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## Notice of Decision and Reasons for Decision

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Applicant: 'CH2'  
Agency: National Gallery of Victoria  
Decision date: 9 November 2020  
Exemptions considered: Section 30(1), 35(1)(a), 35(1)(b), 34(4)(a)(ii), 36(1)(b)  
Citation: 'CH2' and National Gallery of Victoria (Freedom of Information) [2020] VICmr 314 (9 November 2020)

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FREEDOM OF INFORMATION – management matters – external consultant – email correspondence – memorandum – letter – agency not engaged in trade or commerce

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 in that I have decided to release additional information in the documents.

I am not satisfied the documents are exempt under sections 30(1), 35(1)(a), 35(1)(b), 34(4)(a)(ii) or 36(1)(b).

As I am satisfied it is practicable to delete irrelevant information in the documents in accordance with section 25, I have determined to grant access to the documents in part.

My reasons for decision follow.

Sven Bluemmel  
Information Commissioner

9 November 2020

## Reasons for Decision

### Background to review

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

Meetings, discussions, and/or correspondence between NGV staff and [consultant] [name] between [date] and [date]. This includes, but should not be limited to:

  - (i) Meeting agendas
  - (ii) Meeting minutes
  - (iii) Emails
  - (iv) Phone conversation notes
2. In its decision, the Agency identified certain documents falling within the terms of the Applicant's request. It decided to grant access to some of those documents in part and refuse access to other documents in full.

### Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. The Applicant narrowed the scope of the review to Documents 4.1, 7, 8, 10, 11, 11.1, 13, 18, 19, 24, 27 and 30.
5. The Applicant advised during the review they do not seek access to the personal affairs information of third parties in the documents. Accordingly, this review does not consider information the Agency exempted under section 33(1).
6. I have examined copies 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, including:
  - (a) the Agency's decision on the FOI request;
  - (b) the Applicant's submission dated [Date] and information provided with the Applicant's review application;
  - (c) the Agency's submission dated [Date]; and
  - (d) all other communications between the Agency, the Applicant and OVIC staff.
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 and at the lowest reasonable cost.

## Review of exemptions

### Section 30(1)

11. 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; and
  - (a) such matter must be made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government; and
  - (b) disclosure of the matter would be contrary to the public interest.
12. The exemption does not apply to purely factual material in a document.<sup>1</sup>
13. The term 'officer of an Agency' is defined in section 5(1). It includes a member of an agency, a member of an agency's staff, and any person engaged by or on behalf of an agency, whether or not that person is one to whom the provisions of the *Public Administration Act 2004* (Vic) apply.
14. The words 'opinion, advice or recommendation' convey a meaning of matters in the nature of a 'personal view', 'an opinion recommended or offered' or a 'presentation worthy of acceptance'.<sup>2</sup>
15. It is not necessary for information in a document to be in the nature of opinion, advice or recommendation. Rather, its release must disclose information of that nature.
16. Determining whether disclosure of a document would be contrary to the public interest involves a 'process of the weighing against each other conflicting merits and demerits' of disclosure.<sup>3</sup>

*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?*

17. Having reviewed the documents, I am satisfied certain information conveys opinions, advice and recommendations of Agency officers.
18. However, certain information in the documents consists of administrative information. I do not accept this information is in the nature of opinion, advice or recommendation prepared by an Agency officer in the course of consultation or deliberation between Agency officers.
19. Accordingly, I am not satisfied the first requirement of section 30(1) is met with respect to certain information exempted by the Agency in the documents and such information is not exempt under section 30(1).

*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' has been interpreted widely. In *Re Waterford and Department of Treasury (No. 2)*,<sup>4</sup> the Commonwealth Administrative Appeals Tribunal held:

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<sup>1</sup> Section 30(3).

<sup>2</sup> *Halliday v Office of Fair Trading* (unreported, AAT of Vic, Coghlan PM, 20 July 1995).

<sup>3</sup> *Sinclair v Maryborough Mining Warden* [1975] HCA 17; [1975] 132 CLR 473 at [485], adopted in *Department of Premier and Cabinet v Hulls* [1999] VSCA 117 at [30].

