

Notice of Decision and Reasons for Decision

Applicant:	'DS7'
Agency:	Horsham City Council
Decision date:	22 December 2021
Exemptions considered:	Sections 30(1), 33(1), 34(4)(a)(ii), 36(2)(b), and 38 in conjunction with section 125 of the <i>Local Government Act 2020</i> (Vic)
Citation:	
Citation:	'DS7' and Horsham Rural City Council (Freedom of Information) [2021] VICmr 296 (22 December 2021)

FREEDOM OF INFORMATION – council documents – employment contract – chief executive officer – senior executive officer – salary – performance criteria – superannuation – motor vehicle allowance – draft organisational restructure – secrecy provision – *Local Government Act 2020* (Vic)

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

Notice of Decision

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

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

I am satisfied Documents 2 to 4 and 7 are exempt in part, and Document 1 is exempt in full under section 38 in conjunction with section 125 of the *Local Government Act 2020* (Vic) (**LG Act 2020**).

However, I am not satisfied the documents are exempt under sections 30(1), 34(4)(a)(ii) and 36(2)(b).

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

22 December 2021

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to the following documents:
 1. Current Employment Contracts for:
 - the Chief Executive Officer
 - all senior officers as defined by the *Local Government Act* (1989) where a senior officer is "a member of Council Staff who has management responsibilities and reports directly to the Chief Executive Officer" (LGA [Local Government Act] 1989 s.3).
 2. All annual performance criteria for the purpose of reviewing the performance of the CEO and the individual senior officer's (as defined above) performance for each year during the employment term of the current CEO from his appointment in 2018.
 3. All documents that relate to the distribution of the responsibilities of [named individual] Horsham Rural City Council's former Development Services Director, and/or whether this is considered a new senior role. ("Further Amended Request")
2. The Agency identified 13 documents falling within the terms of the Applicant's request and granted access to eight documents in full and refused access to five documents under sections 30(1), 33(1), 34(4)(a)(ii) and 36(2)(b). The Agency's decision letter sets out the reasons for its decision.

Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. I have examined copies of the documents subject to review.
5. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
6. I have considered all communications and submissions received from the parties.
7. 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.
8. 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.
9. In completing a review under section 49F, I am required by section 49P to make a fresh or new decision. This means my review does not involve determining whether the Agency's original decision is correct, but rather I am required to ensure my fresh decision is the 'correct or preferable decision'. This involves ensuring my decision is correctly made under the FOI Act and any other relevant applicable law in force at the time of making my fresh decision.

Changes to the Local Government Act

10. On 24 October 2020, the LG Act 2020 commenced. The objectives of the LG Act 2020 are set out in section 4 of that Act and include ensuring, '[c]ouncils are constituted as representative bodies that are accountable, transparent, collaborative, efficient and engaged with their communities'.
11. Section 9 of the LG Act 2020 sets out overarching governance principles and supporting principles for that Act:
 - (1) A Council must in the performance of its role give effect to the overarching governance principles.
 - (2) The following are the overarching governance principles—
 - (a) Council decisions are to be made and actions taken in accordance with the relevant law;
 - (b) priority is to be given to achieving the best outcomes for the municipal community, including future generations;
 - (c) the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;
 - (d) the municipal community is to be engaged in strategic planning and strategic decision making;
 - (e) innovation and continuous improvement is to be pursued;
 - (f) collaboration with other Councils and Governments and statutory bodies is to be sought;
 - (g) the ongoing financial viability of the Council is to be ensured;
 - (h) regional, state and national plans and policies are to be taken into account in strategic planning and decision making;
 - (i) the transparency of Council decisions, actions and information is to be ensured.
 - (3) In giving effect to the overarching governance principles, a Council must take into account the following supporting principles—
 - (a) the community engagement principles;
 - (b) the public transparency principles;
 - (c) the strategic planning principles;
 - (d) the financial management principles;
 - (e) the service performance principles.
12. As can be seen by the above objectives and principles (and other provisions in the LG Act 2020),¹ public transparency in council decision making and the exercise of statutory and administrative functions and powers is a key focus of the LG Act 2020, subject to a secrecy provision in section 125 of that Act.
13. Section 125 of the LG Act 2020 changes the way a council must process certain FOI requests to consider the prohibition on the disclosure of 'confidential information', as defined in the LG Act 2020, which includes the personal information of a third party in a document held by a council.
14. While the Agency did not rely on section 38 to exempt from release information in the documents, during the review it became clear the operation of section 125 of the LG Act 2020 is a relevant consideration in determining whether the documents are exempt under section 38.

