

Notice of Decision and Reasons for Decision

Applicant:	'FD2'
Agency:	Department of Justice and Community Safety
Decision date:	3 May 2023
Exemptions considered:	Sections 28(1)(ba), 28(1)(d), 30(1), 32(1), 34(1)(b), 34(4)(a)(ii)
Citation:	'FD2' and Department of Justice and Community Safety (Freedom of Information) [2023] VICmr 37 (3 May 2023)

FREEDOM OF INFORMATION – ministerial briefs – briefing to Attorney General – Fines Victoria – implementation of new IT system – Victorian Infringement Enforcement and Warrants (VIEW) system delivery – contract costs – contract service provider – government contracting – contractual terms – contract management

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 a documents requested by the Applicant under the FOI Act.

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

While I am satisfied certain information in the documents is exempt from release under sections 28(1)(ba), 28(1)(d) and 32(1), I am not satisfied information to which the Agency refused access under sections 30(1), 34(1)(b) or 34(4)(a)(ii) is exempt from release.

Where I am satisfied it is practicable to provide the Applicant with an edited copy of a document with irrelevant and exempt information deleted in accordance with section 25, access to the document is granted in part. Where it is not practicable to do so, access to the document is denied in full.

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

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

3 May 2023

Reasons for Decision

Background to review

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

A copy of all Ministerial briefs to the Attorney-General regarding the implementation of the new Fines Victoria IT system and issues associated with the system, for the period 1 January 2019 to 28 February 2021. ...

2. Following consultation with the Agency, the Applicant clarified the terms of their request to the final version of any ministerial briefs, excluding attachments.
3. The Agency identified 22 documents falling within the terms of the Applicant's request and refused access to certain documents in part and in full under sections 28(1)(ba), 28(1)(d), 30(1), 32(1), 33(1), 34(1)(b) and 34(4)(a)(ii). 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. The Applicant does not seek review of information to which the Agency refused access under section 33(1). Accordingly, this information is irrelevant information for the purposes of section 25, which is discussed below.
6. I have examined a copy of the documents subject to review.
7. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
8. I have considered all communications and submissions received from the parties.
9. In undertaking my review, I have had regard to the object of the FOI Act, which is to create a general right of access to information in the possession of the Government or other public bodies, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.
10. I note Parliament's intention the FOI Act must be interpreted so as to further the object of the Act and any discretions conferred by the Act must be exercised, as far as possible, so as to facilitate and promote the disclosure of information in a timely manner and at the lowest reasonable cost.
11. 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.

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

Review of exemptions

Section 28(1) – Cabinet documents

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” about it. Rather, for a document to come within the Cabinet document exemption, “it must fit squarely within one of the four exceptions [(now five)]” in section 28(1) of the Act.

13. Section 28(3) provides a document will not be exempt from release under section 28(1) to the extent it contains purely statistical, technical or scientific material, unless disclosure of the document would involve the disclosure of any deliberation or decision of the Cabinet.
14. I am satisfied the documents do not contain purely statistical, technical or scientific material.
15. Section 28(7)(a) defines ‘Cabinet’ as including a committee or subcommittee of the Cabinet.

Section 28(1)(ba) – Documents prepared for the purpose of briefing a Minister in relation to issues to be considered by the Cabinet

16. Section 28(1)(ba) provides a document is exempt from release if it was prepared for the purpose of briefing a Minister in relation to issues to be considered by the Cabinet.
17. For the exemption under section 28(1)(ba) to be made out, the sole purpose, or one of the substantial purposes, for which a document was prepared must have been to brief a Minister in relation to issues to be considered by Cabinet.³
18. In the absence of direct evidence, the sole or substantial purpose of a document may be determined by examining the use of the document, including whether it was submitted to the Cabinet.⁴
19. The Cabinet briefing purpose must have been contemplated and identified when the document is created. The exemption will not apply merely because the Cabinet ultimately considered the issue.⁵
20. The word ‘briefing’ means a ‘short accurate summary of the details of a plan or operation. The purpose ... is to inform’.⁶ Therefore, the document should have the character of briefing material.⁷ A document will be of such character if it contains ‘information or advice...prepared for the purpose of being read by, or explained to, a minister’.⁸ It requires more than having ‘placed a document before a minister’.⁹
21. The phrase ‘issues to be considered by the Cabinet’ requires that it must be more than just ‘likely’ a document will be considered by the Cabinet. There must be an intention or expectation the relevant

² [2004] VCAT 2346 at [33].

³ *Ryan v Department of Infrastructure* (2004) 22 VAR 226; [2004] VCAT 2346 at [34]. See also *Department of Treasury and Finance v Dalla-Riva* (2007) 26 VAR 96; [2007] VSCA 11 at [13].

⁴ *Secretary to the Department of Treasury and Finance v Dalla Riva* [2007] VSCA 11 at [15].

⁵ *Hennessy v Minister Responsible for the Establishment of an Anti-Corruption Commission* [2013] VCAT 822.

⁶ *Ryan v Department of Infrastructure* (2004) 22 VAR 226; [2004] VCAT 2346 at [41].

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

issue will be considered by the Cabinet, even if it is not ultimately considered. Evidence that a matter was included on a Cabinet meeting agenda will generally meet this test.¹⁰

22. From the content and context of the documents and the information before me, I am satisfied it is evident that a number of the documents were prepared for the purpose of briefing the Attorney General in relation to issues to be considered by the Cabinet. Accordingly, I am satisfied the requirements for section 28(1)(ba) are met.
23. My decision in relation to section 28(1)(ba) is set out in the Schedule of Documents at **Annexure 1**.

