

---

## Notice of Decision and Reasons for Decision

---

Applicant:	'BT1'
Agency:	Infrastructure Victoria
Decision date:	29 June 2020
Exemptions considered:	Sections 30(1), 35(1)(a), 35(1)(b), 36(1)(a), and 38 of the <i>Freedom of Information Act 1982</i> (Vic) in conjunction with section 25 of the <i>Infrastructure Victoria Act 2015</i> (Vic)
Citation:	<i>'BT1' and Infrastructure Victoria (Freedom of Information)</i> [2020] VICmr 183 (29 June 2020)

---

FREEDOM OF INFORMATION – infrastructure projects – transport modelling – infrastructure costing and analysis – external consultant reports – confidentiality provision – secrecy provision

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 the documents are exempt under sections 35(1)(a) or (b), 36(1)(a) or 38.

I am satisfied certain parts of the documents are exempt under section 30(1).

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

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

My reasons for decision follow.

**Sven Bluemmel**  
Information Commissioner  
29 June 2020

## Reasons for Decision

### Background to review

1. Page 39 of the Agency's [year-ear] Annual Report (**Annual Report**) contains a list of consultancies, the purpose of those consultancies and their value.
2. The Applicant made a request to the Agency seeking access to documents reporting the outcomes for each of the consultancies listed on page 39 with an end date prior to the date of the Applicant's request.
3. The Agency identified 32 documents falling within the terms of the Applicant's request. In its decision, the Agency determined:
  - (a) to refuse access to three documents in full;
  - (b) to grant access to one document in part; and
  - (c) noted 28 documents are publicly available on its website.
4. The Agency relied on the exemptions in sections 30(1), 33(1), 35(1)(a), 35(1)(b), 36(1)(a), and 38 in conjunction with section 25 of the *Infrastructure Victoria Act 2015* (Vic) (**IV Act**) to refuse access to the documents. The Agency's decision letter sets out the reasons for its decision.

### Review

5. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access to documents.
6. During the review, the Applicant advised they seek review of the Agency's decision to deny access to the three documents in full (Documents 1 to 3) and does not seek review of information exempted by the agency under section 33(1).
7. The Agency subsequently decided to grant access to Document 3 in full. Therefore, this review concerns the Agency's decision to refuse access to Documents 1 and 2 only with the exception of personal affairs information in the documents.
8. During the review, the Agency advised it no longer relies on certain exemptions in respect to Documents 1 and 2, as set out in its decision, but continues to rely on sections 30(1), 36(1)(b) and 38 to refuse access to the documents.
9. I have examined copies of the documents subject to review.
10. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
11. I have considered all communications and submissions received from the parties, including:
  - (a) the Agency's decision on the FOI request;
  - (b) the Applicant's review application;
  - (c) the Agency's submissions dated 18 December 2019 and 23 March 2020; and
  - (d) all correspondence between OVIC and the Applicant and the Agency in relation to this matter.

## **Preliminary view**

12. On [dates], OVIC staff provided the Agency with my preliminary view in relation to its decision to refuse access to Documents 1 and 2. My preliminary view was that the exemptions claimed by the Agency did not apply to the documents. My staff set out my reasons for my view and gave the Agency an opportunity to provide further submissions on the matter.
13. In response to my preliminary view, the Agency's legal representative made a submission in which the Agency maintains its view the documents are exempt under the FOI Act. I have taken the Agency's further submission into consideration in my decision below. While I note the Agency advised this submission is confidential, I consider much of the information in the submission is general in nature. Further, in order to provide adequate reasons for decision, it is necessary for me to engage with issues raised in that submission.
14. I note the Agency asked that I provide a further preliminary view in this matter before making my decision. However, in my view, the Agency has been afforded the opportunity to make its submissions in this matter, including when it was advised of the review, and again following my preliminary view. I have taken both the Agency's submissions into consideration below. Should the Agency disagree with my decision, information about review rights is set out below.

## **Review of exemptions**

### **Section 30(1)**

15. 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.
16. The exemption does not apply to purely factual material in a document.<sup>1</sup>
17. The term 'officer of an agency' is defined in section 5(1). It includes a member of an agency, a member of the agency's staff, and any person employed by or for an agency, whether that person is one to whom the provisions of the *Public Administration Act 2004* (Vic) apply or not.
18. The Agency applied section 30(1) to both documents subject to review.
19. Document 1 is a report prepared by external consultants regarding transport modelling. It is a draft document containing amendments and commentary.
20. Document 2 is also a report prepared by external consultants. It relates to infrastructure costing and analysis and is marked 'final'.

