

## Notice of Decision and Reasons for Decision

---

Applicant:	'EN4'
Agency:	Melbourne Convention and Exhibition Trust
Decision date:	6 June 2022
Provisions considered:	Sections 25A(1), 25A(6)
Citation:	'EN4' and Melbourne Convention and Exhibition Trust ( <i>Freedom of Information</i> ) [2022] VICmr 149 (6 June 2022)

---

FREEDOM OF INFORMATION – workplace relations – workplace conduct – employee – internal email correspondence – SMS – reasonable opportunity to consult under section 25A(6) – substantial and unreasonable diversion of Agency resources

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.

I am satisfied the work involved in processing the Applicant's original request would substantially and unreasonably divert the resources of the Agency from its other operations.

Accordingly, I am satisfied the requirements for refusal to grant access to documents in accordance with the Applicant's request under section 25A(1) are met and the Agency is not required to process the original request.

My reasons for decision follow.

**Joanne Kummrow**  
Public Access Deputy Commissioner

6 June 2022

## Reasons for Decision

### Background to review

1. On [date], the Applicant made a request to the Agency seeking access to the following documents:

First:

I kindly request a list of the hours paid to casual employees for their attendance at [specified] meetings. [Contextual information redacted]. Specifically, I am interested in whether casual employees are remunerated for their actual time worked at these meetings, or if they are paid the minimum engagement time of four hours as required under the EBA.

Second:

Separate to the above, I kindly request copies of correspondence held by the MCET regarding the applicant by particular persons and entities. This includes emails or text messages sent, received, or between the specified people and entities from the provided accounts. This may explicitly mention me by name (either [Name], [Name], or variations of either), or the subsequent correspondence implicitly regarding me. The specific people and entities, and their email addresses and phone numbers, are:

- Employee Services
  - E: [group work email address]
- Rostering
  - E: [group work email address]
- [Name]
  - E: [Direct work email address]
  - P: [Mobile number]
- [Name]
  - E: [Direct work email address]
  - P: [Mobile number]
- [Name]
  - E: [Direct work email address]
  - P: [Mobile number]
- [Name]
  - E: [Direct work email address]
  - P: [Mobile number]
- [Name]
  - E: [Direct work email address]
  - P: [Mobile number]
- [Name]
  - E: [Direct work email address]
  - P: [Mobile number]
- [Name]
  - E: [Direct work email address]
  - P: [Mobile number]
- [Name]
  - E: [Direct work email address]
  - P: [Mobile number]
- [Name]
  - E: [Direct work email address]
  - P: [Mobile number]

2. The Applicant advised the Agency they do not seek access to personal affairs information or emails either that they sent to or received from the Agency.
3. On [date], the Agency provided the Applicant with a notice in accordance with section 25A(5) of its intention to refuse their request under section 25A(1) on grounds it was satisfied the work involved in processing the request would divert its resources substantially and unreasonably from its other operations (**Notice**). In doing so, the Agency advised:

[Detailed submission redacted regarding the work involved in processing the Applicant's request].

...

We invite you to confine your requests in order to strike a more achievable balance between achieving your request and reducing the pressure on the MCECs limited resources.

4. The Applicant responded to the Notice on the same day and proposed to narrow the terms of their request (**proposed Amended Request**) as follows:

I withdraw the [type of] Timesheets Request. The business has since acknowledged [an activity]. At the time the request was submitted, the [Position title] [undertook an activity].

#### **Email Correspondence Request**

1. Email correspondence regarding the applicant sent or received between [date]and [date]by the following persons and entities:

- [Name] – [Direct work email address]
- [Name] – [Direct work email address]
- [Name] – [Direct work email address]
- Employee Services – [group email domain]@[mcec.com.au]

Without limiting the scope of this request, this correspondence will likely pertain to the applicant's purported failure to [undertake a certain activity]

2. Email correspondence regarding the applicant sent or received between [date]and [date]by the following persons and entities:

- [Name] – [Direct work email address]
- [Name] – [Direct work email address]
- [Name] – [Direct work email address]
- [Name] – [Direct work email address]
- Employee Services – [Group work email address]
- [Name] – [Direct work email address]

3. Email correspondence regarding the applicant sent or received between [date]and [date]by the following persons and entities:

- [Name] – [Direct work email address]
- [Name] – [Direct work email address]
- [Name] – [Direct work email address]
- [Name] – [Direct work email address]
- Employee Services – [Group work email address]

Any correspondence sent or received by the applicant's email address are excluded from the scope of all three requests.