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

24. Section 28(1)(d) provides a document is an exempt document if its disclosure 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.
25. A document will be exempt from release under section 28(1)(d) if there is evidence the Cabinet discussed and determined options or issues set out in a document.¹¹
26. A decision of the Cabinet includes a course of action set, or a determination made as to the final strategy for a matter or a conclusion as to how a matter should proceed.¹²
27. Where a decision made by the Cabinet is subsequently made public, as is usually the case, releasing information about the outcome of an issue the subject of a Cabinet decision will not necessarily disclose a decision or any deliberation of the Cabinet for the purposes of section 28(1)(d).¹³
28. In *Asher v Department of Sustainability and Environment*,¹⁴ VCAT held that where a document, on its face, does not disclose a decision or deliberation of the Cabinet, or the extent of the Cabinet's interaction with a document is unclear, section 28(1)(d) will not apply.
29. From my review of the documents, I am satisfied it is evident that the disclosure of a number of the documents would involve the disclosure of the deliberation or decision of the Cabinet. Accordingly, I am satisfied the requirements for section 28(1)(ba) are met.
30. My decision in relation to section 28(1)(d) is set out in the Schedule of Documents at **Annexure 1**.

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;
 - (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

¹⁰ *Mildenhall v Department of Treasury and Finance* (unreported, AAT of Vic, Macnamara DP, 18 March 1996). See also *Batchelor v Department of Premier and Cabinet* (unreported, AAT of Vic, Fagan P and Coghlan M, 29 January 1998); *Hulls v Department of Treasury and Finance (No 2)* (1994) 14 VAR 295 at [320]-[321]; reversed on other grounds by the Court of Appeal: *Department of Premier & Cabinet v Hulls* [1999] 3 VR 331; 15 VAR 360; [1999] VSCA 117.

¹¹ *Smith v Department of Sustainability and Environment* (2006) 25 VAR 65; [2006] VCAT 1228 at [23].

¹² *Dalla-Riva v Department of Treasury and Finance* (2005) 23 VAR 396; [2005] VCAT 2083 at [30].

¹³ *Honeywood v Department of Innovation, Industry and Regional Development* (2004) 21 VAR 1453; [2004] VCAT 1657 at [26]. *Ryan v Department of Infrastructure* [2004] VCAT 2346 at [46].

¹⁴ [2010] VCAT 601.

(c) disclosure of the matter would be contrary to the public interest.

32. Section 30(3) provides that the exemption under section 30(1) does not apply to purely factual material in a document.

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. The term 'officer of an Agency' is defined in section 5(1). It includes a member of an agency, a member of an agency's staff, and includes any person employed or engaged by or on behalf of an agency, whether or not they are subject to the *Public Administration Act 2004* (Vic).

34. It is not necessary for a document to be in the nature of opinion, advice or recommendation. Rather, it is enough that release of the document would disclose matter of that nature.¹⁵

35. From my review of the documents, I am satisfied they contain information in the nature of opinion, advice and recommendations prepared by Agency officers or consultation between Agency officers.

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?

36. The term 'deliberative process' is interpreted broadly and includes any of the processes of deliberation or consideration involved in the functions of an agency, Minister or government.¹⁶

37. In *Re Waterford and Department of Treasury (No.2)*,¹⁷ 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.

38. I am satisfied the documents were created in course of the Agency's deliberative processes in connection with its responsibility for managing the implementation and enforcement of Victoria's fines system and briefing a Minister in relation to a recommended course of action to be taken and a decision to be made.

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

39. In determining if disclosure of a document 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:¹⁸

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

¹⁵ *Mildenhall v Department of Education* (1998) 14 VAR 87.

¹⁶ *Borg v Department of Premier and Cabinet* (1989) 3 VAR 201 at 208.

¹⁷ [1984] AATA 67; (1984) 5 ALD 588; 1 AAR 1 at [58].

¹⁸ *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; and
- (f) 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.

40. The Agency's decision letter states:

When determining the most appropriate course of action to take in relation to a particular matter, departmental officers will often investigate, consult, and make recommendations as part of their decision-making process. While I acknowledge the importance of transparency and accountability in government decision-making, I also acknowledge the public interest that lies in promoting effective deliberation, and subsequently, decision-making of a high standard, by government officers.

I have also taken into account the stage of policy development at the time these documents were developed, as discussions over time may lead to changes in proposals. Discussion of the proposed options in these documents does not necessarily reflect the final position. Therefore, disclosing this deliberative information may inhibit the free and frank exchange of information and advice between officers during policy and project development and consultation with key stakeholders in future, which is contrary to the public interest.

- 41. The documents record decision making in relation to the way in which the Agency manages the enforcement of fines, including the implementation of a new IT system, engagement with third party contract suppliers and government contract management.
- 42. The documents detail the engagement of an external consultant to review the delivery of the Agency's fines IT system (known as the 'Victorian Infringement Enforcement and Warrants (VIEW) system), through to issues in the delivery and fulfilment of IT systems contracts entered into by the Agency, on behalf of the State, and the process for designing solutions to address those issues.
- 43. The Agency released certain information in the documents to the Applicant that provides a general outline of events (although it refused access in full to some of the later documents under section 28(1)(ba) or 28(1)(d)).
- 44. The Agency refused access to information under section 30(1) that details negotiations with third party contract service providers, funding requests and reasons for those requests, options for resolving issues identified with the implementation of the new IT system, and some general comments by relevant ministers.
- 45. I have carefully reviewed the Agency's submission and considered the content and context of the briefings prepared by the Agency for the Attorney General.
- 46. Having regard to the following factors, I am satisfied disclosure of the documents would not be contrary to the public interest:
 - (a) The issues besetting a new IT system at Fines Victoria are publicly and well known. The Fines Reform Advisory Board (the **Advisory Board**) was appointed by the Attorney General to provide independent advice on how the fines system was working since reforms, that were introduced by the *Fines Reform Act 2014* (Vic), commenced in 2018. The Advisory Board handed down its report in April 2020. A copy of the report is available [here](#).

The Victorian Auditor General's Office (**VAGO**) has also conducted an audit under the Audit Act and reported on the Agency's implementation of the new fines management IT system. A copy of the report is available [here](#). The following is a summary of VAGO's audit scope, findings and recommendations:

Why this audit is important

On 31 December 2017, DJCS introduced a new information technology (IT) system, called the Victorian Infringements Enforcement Warrant (VIEW) system, to manage fines and incorporate new social justice initiatives.

