

Notice of Decision and Reasons for Decision

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| Applicant: | 'CN9' |
| Agency: | Goulburn-Murray Rural Water Corporation (Trading as Goulburn-Murray Water) |
| Decision Date: | 21 January 2021 |
| Exemptions considered: | Sections 30(1), 33(1), 34(1)(b) |
| Citation: | 'CN8' and <i>Department of Education and Training</i> (Freedom of Information) [2021] VICmr 17 (21 January 2021) |

FREEDOM OF INFORMATION – works contract – emails – personal affairs information – disclosure not unreasonable – internal communications – disclosure of information not likely to expose undertaking unreasonably to disadvantage

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

Notice of Decision

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

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

I am not satisfied certain information in the documents is exempt under sections 30(1), 33(1) and 34(1)(b).

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

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

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
21 January 2021

Reasons for Decision

Background to review

1. The Applicant, through their representative, made a request to the Agency seeking access to the following documents:
 1. Signed Agreement between [company]t and GMW [Goulburn-Murray Water] and any Variation which is relevant to the Connections Project works abutting the property owned by [first named person] being [address];
 2. Any Agreement between [second named person] and GMW in relation to the Connections Project works abutting the property owned by [first named person] being [address];
 3. Any insurance policy or policies insuring the contractors and GMW against claims for damage to land of landowners in the course of carrying out the [named] Project works abutting the property owned by [first named person] being [address] and a document which provides the name of the person at the insurance company with whom we should correspond including name, address, mobile phone number and email address;
 4. Any authority signed by [first named person] authorising a contractor or GMW to enter his land in relation to the [named] Project works abutting the property owned by [first named person] being [address] or authorisation signed by GMW to [second named person] under s133 or s134 of the Water Act if [first named person] did not sign an authority in appropriate terms to enter his land;
 5. Correspondence between GMW or its contractors with [first named person] in respect of the Connections Project works abutting the property owned by [first named person] being [address];
 6. Any internal correspondence between [third named person] and [their] immediate superior in respect of the Connections Project works abutting the property owned by [first named person] being [address];
 7. Any diary notes of [third named person] or [their] immediate superior in respect of the Connections Project works abutting the property owned by [first named person] being [address];
 8. [removed]
 9. Any correspondence of [third named person] with GMW about [additional circumstances];
 10. Any documents relating to [additional circumstances];
 11. All correspondence between [fourth named person] and representatives of GMW about the [first named person's] property between [date range];
 12. Water bills sent to [first named person] in [date range] in respect of the property owned by [first named person] being [address].
2. In its decision, the Agency determined to grant access to certain documents in full and refuse access to other documents in full under sections 30(1), 33(1) and 34(1)(b).

Adequacy of search complaint

3. During the review, the Applicant raised concerns about the adequacy of the Agency's document searches as well as missing documents. In accordance with section 61B(3), these concerns were addressed as part of this review.
4. OVIC staff made enquiries with the Agency to address the Applicant's concerns regarding missing documents. The outcome of those enquiries was communicated to the Applicant as part of the review process.
5. I note the Applicant has continued to advise OVIC staff of their belief that further documents exist that were not provided as part of their FOI request. However, I am satisfied a thorough and diligent

search was conducted by the Agency and have determined to take no further action regarding the Applicant's concerns.

Review

6. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
7. During the review, the Applicant agreed to receive edited copies of the documents after previously not agreeing to accept edited copies when asked by the Agency during the handling of the FOI request.
8. The Applicant also agreed to narrow the scope of their review to certain information in Document 12 and Documents 13 to 17. Therefore, Document 11 is not subject to review.
9. In relation to Document 12, the Applicant reduced the scope of the review to clauses 12 to 19 of the contract. This information features on 7 pages in the document. Accordingly, the remainder of the document is irrelevant information for the purposes of section 25, which is discussed below.
10. In discussions with OVIC staff, the Agency advised it now relies on section 30(1) to refuse access to Documents 14, 15 and 16 in full, where it had previously relied on section 33(1). Accordingly, this review will consider the application of section 30(1) to those documents.
11. I note there is information in the documents that relates to third parties' properties and their involvement with the Agency. Having considered the terms of the request, I am not satisfied this information is relevant. Accordingly, this information is not subject to review and should be deleted by the Agency in accordance with section 25.
12. I have examined copies of the documents subject to review.
13. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
14. I have considered all communications and submissions received from the parties.
15. 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.
16. I note Parliament's intention the FOI Act must be interpreted so as to further the object of the Act and that 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.

