

Notice of Decision and Reasons for Decision

Applicant:	'EZ4'
Agency:	Department of Treasury and Finance
Decision date:	7 February 2023
Exemptions considered:	Sections 28(1)(ba), 28(1)(d), 34(1)(b), 34(4)(a)(ii)
Citation:	'EZ4' and Department of Treasury and Finance (Freedom of Information) [2023] VICmr 4 (7 February 2023)

FREEDOM OF INFORMATION – Ministerial briefings – cabinet documents – commercial agreements – Melbourne Airport Rail Early Works – funding request – Royal Melbourne Hospital acute mental health beds – Commonwealth Road Safety Program – Tiered Infringement Model for industry

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

Notice of Decision

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

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

While I am satisfied certain information in the documents is exempt from release under sections 28(1)(d) and 34(1)(b), I am not satisfied information is exempt from release under sections 28(1)(ba) or 34(4)(a)(ii).

Accordingly, I have determined to release further information where I am satisfied it is not exempt from release or irrelevant information.

As I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with irrelevant and exempt information deleted in accordance with section 25, I have determined to grant access to the documents in part.

The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

My reasons for decision follow.

Sven Bluemmel

Information Commissioner

7 February 2023

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to specified briefs to the Treasurer.
2. The Agency identified eight documents falling within the terms of the Applicant's request and granted access to three documents in full and refused access to four documents in part and one document in full under sections 28(1)(ba), 28(1)(d), 34(1)(b) and 34(4)(a)(ii).
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. I have examined a copy of the documents subject to review.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered all communications and submissions received from the parties.
8. OVIC staff made enquires with the Agency to confirm that the Applicant had agreed to the removal of certain personal affairs information from the documents relating to non-executive staff and for any attachments to be excluded. The Agency advised there was a long-standing agreement between the Applicant and the Agency for these exclusions.
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 28(1) – Cabinet documents

12. Section 28(7)(a) defines 'Cabinet' as including a committee or sub-committee of the Cabinet.
13. In *Ryan v Department of Infrastructure*,² the Victorian Civil and Administrative Tribunal (**VCAT**) observed:

It has been said that a document is not exempt merely because it has some connection with Cabinet, or is perceived by departmental officers or others as being of a character that they believe ought to be regarded as a Cabinet document or because it has some Cabinet "aroma" around it. Rather, for a

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

² [2004] VCAT 2346 at [33].

document to come within the Cabinet document exemption, “it must fit squarely within one of the four exemptions [(now five)]” in section 28(1) of the Act.

14. Purely statistical, technical or scientific material in a document is not exempt.³

15. I address the application of sections 28(1)(ba) and 28(1)(d) below.

Section 28(1)(ba) – Document prepared for the purpose of briefing a Minister in relation to issues to be considered by the Cabinet

16. Section 28(1)(ba) provides a document is exempt if it has been prepared for the purpose of briefing a Minister in relation to issues to be considered by the Cabinet.

17. A document will be exempt under section 28(1)(ba) if the sole purpose, or one of the substantial purposes, for which the document was prepared was to brief a Minister in relation to an issue to be considered by the Cabinet.⁴ In the absence of direct evidence, the sole or substantial purpose of a document may be determined by examining the use of the document, including whether it was submitted to Cabinet.⁵

18. The word ‘briefing’ means a ‘short accurate summary of the details of a plan or operation. The ‘purpose...is to inform’.⁶ Therefore, the document should have the character of briefing material.⁷ A document will be of such character if it contains ‘information or advice...prepared for the purpose of being read by, or explained to, a minister’.⁸ It requires more than having ‘placed a document before a minister’.⁹

19. The Cabinet briefing purpose must be ‘immediately contemplated’ when the document is created. The exemption cannot apply merely because Cabinet ultimately considered the issue.¹⁰ The term ‘issues to be considered by the Cabinet’ within the meaning of section 28(1)(ba), requires that it must be more than just ‘likely’ the Cabinet will consider it. There must be an intention or expectation the relevant issue will be considered by the Cabinet, even if not ultimately considered.¹¹

20. Regarding Document 2, I am satisfied on the face of the document that the sole, dominant or substantial purpose of the document’s creation was to present options and recommendations to the Treasurer in relation to matters previously considered, and intended to be further considered, by a Cabinet Committee.