DJCS had failed in a prior attempt to implement a new fines IT system and Victorian public sector agencies have had persistent issues with implementing new IT projects. It is therefore useful to assess DJCS's performance in implementing VIEW so it and other government agencies can apply learnings to future projects.

Who we examined

- DJCS
- Department of Treasury and Finance (DTF).

We did not examine the performance of the vendor who DJCS contracted to supply VIEW.

What we examined

- project governance and oversight
- DJCS's procurement process
- DJCS's project implementation and management of risks
- DJCS's management of its chosen vendor.

What we concluded

DJCS's significant failures in planning the VIEW project meant that its implementation did not meet the expected time, cost, quality and functionality targets.

These failures were mainly due to DJCS's misguided and poorly implemented risk mitigation strategy to procure a commercial off-the-shelf (COTS) system. This is because no COTS system existed, or could reasonably be expected to exist, that could meet DJCS's complex requirements.

The Victorian public service must rethink its approach to sourcing, managing and governing its complex IT projects to avoid these issues recurring.

It must also re-examine its approach to providing robust advice to the government, especially when the government may not be receptive to the advice.

What we recommended

We made a total of seven recommendations to the Department of Premier and Cabinet, Department of Treasury and Finance (DTF) and Victorian Public Sector Commission. Our recommendations relate to leadership training for public servants, building information technology project delivery capability, risk management and project governance. All recommendations we made were accepted.

- (b) I acknowledge some of the information may be considered sensitive in nature. However, given this project was 'high value nature', involved the expenditure of substantial public funds in the procurement of and addressing the issues with the new IT system, and the impact and importance of a proper functioning fines system in Victoria, I consider there is a strong public interest in the community being better informed about and able to publicly scrutinise the way in which the Agency carries out its functions. This includes the advice the Agency provides to Ministers and its deliberative, consultative and decision making processes.

The recent Royal Commission into the Robodebt Scheme has put into sharp focus the need for greater transparency and scrutiny in relation to the record keeping, decision making, advice, and integrity of the public sector and its employees at all levels of the public service.

- (c) Some of the information critical of third party contract service providers was disclosed in documents released by the Agency in part. I also consider that some of the information to which the Agency refused access under section 30(1) relates closely to information already released or discussed in VAGO's audit report.
- (d) In relation to the remainder of the information relating to third party contract service providers, I acknowledge the sensitivity of some of that information. However, I consider such businesses should expect that because government is accountable to the public for its decision making and the expenditure of public funds, greater transparency and public scrutiny will necessarily require disclosure of information about those businesses. It is also a reflection of the public interest factors listed below, where, even if disclosure may affect the relationship between the government and those businesses, the public interest will still weigh in favour of disclosure.
- (e) In relation to the Agency's submission that disclosure of the documents would inhibit the 'frank and free exchange of ideas', I do not accept this concern. In *Graze v Commissioner of State Revenue*,¹⁹ VCAT states:

It is important to note, however, that Parliament has not made documents exempt simply because they are internal working documents. Merely to demonstrate that documents are part of the deliberative processes of an agency, that is, its thought process, does not, without more, make out the exemption. The view that officers in the Public Sector will be able to give candid and fearless advice only if they can be confident that such advice will not be open to public scrutiny under the Freedom of Information Process would be served only if the exemption were made absolute in its terms and perhaps protected from being overridden under Section 50(4). We must assume that the failure to do either of these things was a deliberate decision by Parliament.

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

There is no objective evidence before me that demonstrates disclosure of the additional information in the documents would have a negative impact on the nature and quality of advice provided by Agency officers to a Minister in the future.

In any case, Agency officers performing their professional duties in providing advice to a Minister are responsible for ensuring their advice is accurate, complete and properly considered on matters central to the Agency's governmental functions. Agency officers, as public sector employees, are required to discharge their duty to provide impartial and fulsome advice to their agency and government. These requirements are a core aspect of their public sector roles and responsibilities and accords with their obligations under the *Public Administration Act 2004* (Vic).

Accordingly, I am not persuaded Agency officers would be deterred from discharging their professional and ethical obligations should these documents be disclosed under the FOI Act. Rather, I adopt the view of VCAT that such transparency can improve, rather than diminish, the advice provided by public sector employees during decision making processes and in briefing Ministers.

- (f) Finally, I have also given considerable weight to the impact of infringement issuing and enforcement systems on the broader community and the importance of government

¹⁹ [2013] VCAT 869 at [25] and [26].

transparency and accountability for government decision making processes that have significant impact on the community in terms of the issuing and management of fines and the expenditure of substantial public funds. As such, I consider the release of these documents falls squarely within the purpose and object of the FOI Act.

47. Accordingly, I am not satisfied the information to which the Agency refused access to information under section 30(1) is exempt from release.

48. My decision in relation to section 30(1) is set out in the Schedule of Documents at **Annexure 1**.

Section 32(1) – Documents subject to legal professional privilege or client legal privilege

49. Section 32(1) provides a document is an exempt document ‘if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege or client legal privilege’ (**legal privilege**).

50. A document will be subject to legal privilege and exempt under section 32(1) where it contains a confidential communication:

- (a) between the client (or the client’s agent) and the client’s professional legal advisers, that was made for the dominant purpose of obtaining or providing legal advice or is referable to pending or contemplated litigation;
- (b) between the client’s professional legal advisers and third parties, that was made for the dominant purpose of pending or contemplated litigation; or
- (c) between the client (or the client’s agent) and third parties that was made for the purpose of obtaining information to be submitted to the client’s professional legal advisers for the dominant purpose of obtaining advice on pending or contemplated litigation.