¹ See for example, sections 57 and 58 of the LG Act 2020.

15. Accordingly, it is appropriate to consider the exemption under section 38 before considering the other exemptions relied on by the Agency.

Review of exemptions

Section 38 – Secrecy provision

16. A document is exempt under section 38 if the following three requirements are met:
- (a) there is an enactment in force;
 - (b) the enactment applies specifically to the kind of information in a document; and
 - (c) the enactment prohibits persons, referred to in the enactment, from disclosing that specific kind of information (either absolutely or subject to exceptions or qualifications).
17. For section 38 to apply to a document, an enactment must be formulated with such precision that it specifies the actual information sought to be withheld.

Is there is an enactment in force?

18. Section 125 of the LG Act 2020 came into force on 24 October 2020 and provides:

125 Confidential information

- (1) Unless subsection (2) or (3) applies, a person who is, or has been, a Councillor, a member of a delegated committee or a member of Council staff, must not intentionally or recklessly disclose information that the person knows, or should reasonably know, is confidential information.

Penalty: 120 penalty units.

- (2) Subsection (1) does not apply if the information that is disclosed is information that the Council has determined should be publicly available.
- (3) A person who is, or has been, a Councillor, a member of a delegated committee or a member of Council staff, may disclose information that the person knows, or should reasonably know, is confidential information in the following circumstances—
- (a) for the purposes of any legal proceedings arising out of this Act;
 - (b) to a court or tribunal in the course of legal proceedings;
 - (c) pursuant to an order of a court or tribunal;
 - (d) in the course of an internal arbitration and for the purposes of the internal arbitration process;
 - (e) in the course of a Councillor Conduct Panel hearing and for the purposes of the hearing;
 - (f) to a Municipal Monitor to the extent reasonably required by the Municipal Monitor;
 - (g) to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;

...

19. I am satisfied the LG Act 2020 is an enactment in force for the purpose of section 38 of the FOI Act.

Does the enactment apply specifically to the kind of information in the documents?

20. To satisfy the second requirement of section 38, the enactment must be formulated with such precision that it refers with particularity to the information.² It is not sufficient for the enactment to be formulated in general terms such that it would encompass the information without expressly describing the information.
21. 'Confidential Information' is defined in section 3(1) of the LG Act 2020 Act and includes:
- ...
 - (f) personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;
 - ...
 - (l) information that was confidential information for the purposes of section 77 of the Local Government Act 1989;

Personal information of third parties

22. The definition of 'confidential information' in section 3(1)(f) of the LG Act 2020 which concerns 'personal information' overlaps with the exemption under section 33(1) of the FOI Act.
23. Section 33(1) provides a document is exempt if:
- (a) disclosure of a document under the FOI Act would 'involve' the disclosure of information relating to the 'personal affairs' of a person other than the Applicant (a **third party**);² and
 - (b) disclosure of the personal affairs information would be 'unreasonable' in the circumstances.
24. Given this overlap, in determining whether a document contains 'personal information' about any person or their personal affairs, and whether its disclosure would be unreasonable in the circumstances, I have had regard to similar considerations that arise under section 33(1) of the FOI Act.

Do the documents contain 'personal information' for the purposes of section 125 of the LG Act 2020?

25. In determining what information amounts to 'personal information', I have taken into consideration the definition of 'personal affairs information' in section 33(9) of the FOI Act, which provides that information relating to a person's personal affairs includes information that identifies any person or discloses their address or location. It also includes any information from which such information may be reasonably determined.³
26. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the interest in protecting an individual's personal privacy in the circumstances.