Review of exemptions

Section 30(1)

17. The Agency relies on section 30(1) to exempt information in Documents 14 to 17.

18. 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 in consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister;
 - (b) such matter must be made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government; and
 - (c) disclosure of the matter would be contrary to the public interest.
19. The exemption does not apply to purely factual information in a document.¹
20. The term ‘officer of an Agency’ is defined in section 5(1). It includes a member of an agency, a member of an agency and any person engaged by or on behalf of an agency, whether or not that person is subject to the *Public Administration Act 2004 (Vic)*.²

Do the documents contain purely factual information?

21. Having reviewed the documents, I consider certain information in the Document 14 is factual in nature and publicly available. Accordingly, such information is not exempt by virtue of section 30(3).

Do the documents disclose matter in the nature of opinion, advice or recommendation prepared by an officer or minister or in consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister?

22. The documents are emails between Agency officers, consultants engaged by the Agency and staff members from the contractors engaged by the Agency for the infrastructure project.
23. Document 14 is an email with attachments prepared by consultants engaged by the Agency.
24. Having reviewed the documents, I am satisfied they contain matter in the nature of advice, opinion, recommendations, consultation or deliberation between Agency officers.

Was the information communicated in the course of the Agency’s deliberative processes?

25. The term ‘deliberative process’ is interpreted widely and includes any of the processes of deliberation or consideration involved in the functions of an agency, Minister or government.³
26. In *Re Waterford and Department of Treasury (No.2)*,⁴ the Administrative Appeals Tribunal held:
- ... “deliberative processes” [is] wide enough to include any of the processes of deliberation or consideration involved in the functions of an agency... In short, ...its thinking processes — the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.
27. Having reviewed the documents, I am satisfied they contain information provided in the course of the Agency’s deliberative processes concerning dispute resolution engagements with property owners affected by the Agency’s irrigation infrastructure project.

¹ Section 30(3).

² See *Koch v Swinburne University* [2004] VCAT 1513 at [15]; *Thwaites v Department of Human Services (No 2)* (1998) 14 VAR 347.

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

⁴ (1981) 1 AAR 1.

Would disclosure of the information be contrary to public interest?

28. In determining whether disclosure of the information exempted by the Agency under section 30(1) would be contrary to the public interest I have given weight to the following factors.
- (a) the general right of every person to seek access to government documents under the FOI act;
 - (b) the degree of sensitivity of the issues discussed in the documents and the broader context giving rise to the creation of the documents;
 - (c) the stage of a decision or status of policy development or a process being undertaken at the time the communications were made;
 - (d) whether disclosure of the documents would be likely to inhibit communications between Agency officers essential for the Agency to make an informed and well-considered decision or participate fully and properly in a process in accordance with the Agency's functions and other statutory obligations;
 - (e) whether disclosure of the documents would give merely a part explanation, rather than a complete explanation for the taking of a particular decision or the outcome of a process, which the Agency would not otherwise be able to explain if the documents were disclosed;
 - (f) the impact of disclosing documents in draft form, including where disclosure would not clearly or accurately represent a final position or decision reached by the Agency at the conclusion of a decision or related 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.
29. The Agency submits:
- ...
- its disclosure would inhibit frankness and candour of pre-decisional communications in the future. The tone and expression of the communication makes it clear that a decision was yet to be made but that options would need to be further considered amongst officers;
 - its disclosure would lead to confusion and unnecessary debate with the Applicant because of the consideration of a range of options; and
 - disclosure of the document could subject officers involve to harassment from the Applicant, based on the Applicant's previous conduct in respect of this matter.
30. Having considered the information before me, I am not satisfied disclosure of the opinion, advice and recommendations in the documents would be contrary to the public interest for the following reasons:
- (a) The Agency submits the information is sensitive given the context in which the Applicant has made their FOI request. I acknowledge matters relating to dispute resolution between landowners and government agencies are generally sensitive in nature. However, I consider there is a strong public interest in members of the community, who have been affected by the infrastructure project, receiving further information around government decision making and its processes.
 - (b) I note the Applicant's client received a later version of the report prepared by an external consultant that was attached to emails in Document 14, and the Applicant provided this

document to OVIC. The document is substantially similar to the document subject to review. Given those circumstances, I consider the information in the report is less sensitive.