<sup>4</sup> [1981] 1 AAR 1.

... “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.

21. I am satisfied the documents were produced for the Agency’s deliberative processes relating to management matters. Therefore, I am satisfied the second requirement of section 30(1) is met.

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

22. In deciding whether disclosure of information exempted by the Agency would be contrary to the public interest, I have given weight to the following factors:<sup>5</sup>

- (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 or 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 document 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 document;
- (f) the impact of disclosing a document in draft form or where 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 its decision letter, the Agency submits the following about its application of section 30(1):

Release of the documents would disclose opinion, advice or recommendation prepared by NGV officer, or consultation or deliberation between NGV officers in relation to its consideration of industrial relations matters.

The documents contain exchanges between officers in the course of and for the purposes of deliberative process of the NGV. That includes its thinking process as part of it exercising its functions as a Victorian public sector employer and under the NGV Enterprise Agreement.

... disclosure of those documents would be contrary to the public interest in that:

- (a) disclosure may lead to confusion and unnecessary debate where the documents do not accurately reflect all considerations that led to the final position of the NGV;

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

- (b) internal deliberations about or in the nature of draft documents are preliminary in nature and are likely to omit information, particularly where they were exchanged without intention of public review;
- (c) the sensitivity of the material contained in those documents, including the seniority of some of the individuals involved in communicating or exchanging those document.

24. In its submission, the Agency further submits that disclosure of the documents would be contrary to the public interest for the following reasons:

... Disclosure would be likely to inhibit frankness and candour in the making of communications between NGV officers in circumstances of resolving and responding to complaints made by staff. This would, in turn, likely affect the quality of decisions made by a decision maker.

In this case, the relevant NGV officers hold senior or executive level positions. In *Thwaites v Department of Premier and Cabinet*, the AAT said that documents containing information in the nature of opinion, advice or recommendation passing between an executive officer and more senior officers constitute a rare and quintessential example of when the frankness and candour argument might be made out.

... There is strong public interest in maintaining confidentiality of exchanges of opinion, advice or recommendations in regards to industrial relations. Disclosure would inhibit the capacity of officers to give such opinion, advice or recommendations independently and frankly in the future and potentially disadvantage the agency in future enterprise bargaining negotiations.

25. Having reviewed the documents, I am satisfied release of the opinions and recommendations of the Agency officers would not be contrary to the public interest for the following reasons:

- (a) I accept some information in the documents has a degree of sensitivity as it relates to internal management matters and the Agency's responsibilities to its employees. However, I do not consider the documents disclose sensitive deliberations that would be contrary to the public interest to release such that it would diminish the Agency's deliberative processes. In addition, where the information is administrative in nature – I do not consider this information to be sensitive.
- (b) While I accept there is a public interest in preserving the ability of Agency officers to express their opinions and recommendations when giving advice and providing information to the Agency, based on the content of the documents, I consider disclosure of such information would not be reasonably likely to discourage or inhibit Agency officers from recording similar opinions and recommendations in the future.
- (c) I note that Agency's view disclosure of the documents could cause confusion or unnecessary debate where the documents do not reflect all considerations relating to a decision. In my view, the public is capable of understanding such advice, opinions or recommendations are provided at a particular point in time and may be one of a number of sources of advice contributing to the Agency's overall assessment of an issue. I consider it would be open to the Agency to provide an explanation as to the current position of the Agency regarding the matter.
- (d) I am not satisfied that disclosure would inhibit frankness or candour in the making of communications between Agency officers. Agency officers are responsible for ensuring advice is accurate, complete and properly considered on matters central to its governmental functions. It is the role of government, supported and informed by analysis and advice undertaken by agency officers, to make decision and act in the best interests of the public – a role that is necessarily the subject of public scrutiny.

26. Accordingly, in balancing the above factors, I am satisfied disclosure of the documents would not be contrary to the public interest and the documents are not exempt under section 30(1).

**Section 35(1)(b)**

27. 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.

28. In summary, section 35(1)(b) is concerned with protecting the public interest in the free flow of information provided in confidence between a third party and an agency.

