Minister; and
- (b) disclosure would be contrary to the public interest as it would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.

Was the information obtained in confidence?

42. Whether information communicated by an individual to an agency was communicated in confidence is a question of fact.⁹

43. 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.¹⁰

44. The Agency did not provide advice about whether it consulted with any third parties in relation to whether the information was communicated in confidence. However, the Agency submits that the confidential nature of the document is clear because it is a complaint from a member of the public.

45. Where the complainant has forwarded a complaint previously made to a third party organisation to the Agency, I am satisfied this was intended to constitute an additional complaint and that all

⁸ *Mann v Carnell* (1999) 201 CLR 1 at [28].

⁹ *Ryder v Booth* [1985] VR 869 at [883]; *XYZ v Victoria Police* [2010] VCAT 255 at [264].

¹⁰ *XYZ v Victoria Police* [2010] VCAT 255 at [265].

content preceding the complaint to the Agency was communicated in confidence by the complainant.

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

46. 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.
47. The public interest test in section 35(1)(b) is narrow, in that 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 of an agency's impairment goes no further than showing potential communicators of the information may be less candid than they would otherwise have been.¹¹
48. The Agency's statutory functions require it to administer and ensure compliance with certain legislation. I accept the Agency relies on information provided by third parties and complainants on a voluntary basis.
49. I consider if details of complaints were to be routinely released under the FOI Act, individuals would be deterred from providing complaint related information to the Agency in the future. In my view, the resultant impairment for the Agency and the community would go beyond a trifling or minimal impairment.¹² I consider it would compromise the Agency's ability to receive and investigate complaints and thereby, interfere with its ability perform its regulatory and enforcement functions.
50. While I acknowledge the Applicant has an interest in accessing information about their company, in my view, there is an essential public interest in protecting information provided by complainants in such circumstances that outweighs the Applicant's personal interest in obtaining access to the documents. I note that the information already released by the Agency allows the Applicant to know and understand the nature of the complaint and to respond in an informed manner.
51. Therefore, I am satisfied disclosure of certain information in the document would be contrary to the public interest as it would be reasonably likely to impair the Agency's ability to obtain similar information in the future.
52. The information identified by the Agency is therefore exempt under section 35(1)(b).
53. My decision in relation to section 35(1)(b) is set out in the Schedule of Documents in **Annexure 1**.

Section 25 – Deletion of exempt or irrelevant information

54. 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.
55. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹³ and the effectiveness of the deletions. Where

¹¹ *Smeaton v Victorian WorkCover Authority* [2012] VCAT 1549 at [69], approving *Birnbauer v Inner and Eastern Health Care Network* [1999] 16 VAR 9.

¹² *Ryder v Booth* [1985] VR 869.

¹³ *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 the document meaningless, they are not 'practicable', and release of the document is not required under section 25.¹⁴

56. As discussed above, the Applicant has advised they do not seek review of information exempted under section 33(1). As such, this information is irrelevant for the purposes of this review and is to be deleted in accordance with section 25.
57. I have considered the effect of deleting irrelevant and exempt information from the documents. Where it is practicable for the Agency to delete the irrelevant and exempt information, because it would not require substantial time and effort and the edited documents would retain meaning, access to a document is granted in full. Where it is not practicable to edit a document, as to do so would render it meaningless, access has been refused in full.
58. My decision in relation to section 25 is set out in the Schedule of Documents in **Annexure 1**.

Conclusion

59. On the information before me, I am satisfied certain information in the documents is exempt from release under sections 32(1) and 35(1)(b). However, I am not satisfied the documents are exempt under section 30(1).
60. Where I am satisfied it is practicable to provide the Applicant with an edited copy of a document with irrelevant and exempt information deleted in accordance with section 25, access to the document is granted in part. Where it is not practicable to do so, access is refused in full.
61. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

Review rights

62. 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.¹⁵
63. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁶
64. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁷
65. 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.
66. 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.¹⁸

When this decision takes effect

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

¹⁴ *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].

¹⁵ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁶ Section 52(5).

¹⁷ Section 52(9).

¹⁸ Sections 50(3F) and 50(3FA).

Annexure 1 – Schedule of Documents

| Document No. | Date of Document | Document Description | No. of pages | Agency Decision | OVIC Decision | OVIC Comments |
|---|------------------|---------------------------|--------------|-----------------------------------|-----------------------|---------------|
| 1. <i>Pages 1-3 of the pdf document provided by the Agency</i> | [date] | Email chain | 3 | Released in part Section 33(1) | Not subject to review | |
| 2. <i>Pages 4-6 of the pdf document provided by the Agency</i> | [date] | Email chain ¹⁹ | 3 | Released in part Section 33(1) | Not subject to review | |
| 3. <i>Pages 7-9 of the pdf document provided by the Agency</i> | [date] | Email chain | 3 | Released in part Section 33(1) | Not subject to review | |
| 4. <i>Pages 10-13 of the pdf document provided by the Agency</i> | [date] | Email chain ²⁰ | 4 | Released in part Section 33(1) | Not subject to review | |
| 5. <i>Pages 14-17 of the pdf document provided by the Agency</i> | [date] | Email chain ²¹ | 4 | Released in part Section 33(1) | Not subject to review | |

¹⁹ The Agency provided information in the course of the review which I am satisfied confirms the attachment to this document is out of scope of the review.