---

<sup>1</sup> 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?*

21. Having reviewed the documents, I am satisfied they were prepared by external consultants who were engaged by the Agency and meet the definition of 'officer' under section 5(1).
22. I am also satisfied the documents disclose matter in the nature of opinion, advice or recommendation that has taken place between Agency officers for the purposes of section 30(1)(a).

*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?*

23. I am satisfied the documents were prepared for the purpose of the deliberative processes of the Agency, namely, planning for potential future infrastructure projects.

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

24. In its submission dated 23 March 2020, the Agency relies on previous decisions of the Victorian Civil and Administrative Tribunal (**VCAT**) in relation to 'public interest considerations' to support its decision to exempt the documents under section 30(1).
25. In relation to section 30(1)(b), the Agency's submission dated 23 March 2020 states:
  - (a) Document 1 is in draft form and Document 2 is in a form unsuitable to be used to inform any final version of the document.
  - (b) Disclosure of the documents would likely lead to unnecessary confusion and ill-informed debate to the extent that members of the public may believe the conclusions in the documents are reliable or will be relied on.
  - (c) Release of the documents could give spurious standing to the documents, as they may be seen as generally accurate or as reflecting the current state of possible policy options under consideration by the Victorian Government.
  - (d) Disclosure 'would likely lead to pointless hypothetical speculation about the future state of the transport network'.

26. The Agency further submits in *Pallas v Roads Corporation*<sup>2</sup> (***Pallas v Roads Corporation***):

... the Member considered whether a subsequent public statement describing the policy options discussed in that document as 'shelved' would mitigate the risk of unnecessary public confusion. The Member rejected this—the Member reasoned that, despite this statement, members of the public might regard the policy options as merely postponed, and therefore the document was not suitable to be disclosed. Therefore the Member did not accept that the internal working document could be released in light of the additional context provided by the public statement. Nor did the Member suggest that the agency release the document as contextualised by a further public statement.

...

Further, and for completeness, there are authorities to indicate that the disclosure of consultant opinions would be contrary to the public interest in that it would dampen the full frankness of their advice.<sup>3</sup>

---

<sup>2</sup> *(Review and Regulation)* [2013] VCAT 1967.

<sup>3</sup> *Dalla-Riva v Department of Treasury & Finance* (2005) 23 VAR 396; *Baker v Department of Education and Training* [2005] VCAT 2263; *Herington v Department of Transport Planning & Local Infrastructure* [2014] VCAT 1026.

27. While I acknowledge decisions of VCAT are instructive, they are not binding on future decisions made under the FOI Act. Each decision made under the FOI Act will generally turn on its own facts and relevant considerations in the particular circumstances.
28. Further, in deciding if disclosure of the documents 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, it is necessary not only for a decision maker to consider public interest considerations against disclosure, but rather to weigh competing public interest considerations both in favour and against disclosure.
29. In deciding whether disclosure of the documents would be contrary to the public interest in this case, 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 object of the FOI Act and Parliament's stated intention to extend as far as possible the right of the community to access government information 'limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by agencies';<sup>4</sup>
  - (c) that any discretions conferred by the FOI Act must be exercised as far as possible so as to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information;<sup>5</sup>
  - (d) the degree of sensitivity of the issues discussed in the documents and the broader context giving rise to the creation of the documents;
  - (e) the stage or a decision or status of policy development or a process being undertaken at the time the communications were made;
  - (f) 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;
  - (g) 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;
  - (h) the impact of disclosing documents in draft form, including 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
  - (i) 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.
30. On balance, I have determined disclosure of a majority of the documents would not be contrary to the public interest for the following reasons:

---

<sup>4</sup> Section 3(1).

<sup>5</sup> Section 3(2).