- (c) I note the Agency's submission the documents contain communications where a decision was yet to be made and the options were being presented for consideration. However, I am of the view members of the public are capable of understanding the difference between options that were considered and decisions that are eventually made by an agency. In any case, I consider disclosure of these documents would assist the Applicant's understanding of information in the documents and decisions made in relation to their client's property.
- (d) I am not satisfied disclosure of these documents would impair government decision making or discourage the provision of advice by Agency officers to decision makers in the future. One of the documents was prepared by an external consultant engaged by the Agency for a commercial fee using public funds. Accordingly, consultants engaged by a government agency are under a contractual obligation to provide considered, professional and accurate advice.
- (e) In relation to all information the Agency determined to be exempt, I note the decision in *Graze v Commissioner of State Revenue*,⁵ which considered the role of public scrutiny in improving the quality of advice provided to government decision makers, as follows:

As I have in frequently observed Freedom of Information determinations over the years, the possibility of public scrutiny may improve the quality of advice that is given to administrative decision-makers. The provision of advice that is superficial or the result of insufficient analysis or might be thought to be slanted to a particular political view would be deterred by the prospect that such advice might come to light under the Freedom of Information system. The fact that Parliament has left the public interest issues relative to internal working documents at large indicates, to my mind, that it contemplates that the public interest may cut both ways.⁶

- (f) I do not accept disclosure of information in a form that an agency may not have intended be disclosed under the FOI Act will necessarily cause 'ill-informed debate'. Rather, I consider the public has the capacity to understand the nature of government's role in considering issues and making decisions on behalf of the community on a wide variety of issues. Further, it is my view public debate is informed by greater transparency and is a necessary part of public participation in a democratic society which contributes to government accountability.

31. Accordingly, 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).

32. My decision in relation to section 30(1) is outlined in the Schedule of Documents in **Annexure 1**.

Section 34(1)(b)

33. Given my decision Document 14 is not exempt under section 30(1), for completeness, I also consider whether certain information in this document and Document 12 is exempt under section 34(1)(b).

34. Section 34(1)(b) provides a document is an exempt document if:

- (a) its disclosure under the FOI Act would disclose information acquired by an agency from a business, commercial or financial undertaking;
- (b) the information relates to matters of a business, commercial or financial nature; and

⁵ [2013] VCAT 869.

⁶ Ibid at [26].

- (c) disclosure of the information would be likely to expose the undertaking unreasonably to disadvantage.

35. The Applicant provided the following background information in relation to this matter:

- (a) In [date], the Agency's contractor (the **contractor**) entered a property owned by the Applicant's client to complete works on behalf of the Agency.
- (b) The client alleges while completing the works, the contractor caused damage to their property.
- (c) The client is seeking further compensation for damages and seeks access to the documents in relation to the contractor and the relevant works.

Do the documents contain information relating to matters of a business, commercial or financial nature that has been acquired by the Agency from a business undertaking?

36. The words, 'business, commercial or financial nature' are to be given their ordinary meaning.⁷

37. Document 12 is an agreement between the Agency and the contractor.

38. As noted above, the Applicant does not seek review of Document 11 and has agreed to reduce the scope of the review of Document 12 to seven pages of information in clauses 12 to 19 of the contract. Clauses 12 to 19 relate to insurance and indemnity for works completed.

39. Document 14 contains an attachment prepared by an external consultant. In such cases, it is necessary for a decision maker to consider whether an external consultant's report may be exempt on grounds disclosure of the consultant's business, commercial or financial information in the document would expose the consultant unreasonably to disadvantage.