51. The High Court of Australia has held the purpose of legal privilege ensures a client can openly and candidly discuss legal matters with their legal representative and seek legal advice:

The rationale of this head of privilege, according to traditional doctrine, is that it promotes the public interest because it assists and enhances the administration of justice by facilitating the representation of clients by legal advisers, the law being a complex and complicated discipline. This it does by keeping secret their communications, thereby inducing the client to retain the solicitor and seek his advice, and encouraging the client to make a full and frank disclosure of the relevant circumstances to the solicitor.²⁰

52. The dominant purpose for which a confidential communication was made will determine whether the exemption applies.²¹ Where mixed purposes exist, the paramount purpose of the communication is used.²²

53. A document may also be privileged in part. As such, the fact a document contains non-privileged material does not mean the document, in its entirety, ceases to be privileged.²³ In this respect, the High Court of Australia has held:

If a communication satisfies the description of a document brought into existence for the sole purpose of enabling a confidential professional communication between a client and his legal adviser in connexion with pending or anticipated legal proceedings then in our opinion it follows that it is an exempt document within the meaning of s. 42 of the Act. In such a case it is not to the point that the document may contain advice which relates to matters of policy as well as of law. It is the connexion

²⁰ *Grant v Downs* (1976) 135 CLR 674 at [19].

²¹ *Esso Australia Resources Ltd v Federal Commissioner of Taxation* (1999) 201 CLR 49.

²² *Martin v Melbourne Health (Review and Regulation)* [2019] VCAT 1190 at [35].

²³ *Waterford v Commonwealth* (1987) 163 CLR 54 at [10].

between the document and legal proceedings that establishes its character and thus attracts the privilege.²⁴

54. Legal privilege will apply to a document prepared by the recipient of legal advice or an employee of the recipient, if it contains a written record of confidential legal advice provided by the recipient's legal advisor. The dominant purpose test is to be applied to the original communication and extends to notes without having to apply the dominant purpose test to the separate document recording the advice.²⁵ This means, if an agency creates an internal document that records or discloses legal advice received by the Agency, legal privilege also will extend to that document.
55. My decision in relation to section 32(1) is set out in the Schedule of Documents at **Annexure 1**.

Section 34(1)(b) – Documents of a business, commercial or financial nature

56. Section 34(1)(b) provides a document is an exempt document if
- (a) its disclosure under the FOI Act would disclose information acquired by an agency (or a Minister) from a business, commercial or financial undertaking (**business undertaking**);
 - (b) the information relates to other matters of a business, commercial or financial nature; and
 - (c) the disclosure of the information would be likely to expose the business undertaking unreasonably to disadvantage.
57. The Agency refused access to the following information under section 34(1)(b) in the documents:
- (a) Document 3 – general statements about a specific element of the Agency's expenditure and information about the cost of services provided by a particular third party contracted services provider;
 - (b) Document 6 – overall funding amounts for certain third party contracted service providers and certain information about a related contract and its terms;
 - (c) Document 9 – certain information provided by a third party business undertaking regarding services provided to the Agency;
 - (d) Document 10 – further additional information provided by a third party business undertaking regarding services provided to the Agency.

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

58. In *Thwaites v Department of Human Services*,²⁶ VCAT observed the phrase 'information acquired' in section 34(1) signifies the need for some positive handing over of information in some precise form.
59. I am not satisfied all the information to which the Agency refused access under section 34(1)(b) amounts to information acquired from a business undertaking, rather it amounts to information relating to the Agency's expenditure and contractual terms agreed to between it and a business undertaking.
60. However, given some of the specific information was provided to the Agency by a business undertaking, broadly, I accept that some of the information was acquired from a business undertaking.

²⁴ Ibid [11].

²⁵ *Standard Chartered Bank of Australia Ltd v Antico* (1995) 36 NSWLR 87 at [91]-[93].

²⁶ (1999) 15 VAR 1.

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

61. VCAT has recognised the words ‘business, commercial or financial nature’ are to be given their ordinary meaning.²⁷

62. I am satisfied the information relates to matters of a business, commercial and financial nature.

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

63. Section 34(2) provides that in deciding whether disclosure of information would expose an undertaking unreasonably to disadvantage, for the purposes of section 34(1)(b), 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.

64. I have also had regard to the decision in *Dalla Riva v Department of Treasury and Finance*,²⁸ 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;
- (b) enable competitors to engage in destructive competition with a business undertaking; and
- (c) would lead to the drawing of unwarranted conclusions as to a business undertaking’s financial affairs and position with detrimental commercial and market consequences.

65. 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 should apply where an undertaking would be exposed ‘unreasonably’ to disadvantage only, rather than where disclosure would result in any measure of exposure to disadvantage. Accordingly, the question is whether any such disclosure would expose the undertaking unreasonably to disadvantage.

66. In determining whether disclosure of commercially sensitive information would expose a business undertaking unreasonably to disadvantage, if practicable, an agency must notify an undertaking and seek its views on disclosure.²⁹

67. The Agency submits:

The release of this information would be likely to unreasonably disadvantage [business undertaking] because it is information that is not generally available to its competitors, and would reveal the commercial pressures [business undertaking] is under, and the risks it is exposed to under its contractual

²⁷ *Gibson v Latrobe CC* [2008] VCAT 1340 at [25].

²⁸ [2007] VCAT 1301 at [33].

²⁹ Section 34(3).

arrangements with the State. If released, this information could give its competitors a commercial advantage to the extent that it provides an insight into [business undertaking's] capacity to service its existing contracts and enter into new ones.

68. The information in the documents I consider amounts to information acquired from a business, and of a business, commercial or financial nature is information provided by a business that relates to its proposal to the Agency for the delivery, timing and cost of certain contracts.
69. The Agency did not contact the business undertaking that provided the information to the Agency that an FOI request had been made for this information, nor sought its views on the disclosure of the relevant information. Therefore, there is no information before me as to whether the business undertaking objects to release, or what impact, disclosure of this information would have on its business, if any.
70. In the particular circumstances of this matter, I am not satisfied disclosure of the relevant information would expose the business undertaking unreasonably to disadvantage for the following reasons:
 - (a) There is no specific information before me that provides, with any specificity, the impact disclosure would have on the business undertaking.
 - (b) While certain information is critical of the business undertaking, the issues involving the business undertaking's implementation of the new IT system is well documented and publicly examined in the VAGO audit report, discussed above. Further, I note similar information in the documents has already been disclosed to the Applicant.
 - (c) While I recognise the relevant information is unlikely to be available to competitors of the business undertaking, given the nature of the information and the time that has passed since providing that information and information already in the public domain regarding the business undertaking, I do not consider the specific information could be used by a competitor of the business undertaking to cause it financial harm or negatively impact its competitive position.
 - (d) For similar reasons, I consider the information can be released without causing substantial harm to the business undertaking.
 - (e) In my view, the public interest weighs in favour of disclosure where it provides information regarding the Agency's negotiation processes, and provides more robust public scrutiny of the government's procurement processes and the expenditure of public funds.
71. Accordingly, I am not satisfied the information to which the Agency refused access to information under section 34(1)(b) is exempt from release.
72. My decision in relation to section 34(1)(b) 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

73. 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;
 - (b) the document contains information of a business, commercial or financial nature; and
 - (c) disclosure of which would be likely to expose the agency unreasonably to disadvantage.