- (a) I acknowledge the documents could be considered sensitive, as they relate to future planning or scoping for major infrastructure projects that may impact upon members of the community and involve the spending of public funds. However, I consider any such sensitivity is better served by transparency in government decision making, rather than by maintaining secrecy.
- (b) In reaching this view, I had regard to the Agency being a statutory authority with functions under the IV Act, including to:
- (i) provide a 30-year infrastructure strategy for Victoria;
  - (ii) provide advice to the Victorian Government on infrastructure matters; and
  - (iii) publish research on infrastructure matters.<sup>6</sup>

Further, in its 2018-19 Annual Report, the Agency describes itself as:

- (i) providing 'independent and expert advice about Victoria's current and future infrastructure needs and priorities to support improved social, economic and environmental outcomes for the State';
  - (ii) promoting 'rigorous and transparent decision-making'; and
  - (iii) improving 'public debate and consensus about priority infrastructure projects for Victoria'.<sup>7</sup>
- (c) Disclosure of the documents would serve the public interest by promoting public sector transparency and accountability, including the performance of the Agency's functions and oversight of its expenditure of public funds on engaging external consultants to provide advice in connection with its functions under section 8 of the IV Act.<sup>8</sup>
- (d) I consider the Applicant, who is a Member of Parliament, along with members of the public, are capable of understanding the documents were produced at a particular point in time and may not represent a final position or decision reached by the Agency at the conclusion of decision making processes (eg. the development of a 30-year infrastructure strategy for Victoria). Consequently, I do not accept disclosure of the documents would necessarily cause confusion or unnecessary debate, or result in any person misinterpreting or misunderstanding the documents. In my view, such arguments underestimate the capacity of the public to be informed about advice received and decisions made by agencies and government. It also minimises the importance of public engagement and participation in government policy making and decision making. In any event, I consider that the question of whether debate is necessary or not should be left to the public rather than to government.
- (e) In response to the preliminary views provided to the Agency, the Agency's submission dated 23 March 2020 states:
- OVIC has suggested that IV could release Documents 1 and 2 with additional contextualising information in order to avoid or mitigate these risks. That suggestion is inconsistent with VCAT authorities. VCAT has not, in applying s 30(1) of the FOI Act, treated the possibility that an agency could release internal working documents with additional contextualising information as relevant to the application of the public interest criterion.
- (f) While I note the Agency's submission regarding *Pallas v Roads Corporation*, each document must be considered on its own merits. In this matter, I consider the status of the documents is clear and there is unlikely to be confusion or misunderstanding as to their status in any

---

<sup>6</sup> IV Act, section 8.

<sup>7</sup> Infrastructure Victoria, *2018-19 Annual Report*, p 8.

<sup>8</sup> IV Act, section 29.

decision making process. In reaching this view, I note the two reports include a disclaimer in relation to the limitations on the advice provided. In any case, I maintain my view that in seeking to facilitate and promote the disclosure of information, consistent with the object of the FOI Act, and taking into account the functions of the Agency under section 8 of the IV Act, it is open to the Agency to disclose the documents with any necessary explanation to eliminate or minimise any confusion or misunderstanding concerning the documents.

- (g) In relation to the Agency's submission that disclosure of opinions provided by external consultants would be contrary to the public interest in that 'it would dampen the full frankness of their advice', I do not accept an impact of disclosure of the documents would result in external consultants, who provide such advice in exchange for a commercial fee, would temper or be disinclined to provide such advice in the future.<sup>9</sup>
- (h) I do not accept that, by their very nature, disclosure of draft documents would be contrary to the public interest. While Document 1 is a marked 'Draft', and contains commentary throughout, given the Agency identified this document as the report it listed in its Annual Report (which appears to be the means by which the Applicant identified the existence of the documents subject to review), I do not consider it is of a nature that its 'draft' status means its contents is without meaning or lacking in substance. Having reviewed the document, which comprises 216 pages and was prepared by [named business undertaking], it appears to be comprehensive and in near final form.
- (i) Finally, I note the Agency's positive practice, consistent with its functions, of publishing reports obtained by external consultants on its website. Having perused other external consultant reports published by the Agency and considered the nature of the documents subject to review, I am not satisfied their contents are conceptually different from other publicly available reports such that disclosure of the documents would be contrary to the public interest.

- 31. Accordingly, on balance, I am not satisfied a majority of the documents are exempt under section 30(1). I have however identified some very specific information in the documents and my assessment of that information is as follows.

#### *Consideration of certain detailed information*

- 32. I have identified certain pages in Document 2 that the Agency determined are exempt under section 30(1) that contain certain specific information. These are the annotated maps at Figures A, C, D, G and K. They contain markings indicating areas identified for potential land acquisition should certain projects proceed be implemented using a particular design.
- 33. In the circumstances of this matter, I have decided it would be contrary to the public interest to release this particular information. As set out above, the preliminary nature of a document does not necessarily mean its disclosure would be contrary to the public interest. However, I consider these documents contain certain specific information, being recommendations about future land use currently held privately, the disclosure of which could have significant impacts on members of the community or potentially on the cost of future projects, should it result in speculative land acquisitions. I consider the public interest weighs against disclosure of this type of information.
- 34. The annotated maps at Figures A, C, D, G and K in Document 2 are therefore exempt under section 30(1).

