

Notice of Decision and Reasons for Decision

Applicant:	'ES8'
Agency:	Department of Treasury and Finance
Decision date:	18 August 2022
Exemptions and provisions considered:	Sections 29(1)(a), 28(1)(d), 30(1), 34(1)(b), 34(4)(a)(ii), 25
Citation:	'ES8' and Department of Treasury and Finance (Freedom of Information) [2022] VICmr 199 (18 August 2022)

FREEDOM OF INFORMATION – ministerial briefings – government grants – priority planning projects – High Capacity Metro Trains – North East Link – communications from the Commonwealth government – COVID-19 pandemic – contracts modifications – bed capacity in prisons – Victorian Major Projects Pipeline – disclosure would not expose an undertaking unreasonably to disadvantage – agency is not engaged in trade and commerce – disclosure not contrary to the public interest – public interest in disclosure of information

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 satisfied the exemption under section 28(1)(d) applies to some information in Documents 4 and 7. However, I am not satisfied any information in the documents is exempt under sections 29(1)(a), 30(1), 34(1)(b) or 34(4)(a)(ii).

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

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

My reasons for decision follow.

Sven Bluemmel
Information Commissioner

18 August 2022

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to certain documents. Following consultation with the Agency, the Applicant amended their initial request and sought access to specific briefs to the Treasurer. The Applicant did not seek access to personal affairs information of non-executive staff or any attachments to the briefs.
2. The Agency identified seven documents falling within the terms of the Applicant's request and decided to grant access to each document in part. The Agency relied on the exemptions under sections 28(1)(d), 29(1)(a), 30(1), 34(1)(b) and 34(4)(a)(ii).
3. The Agency's decision letter sets out the reasons for its decision.

Review application

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

Review of exemptions

Section 28 – Cabinet documents

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

It has been said that a document is not exempt merely because it has some connection with Cabinet, or is perceived by departmental officers or others as being of a character that they believe ought to be regarded as a Cabinet document or because it has some Cabinet "aroma" around it. Rather, for a document to come within the Cabinet document exemption, "it must fit squarely within one of the four exemptions [(now five)]" in section 28(1) of the Act.

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

² (2004) VCAT 2346 at [33].

13. Notwithstanding, where a document attracts the Cabinet exemption, the exemption in section 28(1) provides complete protection from release of the document.
14. Section 28(3) provides the exemption in section 28(1) does not apply to a document to the extent it contains purely statistical, technical or scientific material unless the disclosure of the document would involve the disclosure of any deliberation or decision of the Cabinet.³

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

15. Section 28(1)(d) provides a document is an exempt document if it is a document the disclosure of which would involve the disclosure of any deliberation or decision of the Cabinet, other than a document by which a decision of the Cabinet was officially published.
16. A document will be exempt under section 28(1)(d) if there is evidence that the Cabinet discussed various options in the document and deliberated upon and/or adopted on or more of the options for its consideration.⁴
17. A ‘decision’ means any conclusion as to the course of action the Cabinet adopts whether it is a conclusion as to final strategy on a matter or conclusions about how a matter should proceed.⁵
18. Where a decision of the Cabinet is made public, the announcement in relation to the issue decided will not disclose the Cabinet’s decision or deliberation.⁶
19. Document 4 is a brief to the Treasurer concerning a [document type] for the North East Link project. I am satisfied that on the face of the document, the information that the Agency has exempted under section 28(1)(d) discloses matters endorsed by a Cabinet committee. Accordingly, the information is exempt under section 28(1)(d) as it would involve disclosure of a decision of the Cabinet.
20. Document 7 is a brief to the Treasurer to update on the Victorian Major Projects Pipeline. I am satisfied that the information that the Agency has exempted under section 28(1)(d) discloses a decision of a Cabinet committee. Accordingly, I am satisfied it is exempt under section 28(1)(d).
21. My decision on section 28(1)(d) is outlined further in the Schedule of Documents in **Annexure 1**.

