

Notice of Decision and Reasons for Decision

Applicant:	'FH2'
Agency:	VicForests
Decision date:	14 July 2023
Provision considered:	Section 25(A)(1)
Citation:	'FH2' and VicForests (Freedom of Information) [2023] VICmr 73 (14 July 2023)

FREEDOM OF INFORMATION – forest management – [named] State Forest – memorandums of understanding – heads of agreements – all correspondence – survey responses – coupe plans – harvesting schedules – all information – consultation requirements under section 25A(6) – substantial and unreasonable diversion of agency resources from its other operations

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 amended request is the same as the Agency's decision.

I am satisfied the work involved in processing the Applicant's amended request would substantially and unreasonably divert the resources of the Agency from its other operations.

Accordingly, I am satisfied the requirements for refusal to grant access to documents in accordance with the Applicant's amended request under section 25A(1) are met, and the Agency is not required to process the request.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

14 July 2023

Reasons for Decision

Background to review

1. On [date], the Applicant, who represents an advocacy organisation, made a request to the Agency seeking access to the following documents:
 1. In connection with the forest recovery, salvage logging or similar works planned or underway (“the works”) in [named] State Forest:
 - a. Any licenses issued to [the Agency] or by [the Agency] under the Forests Act 1958 in relation to the works.
 - b. Any memorandum of understanding, heads of agreements, contract or correspondence or emails relating to the issuing of the licenses under the *Forests Act 1958* and the carrying out of the works.
 2. All correspondence or emails between [the Agency] and the [named government department] in relation to:
 - a. the planning or carrying out of the works;
 - b. any fire prevention or any other operations in [named] State Forest from [date].
 3. In relation to the operations completed, underway or proposed in the coupes listed in [the Agency’s] “Forest Recovery Timber Utilisation Plan [date]”.
 - a. Coupe plans, harvesting schedules, maps or any similar documentation.
 - b. Records of any surveys for threatened species or other environmental values carried out by [the Agency] or at the request of [the Agency].
 - c. Any other information held by [the Agency] relating to the scheduling and planning of the operations.
2. On [date], the Agency issued a notice under section 25A(6) advising that it intended to refuse access to documents, without having caused the processing of the request under section 25A(1), because it considered the work involved in processing the request would substantially and unreasonably divert the resources of the Agency from its other operations. The Agency invited the Applicant to consult with a view of amending the request terms to remove the grounds for refusal.
3. The Applicant responded with a draft amended scope for discussion and requested a time to meet with Agency staff.
4. On [date], following discussions with the Agency, the Applicant amended the terms of their original request to the following documents:
 1. In connection with the forest recovery, salvage logging, Timber recovery program or similar works planned or underway (the “works”) in the [named] State Forest:
 - Any memorandum of understanding, heads of agreement, contract or correspondence or emails relating to the issuing of the licenses between [named government department]; other government organisations and [the Agency] under the *Forests Act 1958* and the carrying out of the works between the dates of [date range].