---

<sup>9</sup> *Dalla-Riva v Department of Treasury & Finance* (2005) 23 VAR 396; *Baker v Department of Education and Training* [2005] VCAT 2263; *Herington v Department of Transport Planning & Local Infrastructure* [2014] VCAT 1026.

## Section 38

35. Section 38 provides:

### **38 Documents to which secrecy provisions of enactments apply**

A document is an exempt document if there is in force an enactment applying specifically to information of a kind contained in the document and prohibiting persons referred to in the enactment from disclosing information of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.

36. For section 38 to apply to an enactment, the enactment must be formulated with such precision that it specifies the actual information sought to be withheld.

37. The Agency relies on section 38 in conjunction with section 25 of the IV Act, which provides:

### **25 Infrastructure Victoria must seek consent before disclosing confidential information**

- (1) This section applies if—
  - (a) information or a document is given to Infrastructure Victoria; and
  - (b) the person or body giving the information or document states that it is of a confidential nature.
- (2) Infrastructure Victoria must not disclose the information or the contents of the document to any person or body unless the person or body who supplied the information or document has consented to the disclosure.

*Is the IV Act an enactment in force for the purpose of section 38 of the FOI Act?*

38. I am satisfied the IV Act is an enactment in force for the purposes of section 38.

*Does section 25 of the IV Act describe the protected information with sufficient specificity?*

39. The Agency was provided with a preliminary view by my office that section 25 of the IV Act is not drafted with sufficient specificity for the purposes of section 38 of the FOI Act.

40. In its submission, dated 23 March 2020, the Agency submits:

- Any further specificity in the definition of the information to which s 25 applies is explained by the difficulty faced by the drafters in anticipating the myriad kinds of information that IV might seek and receive in the course of carrying out its statutory functions. As the Explanatory Memorandum states, s 25 serves to 'facilitate[] the provision of relevant information to IV by assuring the provider of this information that it will not be disclosed without appropriate consent processes'. Therefore, the presence of the requirement in s 25 assures government departments and agencies (among others) who may cooperate with a request for information from IV that any documents or information provided to IV will not be subsequently disclosed or published without its knowledge and consent. That assurance is essential to obtaining the cooperation of these entities; without such cooperation IV would be unable to collect the information it requires to perform some of its statutory functions, as it entirely lacks any coercive powers to request information.
- The issue may be approached by asking whether Parliament intended disclosure under the FOI Act to be an exception to the restriction on disclosure in s 25. There is nothing express or implied in the IV Act which supports the conclusion that Parliament intended to include disclosure under the FOI Act as permitted under that Act. This is the specific 'kind' of information to which s 25(2) applies.



- Further, to interpret s 25 of the IV Act in this way (ie that it is not sufficiently specific) would be contrary to the purpose of the confidentiality requirement of that provision. As explained above, the purpose of this requirement was to ensure that IV is able to obtain the information it needs to carry out its statutory functions—here, relevant data for government departments and agencies needed for the purposes of producing the 30-year infrastructure strategy. A contrary interpretation would frustrate the clear objects of the IV Act, and may prejudice the ability of IV to carry out its statutory functions.
- The proper interpretation of the specificity requirement in s 38 of the FOI Act should have regard to the particular context of the provision concerned: s 25 was necessarily drafted in its current terms because it was impossible to anticipate the various specific kinds of information IV might seek and receive in order to perform its functions.