#### **SMS Message Request**

1. SMS messages sent or received by the following persons regarding the applicant:

- [Name] – [Mobile number]
- [Name] – [Mobile number]

2. For the avoidance of doubt, MMS messages are excluded from the scope of this request. SMS messages sent by [Name] to the applicant at [Mobile number] are also excluded.

I believe the above amendments will significantly reduce the time required to process this request.

With regards to its reasonableness, this is in response to ongoing instances of bullying ..., which I have been made aware of through a disclosure by .... There are substantial public interests involved.

5. ...On [date], the Applicant wrote to the Agency to seek an update on the proposed Amended Request and noted the statutory timeframe for processing an FOI request under section 21:

Could you please advise on the status of this request? By my calculation, the due date for providing a decision has now passed even with a 15-day extension under section 21(2)(a) of the FOI Act. I note I have not been notified of any such extensions as required under section 21(4).

6. On [date], the Agency responded to the Applicant advising:

[Background redacted]

We are continuing to review your below proposed amended request and seeking further information from relevant aspects of the business to determine whether the MCEC can comply with the amended scope. This includes consultation with IT as to whether the requested email inboxes can be accessed for the requested time periods.

We aim to be in position to respond to you on this issue shortly

7. On [date], the Agency notified the Applicant of its decision to refuse to process the Applicant's request under section 25A(1) on the basis the work involved in doing so would substantially and unreasonably divert the Agency's resources from its other operations.

8. In its decision letter, the Agency advised:

Request for a response to the Amended Request

In our letter of [date], we stated that the time to action your request would not recommence until both parties had agreed to the amended version of the request. Notwithstanding the above, you have pressed for a response to the amended version.

9. The Agency's decision letter in which it set out its reasons for refusing the Applicant's request addressed the terms of both the original request and the proposed Amended Request:

... I have decided to refuse access to your Amended Request, in whole, on the basis that the work involved in processing the Amended Request would substantially and unreasonably divert the resources of the MCEC from its other operations.

In our letter of [date], the MCEC outlined the difficulties it would face in responding to your original request. The basis for this position was set out at pages [3]-[4] of that letter, and detailed the number of departments within the MCEC required to be engaged to respond to your original request, noted the staff captured by the original request no longer at the MCEC (and the difficulties such circumstances present) and outlined the limited availability of staff to conservatively comply with your request.

I accept that your Amended Request is narrower in the scope when compared to your original request. However the difficulties faced by the MCEC, articulated in our letter of [date], remain.

The Amended Request still requires several departments to conduct substantial hardcopy and electronic searches for communications, continues to capture a staff member no longer at the MCEC ([Name]) and remains a large and onerous process which will divert staff from fulfilling their core roles.

On this last point, my last letter conveyed the MCECs view that on a conservative estimate, your original Email Correspondence Request would require 4-5 weeks to complete. Due to the difficulties in staff availability associated with the latest outbreak in the COVID-19 pandemic, accepting that the Amended Email Correspondence Request (and clarification on the SMS Request) is narrower in scope, we remain of the view that searches would, on a conservative estimate, take 4-5 weeks to complete. The uncertain nature of staffing availabilities makes it possible that the searches could take longer.

## Review application

10. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse to grant access to documents in accordance with their request.
11. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.

12. I have considered all communications and submissions received from the Applicant and the Agency in relation to the review.
13. 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.
14. 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.

#### **Request under review**

15. Despite the proposed Amended Request, I consider no formal agreement was reached between the Agency and Applicant as to narrowed terms for the Applicant's original request. As such, I am required to determine whether the requirements of section 25A(1) are met in relation to the terms of the Applicant's original request, as set out in paragraph 1 above.
16. I first consider whether processing the Applicant's original request would involve a substantial diversion of the Agency's resources, and secondly whether processing the request would involve an unreasonable diversion of the Agency's resources.
17. In conducting a review, I am required to consider whether the requirements of section 25A(1) are satisfied at the time of my review. That is, whether at the time of my decision, processing the Applicant's request would substantially and unreasonably divert the Agency's resources from its other operations.<sup>1</sup>