21. The Agency exempted one paragraph in Document 7 under section 28(1)(ba) that refers to matters, in the most general terms, that are intended to be included in a submission to Cabinet, prepared by another agency. While the information refers to a potential submission, I am not satisfied that this material in Document 7 has been prepared for the purpose of briefing a Minister in relation to issues to be considered by Cabinet.

³ Section 28(3).

⁴ *Ryan v Department of Infrastructure* (2004) 22 VAR 226; [2004] VCAT 2346 at [34] citing *Mildenhall v Department of Premier and Cabinet (No 2)* (1995) 8 VAR 478, at 290; *Herald & Weekly Times v Victorian Curriculum & Assessment Authority* [2004] VCAT 924 at [72]. See also *Department of Treasury and Finance v Dalla Riva* (2007) 26 VAR 96; [2007] VSCA 11 at [13].

⁵ *Secretary to the Department of Treasury and Finance v Dalla Riva* [2007] VSCA 11 at [15]; *Ryan v Department of Infrastructure* [2004] VCAT 2346 at [34].

⁶ *Ryan v Department of Infrastructure* [2004] VCAT 2346 at [41].

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Thwaites v Department of Health and Community Services* (unreported, AAT of Vic, Macnamara DP, 4 April 1996); *Environment Victoria Inc v Department of Primary Industries (general)* [2013] VCAT 39 at [40]; *Hennessy v Minister Responsible for the Establishment of an Anti-Corruption Commission & Anor* [2013] VCAT 822 at [29].

¹¹ *Environment Victoria Inc v Department of Primary Industries* [2013] VCAT 39 at [38]-[41].

22. Accordingly, I am not satisfied information in the documents is exempt from release under section 28(1)(ba).
23. My decision on section 28(1)(ba) is set out in the Schedule of Documents in **Annexure 1**.

Section 28(1)(d) –Disclosure of any deliberation or decision of the Cabinet

24. Section 28(1)(d) provides a document is exempt from release if it would involve the disclosure of any deliberation or decision of the Cabinet other than a document by which a decision of the Cabinet was officially published.
25. A document will be exempt under section 28(1)(d) if there is evidence the Cabinet discussed and determined options or issues set out in a document.¹²
26. Where a document, on its face, does not disclose a decision or deliberation of the Cabinet, or the extent of the Cabinet’s interaction with a document is unclear, section 28(1)(d) will not apply.¹³
27. Deliberations means the actual debate that takes place, not just the subject matter of the debate. In *Department of Infrastructure v Asher (Asher)* at [8], the Victorian Supreme Court of Appeal held:

It all depends upon the terms of the document. At one end of the spectrum, a document may reveal no more than that a statistic or description of an event was placed before Cabinet. At the other end, a document on its face may disclose that Cabinet required information of a particular type for the purpose of enabling Cabinet to determine whether a course of action was practicable or feasible or may advance an argument for a particular point of view.¹⁴ The former would say nothing as to Cabinet’s deliberations; the latter might say a great deal.

28. Also held in *Asher* at [58]:

The deliberative process involves the weighing up or evaluating of the competing arguments or considerations that may have a bearing upon Cabinet’s course of action – its thinking processes¹⁵ - with a view to the making of a decision. It encompasses more than mere receipt of information in the Cabinet room for digestion by Cabinet ministers then or later.¹⁶

29. A ‘decision’ means any conclusion as to the course of action the Cabinet adopts whether it is a conclusion as to final strategy on a matter or conclusions about how a matter should proceed.¹⁷
30. Where a decision made by the Cabinet is public, an announcement in relation to the issue decided will not disclose the Cabinet’s decision or deliberation.¹⁸
31. I am satisfied a small amount of information in Document 2 reveals a decision of a Cabinet committee.