41. Putting aside the issue of whether section 25 of the IV Act is drafted with sufficient specificity for the purposes of section 38 of the FOI Act, on a plain reading of this provision, it applies to information or a document that is 'given' to the Agency. Consistent with the Agency's submission, I agree the provision is intended to cover 'government departments and agencies (among others) who may cooperate with a request for information from IV where the department or agency would not otherwise do so without the assurance of confidentiality provided under section 25 of the IV Act.
42. However, I do not accept, when section 25 of the IV Act is considered in the context and purpose of that Act, Parliament intends it to broadly apply to all documents obtained by the Agency by the mere fact they are marked 'confidential' or deemed to be so by the information provider, or the Agency.
43. In my view, a key word in section 25 of the IV Act is 'given'. This requires the information or document must be 'given' to the Agency by, for example, a government agency upon the Agency's request. In doing so, section 25 of the IV Act operates to ensure the Agency 'must not disclose the information or the contents of the document to any person or body unless the person or body who supplied the information or document has consented to the disclosure'.
44. In this case, the Agency formally engaged external consultants to undertake the requested pieces of work for a commercial fee. As such, I do not accept the reports were 'given' to the Agency for the purposes of section 25 of the IV Act.
45. Further, where an external consultant is paid a commercial fee for undertaking a requested piece of work, I consider the interpretation submitted by the Agency is inconsistent with the Agency's functions under the IV Act and the way in which it describes itself, as detailed in paragraph 26 above.
46. In my view, such an interpretation is overly broad and, if accepted, would afford an external consultant engaged by the Agency to provide advice for a commercial fee, the right to consent or object to disclosure of the information provided in circumstances where the information was procured by the Agency with the use of public funds. This outcome would be inconsistent with the object of the FOI Act.
47. Therefore, I am not satisfied section 25 of the IV Act applies to the documents subject to review.
48. Accordingly, I am not satisfied the documents are exempt under section 38.
49. I note the Agency's submission in relation to the application of section 38 refers to factors that could be considered under sections 35(1)(a) or 35(1)(b). While I note the Agency withdrew its application of these exemptions, for completeness, I have considered the application of section 35 to the documents.

**Sections 35(1)(a) and 35(1)(b)**

50. A document is an exempt document if its disclosure would divulge any information or matter communicated in confidence by or on behalf of a person or a government to an agency or a Minister, and:
- (a) the information would be exempt matter if it were generated by an agency or a Minister; or
  - (b) the disclosure of the information under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.
51. This request is for documents produced by consultants for the Agency. I do not consider the consultant firms (that provided the reports for a professional fee) provided the reports in confidential circumstances.
52. Further, I consider the other government departments (who provided the information) were engaged in their ordinary professional duties. Hence, I do not consider it reasonable to conclude that this information was communicated in confidence.
53. However, even if I were satisfied the information was provided to the Agency in confidence, I am not satisfied:
- (a) in relation to section 35(1)(a), the information is exempt information – see my reasoning above for section 30(1); or
  - (b) in relation to section 35(1)(b), the release of this information would impair government agencies from completing their professional functions and providing similar information to the Agency in the future, where they are required to do so to fulfill their statutory functions.
54. Accordingly, I am not satisfied the documents are exempt under section 35(1)(a) or (b).

**Section 36(1)(a)**

55. Section 36(1)(a) provides:

A document is an exempt document if—

- (a) in the case of documents of a department or prescribed authority its premature disclosure under this Act would be contrary to the public interest by reason that the disclosure would be reasonably likely to have a substantial adverse effect on the economy of Victoria, including but not limited to, revealing consideration of a contemplated movement in bank interest rates or in sales tax, the imposition of credit controls, the sale or acquisition of land or property by the Crown, urban re-zoning, the formulation of and use and planning controls and the formulation of State imposts;

...

56. In *Pallas v Roads Corporation*, VCAT observed:

As indicated previously, to make good this exemption, it is necessary to point to evidence indicating a substantial adverse affect upon the economy were disclosure to occur. There was no evidence along those lines placed before me. The very nature of the matters in contemplation here shows that they are very costly. The study itself was costed at \$5m, implying that actual implementation of the matters under consideration would be vastly more expensive. Figures going to the billions of dollars were mentioned in a Parliamentary debate to which I was referred. Nevertheless, there was a lack of

evidence that release of these documents would, however, have substantial adverse effect on the economy. Since the burden of proof lies on the respondent, the exemption is not made out<sup>10</sup>.

57. In relation to Document 1, the Agency submits:

...disclosure of this document would reveal consideration of a contemplated sale or acquisition of land or property by the Crown, urban re-zoning, the formulation of land use and planning controls and/or the formulation of State imposts. Importantly, this working draft report includes modelling of changes to planning regulations (the 2051 'dialled up Melbourne' scenario) that would reveal consideration of urban re-zoning and formulation of land use and planning controls. The report also reveals some Victorian Government transport infrastructure projects that may result in the acquisition of land or property by the Crown. It would not be in the public interest for these considerations to be prematurely disclosed - especially in an incomplete working draft document based on outdated reference case information and without further context being provided by Infrastructure Victoria.