²⁰ The Agency provided information in the course of the review which I am satisfied confirms the attachment to this document is out of scope of the review.

²¹ The Agency provided information in the course of the review which I am satisfied confirms the attachment to this document is out of scope of the review.

| Document No. | Date of Document | Document Description | No. of pages | Agency Decision | OVIC Decision | OVIC Comments |
|--|------------------|----------------------|--------------|---|---|--|
| 6. <i>Page 18 of the pdf document provided by the Agency</i> | [date] | Email ²² | 1 | Released in part Section 33(1) | Not subject to review | |
| 7. <i>Page 19-20 of the pdf document provided by the Agency</i> | [date] | Email chain | 2 | Released in part Sections 30(1), 32(1), 33(1) | Release in part Sections 32(1), 25 The document is to be released with exempt and irrelevant information deleted in accordance with section 25. | Section 30(1): The Agency determined certain information on page 19 of the pdf is exempt from release under section 30(1). I am satisfied the first sentence of this section is exempt from release under section 32(1) as it relates to a request for legal advice and the subject of that advice. I am satisfied the remainder of the document contains the opinion and advice of an Agency officer that was provided for the deliberative purposes of the Agency. However, I am not satisfied its disclosure would be unreasonable as it is general in nature and discusses broad agency processes only. Accordingly, I am not satisfied this information is exempt from release under section 30(1). |

²² The Agency provided information in the course of the review which I am satisfied confirms the attachment to this document is out of scope of the review.

| Document No. | Date of Document | Document Description | No. of pages | Agency Decision | OVIC Decision | OVIC Comments |
|--|------------------|----------------------|--------------|---|---|---|
| | | | | | | <p>Section 32(1): I am satisfied the document contains emails between a lawyer to Agency officers for the dominant purpose of providing legal advice on a specified issue. Accordingly, this information is exempt under section 32(1).</p> <p>Section 25: The Applicant is not seeking personal affairs information. The information exempted by the Agency under section 33(1) is therefore irrelevant to the request.</p> <p>I am satisfied it is practicable to provide the Applicant with an edited copy of the document with exempt and irrelevant information deleted in accordance with section 25.</p> |
| <p>8.</p> <p><i>Pages 21-26 of the document provided by the Agency</i></p> | [date] | Memorandum | 6 | <p>Refused in full</p> <p>Sections 32(1) and 33(1)</p> | <p>Refuse in full</p> <p>Section 32(1)</p> | <p>Section 32(1): I am satisfied the memorandum was prepared by inhouse lawyers for the dominant purpose of providing legal advice to the Agency on a specified issue and legal privilege has not been waived. Accordingly, I am satisfied this information is exempt from release under section 32(1).</p> |

| Document No. | Date of Document | Document Description | No. of pages | Agency Decision | OVIC Decision | OVIC Comments |
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| | | | | | | Section 25: I am satisfied it would be not practicable to provide the Applicant with an edited copy of the document with exempt and irrelevant information deleted in accordance with section 25, as to do so would rendered the document meaningless. |
| 9. <i>Page 27 of the pdf document provided by the Agency</i> | [date] | Email | 1 | Released in part Section 33(1) | Not subject to review | |
| 10. <i>Pages 28-32 of the document provided by the Agency</i> | [date] | Email chain | 5 | Released in part Section 33(1) | Not subject to review | |
| 11. <i>Pages 33-37 of the pdf document provided by the Agency</i> | [date] | Email chain ²³ | 5 | Released in part Section 33(1) | Not subject to review | |
| 12. <i>Pages 38-40 of the pdf document provided by the Agency</i> | [date] | Email chain | 3 | Released in part Section 33(1) | Not subject to review | |

²³ The Agency provided information in the course of the review which I am satisfied confirms the attachment to this document is out of scope of the review.

| Document No. | Date of Document | Document Description | No. of pages | Agency Decision | OVIC Decision | OVIC Comments |
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| 13. <i>Pages 41-45 of the pdf document provided by the Agency</i> | [date] | Email chain | 5 | Released in part Section 33(1) | Not subject to review | |
| 14. <i>Pages 46-51 of the pdf document provided by the Agency</i> | [date] | Email chain | 6 | Released in part Section 33(1) | Not subject to review | |
| 15. <i>Pages 52-59 of the pdf document provided by the Agency</i> | [date] | Email chain ²⁴ | 8 | Released in part Section 33(1) | Not subject to review | |
| 16. <i>Pages 60-61 of the document provided by the Agency</i> | [date] | Letter | 2 | Released in part Section 33(1) | Not subject to review | |
| 17. <i>Pages 62 -71 of the pdf document provided by the Agency</i> | [date] | Attachments to Document 16 – Letter and product information | 11 | Released in part Section 33(1) | Not subject to review | |