74. The Agency has refused access to the following information under section 34(1)(b):
- (a) Document 1 – the cost of engaging a consultant to conduct a review of the VIEW system;
 - (b) Document 7 – the release of certain funding amounts relating to a certain government objective as well as certain other information about that objective.
 - (c) In its submission, the Agency also sought to exempt the information it exempted under section 34(1)(b) under section 34(4)(a)(ii).

Is the Agency engaged in trade or commerce?

75. Whether an agency is engaged in trade or commerce depends on the facts and circumstances of each case.³⁰
76. VCAT has held ‘the terms ‘trade’ and ‘commerce’ are not words of art; rather they are expressions of fact and terms of common knowledge’.³¹ VCAT has adopted the view of the Federal Court of Australia that these terms are ‘of the widest import’.³² 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.³³
77. Further, an agency may be engaged in trade or commerce, even if profit is not one of its express statutory objectives.³⁴
78. While the phrase ‘trade and commerce’ may be interpreted broadly,³⁵ it has been held trade and commerce must ‘of their nature, bear a trading or commercial character’.³⁶
79. 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).³⁷
80. The Agency states it is engaged in trade or commerce:

While the function of the department is not wholly one of being engaged in trade or commerce, it was held in *Marple v Department of Agriculture* (1995) 9 VAR 29 at 46 that an agency could be regarded as being engaged in trade or commerce even if the trade or commerce in which it is engaged was insignificant and only incidental to its other functions. The fact that the department’s primary function is to manage the development and implementation of laws, regulation and policy across the Justice portfolio does not mean it is not engaged in trade or commerce to the extent that it negotiates and enters into commercial contracts with third party service providers for the purpose of performing its primary role.

The terms ‘trade’ and ‘commerce’ are not terms of art – they are words of ordinary meaning. The department routinely, as in this instance, expends money and enters into commercial contractual arrangements with third party service providers to support its primary function. In many cases, these arrangements are long-term in nature.

³⁰ *Stewart v Department of Tourism, Sport and the Commonwealth Games* [2003] VCAT 45 at [41].

³¹ *Pallas v Roads Corporation (Review and Regulation)* [2013] VCAT 1967 at [33].

³² *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].

³³ *Marple v Department of Agriculture* (1995) 9 VAR 29 at [47].

³⁴ *Thwaites v Metropolitan Ambulance Services* (1996) 9 VAR at [473].

³⁵ *Re Ku-Ring-Gai Co-operative Building Society (No 12) Ltd* [1978] FCA 50; (1978) 36 FLR 134.

³⁶ *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].

³⁷ *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].

81. I do not consider the information in the document demonstrates the Agency is engaged in trade or commerce for the purpose of section 34(4)(a)(ii) for the following reasons:
- (a) In my view, for this exemption to have meaning within the context of the FOI Act, 'trade or commerce' must be distinct from ordinary governmental activities conducted by all government agencies and arising from legislative functions and responsibilities.
 - (b) In this instance, the Agency considers it is engaged in trade or commerce in the engagement of a third party contract service provider and the expenditure in relation to a particular program objective. However, in my view, most if not all government agencies would be involved in the procurement of services and the management of its budget. Such a factor is not demonstrative of the Agency being engaged in trade or commerce.
 - (c) As it is common for government agency's to be engaged in such activities, and the Agency has not provided any additional information regarding, for example, additional sensitivities or commercial pressures in relation to these activities, I do not consider it has demonstrated it is engaged in trade or commerce.

82. Despite the above, and for completeness, I have considered the remaining limbs of section 34(4)(a)(ii).

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

83. I consider the information is of a financial nature as it relates to procurement and the management of its budget.

Would disclosure unreasonably expose the Agency to disadvantage?

84. The Agency submits:

The release of this information is likely to expose the department unreasonably to disadvantage because:

- it reveals how much the department could pay for specific services (information that is likely to unreasonably disadvantage the department in future negotiations with third party providers to secure value for money for the State);
- it reveals how much the department is expending on the development of a long-term fines IT solution (information that is likely to unreasonably disadvantage the department in future negotiations on related contractual matters).

It is also relevant to note that release of the information may adversely impact on existing and ongoing relationships with third party service providers to the extent that the information may reveal to competitors the price it is charging for those services.

85. In relation to the information the Agency exempted under section 34(1)(b) and now also claims section 34(4)(a)(ii) to that information, it submits:

The department also considers that this information is exempt from release under section 34(4)(a)(ii), as its release would damage the State's capacity to effectively negotiate and conclude commercial contracts (including with [named business undertaking]) for services that are critical to the operation of the fines system. This is because the information discloses details of:

- the critical importance to the State of the existing contracts with [named business undertaking]
- the payments made by the State to [named business undertaking] under key agreements
- the State's expenditure on fines system service providers
- the State's negotiating strategy with [named business undertaking], and
- the State's long-term strategy for the delivery of services to support the fines system.

Disclosure of the information also has the potential to damage the State's existing contractual relationship with [named business undertaking] to the extent that it discloses the State's consideration of alternatives to the IT system built and serviced by [named business undertaking].