58. In relation to Document 2, the Agency submits:

Disclosure of the report is also likely to lead to speculation by land owners and prejudice to the State's position in future decisions regarding planning and acquisition of land. Stakeholders may reasonably assume that some of the options identified in a consultant report commissioned by Infrastructure Victoria will be implemented by the State. In particular, disclosure of this document would reveal consideration of a contemplated sale or acquisition of land or property by the Crown, urban re-zoning, the formulation of land use and planning controls and/or the formulation of State imposts. Importantly, the report contains maps of possible future transport routes which would impact upon land or property, may result in land use changes and could potentially result in value capture methods of State imposts upon land owners who benefit from increases in property values.

59. I have determined the documents are not exempt under section 36(1)(a) for the following reasons:

- (a) A substantial amount of the documents do not contain the information referred to by the Agency above. Rather, they contain data, modelling methodologies and costs, and general discussion regarding changes or improvements to infrastructure in Victoria.
- (b) I have already found that the annotated maps at Figures A, C, D, G and K of Document 2 are exempt under section 30(1) as they contain markings indicating areas identified for potential land acquisition should certain projects proceed be implemented using a particular design.
- (c) The agency has not provided any evidence that disclosure would substantially adversely affect the economy.

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

60. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.

61. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view' 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 in accordance with section 25.

62. The Applicant does not seek access to information exempted by the Agency under section 33(1). The names of individuals in the documents are therefore irrelevant to the request.

---

<sup>10</sup> At 54.

63. I have considered the effect of deleting the irrelevant and exempt information from the documents in accordance with section 25. I am satisfied it is practicable to delete the irrelevant and exempt information, as to do so would not require substantial time and effort, and the edited documents would retain meaning.

### **Conclusion**

64. On the information before me, I am not satisfied the documents are exempt under sections 35(1)(a), 35(1)(b), 36(1)(a) or 38.
65. In relation to section 30(1) I am satisfied a majority of the documents are not exempt. However I have decided the annotated maps at Figures A, C, D, G and K in Document 2 are exempt under section 30(1).
66. As I am satisfied it is practicable to delete the irrelevant and exempt information in the documents in accordance with section 25, I have determined to release the documents in part.
67. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

### **Review rights**

68. The Agency is entitled to apply to VCAT for review of my decision<sup>11</sup> up to 14 days from the date it is given this Notice of Decision.<sup>12</sup>
69. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.
70. Information about how to apply to VCAT is available online at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au). Alternatively, VCAT may be contacted by email at [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au) or by telephone on 1300 018 228.
71. The Agency is required to notify the Information Commissioner in writing, as soon as practicable, if either party applies to VCAT for a review of my decision.<sup>13</sup>

### **When this decision takes effect**

72. My decision does not take effect until the relevant review period (stated above) expires. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

---

<sup>11</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>12</sup> Section 52(9).

<sup>13</sup> Sections 50(3F) and (3FA).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision
1.	[date]	Draft [named business undertaking] baseline transport modelling report	216	<p><b>Refused in full</b></p> <p>Sections 30(1), 36(1)(a), and 38 of the <i>Freedom of Information Act 1982 (Vic)</i> in conjunction with section 25 of the <i>Infrastructure Victoria Act 2015 (Vic)</i></p>	<p><b>Release in part</b></p> <p>Section 25</p> <p>The document is to be released with irrelevant information deleted in accordance with section 25.</p> <p>The irrelevant information is the names, email addresses, phone numbers and other identifying information of all individuals in the document, including in any comments and annotations.</p>
2.	[date]	Infrastructure provision in regional development settings phase 2C report	145	<p><b>Refused in full</b></p> <p>Sections 30(1), 36(1)(a), and 38 of the <i>Freedom of Information Act 1982 (Vic)</i> in conjunction with section 25 of the <i>Infrastructure Victoria Act 2015 (Vic)</i></p>	<p><b>Release in part</b></p> <p>Sections 30(1), 25</p> <p>The document is to be released with irrelevant and exempt information deleted in accordance with section 25.</p> <p>The irrelevant information is the names, email addresses, phone numbers and other identifying information of all individuals in the document, including in any comments and annotations.</p> <p>The exempt information are the annotated maps at figures A, C, D, G and K.</p>

**Annexure 1 – Schedule of Documents**

<b>Document No.</b>	<b>Date of Document</b>	<b>Document Description</b>	<b>Number of Pages</b>	<b>Agency's Decision</b>	<b>OVIC Decision</b>
3.	[date]	[Named business undertaking]transport network pricing dashboard (Excel spreadsheet)	5	Released in full	Not subject to review