40. In *Thwaites v Department of Human Services*,⁸ the Victorian Civil and Administrative Tribunal (VCAT) observed the phrase 'information acquired' in section 34(1) signifies the need for some positive handing over of information in some precise form.

41. In relation to whether a contract contains information acquired by an agency, VCAT has held such information was nothing more than a record of concluded negotiations between the parties.⁹

42. While I acknowledge the contract contains information of a business commercial or financial nature, I consider this information notes a record of a transaction agreed between the Agency and the contractor, rather than 'information acquired' by the Agency.

43. Therefore, I am not satisfied the document contains information relating to matters of a business commercial or financial nature that was acquired by the Agency from the contractor.

44. However, I am satisfied information in Document 14 relates to matters of a business and commercial nature as they detail technical or specialist advice provided by an external consultant commissioned by and provided to the Agency.

45. For completeness, I will further consider whether disclosure of the information in both documents would expose the respective undertakings unreasonably to disadvantage.

⁷ *Gibson v Latrobe CC* [2008] VCAT 1340 at [25].

⁸ (1999) 15 VAR 1.

⁹ *Ibid.*

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

46. Section 34(2) provides:

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—
- (e) and of any other consideration or considerations which in the opinion of the agency or Minister is or are relevant.

47. The Agency submits the following in relation to the contract:

...

- the information sought is not available to competitors of GMW's contractor;
- based on the response from GMW's contractor, the information could not be disclosed without causing substantial harm to the competitive position of GMW's contractor;
- there is no identified consideration in the public interest in favour of disclosure which outweigh considerations of competitive disadvantage.

On balance, these documents would disclose information acquired by GMW from a commercial undertaking that relates to matters of a business, commercial or financial nature and the disclosure of this information would be likely to expose the undertaking unreasonably to disadvantage.

48. Following the Applicant's agreement to reduce the scope of the review to specific clauses in the contract, OVIC staff provided the Agency with an initial assessment that noted the clauses appeared to be standard for commercial contracts and disclosure would not expose the undertaking unreasonably to disadvantage.
49. The Agency consulted with the undertaking and provided their response for my consideration.
50. I note the Agency did not consult with the external consultant, who was the author of the report in Document 14. The Agency advised OVIC staff it did not consult with the external consultant in accordance with section 34(3), as it did not consider Document 14 is exempt under section 34(1)(b).
51. Having carefully considered the purpose and content of the documents, I am not satisfied disclosure would be likely to expose the business undertakings unreasonably to disadvantage for the following reasons:
- (a) Section 34(1)(b) contemplates a business undertaking may be exposed to a certain measure of disadvantage should a document containing its business, commercial or financial information be disclosed under the FOI Act. By the introduction of the word 'unreasonably' in section 34(1)(b), Parliament determined this exemption will apply where an undertaking will be exposed 'unreasonably' to disadvantage only.

- (b) As noted above, the Applicant's client received a later version of the report in Document 14. Given the two versions of the document are substantially similar, it is unlikely the release of the document would expose the undertaking unreasonably to disadvantage.
- (c) I acknowledge the business undertaking objects to disclosure of Document 12. However, this is not a determinative factor in the application of section 34(1)(b). The business undertaking is a commercial entity that, when providing services to government for a fee paid for by the public, should be aware of the requirement for transparency in the provision of government held documents to the public through the FOI Act.
- (d) Transactions between private entities and the government take on a different hue and the same level of commercial confidence cannot be afforded to such transactions and the subsidiary documents related to them, particularly where it involves the spending of public funds.
- (e) I acknowledge the contractor's submission in respect of Document 12 that specific clauses in the contract that relate to indemnity and insurance deviate from the standard contract in these matters. The Agency and the contractor also submit the release of this information would result in the contractor losing their competitive advantage and bargaining power in future transactions.
- (f) Further, I accept there are circumstances where disclosure of information in confidential documents will impact an undertaking's future commercial dealings. However, the information in these clauses is specific to this particular transaction such that they would not be likely to allow a competitor to use the document to engage in destructive competitive behaviour to the commercial detriment of the contractor.
- (g) Each commercial transaction has a unique set of circumstances that will impact upon an undertaking's competitive advantage. Accordingly, the release of information in the document is unlikely to impact upon any future transactions.
- (h) I am satisfied the purpose for seeking access to the documents in full relates to seeking compensation for alleged property damage in connection with the works completed by the undertaking. While I acknowledge the nature of release under the FOI Act is unrestricted and unconditional, I do not consider the documents are being sought by a commercial competitor of the business undertakings.
- (i) I consider disclosure of the documents to the Applicant is in the public interest in that it supports open and accountable actions of government.