²⁴ The Agency provided information in the course of the review which I am satisfied confirms the attachment to this document is out of scope of the review.

| Document No. | Date of Document | Document Description | No. of pages | Agency Decision | OVIC Decision | OVIC Comments |
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| 18. <i>Page 72 of the pdf document provided by the Agency</i> | [date] | Email ²⁵ | 1 | Released in part Section 33(1) | Not subject to review | |
| 19. <i>Pages 73-74 of the pdf document provided by the Agency</i> | [date] | Email chain | 2 | Released in part Section 33(1) | Not subject to review | |
| 20. <i>Pages 75-76 of the pdf document released by the Agency</i> | [date] | Email chain ²⁶ | 2 | Released in part Section 33(1) | Not subject to review | |
| 21. <i>Page 77 of the pdf document released by the Agency</i> | [date] | Email | 1 | Released in part Section 33(1) | Not subject to review | |
| 22. <i>Pages 78-79 of the pdf document provided by the Agency</i> | [date] | Attachment to Document 21 – Draft letter | 2 | Refused in full Section 30(1) | Release in part Section 25 The document is to be released with | Section 30(1): The document is a draft letter. It contains the advice and opinion of an Agency and was prepared for the deliberative processes of the Agency – being part of its regulatory functions. I am satisfied |

²⁵ The Agency provided information in the course of the review which I am satisfied confirms the attachment to this document is out of scope of the review.

²⁶ The Agency provided information in the course of the review which I am satisfied confirms the attachment to this document is out of scope of the review.

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|--|------------------|----------------------|--------------|---|--|--|
| | | | | | irrelevant information deleted in accordance with section 25. | its disclosure would not be unreasonable as it is substantially the same as the final version. Accordingly, I am not satisfied the document is exempt from release under section 30(1). Section 25: See comments for Document 7. |
| 23. <i>Page 80 of the pdf document provided by the Agency</i> | [date] | Email ²⁷ | 1 | Released in part Section 33(1) | Not subject to review | |
| 24. <i>Pages 81-82 of the pdf document provided by the Agency</i> | [date] | Briefing document | 2 | Released in part Sections 30(1), 33(1) | Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25. | Section 30(1): The document is a draft letter and contains the advice and opinion of an Agency officer prepared for the deliberative processes of the Agency – being part of its regulatory functions. I am satisfied its disclosure would not be unreasonable as it contain information that is largely factual in nature, and any advice or opinion is general and relates to the broad processes undertaken by the Agency only. Accordingly, I am not satisfied the document is exempt from release under section 30(1). |

²⁷ The Agency provided information in the course of the review which I am satisfied confirms the attachment to this document is out of scope of the review.

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|--|------------------|----------------------------|--------------|-----------------------------------|--|--|
| | | | | | | Section 25: See comments for Document 7. |
| 25. <i>Page 83 of the pdf document provided by the Agency</i> | [date] | Email | 1 | Released in part Section 33(1) | Not subject to review | |
| 26. <i>Pages 84-85 of the pdf document provided by the Agency</i> | [date] | Draft letter | 2 | Refused in full Section 30(1) | Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25. | Section 30(1): See comments for Document 22. Section 25: See comments for Document 7. |
| 27. <i>Pages 86-87 of the pdf document provided by the Agency</i> | [date] | Email | 2 | Released in part Section 33(1) | Not subject to review | |
| 28. <i>Pages 88-97 of the pdf document provided by the Agency</i> | [date] | Attachments to Document 27 | 11 | Released in part Section 33(1) | Not subject to review | |

| Document No. | Date of Document | Document Description | No. of pages | Agency Decision | OVIC Decision | OVIC Comments |
|---|------------------|--|--------------|---|--|---|
| 29. <i>Page 98 of the pdf document provided by the Agency</i> | [date] | Email | 1 | Released in part Section 33(1) | Not subject to review | |
| 30. <i>Pages 99-112 of the document provided by the Agency</i> | [date] | Email chain with attachments ²⁸ | 14 | Released in part Sections 33(1), 35(1)(b) | Release in part Sections 35(1)(b), 25 The document is to be released with exempt and irrelevant information deleted in accordance with section 25. | <p>Section 35(1)(b): The Agency relies on section 35(1)(b) to exempt from release communications from a member of the community to the Agency. Given the sensitivity of the information, I accept it was provided to the Agency in confidence. I also accept the Agency would rely on receiving such information in meeting its regulatory responsibilities. In my view, disclosure of the information would impair the ability of the Agency to receive similar information. It is therefore exempt under section 35(1)(b).</p> <p>I note a complete copy of these communications was not provided to OVIC to assist my review of the Agency's decision.</p> <p>Section 25: See comments for Document 7.</p> |