¹² *Smith v Department of Sustainability and Environment* [2006] VCAT 1228 at [23]; *Asher v Department of Infrastructure* (2006) 25 VAR 143; [2006] VCAT 1375 at [27].

¹³ *Asher v Department of Sustainability and Environment* (General) [2010] VCAT 601 at [42], citing *Re Birrell and Department of Premier and Cabinet [Nos 1 and 2]* (1986) 1 VAR 230 at 239.

¹⁴ *Smith v Department of Environment and Sustainability* [2006] VCAT 1228.

¹⁵ *Re Waterford and the Department of the Treasury (No 2)* [1984] AATA 67; (1984) 1 AAR 1.

¹⁶ *Re Birrell and Department of the Premier and Cabinet* (1986) 1 VAR 230.

¹⁷ *Dalla Riva v Department of Treasury and Finance* (2005) 23 VAR 396; [2005] VCAT 2083 at [30], citing *Toomer and Department of Agriculture, Fisheries and Forestry and Ors* [2003] AATA 1301.

¹⁸ *Honeywood v Department of Innovation, Industry and Regional Development* (2004) 21 VAR 1453; [2004] VCAT 1657 at [26]; *Ryan v Department of Infrastructure* [2004] VCAT 2346 at [46].

32. As mentioned above, an exemption under section 28 cannot be claimed merely because it has some connection with Cabinet or a Cabinet 'aroma', as the document must fit squarely into one of the exemptions under section 28.¹⁹
33. On the information before me, I am not satisfied the information exempted in Document 8 reveals the nature of any deliberations that may have occurred, or a decision made in relation to the issue. Rather, the exempted information reveals, in general terms, the subject considered by the Cabinet committee. Accordingly, I am not satisfied it is exempt from release under section 28(1)(d).
34. My Decision on section 28(1)(d) is set out in the Schedule of Documents in **Annexure 1**.

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

35. Section 34(1)(b) provides a document is an exempt document if its disclosure under the FOI Act would disclose information acquired by an agency (or a Minister) from a business, commercial or financial undertaking and:
- (a) the information relates to other matters of a business, commercial or financial nature; and
 - (b) the disclosure of the information would be likely to expose the undertaking unreasonably to disadvantage.

Was the information acquired from a business, commercial or financial undertaking?

36. In *Thwaites v Department of Human Services*,²⁰ VCAT observed the phrase 'information acquired' in section 34(1) signifies the need for some positive handing over of information in some precise form.
37. The Agency exempted certain information in Document 1 that I am not satisfied was acquired from a business, commercial or financial undertaking. Rather, it is information relating to an agreement by another public sector agency in relation to the early works package. Such information does not satisfy this limb of section 34(1)(b). In any case, the Agency has applied section 34(4)(a)(ii) to the same information, which I will consider below.
38. However, I am satisfied paragraph 7 of Document 1 reveals information that was acquired from a third party business or commercial undertaking.
39. In Document 5, the Agency has exempted monetary figures relating to an offer from a third party business or commercial undertaking to deliver 22 additional acute mental health beds at a public hospital. I am satisfied the information was acquired from the undertaking.

Does the information relate to matters of a business, commercial or financial nature?

40. VCAT has also recognised the words 'business, commercial or financial nature' have their ordinary meaning.²¹
41. I am satisfied the exempted information relates to matters of a business, commercial or financial nature.

¹⁹ *Herald & Weekly Times v Victorian Curriculum & Assessment Authority* (2004) 21 VAR 68; [2004] VCAT 924 at [71]; *Ryan v Department of Infrastructure* [2004] VCAT 2346 at [33] and *Davis v Major Transport Infrastructure Authority* [2020] VCAT 965 at [23], citing *Birnbaumer v Department of Industry Technology and Resources* (1986) 1 VAR 279 at 286.