Documents 1 to 4

27. Having reviewed Documents 1 to 4, I am satisfied they contain the following personal information:
- (a) in Documents 1 to 4, the names, signatures, addresses, email addresses, salary and other entitlements and employment conditions of [several] senior Agency officers; and

² *News Corp Ltd v National Competition & Securities Commission* (1984) 52 ALR 277 at [281].

³ Section 33(9).

- (b) in Document 7, information about changes to the roles of the named senior Agency officers due to changes to the Agency's organisational structure.

Would disclosure of the personal information be unreasonable in the circumstances?

28. The Agency consulted with the Agency officers to whom Documents 1 to 4 relate and who advised they object to the disclosure of their personal information in the documents under the FOI Act.

29. In relation to these documents, the Agency submits:

It is submitted the persons the subject of the documents, despite being senior officers are not "high flyers" as seen in other cases. For example, in *Asher v Department of State and Regional Development* (2002) 19 VAR 214; [2002] VCAT 609, the Tribunal found that the Chief Executive of Tourism Victoria and the Director of the Department of State and Regional Development's Office of Manufacturing were both "high flyers". In *Rintoul v Swinburne University of Technology* (unreported, AAT of Vic, Galvin DP, 17 April 1998) the AAT found that a number of executives were not "high flyers".

Further, the remuneration of the persons the subject of the documents is already made available to the public as part of the Council's annual reports [See for example p 151 of the 2019/2020 Annual Report with financials].

It is submitted the breakdown or the details of a person's remuneration package should be protected. The remuneration package relates to each person specifically and represents the quid pro quo for the person supplying his or her services to Council. It is tailored to the specific person. For this reason, it is unreasonable to disclose the remuneration package to [the Applicant] or anyone else beyond what is already disclosed to the public.

In addition, as the documents include more than just remuneration, such as leave entitlements or medical examination requirements, it is unreasonable to disclose the documents to [the Applicant] or anyone else.

30. In their review application, the Applicant submits:

I dispute this assertion. The employees are government employees, albeit at a local government level. I believe that their contracts should be made available with appropriate redactions (such as removing personal details such as address, age, etc). This is no different to what occurs in the Victorian Public Sector. If you go to this page [<https://vpsc.vic.gov.au/resources/victorian-public-service-executive-employment/>] you will note that you can download the Standard Executive Employment Contract for positions from Director (SES 1) and Deputy Secretary (SES 3). Therefore I submit if we can see their contracts, and one assume that this employment market is as equally competitive as the local government employment market, there is no reason why the council could not provide a copy of the contracts I requested for the CEO and senior staff (Directors).

Furthermore, in a discussion paper with the Office of Local Government Inspectorate (see here [<https://www.lgi.vic.gov.au/managing-employment-cycle-council-ceo/views-sector-local-government-law-practitioner/>]), it was submitted by a local government legal practitioner that the "full CEO contract, or at least key contract terms, should be on council website". This I submit is further evidence that the CEO contract should be publicly available.

31. In accordance with case law on section 33(1) of the FOI Act, I have considered the following factors in determining whether disclosure of the personal information of the Agency officers would be unreasonable in the circumstances:

- (a) the nature of the information and the circumstances in which it was obtained;
- (b) the Applicant's interest in the information, and whether their purpose for seeking the information is likely to be achieved;
- (c) the likelihood of further disclosure of information, if released;

- (d) whether any public interest would be promoted by release of the information;
- (e) whether the individuals to whom the information relates object, or would be likely to object, to the release of the information; and
- (f) whether the disclosure of information would or would be reasonably likely to endanger the life or physical safety of any person.⁴

32. Having carefully consider the content and context of Documents 1 to 4, I am satisfied disclosure of certain personal information would not be unreasonable for the following reasons:

- (a) The employment contracts are for the Agency's [number of] most senior officers. Persons holding such senior roles in a publicly funded organisation should expect their employment terms and remuneration will be subject to transparency given their leadership roles and responsibility for the senior management and performance of a public sector organisation.
- (b) I have taken into consideration the views of the Agency officers as to disclosure of their personal information in the documents. However, while this is a relevant factor, it is not determinative. While I acknowledge their preference is for the documents not to be disclosed, I am not persuaded by their submissions against disclosure given the context of their senior roles within the Agency and the transparency principles that underpin the LG Act 2020.
- (c) In my view, the documents do not contain sensitive personal information. Rather, they contain what I consider are standard contractual terms expected to be included in an executive employment contract.
- (d) In this regard, I note the documents are substantially similar, particularly Documents 2 to 4 which relate to three senior Agency officers.
- (e) The documents contain leave entitlements in terms of applicable laws only, rather than any sensitive information relating to unique leave or other arrangements applying to a particular individual or their personal circumstances.
- (f) The fact a senior Agency officer may be subject to a medical examination as a condition of their employment is not an unusual contractual term in an executive employment contract and is not a sensitive factor in that any health information of the officer is not being disclosed.
- (g) Disclosure of an individual's salary is less sensitive where the agency publishes the salary bands of its staff. In my view, there is little difference between knowledge of a salary amount within a narrow salary range and the actual salary figure in their employment contract.
- (h) In relation to salary amounts and other benefits, the public interest lies in favour of disclosure of information regarding the expenditure of public funds on the employment of senior Agency officers given their leadership roles and responsibilities for the senior management and performance of a public sector organisation. I consider this view is consistent with the objects of the LG Act 2020 to ensure that councils 'are constituted as representative bodies that are accountable, transparent, collaborative, efficient and engaged with their communities'.⁵

⁴ Section 33(2A).

⁵ Section 4(b) of the LG Act 2020.

33. For the above reasons, I am satisfied the disclosure of certain personal information in the documents would not be unreasonable and is not 'confidential information' for the purposes of section 125 of the LG Act 2020 and is not exempt under section 38 of the FOI Act.
34. However, I have determined certain information in the documents is sensitive in nature as it relates to the personal circumstances of an Agency officer rather than in their professional roles and is not publicly available.
35. Therefore, I am satisfied disclosure of the following personal information is 'confidential information' for the purposes of section 125 of the LG Act 2020 and is exempt under section 38 of the FOI Act:
 - (a) the Agency officers' home and email address; and
 - (b) the Agency officers' and witnesses' signatures.

Document 7

36. Document 7 contains the names of Agency officers and certain personal information about their employment arrangements.
37. I am satisfied certain information is sensitive as it relates to their unique position within the Agency and their future employment status. Therefore, I have determined disclosure of the following personal information in the documents would be unreasonable in the circumstances:
 - (a) the information under the heading 'group 1', including the next three underlined headings and the information beneath those headings;
 - (b) the information under the heading 'any interdependencies/timing issues'; and
 - (c) the information in the table under the heading 'start process to recruit...'
38. Therefore, I am satisfied disclosure of this personal information would be unreasonable and constitutes 'confidential information' for the purposes of section 125 of the LG Act 2020 and is exempt under section 38 of the FOI Act.
39. My decision in relation to section 38 is set out in the Schedule of Documents in **Annexure 1**.

Confidential council meeting information

40. Upon the request of OVIC during the review, the Agency provided additional information which demonstrates Document 1 went before a closed council meeting on 19 February 2018.
41. At the time of the council meeting, the *Local Government Act 1989 (Vic)* (**LG Act 1989**) was in force and contained a secrecy provision under section 77 which, with the repeal of the LG Act 1989, was replaced by the secrecy provision in section 125 in the LG Act 2020.
42. Section 77 of the LG Act 1989 provides in relation to 'confidential information' under that Act:
 - (1) A person who is, or has been, a Councillor or a member of a special committee, must not disclose information that the person knows, or should reasonably know, is confidential information.
Penalty: 120 penalty units.

...