86. I am satisfied disclosure of the relevant information would not expose the Agency unreasonably to disadvantage for the following reasons:
- (a) While Document 1 reveals the cost of engaging a third party business undertaking, it is a large figure and does not provide a breakdown of the amount. For example, hourly rates or the cost of specific services, that would reveal in any detail the amount the Agency is prepared to pay for such services.
 - (b) In any case this amount relates to a specific set of services where quotes would vary from service to service and depending on the time a quote was provided.
 - (c) Where the Agency procures such services, I do not consider it is unreasonable to disclose this information in the interests of supporting the ability of the community to hold government accountable for the expenditure of public funds on such services.
 - (d) In relation to Document 7, the information relates to expenditure already approved and high level generic information about the contract – the disclosure of which I do not consider would have any negative impact on the Agency.
 - (e) In my view, similar to the reasons described above in relation to section 34(1)(b), I consider disclosure of the information to which the Agency refused access is in the public interest, where it records the Agency undertaking analysis and making recommendations in relation to the delivery of services that have a significant impact on the community, and involves substantial public expenditure.
87. In relation to the information the Agency originally exempted from release under section 34(1)(b) and now claims is exempt under section 34(4)(a)(ii), I do not consider disclosure of this information would expose the Agency unreasonably to disadvantage. As described above in my analysis of section 34(1)(b), I am satisfied disclosure would not be unreasonable based on the significant public interest in the issues the subject of the documents.
88. Accordingly, I am not satisfied the information to which the Agency refused access to information under section 34(4)(a)(ii) is exempt from release.
89. My decision in relation to section 34(4)(a)(ii) is set out in the Schedule of Documents in **Annexure 1**.

Section 25 – Deletion of exempt or irrelevant information

90. 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.
91. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'³⁸ 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 25.³⁹

³⁸ *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].

³⁹ *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].

92. The Applicant does not seek review of the personal affairs information the Agency exempted from release under section 33(1). This information is therefore irrelevant to the request.
93. I have considered the effect of deleting irrelevant and exempt information from the documents. In my view, it is practicable to delete such information as to do so would not require substantial time and effort, and the edited documents would retain meaning. However, where I am not satisfied it is practicable to do so, access to a document is refused in full.

Conclusion

94. While I am satisfied certain information in the documents is exempt from release under sections 28(1)(ba), 28(1)(d) and 32(1), I am not satisfied information to which the Agency refused access under sections 30(1), 34(1)(b) or 34(4)(a)(ii) is exempt from release.
95. Where I am satisfied it is practicable to provide the Applicant with an edited copy of a document with irrelevant and exempt information deleted in accordance with section 25, access to the document is granted in part. Where it is not practicable to do so, access to the document is denied in full.
96. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

Review rights

97. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.⁴⁰
98. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁴¹
99. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁴²
100. 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.
101. 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.⁴³

Third party review rights

102. As I have determined to release documents that contain information of a business, financial, commercial nature relating to a business undertaking, if practicable, I am required to notify the business undertaking of its right to seek review by VCAT of my decision within 60 days from the date it is given notice.⁴⁴
103. In this case, I am satisfied it is practicable to notify the business undertaking of its review rights and confirm it will be notified of my decision.

When this decision takes effect

104. My decision does not take effect until the third parties' 60 day review period expires.

⁴⁰ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁴¹ Section 52(5).

⁴² Section 52(9).

⁴³ Sections 50(3F) and 50(3FA).

⁴⁴ Section 49P(5), 50(3A) and 52(3).

105. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.	Undated	Brief to the Attorney General '[business undertaking] engagement – Review of VIEW system delivery'	3	Released in part Sections 30(1), 33(1), 34(4)(a)(ii)	Release in part Section 25 The document is to be released with information exempted by the Agency under section 33(1) deleted in accordance with section 25.	<p>Section 30(1): I am not satisfied the disclosure of information to which the Agency refused access under section 30(1) would be unreasonable for the reasons described in the Notice of Decision above. Accordingly, this information is not exempt from release under section 30(1).</p> <p>Section 34(4)(a)(ii): I am not satisfied the information identified by the Agency is exempt from release under section 34(4)(a)(ii) for the reasons set out above in the Notice of Decision above.</p> <p>Section 25: The Applicant does not seek access to the personal affairs information to which the Agency refused access under section 33(1). Accordingly, this information is irrelevant information for the purpose of section 25. I am satisfied it is practicable to provide the Applicant with an edited copy of this document with irrelevant information deleted in accordance with section 25.</p>
2.	19/07/2019	Brief to the Attorney General 'Roadmap for remediation of the fines system (work program until Oct 2019)'	2	Released in part Sections 28(1)(d), 30(1), 33(1)	Release in part Sections 28(1)(d), 25 The document is to be released with the following information	<p>Section 28(1)(d): The Agency submits the information under paragraph 2.4 was subject to deliberation by a named subcommittee of the Cabinet on an identified date. I accept the Agency's submission in relation to the first sentence under 2.4 and am satisfied it is exempt from release under section 28(1)(d). However, given the second sentence refers to</p>