²⁰ (1999) 15 VAR 1 at 13.

²¹ *Gibson v Latrobe CC* [2008] VCAT 1340 at [25].

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

42. Section 34(2) provides that in deciding whether disclosure of information would expose an undertaking unreasonably to disadvantage, for the purposes of paragraph (b) of subsection (1), an agency or Minister may take account of any of the following considerations—
- (a) whether the information is generally available to competitors of the undertaking;
 - (b) whether the information would be exempt matter if it were generated by an agency or a Minister;
 - (c) whether the information could be disclosed without causing substantial harm to the competitive position of the undertaking; and
 - (d) whether there are any considerations in the public interest in favour of disclosure which outweigh considerations of competitive disadvantage to the undertaking, for instance, the public interest in evaluating aspects of government regulation of corporate practices or environmental controls—
- and of any other consideration or considerations which in the opinion of the agency or Minister is or are relevant.
43. I have also had regard to the decision in *Dalla Riva v Department of Treasury and Finance*,²² in which VCAT held documents are exempt under section 34(1)(b) if their disclosure would:
- (a) give competitors of a business undertaking a financial advantage;
 - (b) enable competitors to engage in destructive competition with a business undertaking; and
 - (c) would lead to the drawing of unwarranted conclusions as to a business undertaking's financial affairs and position with detrimental commercial and market consequences.
44. I consider the phrase 'expose the undertaking unreasonably to disadvantage' in section 34(1)(b), contemplates disclosure of documents under the FOI Act may expose a business undertaking to a certain measure of disadvantage. By the introduction of the word 'unreasonably' in section 34(1)(b), I consider Parliament determined this exemption applies where an undertaking would be exposed 'unreasonably' to disadvantage only, rather than where disclosure would result in any measure of exposure to disadvantage.
45. Accordingly, section 34(1)(b) contemplates a business undertaking may be exposed to a certain level of disadvantage. The question is whether any such disclosure would expose the undertaking unreasonably to disadvantage.
46. There is no information before me concerning the views of the undertakings.
47. I am satisfied disclosure of the exempted information in paragraph 7 of Document 1 will be reasonably likely to expose the undertaking unreasonably to disadvantage, as it concerns the undertaking in the context of being an unsuccessful bidder and the nature of the information could reflect negatively on the undertaking. As such, I am satisfied it is exempt from release under section 34(1)(b).
48. With respect to the remaining information exempted from release under section 34(1)(b), I am not satisfied disclosure would be likely to expose the undertakings unreasonably to disadvantage for the following reasons:

²² [2007] VCAT 1301 at [33].

- (a) While I note certain information concerns financial information not generally known to competitors of the business undertakings, this is one factor for consideration only and is not determinative.
- (b) A key purpose of access to information under the FOI Act is to ensure dealings between government agencies and business undertakings are better able to be scrutinised. There is a public interest in favour of disclosure of the information sought to provide transparency and accountability around government procurement and tendering processes in the expenditure of public funds.
- (c) Where commercial entities engage with government, and where public funds are utilised to fund such projects, it is not unreasonable to expect greater transparency than a commercial entity would experience when dealing with other commercial entities and that information provided by a company to a government agency may be released under the FOI Act or other means.²³
- (d) I accept the release of commercial documents within a commercially competitive environment, may cause a certain measure of disadvantage. However, the test in regard to section 34(1)(b) is whether disclosure would be likely to expose a business undertaking unreasonably to disadvantage. This provision contemplates some disadvantage may be experienced by an entity that enters into a commercial agreement with government on behalf of the State. In this instance, there is not sufficient information to satisfy me any such disadvantage to which the business undertaking may be exposed would be unreasonable.
- (e) The FOI Act requires access be provided to information in the possession of government 'limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs' and that any discretion conferred by the FOI Act be exercised, as far as possible, to facilitate and promote the disclosure of information.²⁴ In my view, any disadvantage to which the business undertakings would likely be exposed due to disclosure of the documents is outweighed by the public interest in favour of government transparency and accountability on the use of public funds.
- (f) I am satisfied the Applicant is not a competitor of the undertaking. Rather, the Applicant seeks access to the documents for personal reasons.