*Was the information or matter communicated in confidence?*

29. When determining whether information was communicated in confidence, it is necessary to consider the position from the perspective of the communicator.<sup>6</sup>

30. Further, confidentiality can be expressed or implied from the circumstances of the matter.<sup>7</sup>

31. The information exempted by the agency is a memorandum (Document 11.1) between Agency officers relating to management matters.

32. Generally, section 35(1)(b) only applies to information communicated to an agency from an external source rather than internal communications between agency staff carrying out their usual duties and responsibilities. For example, where an agency officer provides confidential information to their agency to assist in the investigation of a workplace incident or dispute.<sup>8</sup>

33. However, in this matter, I am not satisfied the information in the memorandum is information communicated in confidence to the Agency for the purposes of section 35(1)(b). Accordingly, I am not satisfied this information is exempt under section 35(1)(b).

34. Internal communications between Agency officers are more appropriately dealt with under section 30(1) of the FOI Act – this has been addressed above.

35. Accordingly, I am not satisfied Document 11.1 is exempt under section 35(1)(b).

**Section 35(1)(a)**

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

- (c) disclosure would divulge information or matter communicated in confidence by or on behalf of a person or a government to an agency or Minister; and
- (d) the information would be exempt matter if it were generated by an agency or Minister.

37. The Agency applied section 35(1)(a) in conjunction with section 30(1) to refuse access to Document 4.1 in full.

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<sup>6</sup> *XYZ v Victoria Police* [2010] VCAT 255 at [265].

<sup>7</sup> *Ibid.*

<sup>8</sup> See *Sportsbet v Department of Justice* [2010] VCAT 8 at [71]-[78]; *XYZ v Victoria Police* [2010] VCAT 255 at [287]-[288]; *Birnbauer v Inner and Eastern Health Care Network* (1999) VCAT 1363 at [14]-[15].

38. Section 30(1) concerns 'internal working documents' of an agency. However, section 35(1)(a) has the effect that, if the information was communicated to an agency from an outside source, so long as the requirements of section 30(1) are met, those communicating the information in confidence are 'deemed' to be officers of the agency and the material will be assessed as if it were generated by the agency. If the material is capable of being exempt under section 30(1), the exemption under section 35(1)(a) will be made out.<sup>9</sup>

*Was the information communicated in confidence?*

39. When determining whether the information was communicated in confidence, 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.<sup>10</sup>
40. Having reviewed the document, there is nothing to indicate the information has been provided in confidence. For example, there are no protective markings or language to imply it is communicated in confidence. The information relates to the Agency's responsibilities to its employees. I am not satisfied this information is 'information or matter communicated in confidence' to the Agency for the purpose of section 35(1)(a).

*Would the information be exempt matter it was generated by the Agency under section 30(1)?*

41. Even if I were satisfied the information was communicated in confidence, for the reasons provided above, I am not satisfied it would be exempt under section 30(1).
42. Accordingly, I am not satisfied Document 4.1 is exempt under section 35(1)(a).

**Section 34(4)(a)(ii)**

43. A document will be an exempt document 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 the document would be likely to expose the Agency unreasonably to disadvantage.
44. Whether an Agency is engaged in trade or commerce depends on the facts and circumstances of each case.
45. In *Re Ku-ring-gai Co-operative Building Society (No 12) Ltd*, the Federal Court of Australia held, '[t]he terms "trade" and "commerce" are not terms of art. They are expressions of fact and terms of common knowledge'<sup>11</sup> and are terms 'of the widest import'.<sup>12</sup>
46. 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.<sup>13</sup>
47. Further, an agency may be engaged in trade or commerce, even if profit is not one of its express statutory objectives.<sup>14</sup>

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<sup>9</sup> *Casey City Council v Environment Protection Authority* [2010] VCAT 453 at [28]-[30].

<sup>10</sup> *XYZ v Victoria Police* [2010] VCAT 255 at [265].

<sup>11</sup> *Pallas v Roads Corporation (Review and Regulation)* [2013] VCAT 1967 at [33].

<sup>12</sup> *Ibid* at [34]; *Re Ku-Ring-Gai Co-operative Building Society (No 12) Ltd* (1978) 22 ALR 621 at [649].