²⁸ During the review, OVIC made enquiries with the Agency in relation to redacted information on the copy of the documents received by OVIC during the course of the review. The Agency confirmed the redacted information had been removed from the documents prior to their receipt of them from a third party complainant, and that they did not hold another copy of the documents. The Agency also provided information in the course of the review which I am satisfied confirms the attachment to this document is out of scope of the review.

| Document No. | Date of Document | Document Description | No. of pages | Agency Decision | OVIC Decision | OVIC Comments |
|--|------------------|-----------------------------|--------------|---|--|--|
| 31. <i>Pages 113-114 of the document provided by the Agency</i> | [date] | Email chain | 2 | Released in part Sections 30(1), 33(1) | Release in part Section 25 The document is to be released with irrelevant information deleted in accordance with section 25. | Section 30(1): I am satisfied the document contains the opinion and advice of an Agency officer, and was provided for the deliberative purposes of the Agency. However, I do not consider its disclosure would be unreasonable in the circumstances as it is general in nature and not sensitive. Accordingly, I am not satisfied this information is exempt from release under section 30(1). Section 25: I am not satisfied certain information in the document, being group emails, which does not consider constitute personal affairs information, is not exempt from release and is to be released. See also comments for Document 7. |
| 32. <i>Page 115-124 of the document provided by the Agency</i> | [date] | Email chain with attachment | 10 | Release in part Section 33(1) | Not subject to review | |
| 33. | [date] | Email chain | 2 | Release in part Section 33(1) | Not subject to review | |

| Document No. | Date of Document | Document Description | No. of pages | Agency Decision | OVIC Decision | OVIC Comments |
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| <i>Pages 125-126 of the pdf document provided by the Agency</i> | | | | | | |
| 34. <i>Page 127 of the pdf document provided by the Agency</i> | [date] | Email chain | 1 | Release in part Section 33(1) | Not subject to review | |
| 35. <i>Page 128 of the pdf document provided by the Agency</i> | [date] | Email | 1 | Release in part Section 33(1) | Not subject to review | |
| 36. <i>Pages 129-130 of the pdf document provided by the Agency</i> | [date] | Email chain | 3 | Release in part Section 33(1) | Not subject to review | |
| 37. <i>Pages 131-132 of the pdf document provided by the Agency</i> | [date] | Email chain | 2 | Release in part Section 33(1) | Not subject to review | |
| 38. <i>Pages 133-135 of the pdf document provided by the Agency</i> | [date] | Email chain | 3 | Release in part Sections 30(1), 33(1) | Release in part Sections 32(1), 25 | Section 32(1): The second sentence of the email on page 1 contains legal advice and is exempt from under section 32(1). |

| Document No. | Date of Document | Document Description | No. of pages | Agency Decision | OVIC Decision | OVIC Comments |
|--|------------------|---------------------------|--------------|----------------------------------|---|---|
| | | | | | The document is to be released with irrelevant information deleted in accordance with section 25. | <p>Section 30(1): I am satisfied the remainder of the document contains the advice and opinion of an Agency officer, provided for the deliberative purposes of the Agency. However, I do not consider its disclosure would be unreasonable as it is general in nature and not sensitive. Accordingly, I am not satisfied the document is exempt from release under section 30(1).</p> <p>Section 25: See comments for Document 7.</p> |
| 39. <i>Pages 136-137 of the pdf document provided by the Agency</i> | [date] | Letter ²⁹ | 2 | Release in part Section 33(1) | Not subject to review | |
| 40. <i>Pages 138-139 of the pdf document provided by the Agency</i> | [date] | Email chain ³⁰ | 2 | Release in part Section 33(1) | Not subject to review | |

²⁹ During the review, OVIC made enquiries with the Agency in relation to redacted information on the copy of the documents received by OVIC during the course of the review. The Agency confirmed the redacted information had been removed from the documents prior to their receipt of them from the Commonwealth Department of Health, and that they did not hold another copy of the documents.

³⁰ The Agency provided information in the course of the review which I am satisfied confirms the attachment to this document is out of scope of the review.

| Document No. | Date of Document | Document Description | No. of pages | Agency Decision | OVIC Decision | OVIC Comments |
|--|------------------|----------------------|--------------|----------------------------------|-----------------------|---------------|
| 41. <i>Pages 140-141 of the pdf document provided by the Agency</i> | [date] | Email chain | 2 | Release in part Section 33(1) | Not subject to review | |