2. All correspondence or emails between [the Agency] and [named government department] between [date range] in relation to:
 - the planning or carrying out of the works between [date range].
 - any fire prevention advice; plans or any other related aspect of the “fire safety” operations in [named] State Forest from [date range].
3. In relation to the operations completed, underway or proposed in the coupes listed in [the Agency’s] “Forest Recovery Timber Utilisation Plan [date]”:
 - Any existing Coupe plans for works conducted so far and any existing coupe plans for planned future works in preparation between the dates of [date] and the duration of the planned works.
 - Copies of any surveys or Environmental significant reports of any threatened species (Flora and Fauna) or other environmental values carried out by [the Agency] or at the request of [the Agency] between [date range] in the [named] forest.
 - “Coupe plans” for existing coupes: [named area] – Coupe [number]; Coupe [number]; Coupe [number] and notices went up recently for Coupe [number]; Coupe [number]. Between [date range] and duration of planned works.
 - “Coupe plans” for existing coupes: [named road] Coupe [number]; Coupe [number]; Coupe [number]. Between dates [date range] and duration of planned works.
 - “Coupe plans” for existing coupes: [named road: [number]; Coupe [number] and Coupe [number]. Between dates [date range] and duration of planned works.
 - Any other information held by [the Agency] relating to the monthly schedules or scheduling and planning of the operations in the [named] State Forest.
4. Any correspondence between the relative Ministerial Offices and [the Agency] regarding “the works” in the State Forest.
5. On [date], the Agency provided notice to the Applicant under section 25A(6) advising that it considered the amended terms of the request would involve a substantial and unreasonable diversion of the Agency’s resources from its other operations. The Agency again invited the Applicant to consult with a view of narrowing the terms of the request.
6. On [date], following further discussion with the Agency, the Applicant amended the terms of their request to the following documents:
 1. In connection with the forest recovery, salvage logging, Timber recovery program or similar works planned or underway (“the works”) in the [named] State Forest:
 - Any memorandum of understanding, heads of agreement, contract or correspondence or emails relating to the issuing of the licenses between [named government department]; other organisations and [the Agency] under the Forests Act 1958 and the carrying out of the works between the dates [date range].
 2. All correspondence or emails between [the Agency] and [named government department] between [date range] in relation to:
 - the planning or carrying out of the forest recovery works between [date range].
 - any fire prevention advice; plans or any other related aspect of the “fire safety” or “fire recovery” operations in [named] State Forest from [date range].
 3. In relation to the operations completed, underway or proposed in the coupes listed in [the Agency’s] “Forest Recovery Timber Utilisation Plan [date]”:

- Any existing Coupe plans for works conducted so far in the [named] forest and any existing coupe plans for works in preparation between the dates [date range] Including:
 - “Coupe plans” for existing coupes: [area] – Coupe [number]; Coupe [number]; Coupe [name] and notices went up recently for Coupe [name]; Coupe [name]. Between dates [date range]
 - “Coupe plans” for existing coupes: [named road] – Coupe [name]; Coupe [name]; Coupe [name]. Between dates [date range]
 - “Coupe plans “for existing coupes: [named road]: Coupe [name]; Coupe [name] Coupe [name]. Between dates [date range]
 - Copies of any surveys or Environmental significant reports of any threatened species (Flora and Fauna) or other environmental values carried out by [the Agency] or at the request of [the Agency] between the dates [date range] in the [named] forest.
 - Logging schedules held by [the Agency] relating to the planning of the operations in the [named] State Forest and or [named] State Forest.
4. Any correspondence between the relative Ministerial Offices and [the Agency] regarding forest recovery or salvage logging works in the [named] State Forest between [date range].

(amended request)

7. On [date], the Agency refused to grant access to documents in accordance with the Applicant’s amended request under section 25A(1) on grounds that the work involved in processing the request would substantially and unreasonably divert the Agency resources from its other operations.

Review application

8. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency’s decision to refuse access.
9. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
10. I have considered all communications and submissions received from the parties.
11. 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.
12. 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.

Section 25A(1) – Refusal to grant access to a request for documents

13. Section 25A provides:

25A Requests may be refused in certain cases

- (1) The Agency or Minister dealing with a request may refuse to grant access to documents in accordance with the request, without having caused the processing of the request to have been undertaken, if the Agency or Minister is satisfied that the work involved in processing the request –
 - (a) in the case of an Agency – would substantially and unreasonably divert the resources of the Agency from its other operations;
 - ...
- (2) Subject to subsection (3) but without limiting the matters to which the Agency or Minister may have regard in deciding whether to refuse under subsection (1) to grant access to the documents to which the request relates, the Agency or Minister is to have regard to the resources that would have to be used –
 - (a) in identifying, locating or collating the documents within the filing system of the Agency, ...
or
 - (b) in deciding whether to grant, refuse or defer access to documents to which the request relates, or to grant access to edited copies of such documents, including resources that would have to be used –
 - (i) in examining the documents; or
 - (ii) in consulting with any person or body in relation to the request; or
 - (c) in making a copy, or an edited copy, of the documents; or
 - (d) in notifying any interim or final decision on the request.
- (3) The agency or Minister is not to have regard to any maximum amount, specified in regulations, payable as a charge for processing a request of that kind.
- (4) In deciding whether to refuse, under subsection (1), to grant access to documents, an agency or Minister must not have regard to –
 - (a) any reasons that the person who requests access gives for requesting access; or
 - (b) the agency's or Minister's belief as to what are his or her reasons for requesting access.
 - ...
- (6) An Agency or Minister must not refuse to grant access to a document under subsection (1) unless the Agency or Minister has –
 - (a) given the Applicant a written notice –
 - (i) stating an intention to refuse access; and
 - (ii) identifying an officer of the Agency... with whom the Applicant may consult with a view to making the request in a form that would remove the ground for refusal; and
 - (b) given the Applicant a reasonable opportunity so to consult; and
 - (c) as far as is reasonably practicable, provided the Applicant with any information that would assist the making of the request in such a form.
 - ...