<sup>13</sup> *Marple v Department of Agriculture* [1995] 9 VAR 29 at [47].

<sup>14</sup> *Thwaites v Metropolitan Ambulance Services* [1996] 9 VAR at [473].

48. 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).<sup>15</sup>
49. The High Court of Australia has determined 'trade or commerce' means 'dealings in the course of those activities or transactions which of their nature bear a trading or commercial character'.<sup>16</sup>
50. The exemption in section 34(4)(a)(ii) is intended to apply where a public sector body conducts itself or part of its operations, in a manner similar to a commercial entity.
51. The Agency applied section 34(4)(a)(ii) to refuse access to Documents 11.1 and 27 in full. The documents relate to internal management matters.
52. In its decision letter, the Agency submits the following with respect to its application of section 30(1):
- ... the NGV engages in trade or commerce in that it enters into employment contracts with individuals employed for or by the NGV in competition with other public and private sector employers. From time to time the NGV also engages external consultants to advise on particular matters, and does so on a competitive basis. The documents to which this exemption applies contain information of a business, commercial or financial nature about the NGV in relation to trade or commerce.
- I am satisfied that if such information was disclosed, the NGV would likely be exposed unreasonably to disadvantage in at least the following ways:
- disclosure would be a departure from the confidentiality of business, commercial or financial information communicated between NGV officers in relation to industrial relations matters; and
  - disclosure would compromise the NGV's bargaining power in negotiating future commercial engagements.
53. I accept the Agency may be engaged in commercial activity insofar as it enters into contracts for, or in connection with, carrying out its functions and powers under the *National Gallery of Victoria Act 1966*. However, I am not satisfied that the essential character or core activity undertaken by the Agency in this instance, relating to management, is that of 'trade or commerce'. If I were to accept the Agency's reasoning, this would mean that an agency is engaged in trade or commerce merely by virtue of the fact that it employs staff or engages consultants. Since every agency employs staff or engages consultants, every agency is "engaged in trade or commerce". This interpretation would render the qualification of "engaged in trade or commerce" meaningless and effectively redundant.
54. In any event, I do not consider the information claimed to be exempt to be the type of 'business, commercial or financial' information that section 34(4)(a)(ii) seeks to protect.
55. Accordingly, as I have found the exemption fails on the first limb, I am not satisfied Documents 11.1 and 27 are exempt under section 34(4)(a)(ii).

### **Section 36(1)(b)**

56. Section 36(1) provides a document is an exempt document if:

...

- (b) in the case of documents of a department or prescribed authority its disclosure under the Act would be contrary to the public interest by reason that it would disclose instructions issued to, or provided for the

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<sup>15</sup> *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].

<sup>16</sup> *Concrete Constructions (NSW) Pty Ltd v Nelson* (1990) 169 CLR 594 at 690, *Gibson v Latrobe City Council* [2008] VCAT 1340 at [35].

use of guidance of, officers of an agency on the procedures to be followed or criteria to be applied in negotiation, including financial, commercial and labour negotiation, in the execution of contracts, in the defence, prosecution and settlement of cases, and in similar activities relating to the financial property to personnel management and assessment interests of the Crown or of an agency.

57. In its submission, the Agency relies on the following information to exempt Documents 4.1, 11.1 and 24:

... it is submitted that the documents exempt under s 36(1)(b) would disclose generalised instructions issued to NGV officers on the execution of a contract, that is, the existing enterprise agreement, or in similar activities relating to personnel management.

... if disclosed, the[y] would disclose instructions on the process or procedure by which NGV officers should adopt for the purpose of compliance with the enterprise agreement .

Alternatively, the documents exempt under s 36(1)(b) would disclose generalised instructions on “similar activities relating to personnel management”, comprising the discussion or development of human resource policies and procedures, that are similar to the execution (or performance) of an enterprise agreement.

58. I am not satisfied that the documents, which concern personnel management matters, fall within the scope of this exemption nor do they contain information of the nature contemplated by this exemption. I am not satisfied that disclosure would be contrary to the public interest or that the release of the documents would be likely to impact future personnel management activities or negotiations.
59. Accordingly, I am not satisfied Documents 4.1, 11.1 and 24 are exempt under section 36(1)(b).