Section 29(1)(a) – Disclosure of documents that would prejudice relation between the State and Commonwealth

22. Section 29(1)(a) provides a document is an exempt document if disclosure under the FOI Act:
 - (a) would be contrary to the public interest; and
 - (b) disclosure would prejudice relations between the State and the Commonwealth or any other State or Territory.
23. This exemption has been applied by the agency to parts of Document 5, which is a briefing to the Treasurer concerning ‘financing the impact of COVID-19’.
24. There is no information before me concerning the Commonwealth’s view on disclosure of the document.
25. The first requirement under section 29(1)(a) is whether disclosure of a document would be contrary to the public interest.

³ *Mildenhall v Department of Premier & Cabinet (No. 1)* (1995) 8 VAR 284.

⁴ *Smith v Department of Sustainability and Environment* (2006) 25 VAR 65; [2006] VCAT 1228 at [23].

⁵ *Della-Riva v Department of Treasury and Finance* (2005) 23 VAR 396; [2005] VCAT 2083 at [30].

⁶ *Honeywood v Department of Innovation, Industry and Regional Development* (2004) 21 VAR 1453; [2004] VCAT 1657 at [26].

26. In my view, the use of the word ‘would’ requires certainty that an event will occur, rather than a mere possibility or likelihood.
27. In determining whether disclosure would be contrary to the public interest, I have had regard to the following factors that were accepted by VCAT in *Millar v Department of Premier and Cabinet*:⁷
- (a) protecting uninhibited exchanges between the governments of Australia; and
 - (b) encouraging cooperative Federalism within Australia; and
 - (c) protecting processes that contribute to high quality policy development by the governments of Australia; and
 - (d) ensuring the public have access to accurate and reliable information that gives a true indication of the basis for government policy; and
 - (e) protecting against unnecessary confusion and debate by avoiding the premature release of documents that represent a stage in the decision—making process.
28. Based on the information before me, I am not satisfied disclosure of the document would be contrary to the public interest for the following reasons:
- (a) There is a public interest in ensuring public sector transparency and accountability in relation to how the Agency communicated with the Commonwealth, and vice versa, regarding responses to the COVID-19 pandemic.
 - (b) The document contains important information about the way the Victorian government responded to the COVID-19 pandemic. I consider there is significant public interest in providing members of the community the ability to participate in such processes and to hold governments to account for the decisions it has made.
 - (c) I do not consider disclosure would impair the effective collaboration between Victoria and the Commonwealth or other states and territories.
29. As I have decided disclosure would not be contrary to the public interest, I have not further considered the remaining requirements of sections 29(1)(a).
30. The Schedule of Documents in **Annexure 1** sets out my decision on section 29(1)(a) to the relevant document.

Section 30(1) – Internal working documents

31. 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
 - (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.
32. The exemption does not apply to purely factual material in a document.⁸

⁷ [2011] VCAT 1230 at [62].

⁸ Section 30(3).

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?

33. For the requirements of section 30(1) to be met, a document must contain matter in the nature of opinion, advice or recommendation prepared by an agency officer, or consultation or deliberation between agency officers.
34. It is not necessary for a document to be in the nature of opinion, advice or recommendation. Rather, the issue is whether release of the document would disclose matter of that nature.⁹
35. Section 30(3) provides purely factual information is not exempt under section 30(1). This provision must be considered in conjunction with section 25, which allows for an edited copy of a document to be released with exempt or irrelevant information deleted, where it is practicable to do so.
36. Each of the documents subject to review are briefings to Ministers. I am satisfied the briefings are in the nature of advice and recommendation for the purposes of 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?

37. 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.¹⁰
38. In *Re Waterford and Department of Treasury (No.2)*,¹¹ the former Victorian 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.
39. I am satisfied the documents were prepared for the deliberative functions of the Agency, being the provision of advice or recommendation regarding a particular matter within the Minister's portfolio.

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

40. In deciding if release is contrary to the public interest, I must consider all relevant facts and circumstances remaining mindful that the object of the FOI Act is to facilitate and promote the disclosure of information.
41. In deciding whether disclosure of the information exempted by the Agency would be contrary to the public interest, I have given weight to the following relevant factors:¹²
 - (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;

⁹ *Mildenhall v Department of Education* (1998) 14 VAR 87.

¹⁰ *Brog v Department of Premier and Cabinet* (1989) 3 VAR 201 at 208.

¹¹ [1984] AATA 67; (1984) 5 ALD 588; 1 AAR 1 at [58].