14. In *Secretary, Department of Treasury and Finance v Kelly*,¹ the Victorian Supreme Court of Appeal described the purpose of section 25A(1) as:

... it is plain enough that s 25A was introduced to overcome the mischief that occurs when an agency's resources are substantially and unreasonably diverted from its core operations by voluminous requests for access to documents. The emphasis of the amendment was on the prevention of improper diversion of the agency's resources from their other operations. The provision was introduced to strike a balance between the object of the Act [in facilitating the individual's right of access to information] and the need to ensure that the requests under the Act did not cause substantial and unreasonably disruption to the day to day workings of the government through its agencies...

15. The words 'substantially' and 'unreasonably' are not defined in the FOI Act and are to be given their ordinary meaning.
16. The words 'other operations' in section 25A(1) includes an agency's ability to deal with and process FOI requests received where its ability to do so would be impaired with the processing of a request.²
17. Once an agency decides to refuse an FOI request under section 25A(1), it bears the onus of establishing it has met the requirements of this provision.³

Consultation requirements under section 25A(6)

18. Three conditions must be satisfied before an agency can rely on section 25A(1) to refuse a request:⁴
- (a) first, an agency must notify an applicant of its intention to refuse their FOI request and nominate an agency officer with whom the applicant can consult;⁵
 - (b) second, provide a reasonable opportunity for the applicant to consult with the agency;⁶ and
 - (c) third, provide information to assist the applicant to amend their request with a view to removing the proposed ground for refusal.⁷
19. For the purpose of proving compliance with section 25A(6), the Agency referred to its submissions, which provided a chronology of interactions with the Applicant. Following enquires made by OVIC staff, the Agency provided further evidence in support of its compliance advising that a meeting was held on [date], which was instigated by the Agency, aimed at explaining the difficulties with the request and how the Applicant may address those difficulties.

¹ [2001] VSCA 246 at [48].

² *Chief Commissioner of Police v McIntosh* [2010] VSC 439 at [24].

³ *Ibid* at [11].

⁴ *The Secretary, Department of Treasury and Finance v Kelly* [2001] VSCA 246 at [26].

⁵ Section 25A(6)(a).

⁶ Section 25A(6)(b).

⁷ Section 25A(6)(c).

20. The Agency specifically pointed to its discussions regarding:

- ...the first limb of the request seemed to repeat another FOI request from the [Applicant organisation] that VicForests had finalised and released documents responsive to. Given that, does the [Applicant organisation] wish to proceed with the first limb? If so, without any framing of the limb as to time and seeking “correspondence or emails” it is likely very broad and will pick up numerous documents in a search as VicForests has been operating in the [named] State Forest for many years;
- in terms of limb 2, [Agency staff] queried the date discrepancy as expressed in the opening line to limb 2 ([date] and [date]) and subpoint (b) which states “from [date]”. What is the period the correspondence and emails is to be searched in?
- in terms of limb 3, [Agency staff] encouraged the applicant to be specific as to what coupes it sought plans, records etc for. Without this identifying information, VicForests would have to first assess each coupe on the Timber Utilisation Plan to see if it was “completed”, “underway” or “proposed” and further asked what [was] meant by “proposed”? Is being on the Timber Utilisation Plan “proposed” or did the [the Applicant] mean this in some other way? Further the last subpoint (c) – “any other information held by VicForests” wasn’t understood. This could pick up internal emails between staff about coupe scheduling, is this what the Applicant was asking for?