#### ***Deletion of exempt or irrelevant information***

60. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable for the agency or Minister to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
61. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’<sup>17</sup> and the effectiveness of the deletions. Where deletions would render the document meaningless they are not ‘practicable’ and release of the document is not required under section 25.<sup>18</sup>
62. As stated above, the Applicant does not seek access to personal affairs information relating to third parties and agrees to receiving an edited copy of the documents. Therefore, third party personal affairs information is irrelevant information for the purposes of this review.
63. I have considered whether 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 am satisfied it is practicable to delete such information, as to do so would not require substantial time and effort, and the edited documents would retain meaning.

#### **Conclusion**

64. On the information before me, I am not satisfied the documents are exempt under section 30(1), 35(1)(b), 35(1)(a), 34(4)(a)(ii) or 36(1)(b).

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<sup>17</sup> *Mickelburgh v Victoria Police (General)* [2009] VCAT 2786 [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

<sup>18</sup> *Honeywood v Department of Human Services* [2006] VCAT 2048 [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140], [155].

65. As I am satisfied it is practicable to delete irrelevant information in the documents in accordance with section 25, I have determined to grant access to the document in part.

### **Review rights**

66. 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.<sup>19</sup>

67. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>20</sup>

68. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>21</sup>

69. 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.

70. 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>22</sup>

### **Third party rights**

71. As I have decided to disclose a document claimed by the Agency to be exempt under section 35(1)(b), if practicable, I must notify any relevant third parties of their right to apply to VCAT for a review of my decision.<sup>23</sup>

72. As I am satisfied it practicable to do so, the relevant third party will be notified of my decision and is entitled to apply to VCAT for a review within 60 days from the date they are given notice of my decision.<sup>24</sup>

73. Accordingly, my decision does not take effect until the 60 day third party review expires.

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<sup>19</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>20</sup> Section 52(5).

<sup>21</sup> Section 52(9).

<sup>22</sup> Sections 50(3F) and (3FA).

<sup>23</sup> Sections 49P(5) and 50(3AB).

<sup>24</sup> Section 52(3).

## Annexure 1 - Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
4.1	[Date]	Letter from [third party] to Agency	1	<p><b>Refused in full</b></p> <p>Sections 33(1), 35(1)(a), 36(1)(b)</p>	<p><b>Release in part</b></p> <p>The document is to be released with irrelevant information removed under section 25.</p>	<p><b>Section 35(1)(a):</b> For the reasons set out above, the document is not exempt under section 35(1)(a) as I am not satisfied the information is communicated in confidence nor do I consider the information is exempt under section 30(1).</p> <p><b>Section 36(1)(b):</b> For the reasons set out above, I am not satisfied the document contains information of the kind contemplated by the exemption. Accordingly, the document is not exempt under section 36(1)(b).</p> <p><b>Section 25:</b> Personal affairs information is not sought by the Applicant and is irrelevant to my review. I am satisfied it is practicable to delete irrelevant information in the document (being names, position titles, a signature, email address) in accordance with section 25.</p>
7.	[Date]	Email from Agency officer to consultant	1	<p><b>Refused in full</b></p> <p>Sections 33(1), 34(4)(a)(ii)</p>	<p><b>Release in part</b></p> <p>The document is to be released with irrelevant information removed under section 25.</p>	<p><b>Section 34(4)(a)(ii):</b> For the reasons set out above, I am not satisfied the essential character or core activity undertaken by the Agency in this instance, relating to management</p>

## Annexure 1 - Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p>matters, is that of 'trade or commerce'. Accordingly, the document is not exempt under section 34(4)(a)(ii). Please note, the separate document which is attached to this email is Document 7.1 and the Applicant confirmed by email dated [Date] they do not require a review of Document 7.1.</p> <p><b>Section 25:</b> See comments in Document 4.1 above. I am satisfied it is practicable to delete the personal affairs information in the document (being names, an email address and mobile telephone number) in accordance with section 25.</p>
8.	[Date]	Email from Agency officer to consultant	1	<p><b>Refused in full</b></p> <p>Sections 30(1), 33(1)</p>	<p><b>Release in part</b></p> <p>The document is to be released with irrelevant information removed under section 25.</p>	<p><b>Section 30(1):</b> The emails relate to organising a meeting. This information is administrative in nature and accordingly, the exemption fails on the first limb of section 30(1). Accordingly, the document is not exempt under section 30(1).</p> <p><b>Section 25:</b> See comments in Document 4.1 above. I am satisfied it is practicable to delete the personal affairs information in the document (being names, an email address and a mobile telephone) in accordance with section</p>