#### **Refusal of a request in accordance with section 25A(1)**

18. Section 25A(1) is an exception under the FOI Act that provides an FOI request may be refused in certain circumstances following an agency's consultation with an applicant in accordance with section 25A(6).
19. Section 25A provides:
  - (1) The Agency or Minister dealing with a request may refuse to grant access to documents in accordance with the request, without having cause the processing of the request to have been undertaken, if the Agency or Minister is satisfied that the work involved in processing the request –
    - (a) in the case of an Agency – would substantially and unreasonably divert the resources of the Agency from its other operations:  
...
  - (2) Subject to subsection (3) but without limiting the matters to which the Agency or Minister may have regard in deciding whether to refuse under subsection (1) to grant access to the documents to which the request relate, the Agency or Minister is to have regard to the resources that would have to be used –
    - (a) in identifying, locating or collecting the documents within the filing system of the Agency,  
...  
or

---

<sup>1</sup> The general rule that applies to tribunals when conducting administrative law proceedings (by way of a *de novo* review) is that the factors to be considered and the law to be applied are as at the date of review. This principle does not appear in the FOI Act, but is established by case law, including the following authorities: *Shi v Migration Agents Registration Authority* [2008] HCA 31, *Victoria Legal Aid v Kuek* [2010] VSCA 29, *Tuitaalili v Minister for Immigration and Citizenship* [2011] FCA 1224, *O'Donnell v Environment Protection Authority* [2010] ACAT 4.

- (b) in deciding whether to grant, refuse or defer access to documents to which the request relates, or to grant access to edited copies of such documents, including resources that would have to be used –
    - (i) in examining the documents; or
    - (ii) in consultation with any person or body in relation to the request; or
  - (c) in making a copy, of an edited copy, of the documents;
  - (d) or in notifying any interim or final decision on the request.
- (3) The agency or Ministers not to have regard to any maximum amount, specified in regulations, payable as a charge for processing a request of that kind.
- (4) In deciding whether to refuse, under subsection (1), to grant access to documents, an agency or Minister must not have regard to—
- (a) any reasons that the person who requests access gives for requesting access; or
  - (b) the agency's or Minister's belief as to what are his or her reasons for requesting access.

...

20. The Victorian Supreme Court of Appeal in *Secretary, Department of Treasury and Finance v Kelly*,<sup>2</sup> described the purpose of section 25A(1):

... it is plain enough that s. 25A was introduced to overcome the mischief that occurs when an agency's resources are substantially and unreasonably diverted from its core operations by voluminous requests for access to documents. The emphasis of the amendment was on the prevention of improper diversion of the agency's resources from their other operations. The provision was introduced to strike a balance between the object of the Act ... and the need to ensure that the requests under the Act did not cause substantial and unreasonable disruption to the day to day workings of the government through its agencies ...

21. The Supreme Court of Victoria has held the meaning of 'other operations' in section 25A(1) includes an agency's ability to deal with and process other FOI requests received where its ability to do so would be impaired by dealing with and processing an applicant's FOI request.<sup>3</sup>
22. If an agency refuses an FOI request under section 25A(1), it bears the onus of establishing it has met the requirements of the provision. Namely, processing the request would substantially and unreasonably divert the resources of the agency from its other operations.<sup>4</sup>

**Requirement for consultation under section 25A(6)**

23. An agency is not permitted to refuse a request for documents under section 25A(1) unless the consultation requirements under section 25A(6) are met.

24. Section 25A(6) provides:

- (6) An Agency or Minister must not refuse to grant access to a document under subsection (1) unless the Agency or Minister has –
  - (a) given the Applicant a written notice –
    - (i) stating an intention to refuse access; and
    - (ii) identifying an officer of the Agency... with whom the Applicant may consult with a view to making the request in a form that would remove the ground for refusal; and
  - (b) given the Applicant a reasonable opportunity to consult; and

<sup>2</sup> [2001] VSCA 246 at [48].

<sup>3</sup> *Chief Commissioner of Police v McIntosh* [2010] VSC 439 at [24].

<sup>4</sup> *Ibid* at [11].

- (c) as far as is reasonably practicable, provided the Applicant with any information that would assist the making of the request in such a form.

25. In relation to the consultation requirements under section 25A(6), the Applicant submits:

In the written notice dated [date] stating its intention to refuse access (Attachment B), the MCET failed to identify an officer with whom I may consult as required under section 25A(6)(a)(ii) of the FOI Act.

...

In response to its notice of intention to refuse access, on the same day I provided an amended request (Attachment C) with a significantly reduced scope in addition to stating:

If I can further clarify this request, please do not hesitate to contact me on [phone number]. I am also open to suggestions to amend this request to reduce the burden on the business or expediate its processing.