49. Accordingly, I am satisfied certain information in Document 1 is exempt from release under section 34(1)(b). However, the remaining information the Agency claimed exempt under section 34(1)(b) is not exempt from release.

50. My decision on section 34(1)(b) is set out in the Schedule of Documents in **Annexure 1**.

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

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

- (a) the agency is engaged in trade or commerce;
- (b) the document contains information of a business, commercial or financial nature; and
- (c) disclosure of which would be likely to expose the agency unreasonably to disadvantage.

²³ This was noted by Deputy President Galvin in *Thwaites v Metropolitan Ambulance Services* (1996) 9 VAR 427 at 477.

²⁴ Section 3.

Is the Agency engaged in trade and commerce?

52. Whether an agency is engaged in trade or commerce depends on the facts and circumstances of each case.²⁵
53. VCAT has held 'the terms 'trade' and 'commerce' are not words of art; rather they are expressions of fact and terms of common knowledge'.²⁶ VCAT has adopted the view of the Federal Court of Australia that these terms are 'of the widest import'.²⁷ An agency may be regarded as being engaged in trade or commerce, even if the amount of trade or commerce engaged in is insignificant and incidental to the agency's other functions.²⁸
54. Further, an agency may be engaged in trade or commerce, even if profit is not one of its express statutory objectives.²⁹
55. While the phrase 'trade and commerce' may be interpreted broadly, it has been held trade and commerce must 'of their nature, bear a trading or commercial character'.³⁰
56. The fact an agency's predominant activities may be described as 'governmental' does not preclude it from relying on the exemption under section 34(4)(a)(ii).³¹
57. In my view, whether information is governmental or relates to agency trade and commerce depends on the specific document and the purpose of that engagement.
58. Documents 1 and 5 both concern the Government entering into commercial agreements with third party undertakings.
59. Document 1 concerns a request to the Treasurer to approve a third party business undertakings as the preferred respondent for the Planning phase of the Early Works Package for the Melbourne Airport Rail project.
60. Document 5 concerns the Treasurer's approval of an offer from an external business undertaking to deliver additional acute mental health beds at the Royal Melbourne Hospital, and other matters related to this subject.
61. I take the view described in *Pallas v Roads Corporation*,³² that a government agency engaged in meeting its public functions it not engaged in trade or commerce, for example in relation to VicRoads:

In carrying out its road building functions the Corporation engages in Governmental activities rather than in trade or commerce...

Nor can it be said that VicRoads is engaged in trade or commerce in putting a road project out to tender or in awarding a contract which has been the subject of a tender process. No doubt the contracting process in a general sense is a manifestation of trade or commerce. The construction companies which might tender for and undertake the contract clearly are engaged in trade or commerce. That fact does not mean that the Corporation is. A consumer who purchases a consumer item from a department store is not, for that

²⁵ *Stewart v Department of Tourism, Sport and the Commonwealth Games* [2003] VCAT 45 at [41].

²⁶ *Gibson v Latrobe CC (General)* [2008] VCAT 1340 at [33] citing *Re Ku-Ring-Gai Co-operative Building Society (No 12) Ltd* [1978] FCA 50; (1978) ALR 621 at [44].

²⁷ *Ibid* at [34] citing *Re Ku-Ring-Gai Co-operative Building Society (No 12) Ltd* [1978] FCA 50; (1978) ALR 621 at [44].

²⁸ *Ibid* at [36] citing *Marple v Department of Agriculture* (1995) 9 VAR 29 at 76.