- (2) For the purposes of this section, information is confidential information if—
- (a) the information was provided to the Council or a special committee in relation to a matter considered by the Council or special committee at a meeting closed to members of the public and the Council or special committee has not passed a resolution that the information is not confidential; or
 - (b) the information has been designated as confidential information by a resolution of the Council or a special committee which specifies the relevant ground or grounds applying under section 89(2) and the Council or special committee has not passed a resolution that the information is not confidential; or
 - (c) the information has been designated in writing as confidential information by the Chief Executive Officer specifying the relevant ground or grounds applying under section 89(2) and the Council has not passed a resolution that the information is not confidential.

43. Under the LG Act 2020, section 3(1)(l) provides the definition of ‘confidential information’ includes ‘information that was confidential information for the purposes of section 77 of the Local Government Act 1989’.
44. Therefore, I am satisfied Document 1 is a record of a council meeting closed to members of the public in relation to which the council has not passed a resolution that the information is not confidential.
45. Accordingly, I am satisfied information in Document 1 constitutes ‘confidential information’ for the purposes of section 125 of that Act and is exempt under section 38 of the FOI Act.
46. In summary, for the above reasons, I am satisfied the three requirements for section 38 are met and my decision in relation to section 38 is set out in the Schedule of Documents in **Annexure 1**.

Section 33(1) – Documents affecting personal privacy

47. As I am satisfied section 38 applies to certain personal information in the documents, it is not necessary to consider the application of section 33(1) to the same information.
48. For completeness, for the reasons described above, I am satisfied section 33(1) does not apply to information I have determined would not be unreasonable to release for the purposes of section 125 of the LG Act 2020.

Section 34(4)(a)(ii) – Documents affecting trade secrets

49. The Victorian Civil and Administrative Tribunal (**VCAT**) has held ‘the terms ‘trade’ and ‘commerce’ are not words of art; rather they are expressions of fact and terms of common knowledge’.⁶ VCAT has adopted the view of the Federal Court of Australia that these terms are ‘of the widest import’.⁷
50. 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.
51. The Agency submits:

It is submitted that despite trade and commerce being only incidental to Council’s other (governmental) functions, when it comes to engaging senior management in a finite market it should still be regarded as being “engaged in trade or commerce” [See *Marple v Department of Agriculture* (1995) 9 VAR 29 at 46.]

⁶ *Pallas v Roads Corporation (Review and Regulation)* [2013] VCAT 1967 at [33].

⁷ *Pallas v Roads Corporation (Review and Regulation)* [2013] VCAT 1967 at [34]; *Re Ku-Ring-Gai Co-operative Building Society* (No 12) Ltd (1978) 22 ALR 621 at [649].

The documents relate to Council engaging in trade or commerce when it comes to employees. The documents set out the terms and conditions in which the Council is willing to engage senior officers.

If the documents are disclosed, it would expose Council unreasonably to disadvantage for the following reasons:

- Council would have a competitive disadvantage in the employment market. It would make available the bases in which Council may be willing to engage senior officers. If the terms and conditions are available to the world at large (and Council is unaware of the bases in which other council's engage senior officers), Council would no longer be on an even playing field.
- Future employees may also be less likely to accept a position at Council if there is a possibility that their employment contracts and the specific details of them could be so easily released under the FOI Act.

52. I am not satisfied the Agency is engaged in trade or commerce in relation to the documents the subject of my review for the purposes of section 34(4)(1)(ii), namely the employment contracts and a document regarding the Agency's organisational structure.

53. Rather, I consider the nature and purpose of these documents relate to the Agency's internal human resource and employment functions, which are undertaken by all public sector agencies as a matter of course. As such, I do not consider they are related to 'trade and commerce'. In my view, to interpret the operation of section 34(4)(a)(ii) in this way, noting the object of the FOI Act discussed above, reflects an overly broad application of this exemption.

54. Accordingly, I am not satisfied the documents are exempt under section 34(4)(a)(ii).

Section 30(1) – Internal working documents

55. Section 30(1) has three requirements:

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

56. The exemption does not apply to purely factual material in a document.⁸

57. In determining if disclosure would be contrary to the public interest, I must consider all relevant facts and circumstances remaining mindful the object of the FOI Act is to facilitate and promote the disclosure of information. In doing so, I have given weight to the following relevant factors:⁹

- (a) the right of every person to gain access to documents under the FOI Act;
- (b) the degree of sensitivity of the issues discussed in the documents and the broader context giving rise to the creation of the documents;
- (c) the stage of a decision or status of policy development or a process being undertaken at the time the communications were made;

⁸ Section 30(3).