Despite this explicit willingness to consult and the extensive delays in responding to my request, the MCET has made no attempt to do so.

Further, my attempts to contact the authorized officer, [Name], on both [their] office phone and mobile phone, including voicemails, on [dates] have been unsuccessful.

...

There was no suggestion that any scope capturing a former employee would invariably constitute a voluminous request, nor acceptable specificity regarding the processing time such a request would necessitate. Consequently, my amended scope significantly reduced both the timeframe and number of former employees included to a level that I reasonably believed to be acceptable. If I had been provided with this information before the decision was made, I would have been willing to again revise the scope of my request.

26. In summary, the proposed Amended Request removed from the scope of the Applicant's original request casual employee timesheets and reduced the number of email addresses subject to the request. Further, with the exception of two individuals, it also removed the request for SMS messages sent by Agency officers on mobile telephones.

27. In relation to the consultation requirements under section 25A(6), the Agency submits:

... In my notification of intention to refuse access dated [date], I invited the Applicant to confine [their] requests in order to strike a more achievable balance between achieving [their] request and reducing pressure on the MCEC's limited resources. While the Applicant did narrow the scope of [their] request in the Amended Request, the time period and subject matter remains too wide for the MCEC to reasonably consider.

28. In my view, the Applicant's response to the Notice represents a reasonable attempt to address the Agency's concerns in relation to the scope of the Applicant's original request.

29. I consider the Agency could have done more to assist the Applicant to amend the terms of their proposed Amended Request given its correspondence dated [date] indicates it would provide the Applicant with a response to the proposed Amended Request, whereas the next correspondence sent by the Agency was its decision letter refusing the request under section 25A(1).

30. However, while I note the concerns raised by the Applicant in relation to the Agency's compliance with the requirements under section 25A(6), on balance, I am satisfied:

- (a) The Agency gave the Applicant written notice stating its intention to refuse access to their request.
- (b) While the Agency's letter does not identify an Agency officer with whom the Applicant could consult with a view to removing the grounds for refusal, correspondence between the Applicant and the Agency was exchanged with the same Agency officer. As such, I am satisfied

the Applicant was aware of the relevant Agency officer with whom they could communicate regarding rescoping of their request, and they communicated with that person.

- (c) Given the Applicant agreed to narrow the terms of their request on the same day they received the Notice I am satisfied they had a reasonable awareness of what aspects of their request required narrowing and attempted to make sufficient concessions to remove the grounds for refusal.
- (d) What constitutes a 'reasonable opportunity' to consult is not specified in the FOI Act and will depend on the particular circumstances of a matter. On balance, I am satisfied the Agency gave the Applicant a reasonable opportunity to consult in relation to the terms of their request. While I consider the Agency could have continued to consult with the Applicant following its consideration of the Proposed Request, I am satisfied from its decision letter and submission made to OVIC during the review that it had formed and continued to hold the view that processing the original request (and the proposed Amended Request) would substantially and unreasonably divert the resources of the Agency from its other operations. As such, it determined to proceed to make a decision to refuse the request.
- (e) As far as is reasonably practicable, an agency is required to provide an applicant with any information that would assist them in making an FOI request in such a form so as to remove the proposed grounds for refusal. Having reviewed the Agency's letter dated [date], while it does not specify proposed terms for an amended request, it details the issues and concerns the request presents for the Agency given the scope of the documents requested, the steps required for the Agency to locate or retrieve the documents requested and the Agency's capacity to do so given the time involved and staff resourcing.

31. Accordingly, I am satisfied the Agency met the mandatory notice requirements under section 25A(6).

***Would processing the request involve a substantial diversion of the Agency's resources?***

- 32. When determining whether to refuse a request, it is possible for an agency to only estimate how much time and effort would be spent to refuse the request. To require that the issue be determined with absolute certainty would compel the agency to undertake the very work that section 25A(1) is designed to avert.<sup>5</sup>
- 33. I note the Agency's request that details of its submission made to OVIC should remain confidential. However, it is necessary for me to include certain information provided by the Agency in relation to the processing of the Applicant's request so as to provide adequate reasons for my decision.
- 34. In relation to the processing of the request, the Agency submits:

On advice from the relevant sectors of the business, ... the Amended Request would require the following actions:

- a) a thorough and diligent search of all mailboxes of the listed persons for [specified] period (for which the business will require each person's consent);
- b) identification of the information requested within those mailboxes;
- c) the consideration of any possible redactions for unrelated or personal information from these mailboxes; and
- d) notification to all persons listed in the Amended Request, and any other persons referred to within the captured emails, that their information has been captured by an FOI request, and seeking their position on this request.