21. In summary, the Applicant reduced the scope of their request by identifying specific Coupe plans, clarified date ranges and specified terms. I note the Applicant actively engaged in a number of consultations with the Agency in an attempt to amend their request. Despite these attempts, the Agency determined the Applicant’s amended request did not sufficiently remove the grounds for refusal.

22. Having carefully reviewed the Agency’s submissions and correspondence between the Agency and the Applicant, I find the consultation requirement in section 25A(6) was met.

Scope of review

23. Following consultation between an agency and an applicant under section 25A(6) and where an agency and an applicant do not reach agreement as to a revised scope, generally, my review will be based on the terms of an applicant’s original request.

24. In this case, the Agency made its decision based on the terms of Applicant’s amended request. Therefore, my review is based on the Applicant’s amended request submitted to the Agency on [date].

Would processing the amended request involve a substantial diversion of the Agency’s resources?

25. In *McIntosh v Victoria Police*,⁸ the Victorian Civil and Administrative Tribunal (VCAT) states,

... in asserting section 25A, an agency cannot be obliged to specify exactly how much time and energy would be spent by the agency in processing the request. Estimates only are acceptable, as to ensure precision would mean the agency would have to do the very work that section 25A is designed to prevent.

⁸ (General) [2008] VCAT 916 (16 May 2008) at [10].

26. In its supplementary submissions, the Agency provided the following estimates regarding the work involved in processing the Applicant's amended request:

After we received OVIC's request for further information, enquiries were made with select staff seeking estimates of the likely number of documents held by them. Responses were provided by 25 staff. It was estimated that 3,290 documents are held by those staff. This is a *conservative* estimate and does not include all likely duplicates of emails and documents held, nor all internal correspondence. There are estimated to be a further 20+ staff that likely hold documents that are relevant to the applicant's request, including [number of] former staff members and several staff who are currently on leave. One of those former staff members was the primary contact for [multiple] agreements in place with the then Department of Environment, Land Water and Planning (**DELWP**) and undertook most of the negotiations on those agreements. They were also responsible for much of the early operational planning. That staff member's emails would need to be searched if this request were to be processed. Based on responses from other staff members, it is estimated that over 200 emails will be identified. Without undertaking the actual searches, VicForests cannot quantify how many documents may be comprised within the emails. This number of 200 emails is in addition to the estimate of 3,290.

It is estimated that at least 40-50 staff will hold documents responsive to this request. The emails of each of those staff members will need to be searched, with the results of those searches to be reviewed by the VicForests Legal team (given its responsibility for FOI matters) for relevance, third party information, personal information and any applicable exemptions as part of processing this request. Four of those staff no longer work for VicForests. Their emails will need to be accessed from archives and searched by the VicForests Legal team. This is a manual process that involves obtaining and opening the .pst files and loading them into Outlook for searching. An employee's approach to email management will determine the ease of such searches. Filing emails within folders will add considerable time to searches as individual folders rather than email account-wide searches must be undertaken.

...

If VicForests was to process the request, substantial consultation would be required with the Department of Energy, Environment and Climate Action (**DEECA**, formerly DELWP and incorporating the former Department of Jobs, Precincts and Regions) and its regulatory arm, the Office of the Conservation Regulator. Consultation with DEECA will likely be required for most of the document pool owing to contractual arrangements, planning matters and regulatory issues.

Further consultation will be required with one or more Traditional Owner groups, particularly the [named group], as many of the works in the [named] State Forest are being undertaken pursuant to licences with those groups to assist with caring for country. Considerable correspondence was exchanged in facilitating those licences and the associated contracts.

We would also be required to consult with the Office of the Minister for Agriculture...

27. Regarding resources to process FOI requests received by the Agency, it was submitted:

The Legal team currently consists of three people: a General Manager, a Senior Legal Counsel and a Legal Counsel. The other Senior Legal Counsel (the 0.6FTE Senior Legal Counsel referred to in our submission) ceased working at VicForests [recently]. We do not currently have any other appropriately trained/experienced resources that we can allocate to assessing the documents for relevance, third party information, personal information and any applicable exemptions.