¹² *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.
42. My decision on whether disclosure would be contrary to the public interest, and whether the documents are exempt under section 30(1), is set out in the Schedule of Documents in **Annexure 1**.

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

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

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

44. In *Thwaites v Department of Human Services*,¹³ VCAT observed the phrase 'information acquired' in section 34(1) signifies the need for some positive handing over of information in some precise form.

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

45. VCAT has also recognised the words 'business, commercial or financial nature' have their ordinary meaning.¹⁴
46. Document 1 concerns the request for approval of a grant to a business. The exempted information outlines what the grant is for. I am satisfied it is broadly information that was acquired from a business undertaking for the purposes of section 34(1)(b).
47. The information exempted in Document 3 concerns the delivery of High Capacity Metro Trains. While the information concerns the delivery of the trains from a business undertaking, the exempted information was not acquired from the business undertaking. Therefore, the exemption under section 34(1)(b) does not apply.
48. Document 5 concerns financing the impact of COVID-19. The exempted information concerns Treasury Corporation of Victoria bonds. While the exempted information concerns a financial undertaking, I am not satisfied the information was acquired from the financial undertaking. Therefore, the exemption under section 34(1)(b) does not apply.

¹³ (1999) 15 VAR 1.

¹⁴ *Gibson v Latrobe CC* [2008] VCAT 1340 at [25].

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

49. Section 34(2) provides that in deciding whether disclosure of information would expose an undertaking unreasonably to disadvantage, for the purposes of paragraph (b) of subsection (1), an agency or Minister may take account of any of the following considerations—
- (a) whether the information is generally available to competitors of the undertaking;
 - (b) whether the information would be exempt matter if it were generated by an agency or a Minister;
 - (c) whether the information could be disclosed without causing substantial harm to the competitive position of the undertaking; and
 - (d) whether there are any considerations in the public interest in favour of disclosure which outweigh considerations of competitive disadvantage to the undertaking, for instance, the public interest in evaluating aspects of government regulation of corporate practices or environmental controls—
- and of any other consideration or considerations which in the opinion of the agency or Minister is or are relevant.
50. I have also had regard to the decision in *Dalla Riva v Department of Treasury and Finance*,¹⁵ in which VCAT held documents are exempt under section 34(1)(b) if their disclosure would:
- (a) give competitors of a business undertaking a financial advantage;
 - (a) enable competitors to engage in destructive competition with a business undertaking; and
 - (b) would lead to the drawing of unwarranted conclusions as to a business undertaking's financial affairs and position with detrimental commercial and market consequences.
51. I consider the phrase 'expose the undertaking unreasonably to disadvantage' in section 34(1)(b), contemplates disclosure of documents under the FOI Act may expose a business undertaking to a certain measure of disadvantage. By the introduction of the word 'unreasonably' in section 34(1)(b), I consider Parliament determined this exemption applies where an undertaking would be exposed 'unreasonably' to disadvantage only, rather than where disclosure would result in any measure of exposure to disadvantage.
52. Accordingly, section 34(1)(b) contemplates a business undertaking may be exposed to a certain level of disadvantage. The question is whether any such disclosure would expose the undertaking unreasonably to disadvantage.
53. In determining whether disclosure of commercially sensitive information in a document would expose an undertaking unreasonably to disadvantage, if practicable, an agency must notify an undertaking and seek its views on disclosure.¹⁶

¹⁵ [2007] VCAT 1301 at [33].

¹⁶ Section 34(3).

Document 1

54. I am not satisfied disclosure of the exempted information would expose the undertaking unreasonably to disadvantage for the following reasons:
- (a) There is a public interest in transparency and accountability with respect to grants to businesses, given it concerns expenditure of public funds. An important purpose of access to information under the FOI Act is to ensure grants awarded by government to business undertakings are better able to be scrutinised.
 - (b) Entities applying for government grants should reasonably expect a greater degree of transparency and accountability given the use of public funds.
 - (c) General information about the matter to which the grant relates is generally available on the undertaking's website. The exempted information is not detailed and does not reveal anything about the undertaking's methodologies, such that a competitor could use such information to obtain a financial or competitive advantage.
 - (d) While it is possible the undertaking may be exposed to a certain measure of disadvantage if the document is disclosed, I am not satisfied any such exposure would be unreasonable given the circumstances.
55. My decision on section 34(1)(b) to the relevant documents is set out in the Schedule of Documents in **Annexure 1**.