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					<p>deleted in accordance with section 25:</p> <ul style="list-style-type: none"> information exempted by the Agency under section 33(1); and the first sentence under the heading 2.4. 	<p>actions taken by the Agency, I do not consider section 28(1)(d) applies to this information. I also do not consider it is exempt under any other exemption. Therefore, this additional information is to be released to the Applicant.</p> <p>Section 30(1): See comments for Document 1.</p> <p>Section 25: See comments for Document 1.</p>
3.	01/10/2020	Brief to the Attorney General 'Approval for increased expenditure under key fines contracts'	2	Released in part Sections 28(1)(d), 30(1), 32(1) 33(1), 34(1)(b)	<p>Release in part Sections 28(1)(d), 32(1), 25</p> <p>The document is to be released with the following irrelevant and exempt information deleted in accordance with section 25:</p> <ul style="list-style-type: none"> information exempted by the Agency under section 33(1); the information in point 1.1; and the last nine words of the 	<p>Section 28(1)(d): The Agency's submission in relation to this document refers to a specific meeting of a subcommittee of the Cabinet. The Agency submits that the information identified in the document 'discloses details of, or decisions made as a result of' a decision by a subcommittee of the Cabinet.</p> <p>While I accept information that discloses a decision of the subcommittee of the Cabinet is exempt from release under section 28(1)(d), I do not consider decisions 'made as a result of' a decision of a subcommittee of Cabinet are necessarily exempt under section 28(1)(d).</p> <p>The information under the heading 'Topic', was released to the Applicant in the overall heading of the document and is not exempt from release under section 28(1)(d).</p> <p>In relation to the information under the heading 'Recommendations', this section</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					<p>paragraph under point 2.3.</p>	<p>seek approval from the Attorney General, not the Cabinet. Therefore, I am not satisfied this information is exempt from release under section 28(1)(d).</p> <p>In relation to the information at point 1.1, I agree this discloses a decision of a subcommittee of the Cabinet and is exempt from release under section 28(1)(d).</p> <p>Section 30(1): See comments for Document 1.</p> <p>Section 32(1): The Agency relied on section 32(1) to refuse access to the last nine words in the final sentence under point 2.3. In my view the whole sentence provides sufficient detail to reveal the substance of legal advice sought by the Agency and is exempt from release under section 32(1). However, given the first part of the sentence has been disclosed, this content is to remain disclosed with the second part of the sentence to remain exempt from release under section 32(1).</p> <p>Section 34(1)(b): I am not satisfied the relevant information to which the Agency refused access under section 34(1)(b) is exempt from release for the reasons set out in the Notice of Decision above.</p> <p>Section 34(4)(a)(ii): In its submission, the Agency sought to rely on section 34(4)(a)(ii) to information to which it applied section 34(1)(b) in its decision. I have decided section</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						34(a)(ii) does not apply to the documents for the reasons described above in the Notice of Decision. Section 25: See comments for Document 1.
4.	Undated	Brief to the Attorney General 'Addendum to approval of increased expenditure under key fines contracts'	1	Released in part Sections 28(1)(d), 30(1), 33(1)	Release in part Section 25 The document is to be released with information exempted by the Agency under section 33(1) deleted in accordance with section 25.	Section 28(1)(d): In relation to the information under the heading 'Topic', I consider this refers to a decision of the Attorney General and therefore is not a decision of the Cabinet. I also note similar information is was not refused under this provision under the heading 'Recommendations'. Accordingly, it is not exempt from release under section 28(1)(d). Section 30(1): See comments for Document 1. Section 25: See comments for Document 1.
5.	01/10/2020	Brief to the Attorney General 'Approval for increased expenditure under key fines contracts'	2	Released in part Sections 28(1)(d), 30(1), 32(1) 33(1), 34(1)(b)	Release in part Sections 28(1)(d), 32(1), 25 See directions for Document 3.	This is a duplicate of Document 3.
6.	18/02/2020	Brief for the Attorney General 'Treasurer's funding confirmation to support the Victorian fines system'	2	Released in part Sections 28(1)(d), 30(1), 32(1) 33(1), 34(1)(b)	Release in part Sections 28(1)(d), 25 The document is to be released with the following information	Section 28(1)(d): I am satisfied the following information discloses a decision of a subcommittee of the Cabinet: <ul style="list-style-type: none"> information under the heading 'Topic'; the information under point 1.1; and

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					<p>deleted in accordance with section 25:</p> <ul style="list-style-type: none"> information exempted by the Agency under sections 33(1); and information exempted under section 28(1)(d) identified in the OVIC comments. 	<ul style="list-style-type: none"> the second and third sentences under point 1.2. <p>Accordingly, this information is exempt from release under section 28(1)(d).</p> <p>However, I am not satisfied the heading of 1.2 or the first sentence under that heading discloses a decision of the Cabinet, rather it refers to actions taken by the Agency. Accordingly, this information is not exempt from release under section 28(1)(d).</p> <p>Section 30(1): See comments for Document 1.</p> <p>Sections 34(1)(b) and 34(4)(a)(ii): See comments for Document 3.</p> <p>Section 32(1): In my view the redacted information does not provide sufficient detail to reveal the substance of legal advice sought by the Agency and is not exempt from release under section 32(1).</p> <p>Section 25: See comments for Document 1.</p>
7.	18/02/2021	Brief for the Attorney General	2	Released in part Sections 30(1), 33(1), 34(4)(a)(ii)	<p>Release in part Section 25</p> <p>The document is to be released with information exempted by the Agency under section 33(1) deleted in</p>	<p>Section 30(1): See comments for Document 1.</p> <p>Section 34(4)(a)(ii): See comments for Document 1.</p> <p>Section 25: See comments for Document 1.</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					accordance with section 25.	
8.	14/05/2019	Brief for the Attorney General – Budget supplementation request – Victorian infringement enforcement warrant IT system	5	Released in part Sections 30(1), 32(1), 33(1)	Release in part Section 25 The document is to be released with information exempted by the Agency under section 33(1) deleted in accordance with section 25.	Section 30(1): See comments for Document 1. Section 32(1): There is no information before me to conclude the information identified by the Agency as exempt from release under section 32(1) in that it discloses confidential legal advice. Accordingly, I am not satisfied this exemption is made out. Section 25: See comments for Document 1.
9.	24/04/2019	Brief – Delivery of IT system to support the Fines Reform Act 2014	4	Released in part Sections 30(1), 33(1), 34(1)(b)	Release in part Section 25 The document is to be released with information exempted by the Agency under section 33(1) deleted in accordance with section 25.	Section 30(1): See comments for Document 1. Sections 34(1)(b) and 34(4)(a)(ii): See comments for Document 3. Section 25: See comments for Document 1.
10.	05/06/2019	Brief for the Attorney General – [business undertaking] advice regarding IT solution for fines system	4	Released in part Sections 28(1)(d), 30(1), 32(1), 33(1), 34(1)(b)	Release in part Sections 32(1), 25 The document is to be released with information	Section 28(1)(d): The information identified by the Agency in point 2 under 'Recommendations' as exempt information under section 28(1)(d) discloses a request from, the Agency to the Attorney General to make a certain decision and does not involve