⁹ *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

- (d) whether disclosure of the documents would be likely to inhibit communications between Agency officers, essential for the Agency to make an informed and well-considered decision or participate fully and properly in a process in accordance with the Agency's functions and other statutory obligations;
- (e) whether disclosure of the documents would give merely a part explanation, rather than a complete explanation for the taking of a particular decision or the outcome of a process, which the Agency would not otherwise be able to explain upon disclosure of the documents;
- (f) the impact of disclosing documents in draft form, including disclosure not clearly or accurately representing a final position or decision reached by the Agency at the conclusion of a decision or process; and
- (g) the public interest in the community being better informed about the way in which the Agency carries out its functions, including its deliberative, consultative and decision making processes and whether the underlying issues require greater public scrutiny.

58. The Agency applied section 30(1) to Document 7. Document 7 is a draft document about the Agency's organisational restructure.

59. Having reviewed the document, I am satisfied it contains opinion, advice and recommendations prepared by an Agency officer in the course of the deliberative functions of the Agency, namely decisions concerning its organisational structure.

60. In the circumstances, I have determined disclosure of Document 7 would not be contrary to the public interest for the following reasons:

- (a) I have determined certain information in the document is exempt under section 38, however I consider the remainder of the document is not sensitive.
- (b) The document deals with common considerations relating to an organisational restructure.
- (c) Members of the community are capable of understanding information in such documents is subject to change.
- (d) The document appears well developed and sets out a detailed implementation plan.

61. Accordingly, I am not satisfied Document 7 is exempt under section 30(1).

Section 36(2)(b) – Disclosure contrary to the public interest

62. Section 36(2)(b) provides a document is an exempt document if:

in the case of a document of a council, its disclosure under this Act would be contrary to the public interest by reason that it would disclose instructions issued to, or provided for the use of guidance of, officers of a council on the procedures to be followed or the 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 or personnel management and assessment interests of the council.

63. The Agency submits:

It is submitted that there are differences between the contracts as to the terms and conditions in which senior officers are engaged, as reflected in their employment contracts. When they were negotiated, Council officers had a set of instructions as to the terms and conditions on which it would be willing to

engage each particular officer, the procedure to be followed, and the criteria to be applied when negotiating employment contracts. A comparison of the contracts would enable this to be deduced on a contract-by-contract basis.

64. In my view, there is a clear distinction between the outcome of negotiations in the form of a finalised employment contract, and any documents described by section 36(2)(b) that are described as instructions or guidance documents. Further, I do not consider a comparison of the [number of] contracts would disclose any such instructions or guidance.
65. Accordingly, I am not satisfied the documents are exempt under section 36(2)(b).

Section 25 – Deletion of exempt or irrelevant information

66. 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.
67. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’¹⁰ 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 25.¹¹
68. I have considered the effect of deleting exempt information from the documents. I am satisfied it is practicable to delete the exempt information, as to do so would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

69. On the information before me, I am satisfied Documents 2 to 4 and 7 are exempt in part, and Document 1 is exempt in full under section 38 in conjunction with section 125 of the LG Act 2020.
70. As I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with exempt information deleted in accordance with section 25, I have granted access to the documents in part.
71. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

Review rights

72. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.¹²
73. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹³
74. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁴

¹⁰ *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].

¹¹ *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].

¹² The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹³ Section 52(5).

¹⁴ Section 52(9).

75. 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.
76. 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.¹⁵

Third party review rights

77. As I have determined to release documents that contain personal information relating to third parties, if practicable, I am required to notify those individuals of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.¹⁶
78. In this case, I am satisfied it is practicable to notify the relevant individuals of their third party review rights and confirm they will be notified of my decision on the date of decision.