52. Accordingly, I am not satisfied certain information in the documents is exempt under section 34(1)(b).

53. My decision in relation to section 34(1)(b) is outlined in the Schedule of Documents in **Annexure 1**.

Section 33(1)

54. The Agency relies section 33(1) to exempt information in Documents 13 to 17.

55. A document is exempt under section 33(1) if two conditions are satisfied:

- (a) disclosure of the document under the FOI act would 'involve disclosure of information relating to the 'personal affairs' of a person other than the Applicant;¹⁰ and
- (b) such disclosure would be 'unreasonable'.

Do the documents contain personal affairs information?

- 56. Information relating to a person's 'personal affairs' includes any information that identifies any person or discloses their address or location. It includes any information from which such information may be reasonably determined.¹¹
- 57. The documents contain the names, telephone numbers and email addresses of Agency officers, the contractor and other organisations engaged by the Agency in relation to the infrastructure project.
- 58. Accordingly, I am satisfied the documents contain the personal affairs information of third parties.

Would the release of the personal affairs information be unreasonable in the circumstances?

- 59. The concept of unreasonable disclosure involves balancing the public interest in the disclosure of official information with the interest of protecting an individual's personal privacy.¹²
- 60. The nature of disclosure of a document under the FOI Act is unconditional and unrestricted, which means an applicant is free to disseminate widely or use a document as they choose.¹³
- 61. The Supreme Court of Victoria, Court of Appeal stated the following in an appeal concerning the operation of section 33(1):¹⁴

... it stipulates as the only condition for the determination of whether a document is an exempt document that the disclosure of the exempt document 'would involve the unreasonable disclosure of information relating to the personal affairs of any person'.

The very significant public interest sought to be protected by that condition, namely the right of any person to have his or her personal affairs kept private, suggests to me that the condition should not be construed narrowly. Section 33(1) of the Act is the legislature's attempt to reconcile two important, but competing, objectives: the public interest in disclosure and the personal interest of privacy. The mechanism chosen by the legislature to reconcile those objectives is to require a decision-maker to balance them against each other by identifying and inquiring into the facts relevant to that balancing process and making an evaluation of which is to prevail. The condition posed by section 33(1) for its application depends, like that in section 35(1)(b) and others, upon a question dependent upon the particular facts of an actual application. [Footnotes omitted]

- 62. I also note *Coulson v Department of Premier and Cabinet*,¹⁵ in which VCAT determined whether or not an agency officer's personal affairs information is exempt under section 33(1) must be considered in the context of the particular circumstances of each matter.
- 63. Therefore, the proper application of section 33(1) involves consideration of 'all matters relevant, logical and probative to the existence of conditions upon which the section is made to depend'.¹⁶
- 64. In determining whether disclosure of the personal affairs information would be unreasonable in the circumstances of this matter, I have given weight to the following factors:¹⁷

¹⁰ Sections 33(1) and (2).

¹¹ Section 33(9).

¹² *Re Page v Metropolitan Transit Authority* (1988) 2 VAR 243 at [245-6].

¹³ *Victoria Police v Marke* [2008] VSCA 218 at [68].

¹⁴ *Victoria Police v Marke* [2008] VSCA 218 at [95]

¹⁵ *(Review and Regulation)* [2018] VCAT 229.

¹⁶ [2008] VSCA 218 at [104].