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						25.
10.	[Date]	Email from Agency officer to consultant	1	<p><b>Refused in full</b></p> <p>Sections 30(1), 33(1), 34(4)(a)(ii), 25</p>	<p><b>Release in part</b></p> <p>The document is to be released with irrelevant information removed under section 25.</p>	<p><b>Section 30(1):</b> The email relates to preparation of a separate document and seeking advice on that document. For the reasons set out above, I am not satisfied disclosure of the information would be contrary to the public interest. Accordingly, the document is not exempt under section 30(1). Please note, the separate document which is attached to this email is Document 11.1 – referred below.</p> <p><b>Section 34(4)(a)(ii):</b> See comments in Document 7 above.</p> <p><b>Section 25:</b> See comments in Document 4.1 above. I am satisfied it is practicable to delete the personal affairs information in the document (being names, an email address, direct telephone number, professional title and professional address) in accordance with section 25.</p> <p>I am also satisfied the irrelevant information deleted by the Agency is to remain deleted in accordance with section 25.</p>

## Annexure 1 - Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
11.	[Date]	Email from Agency officer to consultant	2	<p><b>Refused in full</b></p> <p>Sections 30(1), 33(1), 34(4)(a)(ii), 25</p>	<p><b>Release in part</b></p> <p>The document is to be released with irrelevant information removed under section 25.</p>	<p><b>Section 30(1):</b> The email chain includes the same email as in Document 10 and responds to the email. The information relates to preparation of a particular document. For the reasons set out above, I am not satisfied disclosure of the information would be contrary to the public interest. Accordingly, the document is not exempt under section 30(1). As per my comments for Document 10, please refer to Document 11.1 for the attachment being discussed.</p> <p><b>Section 34(4)(a)(ii):</b> See comments in Document 7 above.</p> <p><b>Section 25:</b> See comments in Document 4.1 above. I am satisfied it is practicable to delete the personal affairs information in the document (being names, email addresses, professional title, professional address and direct telephone number) in accordance with section 25.</p> <p>I am also satisfied the irrelevant information deleted by the Agency is to remain deleted in accordance with</p>

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						section 25.
11.1	[Date]	Memorandum	13	<p><b>Refused in full</b></p> <p>Sections 30(1), 33(1), 35(1)(b), 34(4)(a)(ii), 36(1)(b)</p>	<p><b>Release in part</b></p> <p>The document is to be released with irrelevant information removed under section 25.</p>	<p><b>Section 30(1):</b> The document is a memorandum relating to management matters. For the reasons set out above, I am not satisfied disclosure of the information would be contrary to the public interest. Accordingly, the document is not exempt under section 30(1).</p> <p><b>Section 35(1)(b):</b> I am not satisfied section 35(1)(b) applies to the information in the document as it is a communication made between Agency officers and not from an outside source. Accordingly, this document is not exempt under section 35(1)(b).</p> <p><b>Section 34(4)(a)(ii):</b> See comments in Document 7 above.</p> <p><b>Section 36(1)(b):</b> See comments in Document 4.1 above.</p> <p><b>Section 25:</b> See comments in Document 4.1 above. I am satisfied it is practicable to delete the personal affairs information in the document (being names and professional titles) in</p>