28. In relation to the estimated time to process the amended request, the Agency submits:

If we estimate 10 minutes per document for a suitably qualified staff member to review a document for relevance, third party information (assuming the applicant agrees to the redaction of such) and any applicable exemptions, that means that processing the request would take approximately 1,193.23 hours ($3,290 \times 10 = 32,900 / 60 = 548.33 + 644.9$). This does not include time for consultation, which would be extensive, nor any communications or discussions with

the applicant. An estimate of 10 minutes is also, in our submission, very low, noting that many of the documents, especially those that are responsive to paragraphs 2 and 3 of the applicant's request, are going to contain technical details that will require close consideration and likely further internal consultation. If we add on 2 weeks, or 75 hours (based on a 7.5 hour day) to cover off additional correspondence and consultation (which is again, we submit, a conservative estimate) the total estimated processing time is **1,268.23 hours, or 170 days** (again, based on a 7.5 hour day)...

29. The Agency provided a time estimate of 1,268.23 hours, or 170 days, to process the amended request. The Agency has not provided any direct evidence regarding how it arrived at its assumption that each document would take 10 minutes to assess.
30. Despite the lack of direct evidence regarding its time estimates, I accept the Agency's submission as to the number of documents likely to be identified, which are likely to exceed 3,290 documents, and consider this would contribute to the substantial work involved in processing the request. I have also considered the size of the Agency and the likely need for it to consult with individuals both internal and external to the Agency.
31. Accordingly, having carefully considered the terms of the Applicant's amended request, I am satisfied the time required for the Agency to undertake a thorough and diligent search for all relevant documents responsive to each point of the Applicant's request, and then identify, assess and undertake any required consultation regarding those documents, would involve a substantial diversion of the Agency's resources from its other operations.

Would processing the amended request involve an unreasonable diversion of the Agency's resources?

32. The concept of 'unreasonableness' was considered in *Re SRB and Department of Health, Housing, Local Government and Community Services*, in which the Commonwealth Administrative Appeals Tribunal held:

... it is not necessary to show ... that the extent of unreasonableness is overwhelming. It is this Tribunal's task to weigh up the considerations for and against the situation and to form a balanced judgement of reasonableness, based on objective evidence.⁹

33. In determining unreasonableness for the purposes of section 25A(1), I have had regard to the approach adopted in *The Age Company Pty Ltd v CenITex*,¹⁰ in which VCAT considered the following factors in determining if a request would involve an unreasonable diversion of an agency's resources:

- (a) Whether the terms of the request offer a sufficiently precise description to permit the Agency, as a practical matter, to locate the documents sought within a reasonable time and with the exercise of reasonable effort

In reviewing the terms of the amended request, I accept parts of the request are reasonably clear and specific to enable the Agency to identify relevant documents in a timely manner with reasonable effort. However, I also note parts of the request contain terms such as 'all correspondence' and 'any other information', that are broad terms as well as large date ranges requiring the Agency to conduct manual searches to ascertain

⁹ *Re SRB and Department of Health, Housing, Local Government and Community Services* (1994) 19 AAR 178 at [34].

¹⁰ *The Age Company Pty Ltd v CenITex* [2003] VCAT 288 at [43]-[45].

whether a document falls into scope or not. I consider this would add to the time and complexity of responding to the request.

(b) The public interest in disclosure of documents relating to the subject matter of the request

Consistent with the object of the FOI Act, there is a public interest in members of the public having a right to access information and documents held by government agencies unless it is necessary to refuse access under an exception or exemption in the FOI Act in order to protect 'essential public interests and the private and business affairs of persons in respect of whom information is collected and held'.¹¹

However, section 25A(1) seeks to balance competing interests in the public's access to official information with the public interest in an agency not being diverted from its core work caused by having to process a 'very broad ranging request for documents'.¹²

The Applicant advised that the organisation they represent:

is a not for profit organization, that exists so that Victoria is a place with a diverse and healthy natural environment that is protected, respected and enjoyed by all.

Noting the subject matter of the documents, I consider there is a public interest in disclosure where it would provide a greater understanding of the Agency's decision making regarding the management of State forests. However, as noted, this must be balanced with the competing public interest in the Agency not being diverted from its other operations, including attending to other FOI requests.