- (a) the nature of the personal affairs information;
 - (b) the circumstances in which information was obtained by the Agency;
 - (c) the Applicant's interest in the information and whether their purpose for seeking the information is likely to be achieved;
 - (d) whether any public interest would be promoted by the release of the information;
 - (e) whether any individuals to whom the information relates object, or would be likely to object to the release of the information;
 - (f) the likelihood of further disclosure of the information if released; and
 - (g) whether disclosure of the information or would be reasonably likely to endanger the life or physical safety of any person.
65. I am satisfied that certain information was acquired by the Agency in the course of Agency officers' usual work duties and responsibilities in carrying out the Agency's irrigation infrastructure project. Other third parties' personal affairs information was acquired as part of those individuals' relevant work duties and responsibilities for their respective organisations. As such, I consider the personal information in the documents concerns these individuals' professional roles rather than their personal or private lives in most circumstances.
66. I note it is likely the identity of many of the persons whose information appears in the documents is known to the Applicant, who has been in contact with the Agency previously. However, even where an FOI applicant knows the identity of a person, disclosure of the personal affairs information may still be unreasonable in the circumstances.¹⁸
67. Where information was released by the Agency to the Applicant, I am satisfied this information is not exempt under section 33(1).
68. I am satisfied it would not be unreasonable to release information in Document 13 that relates to actions taken by the Agency and the contractor in relation to the property, given it relates to that property and decisions made by Agency officers in their professional capacity and other professionals connected with the matter.
69. Where the information relates to a third party's personal telephone number and this information is not already known to the Applicant, I am satisfied its disclosure would be unreasonable as it could potentially lead to an unreasonable intrusion into the personal lives of a third party.
70. Accordingly, I am satisfied disclosure of certain information in the documents would be unreasonable and is exempt under section 33(1).
71. However, I am not satisfied it would be unreasonable to disclose the personal affairs information of Agency officers and other third parties where the information relates to those individuals' professional roles rather than their personal or private lives.
72. My decision in relation to section 33(1) is outlined in the Schedule of Documents in **Annexure 1**.

¹⁷ Ibid.

¹⁸ *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 at [58]; *Akers v Victoria Police* [2003] VCAT 397.

Section 25 – deletion of exempt or irrelevant information

73. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
74. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’¹⁹ 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 25.²⁰
75. I have considered whether it is practicable to provide the Applicant with an edited copy of the documents with exempt and irrelevant information deleted in accordance with section 25.
76. Where I am satisfied it is practicable delete exempt information from a document in accordance with section 25, I have granted access to that document in part. Where I am satisfied to do so would not be practicable, I have refused access to the document in full.
77. My decision in relation to section 25 is outlined in the Schedule of Documents in **Annexure 1**.

Conclusion

78. On the information before me, I am not satisfied certain information in the documents is exempt under sections 30(1), 33(1) and 34(1)(b).
79. Where I am satisfied it is practicable to provide the Applicant with access to an edited copy of a document with exempt information deleted in accordance with section 25, I have granted access to that document in part. Where I have determined to do so would not be practicable, access to the document is refused in full.
80. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

Review rights

81. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.²¹
82. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.²²
83. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.²³
84. 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.
85. 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.²⁴

¹⁹ *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].

²⁰ *Honeywood v Department of Human Services* [2006] VCAT 2048 at [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140] and [155].

²¹ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

²² Section 52(5).

²³ Section 52(9).

²⁴ Sections 50(3F) and (3FA).

Third party review rights

86. As I have decided to disclose a document the Agency determined to be exempt under sections 33(1) and 34(1)(b), if practicable, I must notify any relevant person or undertaking that has a right to apply to VCAT for a review of my decision of their right to do so.²⁵

87. In considering the meaning of 'practicable' in relation to other sections of the FOI Act, VCAT has stated:

The use of the word 'practicable' in the legislation to my mind connotes a legislative intention to apply common sense principles. 'Practicable' is not a term of art or a term of precise meaning.