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

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

Is the Agency engaged in trade and commerce?

57. Whether an agency is engaged in trade or commerce depends on the facts and circumstances of each case.¹⁷
58. VCAT has held 'the terms 'trade' and 'commerce' are not words of art; rather they are expressions of fact and terms of common knowledge'.¹⁸ VCAT has adopted the view of the Federal Court of Australia that these terms are 'of the widest import'.¹⁹ 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.²⁰

¹⁷ *Stewart v Department of Tourism, Sport and the Commonwealth Games* [2003] VCAT 45 at [41].

¹⁸ *Pallas v Roads Corporation (Review and Regulation)* [2013] VCAT 1967 at [33].

¹⁹ *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].

²⁰ *Marple v Department of Agriculture* (1995) 9 VAR 29 at [47].

59. Further, an agency may be engaged in trade or commerce, even if profit is not one of its express statutory objectives.²¹
60. While the phrase 'trade and commerce' may be interpreted broadly,²² it has been held trade and commerce must 'of their nature, bear a trading or commercial character'.²³
61. 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).²⁴

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

62. The phrase 'information of a business, commercial or financial nature' is not defined in the FOI Act. Therefore, the words 'business, commercial or financial nature' should be given their ordinary meaning.²⁵

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

63. Whether disclosure is likely to expose an undertaking *unreasonably* to disadvantage depends on the particular facts and circumstances of the matter, considering the consequences that likely to follow from disclosure of the information.
64. 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.

Document 1

65. Document 1 concerns a request for an approval of a grant to a business. The information exempted by the Agency is the requested monetary value of the maximum grant.
66. While I am satisfied the information is of a business, commercial and financial nature, I am not satisfied an agency is engaged in trade and commerce in issuing grants of public money to businesses.
67. Even if I were satisfied the Agency was engaged in trade a commerce, I am not satisfied the Agency would be exposed unreasonably to disadvantage for the following reasons:
 - (a) In its Annual Report, the Agency that prepared the brief publishes the names of entities to which it has awarded a grant and the amount awarded. As such, I am satisfied it has published the amount awarded to the undertaking.
 - (b) I am not satisfied disclosing the monetary figures of amounts that could have been awarded to the undertaking would expose the Agency unreasonably to disadvantage given the grant has been awarded.
 - (c) There is a public interest in transparency and accountability in relation to the decision-making processes behind awarding government grants.

²¹ *Thwaites v Metropolitan Ambulance Services* (1996) 9 VAR at [473].

²² *Re Ku-Ring-Gai Co-operative Building Society (No 12) Ltd* [1978] FCA 50; (1978) 36 FLR 134.

²³ *Concrete Constructions (NSW) Pty Ltd v Nelson* [1990] HCA 17; (1990) 169 CLR 594 at 690; *Gibson v Latrobe City Council* [2008] VCAT 1340 at [35].

²⁴ *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].

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

Document 3

68. An agency cannot be said to be engaged in trade or commerce merely because it engages in transactions that have some commercial nature such as purchasing good or services. Document 3 concerns the delivery of High Capacity Metro Trains via a Public Private Partnership.
69. Even if I were satisfied the Agency is engaged in trade and commerce, some of the exempted information concerns target dates and timetables in [year]. Given the amount of time that has passed, I am not satisfied information concerning those target dates is sensitive anymore. In my view, disclosure of this information will not expose the Agency unreasonably to disadvantage.
70. Accordingly, I am not satisfied the information is exempt under section 34(4)(a)(ii).

Section 25 – Deletion of exempt or irrelevant information

71. 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.
72. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’²⁶ 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 25.²⁷
73. I have considered the information the Agency deleted from the documents as irrelevant. I agree it falls outside the scope of the Applicant’s request because it is personal affairs information of non-executive level staff.
74. I have considered the effect of deleting irrelevant and exempt information from the documents. In my view, it is practicable for the Agency to delete this information, because it would not require substantial time and effort, and the edited documents would retain meaning.
75. My decision on section 25 for each document is set out in the Schedule of Documents in **Annexure 1**.