²⁹ *Thwaites v Metropolitan Ambulance Services* (1996) 9 VAR at 473.

³⁰ *Gibson v Latrobe City Council* [2008] VCAT 1340 at [35] citing *Concrete Constructions (NSW) Pty Ltd v Nelson* [1990] HCA 17; (1990) 169 CLR at 604.

³¹ *Stewart v Department of Tourism, Sport and the Commonwealth Games* (2003) 19 VAR 363; [2003] VCAT 45 at [41]; *Fyfe v Department of Primary Industries* [2010] VCAT 240 at [23].

³² *Pallas v Roads Corporation (Review and Regulation)* [2013] VCAT 1967.

reason, engaged in trade or commerce, although the department store most certainly is and the sale transaction must be regarded as part of the processes of trade or commerce.³³

62. Where the Government enters into a contract on behalf of the State of Victoria with a private entity in exchange for the provision of services for the benefit of the public, it does not do so as an activity in the capacity of engaging in trade or commerce, but rather to fulfil its role to deliver governmental services, functions and deliver publicly funded projects on behalf of the community.
63. In this instance, while there is a contractual relationship between the Agency and the business undertakings, the Agency is not engaged in trade or commerce in contracting with the business undertakings, but rather carrying out its governmental functions in the delivery of publicly funded projects on behalf of the community.
64. While I am not satisfied this limb of the exemption is satisfied, for completeness, I will consider the remaining limbs of section 34(4)(a)(ii).

Do the documents contain information of a business, commercial or financial nature?

65. The phrase 'information of a business, commercial or financial nature' is not defined in the FOI Act. Therefore, the words 'business, commercial or financial nature' should be given their ordinary meaning.³⁴
66. I am satisfied the exemption information in Documents 1 and 5 is of a business, commercial and financial nature.

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

67. Whether disclosure is likely to expose an agency unreasonably to disadvantage depends on the particular facts and circumstances of the matter, considering the consequences that are likely to follow from disclosure of the information.
68. The provision contemplates that disclosure of a document under the FOI Act may expose the agency to a certain measure of disadvantage, and that any such exposure must be unreasonable.
69. I do not accept disclosure would be likely to expose the Agency unreasonably to disadvantage and the monetary amounts set out in the document.
70. I am not satisfied disclosure will adversely impact future negotiations. I consider, in general terms, that any contract negotiations will be influenced by a number of factors including the subject of the contract, the bargaining power of the contracting parties and the existence of competitive pressures to obtain the benefit of the contract. I consider government agencies have considerable bargaining strength. Businesses will more likely than not be prepared to do business with government agencies where they consider it is in their commercial interests to do so.
71. Regardless, even if I were satisfied the Government would be exposed to disadvantage, I do not consider any such disadvantage would be unreasonable where the public interest lies in favour of disclosure. In this instance, I consider disclosure would promote accountability for government's use of public funds.
72. Accordingly, I am not satisfied information in the documents is exempt from release under section 34(4)(a)(ii).
73. My decision on section 34(4)(a)(ii) is set out in the Schedule of Documents in **Annexure 1**.

³³ Ibid at [57]-[58].

³⁴ *Gibson v Latrobe CC (General)* [2008] VCAT 1340 at [25].

Section 25 – Deletion of exempt or irrelevant information

74. 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.
75. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’³⁵ and the effectiveness of the deletions. Where deletions would render a document meaningless, they are not ‘practicable’ and release of the document is not required under section 25.³⁶
76. I note there is an agreement between the parties that personal affairs information of non-executive persons is not sought nor attachments. Such information is irrelevant in accordance with section 25.
77. I have considered the effect of deleting irrelevant exempt information from the documents. In my view, 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. Accordingly, access to documents is granted in part.