.... The use of the word indicates there should be imported into the process the exercise of judgment by the agency concerned. It does not allow for the conclusion that because a task is possible, it must, ergo, be undertaken.²⁶

88. VCAT also considers the possibility of an unnecessary intrusion into the lives of third parties is relevant when assessing the practicability of notifying them.²⁷

89. I have decided notifying the relevant third parties whose personal affairs information is to be released would be an unnecessary intrusion given the passage of time since the documents were created, and the information relates to those individuals' professional roles rather than their personal or private lives. Accordingly, I am not satisfied it is practicable to notify the relevant persons of their third party review rights.

90. While I have determined it is not practicable for me to notify the relevant third parties, it is open for the Agency to notify its employees of my decision, should it wish to do so.

91. With respect to section 34(1)(b), I have determined to notify one of the third party business undertakings of its review rights. However, I am not satisfied it is practicable to notify the other business undertaking in relation to Document 14, where details of its report have already been released to the Applicant and where the Agency did not rely on section 34(1)(b) to exempt the information.

When this decision takes effect

92. My decision does not take effect until the third party business undertaking's 60 day review period expires.

²⁵ Section 49P(5).

²⁶ *Re Schubert and Department of Premier and Cabinet* (2001) 19 VAR 35 at [45].

²⁷ *Coulston v Office of Public Prosecutions Victoria* [2010] VCAT 1234 at [42].

Annexure 1 – Schedule of Documents

| Document No. | Date of Document | Document Description | Number of Pages | Agency's Decision | OVIC Decision | OVIC Comments |
|--------------|------------------|---|-----------------|-------------------|-----------------------|---------------|
| 1. | [date] | Access Agreement | 3 | Released in full | Not subject to review | |
| 2. | [date] | [type of agreement] Agreement | 12 | Released in full | Not subject to review | |
| 3. | [date] | Impact Report | 60 | Released in full | Not subject to review | |
| 4. | [date] | Email | 1 | Released in full | Not subject to review | |
| 5. | [date] | Email | 2 | Released in full | Not subject to review | |
| 6. | [date] | Email | 2 | Released in full | Not subject to review | |
| 7. | [date] | Letter | 6 | Released in full | Not subject to review | |
| 8. | [date] | Letter | 2 | Released in full | Not subject to review | |
| 9. | [date] | Water Account [date] | 1 | Released in full | Not subject to review | |
| 10. | [date] | Water Account [date] | 1 | Released in full | Not subject to review | |
| 11. | [date] | Goulburn-Murray Rural Water Corporation Winter Works Package Contract Deed of | 12 | Refused in full | Not subject to review | |

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| | | Novation | | | | |
| 12. | [date] | Goulburn-Murray Rural Water Corporation Agreement to Vary Main Contractor Agreement | 132 | Refused in full Section 34(1)(b) | Release in part Section 25 The following information is not exempt under section 34(1)(b) and is to be released: <ul style="list-style-type: none"> Information in clause 12 at the bottom of page 34; and All information on pages 35 to 40. The remaining information in the document is irrelevant and is to be deleted in accordance with section 25. | Section 34(1)(b): I am not satisfied certain information in the document is exempt for the reasons outlined in the Notice of Decision above. Section 25: I am satisfied it is practicable to delete irrelevant and exempt information in accordance with section 25. |
| 13. | [date] | Email | 1 | Refused in full Section 33(1) | Release in part Sections 33(1), 25 The document is to be | Section 33(1): I am satisfied the names and email addresses of Agency officers, consultants and professionals engaged by the Agency was acquired by the Agency in the course of those individuals' performing their professional roles |

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| | | | | | <p>released except for the following information, which is exempt under section 33(1) and is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> The telephone numbers appearing at the bottom of the page. | <p>and, therefore, is not unreasonable to release or exempt under section 33(1).</p> <p>However, I am satisfied it would be unreasonable to release the telephone numbers of the contractor's employee where its release would be an unreasonable intrusion into the personal life of that person. Accordingly, this information is exempt under section 33(1).</p> <p>Section 25: I am satisfied it is practicable to delete exempt information in accordance with section 25.</p> |
| 14. | [date] | Email with attachments | 11 | <p>Refused in full</p> <p>Sections 30(1), 33(1)</p> | <p>Release in part</p> <p>Sections 33(1), 25</p> <p>The document is to be released except for the following information, which is exempt under section 33(1) and is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> The mobile phone number on the fifth line in the body of the email on page 1 | <p>Section 30(1): I am satisfied the document contains opinion, advice and recommendations that was provided in the course of the Agency's deliberative processes. However, I am not satisfied it would be contrary to the public interest for the reasons outlined in the Notice of Decision above. Accordingly, this information is not exempt under section 30(1).</p> <p>Further, I note the Applicant's client was provided with a later version of the report prepared by the consultant and the Applicant provided a copy that document to OVIC. Given there are minor differences between the documents only, I am not satisfied its disclosure would be contrary to the public</p> |