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						accordance with section 25.
13.	[Date]	Email from Agency officer to consultant	2	<p><b>Refused in full</b></p> <p>Sections 30(1), 34(4)(a)(ii), 33(1)</p>	<p><b>Release in part</b></p> <p>The document is to be released with irrelevant information removed under section 25.</p>	<p><b>Section 30(1):</b> The information contains advice about proposed wording for a response. For the reasons set out above, I am not satisfied disclosure of the information would be contrary to the public interest. Accordingly, the document is not exempt under section 30(1).</p> <p><b>Section 34(4)(a)(ii):</b> See comments in Document 7 above.</p> <p><b>Section 25:</b> See comments in Document 4.1 above. I am satisfied it is practicable to delete the personal affairs information in the document (being, names, email addresses, professional title and direct telephone number) in accordance with section 25.</p>
18.	[Date]	Email from Agency officer to consultant	4	<p><b>Refused in full</b></p> <p>Sections 33(1), 30(1), 34(4)(a)(ii), 36(1)(b), 25</p>	<p><b>Release in part</b></p> <p>The document is to be released with irrelevant information removed under section 25.</p>	<p><b>Section 30(1):</b> The emails relate to seeking feedback on drafted wording. For the reasons set out above, I am not satisfied disclosure of the information would be contrary to the public interest. Accordingly, the document is not exempt under section 30(1). Please</p>

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p>note, the attachment to this document refers to speaking notes, which have been released in full as Document 20.1 and not subject to this review.</p> <p><b>Section 34(4)(a)(ii):</b> See comments in Document 7 above.</p> <p><b>Section 36(1)(b):</b> See comments in Document 4.1 above.</p> <p><b>Section 25:</b> See comments in Document 4.1 above. I am satisfied it is practicable to delete the personal affairs information in the document (being, names, email addresses, mobile and telephone numbers and professional titles) in accordance with section 25.</p> <p>I am also satisfied the irrelevant information deleted by the Agency is to remain deleted in accordance with section 25.</p>
19.	[Date]	Email from Agency officer to consultant	2	<p><b>Refused in full</b></p> <p>Sections 30(1), 34(4)(a)(ii), 33(1)</p>	<p><b>Release in part</b></p> <p>The document is to be released with irrelevant information removed under section 25.</p>	<p><b>Section 30(1):</b> This email chain includes part of the content of Document 18. See comments for Document 18, including the comments relating to the attachment.</p>

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p><b>Section 34(4)(a)(ii):</b> See comments in Document 7 above.</p> <p><b>Section 25:</b> See comments in Document 4.1 above. I am satisfied it is practicable to delete the personal affairs information in the document (being, names, email addresses, mobile and telephone number and professional titles) in accordance with section 25.</p>
24.	[Date]	Email from consultant to Agency officer	3	<p><b>Refused in full</b></p> <p>Sections 30(1), 33(1), 36(1)(b)</p>	<p><b>Release in part</b></p> <p>The document is to be released with irrelevant information removed under section 25.</p>	<p><b>Section 30(1):</b> See comments for Document 18 above.</p> <p><b>Section 36(1)(b):</b> See comments in Document 4.1 above.</p> <p><b>Section 25:</b> See comments in Document 4.1 above. I am satisfied it is practicable to delete the personal affairs information in the document (being names, email addresses, mobile and telephone number and professional titles) in accordance with section 25.</p>
27.	[Date]	Email from consultant to Agency officer and third party staff member	1	<p><b>Refused in full</b></p> <p>Sections 30(1), 33(1), 34(4)(a)(ii), 25</p>	<p><b>Release in part</b></p> <p>The document is to be released with irrelevant information removed under section 25.</p>	<p><b>Section 30(1):</b> See comments for Document 18 above.</p> <p><b>Section 34(4)(a)(ii):</b> See comments in Document 7 above.</p>

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p><b>Section 25:</b> See comments in Document 4.1 above. I am satisfied it is practicable to remove the personal affairs information in the document (being, names, email addresses, professional title and telephone number) in accordance with section 25.</p> <p>I am also satisfied the irrelevant information deleted by the Agency is to remain deleted in accordance with section 25.</p>
30.	[Date]	Email from consultant to Agency officer	1	<p><b>Refused in full</b></p> <p>Section 33(1)</p>	<p><b>Refused in full</b></p> <p>Section 25</p>	<p><b>Section 25:</b> I am satisfied that it is not practicable to delete the personal affairs information in the document, as the remainder of the document would be meaningless and devoid of context.</p>