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					<p>exempted by the Agency under section 33(1) deleted in accordance with section 25.</p>	<p>deliberation or a decision of a subcommittee of the Cabinet. Accordingly, I am not satisfied this information is not exempt from release under section 28(1)(b).</p> <p>In relation to the information exempted from release by the Agency in point 3, I do not consider it reveals the substance of deliberation or a decision of a subcommittee of the Cabinet. Accordingly, I am not satisfied this information is not exempt from release under section 28(1)(b).</p> <p>While I note the Agency did not rely on section 28(1)(d) in relation to point 20, I consider similar to the points above, this information does not disclose a decision or deliberation of a subcommittee of the Cabinet.</p> <p>Section 30(1): See comments for Document 1.</p> <p>Sections 34(1)(b) and 34(4)(a)(ii): See comments for Document 3.</p> <p>Section 32(1): See comments for Document 6.</p> <p>Section 25: See comments for Document 1.</p>
11.	Undated	Brief for the Attorney General 'Additional funding to support operations of the Victorian fines system'	2	Released in part Sections 28(1)(d), 30(1), 33(1)	Release in part Sections 28(1)(d), 25 The document is to be released with information	<p>Section 28(1)(d): I am satisfied the information to which the Agency refused access under section 28(1)(d) reveals information that would disclose a matter deliberated upon by a subcommittee of the</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					exempted by the Agency under sections 28(1)(d) and 33(1) deleted in accordance with section 25.	Cabinet and is exempt from release under section 28(1)(d). Section 30(1): See comments for Document 1. Section 25: See comments for Document 1.
12.	Undated	Brief for the Attorney General 'Establishment of independent Fines Reform Advisory Board'	2	Released in part Section 33(1)	Not subject to review	
13.	Undated	Brief for the Attorney General 'Initial advice of Fines Reform Advisory Board on Service Victoria'	2	Released in part Sections 28(1)(ba), 28(1)(d), 33(1)	Release in part Section 25 The document is to be released with information exempted by the Agency under section 33(1) deleted in accordance with section 25.	Section 28(1)(ba): The Agency submits the document was prepared for briefing a Minister in relation to issues to be considered by the Cabinet on an identified date. I note this document was prepared in early 2020. Included in the information already disclosed to the Applicant is that this information is based on 'initial advice' from the FARB. I also note the information in Document 15 that describes the timing of later processes in relation to the advice of the FARB. In my review of the relevant information in the document, I am not satisfied it is sufficiently advanced to amount to a briefing for a Minister in relation to issues to be considered by the Cabinet given those issues were not yet fully developed. Therefore, I am

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>not satisfied the document is exempt from release under section 28(1)(ba).</p> <p>Section 28(1)(d): For similar reasons to those described above in my analysis of section 28(1)(ba), I do not consider information in the document is sufficiently developed such that it would disclose a deliberation or decision of the Cabinet. Therefore, I am not satisfied the document is exempt from release under section 28(1)(d).</p> <p>Section 30(1): For completeness, I do not consider the document is exempt from release under section 30(1) for the reasons set out in the Notice of Decision above.</p> <p>Section 25: See comments for Document 1.</p>
14.	02/09/2020	Brief for the Attorney General 'Meeting with Fines Reform Advisory Board on 29 January 2020'	2	Released in part Sections 28(1)(ba), 28(1)(d), 30(1), 33(1)	Release in part Sections 28(1)(ba), 25 The document is to be released with information exempted by the Agency under sections 28(1)(ba) and 33(1) deleted in accordance with section 25.	<p>Section 28(1)(ba): I am satisfied the document is a briefing to a Minister. Further, based on information in other documents subject to this review, I am satisfied that the subject of the information exempted by the Agency under section 28(1)(ba) are matters in relation to issues to be considered by the Cabinet. Accordingly, I am satisfied this information is exempt from release under section 28(1)(ba). Therefore, I have not considered the application of section 28(1)(d) to the same information.</p> <p>Section 30(1): See comments for Document 1.</p> <p>Section 25: See comments for Document 1.</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
15.	Undated	Brief [title]	2	Refused in full Sections 28(1)(ba), 28(1)(d)	Refuse in full Section 28(1)(ba)	<p>Section 28(1)(ba): The document is a briefing note covering a Cabinet submission. I am satisfied it was prepared for the purpose of briefing a Minister on issues to be considered by the Cabinet and is exempt from release under section 28(1)(ba).</p> <p>Section 25: I am not satisfied it is practicable to provide the Applicant with an edited copy of this document with exempt and irrelevant information deleted in accordance with section 25.</p>
16.	18/02/2021	Brief [title]	2	Refused in full Sections 28(1)(ba), 28(1)(d), 30(1), 31(1)(a)	Refuse in full Section 28(1)(ba)	<p>Section 28(1)(ba): See comments for Document 15.</p>
17.	29/01/2021	Brief [title]	2	Refused in full Sections 28(1)(ba), 28(1)(d)	Refuse in full Section 28(1)(ba)	<p>Section 28(1)(ba): See comments for Document 15.</p> <p>Section 25: See comments for Document 15.</p>
18.	Undated	Brief [title]	2	Refused in full Sections 28(1)(ba), 28(1)(d)	Refuse in full Section 28(1)(ba)	<p>Section 28(1)(ba): See comments for Document 15.</p> <p>Section 25: See comments for Document 15.</p>
19.	Undated	Brief [title]	2	Refused in full Sections 28(1)(ba), 28(1)(d)	Refuse in full Section 28(1)(ba)	<p>Section 28(1)(ba): See comments for Document 15.</p> <p>Section 25: See comments for Document 15.</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
20.	Undated	Brief [title]	2	Refused in full Sections 28(1)(ba), 28(1)(d)	Refuse in full Section 28(1)(ba)	Section 28(1)(ba): See comments for Document 15. Section 25: See comments for Document 15.
21.	Undated	Brief [title]	2	Refused in full Sections 28(1)(ba), 28(1)(d)	Refuse in full Section 28(1)(ba)	Section 28(1)(ba): See comments for Document 15. Section 25: See comments for Document 15.
22.	Undated	Brief [title]	2	Refused in full Sections 28(1)(ba), 28(1)(d)	Refuse in full Section 28(1)(ba)	Section 28(1)(ba): See comments for Document 15. Section 25: See comments for Document 15.