Conclusion

76. On the information before me, I am satisfied the exemption under section 28(1)(d) applies to Documents 4 and 7. I am not satisfied information is exempt under sections 29(1)(a), 30(1), 34(1)(b) or 34(4)(a)(ii).
77. As I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with irrelevant and exempt information deleted in accordance with section 25, access is granted in part.
78. My decision on each document is set out in the Schedule of Documents in **Annexure 1**.

Review rights

79. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.²⁸
80. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.²⁹

²⁶ *Mickelborough 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].

²⁷ *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].

²⁸ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

81. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.³⁰
82. 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.
83. 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.³¹

Third party review rights

84. As I have determined to release documents that contain information exempted by the Agency under section 34(1)(b), if practicable, I am required to notify those persons of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.³²
85. In this case, I am satisfied it is practicable to notify the relevant third parties of their review rights and confirm they will be notified of my decision.

When this decision takes effect

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

²⁹ Section 52(5).

³⁰ Section 52(9).

³¹ Sections 50(3F) and 50(3FA).

³² Sections 49P(5), 50(3A) and 52(3).

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.	[Date]	[Undertaking] – Investment Attraction and Assistance Program proposal	2	Released in part Sections 30(1), 34(1)(b), 34(4)(a)(ii)	Release in part Section 25 The document is to be released, except for the irrelevant personal affairs information which is to remain deleted in accordance with section 25.	<p>Section 30(1): On [date], the Agency advised the information in paragraph 4 under the heading ‘Key Points’ can be released, as it is less sensitive given the time that has passed since the document was created. I agree disclosure would not be contrary to the public interest for the following reasons:</p> <p>(a) there is a public interest in the community knowing what the government has invested in; and</p> <p>(b) given the grant has been awarded, any sensitivity in relation to the exempted information has likely subsided at this point in time.</p> <p>Accordingly, I am not satisfied the document contains information that is exempt under section 30(1).</p> <p>Section 34(1)(b): I am not satisfied information in this document is exempt under section 34(1)(b) for the reasons provided in the Notice of Decision, above.</p> <p>Section 34(4)(a)(ii): I am not</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>satisfied information in this document is exempt under section 34(4)(a)(ii) for the reasons provided in the Notice of Decision, above.</p> <p>Section 25: I am satisfied it is practicable to edit the document to delete irrelevant information in accordance with section 25.</p>
2.	[Date]	Fast tracking priority planning projects	4	<p>Released in part</p> <p>Section 30(1)</p>	<p>Release in part</p> <p>Section 25</p> <p>The document is to be released, except for the irrelevant personal affairs information which is to remain deleted in accordance with section 25.</p>	<p>Section 30(1): I am not satisfied it would be contrary to the public interest to release the information exempted by the Agency because:</p> <ul style="list-style-type: none"> (a) the information is not sensitive in nature; (b) even if the information has now been superseded given the age of the document, the Agency can provide additional information upon release to mitigate any concern of potential confusion. <p>I am not satisfied the information is exempt under section 30(1).</p> <p>Section 25: See comments for</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						Document 1.
3.	[Date]	High Capacity Metro Trains (HCMT)	5	<p>Released in part</p> <p>Sections 30(1), 34(4)(a)(ii)</p>	<p>Release in part</p> <p>Section 25</p> <p>The document is to be released, except for the irrelevant personal affairs information which is to remain deleted in accordance with section 25.</p>	<p>Section 30(1): This brief was signed in [month and year] and concerns the state of the project at that point in time. Therefore, the 'issues' identified in relation to the 'program', 'operational readiness', and 'resources and capability' has likely changed and the information may no longer have the same sensitivity as it did in [year]. I am not satisfied disclosure of this information, including the recommendations, in response to this FOI request would impact the recording of similar information in the future. Further, I consider disclosure would promote transparency and accountability with respect to the status of the project at the point in time this briefing was provided to the Treasurer. As such, I am not satisfied information in this document is exempt under section 30(1).</p> <p>Section 34(1)(b): See comments for Document 1.</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>Section 34(4)(a)(ii): See comments for Document 1.</p> <p>Section 25: See comments for Document 1.</p>
4.	[Date]	North East Link Primary Package Request for Proposal – [document type]	4	<p>Released in part</p> <p>Sections 28(1)(d), 30(1)</p>	<p>Release in part</p> <p>Sections 28(1)(d), 25</p> <p>The document is to be released, except for the information that the Agency exempted under section 28(1)(d) and irrelevant personal affairs information, which is to remain deleted.</p>	<p>Section 28(1)(d): I am satisfied disclosure of the document would involve the disclosure of a decision of a Cabinet Committee. Accordingly, it is exempt under section 28(1)(d).</p> <p>Section 30(1): The information that the Agency exempted under section 30(1) concerns [option types] options. Given the time that has passed since the document was created, and having considered that the preferred bidder has been publicly announced, any sensitivity in relation to the proposed options in relation to bid reimbursements that were communicated to the Treasurer in [year] has likely subsided. Disclosure in this instance will promote transparency and accountability in relation to the recommendations made to the Treasurer and the Treasurer’s decision, particularly as it concerns expenditure of public funds and a major infrastructure project. For</p>