The above tasks would take an estimated 9-10 weeks to complete and require the work and collaboration of multiple MCEC departments beyond the scope of their main responsibilities.

---

<sup>5</sup> *McIntosh v Victoria Police* [2008] VCAT 916 at [10].



...

[Additional detailed submission redacted]

35. During the review, the Agency was invited to provide a further submission on the 9-10 week time estimate for retrieving, sorting and consulting on documents identified as relevant to the terms of the Applicant's request. In summary, the Agency advised it would take a staff member two weeks to retrieve and sort emails based on the recipient. Further, it would take the equivalent of 60 work days to search through emails to determine their relevance to the Applicant's request.
36. Having considered the Agency's submissions, I accept the work involved in it processing the Applicant's original request would substantially divert the resources of the Agency from its other operations given, for example, the broad scope of the request which covers multiple individuals; the significant time periods covered; and the need for the Agency to retrieve emails older than 30 days from back-ups over those time periods.
37. Accordingly, I am satisfied the Agency has established the first requirement for section 25A(1) is met in respect to the Applicant's original request.

***Would processing the request involve an unreasonable diversion of the Agency's resources?***

38. The term 'unreasonableness' was considered in *Re SRB and Department of Health, Housing, Local Government and Community Services*, where the Commonwealth Administrative Appeals Tribunal held:

...it is not necessary to show...that the extent of unreasonableness is overwhelming. It is this Tribunal's task to weigh up the considerations for and against the situation and to form a balanced judgement of reasonableness, based on objective evidence.<sup>6</sup>

39. The Agency submits:

[Contextual information redacted]

...

The MCEC does not have a dedicated FOI unit. Rather, FOI requests are dealt with by a [position title], who dependent on the request, liaises with the [other Agency areas] as an ancillary role to their core responsibilities. The staff members and total capacity of these departments are as follows:

- a) The MCEC has one [position title] who is currently at full capacity.
- b) The [Agency area] Department consists of the [position titles] and is currently at full capacity.
- c) The [Agency area] Department consists of 15 staff members with responsibilities spanning [description of activities]. The Department is currently at full capacity.
- d) The [area of Agency] Department consists of 15 staff members with responsibilities [description of activities]. The Department is currently at full capacity.

...

The MCEC does not have a large IT Department and these resources would either need to be diverted from other 'business as usual' activities or resourced externally at a cost to the MCEC.

...

In addition, I request that the OVIC consider the additional strains to the MCEC's workforce caused by COVID-19. As you are aware, over the past two years our operations have been fundamentally shifted due to the pandemic. We have been required to cancel events and coordinate vaccination clinics in their place. While the MCEC has started to return to standard events and conferences, the backlog caused by this fundamental shift is still causing all MCEC Departments to work beyond their capacity. Until we have dealt with this backlog and returned to a more similar workload to that experienced pre-pandemic, we will be unable to reasonably deal with requests as wide in scope as the Amended Request.

---

<sup>6</sup> *Re SRB and Department of Health, Housing, Local Government and Community Services* (1994) 19 AAR 178 at [34].

40. In determining 'unreasonableness' for the purposes of section 25A(1), I have had regard to the approach adopted by the Victorian Civil and Administrative Tribunal (VCAT) in *The Age Company Pty Ltd v CenITex*,<sup>7</sup> in which VCAT considered relevant factors in determining if a request involves an unreasonable diversion of an agency's resources. I consider each of these factors below in the context of this matter:

- (a) Whether the terms of the request offer a sufficiently precise description to permit the Agency, as a practical matter, to locate the documents sought within a reasonable time and with the exercise of reasonable effort

I consider the terms of the Applicant's original request are sufficiently clear to allow document searches to occur. However, I accept locating documents, for example, from backup files and for former Agency staff would extend the effort required to locate all relevant documents. Given the broad terms of the original FOI request, I am satisfied the task would involve more than the exercise of reasonable effort.

- (b) The public interest in disclosure of documents relating to the subject matter of the request

Consistent with the object of the FOI Act, there is a public interest in members of the public having a right to access information and documents held by government agencies unless it is necessary to refuse access under an exception or exemption in the FOI Act in order to protect 'essential public interests and the private and business affairs of persons in respect of whom information is collected and held'.<sup>8</sup>

In *Mildenhall v Department of Education*,<sup>9</sup> VCAT held:

Section 25A seeks to balance competing interests. There is a public interest in an agency not being diverted from its core work through needing to process a very broad-ranging request for documents.