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| | | | | | of the document. | <p>interest.</p> <p>Section 33(1): I am satisfied the names and email addresses of Agency officers, consultants and professionals engaged by the Agency is information acquired by the Agency in the course of those individuals' performing their professional roles and, therefore, is not unreasonable to release.</p> <p>Further, I note the contact details of an Agency officer were released to the Applicant previously and are, therefore, not unreasonable to release. Accordingly, this information is not exempt under section 33(1).</p> <p>I also note the report mentioned above contains the contact details of a third party. I am satisfied it would not be unreasonable to release this information where the Applicant knows that individual's contact details.</p> <p>Section 34(1)(b): I am not satisfied information in the document is exempt under section 34(1)(b) for the reasons outlined in the Notice of Decision above.</p> <p>Section 25: I am satisfied it is practicable to delete the exempt information in accordance with section 25.</p> |

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| 15. | [date] | Email | 1 | Refused in full Sections 30(1), 33(1) | Release in full | <p>Section 30(1): See comments for Document 14.</p> <p>Section 33(1): I am satisfied the names and email addresses of Agency officers, consultants and professionals engaged by the Agency is information acquired by the Agency in the course of those individuals' performing their professional roles and, therefore, is not unreasonable to release. Accordingly, this information is not exempt under section 33(1).</p> <p>Further, I note the Applicant provided OVIC with a copy of a document listing the contact details of the third party at the bottom of the page. Given the Applicant has this information, I am not satisfied its disclosure is unreasonable and it is not exempt under section 33(1).</p> |
| 16. | [date] | Email chain | 3 | Refused in full Sections 30(1), 33(1) | <p>Release in part</p> <p>Section 25</p> <p>The document is to be released except for the following irrelevant information, which is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> All information that relates to third party | <p>Section 33(1): I am satisfied the names and email addresses of Agency officers, consultants and professionals engaged by the Agency is information acquired by the Agency in the course of those individuals' performing their professional roles and is therefore not unreasonable to release. Further, I note the contact details of one Agency officer were released to the Applicant previously and this information is not unreasonable to release.</p> <p>Section 30(1): I am satisfied the information</p> |

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| | | | | | <p>landowners and their respective properties and dealings with the Agency.</p> <p>This information is contained on:</p> <ul style="list-style-type: none"> Line 2 to line 11 (inclusive) of the email on page 1 of the document; The final line on page 1 of the document; Line 2 to line 10 (inclusive) of the email on page 2 of the document; and The first two lines on page 3 of the document. | <p>relating to the Applicant's client's property contains advice, opinion and recommendations that was provided in the course of the Agency's deliberative processes. However, I am not satisfied it would be contrary to the public interest to release for the reasons outlined in the Notice of Decision above. Accordingly, this information is not exempt under section 30(1).</p> <p>Section 25: I am satisfied it is practicable to delete irrelevant information in accordance with section 25.</p> |
| 17. | [date] | Email | 1 | <p>Refused in full</p> <p>Sections 30(1), 33(1)</p> | <p>Release in full</p> | <p>Section 30(1): See comments for Document 14.</p> <p>Section 33(1): I am not satisfied the release of the personal affairs information in the document would be unreasonable. The names of Agency officers, consultants and</p> |

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| | | | | | | professionals engaged by the Agency is information that was acquired by the Agency in the course of those individuals usual work duties. Further, the contact details of the Agency officer at the bottom of the document were previously released to the Applicant. Accordingly, this information is not exempt under section 33(1). |