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						<p>these reasons, I am not satisfied disclosure would be contrary to the public interest, and therefore, the information is not exempt under section 30(1).</p> <p>Section 25: See comments for Document 1.</p>
5.	[Date]	Financing the impact of COVID-19	7	Released in part Sections 29(1)(a), 30(1), 34(1)(b)	<p>Release in part Section 25</p> <p>The document is to be released, except for the irrelevant personal affairs information which is to remain deleted in accordance with section 25.</p>	<p>Section 29(1)(a): There is a strong public interest in disclosing information concerning the government's response to the COVID-19 pandemic, as outlined above in the Notice of Decision. I am not satisfied section 29(1)(a) applies to this document.</p> <p>Section 30(1): There is a strong public interest in disclosing information concerning the government's response to the COVID-19 pandemic, its financial impact on Victoria and the Commonwealth government's position. In this instance, disclosure serves the public interest as it can assist members of the public in their understanding and scrutiny of the government's response to the pandemic.</p> <p>Therefore, I am not satisfied</p>

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						<p>section 30(1) applies to information in this document.</p> <p>Section 34(1)(b): See comments for Document 1.</p> <p>Section 25: See comments for Document 1.</p>
6.	[Date]	Ravenhall Correctional Centre – Approval to execute contract modification for 300 beds additional capacity	3	<p>Released in part</p> <p>Section 30(1)</p>	<p>Release in part</p> <p>Section 25</p> <p>The document is to be released, except for the irrelevant personal affairs information which is to remain deleted in accordance with section 25.</p>	<p>Section 30(1): The exempted information is the dollar figures for the estimated savings in relation to a modified contract for additional bed capacity within a correction centre.</p> <p>In this matter, the recommendations with respect to the contract modifications were approved by the Treasurer. As the document explicitly states the figures are estimates only, made at the time in which the briefing was created, the Applicant and the wider public will not be misled. Further, disclosure would support transparency and accountability in relation to the factors considered by the Treasurer when approving the recommendations. I am therefore, not satisfied the information is exempt under section 30(1).</p>

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						Section 25: See comments for Document 1.
7.	[Date]	Update on the Victorian Major Projects Pipeline	8	Released in part Sections 28(1)(d), 30(1)	Release in part Sections 28(1)(d), 25 The document is to be released, except for the information that the Agency exempted under section 28(1)(d) and irrelevant personal affairs information, which is to remain deleted.	Section 28(1)(d): I am satisfied disclosure of the document would involve the disclosure of a decision of a Cabinet Committee. Accordingly, it is exempt under section 28(1)(d). Section 30(1): On [date], the Agency advised that further information can be released in paragraphs 20, 27 and 31. I am satisfied disclosure of this information would not be contrary to the public interest and is not exempt under section 30(1). Furthermore, information concerning the key design elements for the Victorian Major Projects Pipeline exempted by the Agency is publicly available information. ³³ The information that is not already publicly available is not sensitive information, and its disclosure would promote transparency. Therefore, I am not satisfied

³³ Office of Projects Victoria, *Pipeline* (Web Page) <<http://www.opv.vic.gov.au/Pipeline>>.

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						section 30(1) applies to information in this document. Section 25: See comments for Document 1.