Although I acknowledge the significant impact the COVID-19 pandemic has had on the Agency's operations and its staff, these factors do not abrogate its statutory obligations under the FOI Act to process an FOI request where its terms are reasonable.

Noting the subject matter of the Applicant's request, I consider they have a personal interest in obtaining access to the documents. However, on the information before me, I am not satisfied there is a broader public interest that would be served by disclosure of the documents sought. Nor am I satisfied the Applicant's personal interest in the documents outweighs the public interest in the Agency not being diverted from its other operations due to the broad terms of the original FOI request.

- (c) Whether the request is a reasonably manageable one, giving due but not conclusive regard, to the size of the Agency and the extent of its resources usually available for dealing with FOI applications

In summary, the Applicant seeks access to correspondence between a number of parties over a [number of] day period. Given the Agency's submission in relation to SMS message storage, I consider all relevant documents would likely be emails.

I accept the Agency's submission on the steps which would be required to process the request, being retrieving, searching, sorting documents and consultation with any third parties, if required and where it is practicable to do so.

---

<sup>7</sup> *The Age Company Pty Ltd v CenITex* [2003] VCAT 288 at [43]-[45].

<sup>8</sup> Section 3(1).

<sup>9</sup> (unreported, VCAT, 19 April 1999) at [30].

Considering the Agency's submission that the Agency has one [position title] who is responsible for processing FOI requests, I am satisfied the work involved in processing the Applicant's original request would significantly impact upon that officer's ability to process other FOI requests. I also acknowledge the impacts on other Agency officers, including within its IT department.

Overall, I am satisfied the Applicant's original request is not a reasonably manageable one given the size of the Agency and extent of its resources.

(d) The reasonableness or otherwise of the Agency's initial assessment and whether the Applicant has taken a co-operative approach to redrawing the boundaries of the application

I have reviewed copies of correspondence exchanged between the Applicant and the Agency.

I consider the Agency's assessment of the Applicant's original request was reasonable, and consider this was acknowledged by the Applicant in their response amending the scope of their request. I acknowledge the efforts of the Applicant to reduce the scope of their request, and the indication they provided they are willing to further amend their request, if required.

As discussed above, I consider the Agency could have done more to assist the Applicant in narrowing their request, although their conduct overall was reasonable in the circumstances.

(e) The statutory time limit for making a decision in this application

I am satisfied the Agency would not be able to process the Applicant's original request within the statutory time limit for making a decision under section 21, even noting section 21(2) which provides for extensions of time which the Agency could either rely upon or for which the Agency could request the agreement of the Applicant.

41. Having considered the above factors, on balance, I am satisfied processing the Applicant's request, in its current form, would involve an unreasonable diversion of the Agency's resources from its other operations.

### **Conclusion**

42. I am satisfied the Agency consulted with the Applicant in accordance with the mandatory requirements under section 25A(6) prior to refusing to grant access to their request under section 25A(1).
43. Having considered the terms of the Applicant's original request I am satisfied the work involved in processing the request would both substantially and unreasonably divert the resources of the Agency from its other operations.
44. Accordingly, I am satisfied the requirements for refusal to grant access to documents in accordance with the Applicant's request under section 25A(1) are met and the Agency is not required to process the original request.
45. Despite my decision, it is open to the Applicant to consult with the Agency regarding framing a new FOI request in terms the Agency is able to process within a reasonable period of time. Suggested areas for consideration for the Applicant may involve an initial request for emails for a reduced number of Agency officers over a reduced period of time. Subsequent FOI requests can then be made for any further documents required.
46. In doing so, I suggest the Agency and the Applicant use the proposed Amended Request as a starting point and encourage them to conduct any discussions and consultation with a continued spirit of

cooperation in order that a fair balance can be struck between the Applicant's right to access documents that concern them and the work involved in the Agency processing the request.

### **Review rights**

47. If the Applicant is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.<sup>10</sup>
48. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>11</sup>
49. Information about how to apply to VCAT is available online at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au). Alternatively, VCAT may be contacted by email at [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au) or by telephone on 1300 018 228.
50. 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.<sup>12</sup>

---

<sup>10</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>11</sup> Section 52(5).

<sup>12</sup> Sections 50(3F) and 50(3FA).