Conclusion

78. On the information before me, I am satisfied certain information in the documents is exempt from release under sections 28(1)(d) and 34(1)(b), however, I am not satisfied information is exempt from release under sections 28(1)(ba) or 34(4)(a)(ii).
79. Accordingly, I have determined to release further information where I am satisfied it is not exempt from release or irrelevant information.
80. As I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with irrelevant and exempt information deleted in accordance with section 25, I have determined to grant access to the documents in part.
81. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

Review rights

82. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.³⁷
83. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.³⁸
84. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.³⁹
85. 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.

³⁵ *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 at [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

³⁶ *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], [155].

³⁷ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

³⁸ Section 52(5).

³⁹ Section 52(9).

86. 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.⁴⁰

Third party review rights

87. As I have determined to release documents that contain information of a business, financial, commercial nature relating to a business undertaking, if practicable, I am required to notify those persons of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.⁴¹
88. In this case, I am satisfied it is practicable to notify the relevant parties of their review rights and confirm they will be notified of my decision on the date of decision.

When this decision takes effect

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

⁴⁰ Sections 50(3F) and 50(3FA).

⁴¹ Sections 49P(5), 50(3A) and 52(3).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.	14/12/2021	Ministerial Brief B21/2107	4	Released in part Sections 34(1)(b), 34(4)(a)(ii)	Release in part Sections 34(1)(b), 25 The document is to be released, except for the following information which is to be deleted in accordance with section 25: (a) the second sentence of paragraph 7, which is exempt from release under section 34(1)(b); and (b) irrelevant personal affairs information that was redacted in the Agency's decision.	Sections 34(1)(b): I am satisfied certain information in this document is exempt from release under section 34(1)(b) for the reasons provided in the Notice of Decision, above. Section 34(4)(a)(ii): I am not satisfied information in this document is exempt from release under section 34(4)(a)(ii) for the reasons provided in the Notice of Decision, above. Section 25: I am satisfied it would be practicable to provide the Applicant with an edited copy of the document with exempt information and irrelevant personal affairs information deleted in accordance with section 25.
2.	[Date]	Ministerial Brief [reference]	6	Refused in full Sections 28(1)(ba), 28(1)(d)	Refused in full Sections 28(1)(ba), 28(1)(d)	Section 28(1)(ba): I am satisfied the document is exempt from release under section 28(1)(ba) for the reasons provided in the Notice of Decision, above.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>Section 28(1)(d): I am satisfied a small amount of information in this document will reveal a decision by a Cabinet committee and is therefore exempt from release under section 28(1)(d).</p> <p>Section 25: I am not satisfied it is practicable to provide the Applicant with an edited copy of the document with exempt information deleted in accordance with section 25.</p>
5.	15/12/2021	Ministerial Brief B21/1852	3	Released in part Sections 34(1)(b), 34(4)(a)(ii)	Release in part Section 25 The information the Agency exempted from release under section 34(1)(b) and 34(4)(a)(ii) is to be released.	<p>Sections 34(1)(b): I am not satisfied information in this document is exempt from release under section 34(1)(b) for the reasons provided in the Notice of Decision, above.</p> <p>Section 34(4)(a)(ii): See comments for Document 1.</p> <p>Section 25: I am satisfied it is practicable to provide the Applicant with an edited copy of the document with irrelevant information deleted in accordance with section 25.</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
7.	1/01/2021	Ministerial Brief B21/1660	5	Released in part Section 28(1)(ba)	Release in part Section 25 The information the Agency exempted from release under section 28(1)(ba) is to be released.	Section 28(1)(ba): I am not satisfied this document is exempt from release under section 28(1)(ba) for the reasons provided in the Notice of Decision, above. Section 25: See comments for Document 5.
8.	6/10/2021	Ministerial Brief B21/1688	2	Released in part Section 28(1)(d)	Release in part Section 25 The information the Agency exempted from release under section 28(1)(d) is to be released.	Section 28(1)(d): I am not satisfied information in this document is exempt from release under section 28(1)(d) for the reasons provided in the Notice of Decision, above. Section 25: See comments for Document 5.