When this decision takes effect

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

¹⁵ Sections 50(3F) and (3FA).

¹⁶ Sections 49P(5), 50(3) 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.	[date]	CEO contract of employment	35	Refused in full Sections 33(1), 34(4)(a)(ii), 36(2)(b)	Refuse in full Section 38	Section 38: I am satisfied the document is exempt under section 38 for the reasons set out in the Notice of Decision above.
2.	Undated	Senior Officer contract of employment [version 1]	35	Refused in full Sections 33(1), 34(4)(a)(ii), 36(2)(b)	Release in part Sections 38, 25 The document is to be released with the following exempt information, which is exempt under section 38, deleted in accordance with section 25: <ul style="list-style-type: none"> the residential address on the covering page of the contract of employment; the residential address and email address on page 1; and the signatures on page 31. 	Section 38: I am satisfied the document contains personal information and the disclosure of this information would not be unreasonable. Therefore, I am not satisfied the document is exempt under section 38 for the reasons set out in the Notice of Decision above. However, I am satisfied certain information is exempt under section 38 for the reasons set out in the Notice of Decision above. Section 34(4)(a)(ii): I am not satisfied the Agency is engaged in trade or commerce for the purposes of section 34(4)(a)(ii) and the reasons in the Notice of Decision above. Section 36(2)(b): I am not satisfied disclosure of the document would be contrary to the public interest for the

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>reasons set out in the Notice of Decision above.</p> <p>Section 25: I am 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>
3.	[date]	Senior Officer contract of employment [version 2]	31	<p>Refused in full</p> <p>Sections 33(1), 34(4)(a)(ii), 36(2)(b)</p>	<p>Release in part</p> <p>Sections 38, 25</p> <p>The document is to be released with the following exempt information, which is exempt under section 38, deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the email address of the Agency officer on page 1; and the Senior Officer's residential address and email address on page 1; and the signatures on pages 24 and 27. 	See comments for Document 2.

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
4.	[date]	Senior Officer contract of employment [version 3]	32	Refused in full Sections 33(1), 34(4)(a)(ii), 36(2)(b)	Release in part Sections 38, 25 The document is to be released with the following information, which is exempt under section 38, deleted in accordance with section 25: <ul style="list-style-type: none"> the email address of the Agency officer on page 1; the Senior Officer's residential address and email address on page 1; and the signatures on pages 25 and 28. 	See comments for Document 2.
5.	[date]	CEO performance Criteria	5	Released in full	Not subject to review	
6.	Undated	Senior Officer Performance Criteria	2	Released in full	Not subject to review	
7.	Undated		5	Refused in full	Release in part	Section 30(1): I am satisfied disclosure of this document would

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
		Draft organisational restructure		Section 30(1)	<p>Sections 38, 25</p> <p>The document is to be released with the following information, which is exempt under section 38, deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the information under the heading 'group 1', including the next three underlined headings and the information beneath those headings; the information under the heading 'any interdependencies/timing issues'; and in the table, the names of officers appearing in the 'Actioned?' column; and the information in the table under the heading 'start process to recruit'. 	<p>not be contrary to the public interest for the reasons set out in the Notice of Decision above.</p> <p>Section 38: I am satisfied the document contains personal information that would be unreasonable to disclose as it relates to sensitive employment matters regarding the named individuals. Accordingly, I am satisfied this information is exempt under section 38 in conjunction with section 125 of the LG Act 2020.</p> <p>However, I am not satisfied the remainder of Agency officer names in the document are exempt as this information is not sensitive and relates to those officer's in their professional roles, rather than in their personal or private capacity.</p>
8.	Undated	Staff Announcement	1	Released in full	Not subject to review	

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
9.	Undated	Staff Announcement 1	1	Released in full	Not subject to review	
10.	[date]	Development Services staff structure	1	Released in full	Not subject to review	
11.	[date]	Communities & Place	1	Released in full	Not subject to review	
12.	[date]	Communities & Place	1	Released in full	Not subject to review	
13.	Undated	Community Wellbeing	1	Released in full	Not subject to review	