(c) Whether the request is a reasonably manageable one, giving due but not conclusive regard, to the size of the Agency and the extent of its resources usually available for dealing with FOI applications

I am satisfied the Agency provided sufficient information to the Applicant regarding the large number of documents estimated to fall within the terms of the amended request.

Overall, I am satisfied the processing of the amended request is not a reasonably manageable one, given the broad range of documents sought. This includes, but is not limited to, Agency officers in other business areas identifying relevant documents and the work involved in manually searching documents, not readily accessible.

I also note the Agency's submissions regarding its resources to respond to FOI matters, specifically:

VicForests is a small agency that does not, and has never had, have a dedicated FOI team. It is not practical in light of the ebb and flow in the number of FOI requests received to have a dedicated team.

... the responsibility for processing FOI requests was handed back to the VicForests' Legal team from December 2022. That team comprises the General Manager, a full time Senior Legal Counsel, a part time Senior Legal Counsel (0.6 FTE) and a full time Legal Counsel.

¹¹ Section 3(1).

¹² *Mildenall v Department of education* (unreported, VCAT 19 April 1999) at [30].

Prior to 12 December 2022, being the period in which the ... request was principally dealt with, FOI was the responsibility of the Director, Governance.

In response to OVIC's enquiries regarding the current workload of the Agency, it submits:

...there are currently only 2.0FTE lawyers in the Legal team available and skilled to process FOI matters. Any FOI matters need to be managed around the existing business critical work of the Legal team. We currently have two FOI requests that are being processed. Having processed two near identical requests in recent months, we can say that this particular FOI request is expected to yield approximately 2,800 pages of documents. The second request is expected to be sizeable and appears likely to require extensive business engagement, with third party consultation expected, as it covers our activities back to November 2022 across the entire forest estate. There is also this FOI matter with your Office and an FOI matter before VCAT. Another new FOI request is anticipated based on communications the Legal team has with a third party about FOI. Further, following a recent letter from the Public Access Deputy Commissioner, OVIC we anticipate receiving an FOI request from a member of the public who will be assisted by OVIC to prepare such application.

While in this case I accept the difficulty of Agency staff managing the amended request alongside its other duties, I also note the Agency's obligations under the FOI Act. While the number of FOI requests an agency receives is no doubt unpredictable, it is foreseeable that having a limited number of staff suitably qualified to respond to, or authorised to make decision under the FOI Act, will most likely result in impacts to the way in which an agency administers the FOI Act. In my view, such a consequence must be actively avoided by an agency to ensure it has the necessary resources and procedures in place to be able to meet its statutory obligations under the FOI Act.

- (d) The reasonableness or otherwise of the Agency's initial assessment and whether the Applicant has taken a co-operative approach to redrawing the boundaries of the application

I have reviewed copies of correspondence exchanged between the Applicant and the Agency as well as the Agency's advice regarding its section 25A(6) consultation efforts.

I consider the Agency's assessment of the Applicant's original request was reasonable and consider this was acknowledged by the Applicant in their responses, which amended the scope of their original request. I acknowledge the efforts of the Applicant to reduce the scope of their request and the indication that they are willing to further amend their request.

- (e) The statutory time limit for making a decision in this application

While I do not accept the Agency's estimate that it would take 10 minutes to assess one document; nonetheless, as noted above, I am satisfied to assess, consult and provide a decision on of over 3,290 pages of documents would be a substantial task for the Agency and could not be completed within the statutory time limit, despite its ability to request the Applicant to agree to a reasonable extension of time.

34. Accordingly, having carefully considered the terms of the Applicant's amended request I am satisfied the work required for the Agency to process the Applicant's request would involve an unreasonable diversion of the Agency's resources from its other operations.

Conclusion

35. On the information before me, I am satisfied the work involved in the Agency processing the Applicant's request would involve both a substantial and unreasonable diversion of the Agency's resources from its other operations.
36. Accordingly, I am satisfied the requirements under section 25A(1) are met and the Agency is not required to process the Applicant's request.
37. Despite my decision, it is open to the Applicant to consult with the Agency regarding framing a new FOI request in terms that the Agency is able to process within a reasonable period of time. In doing so, I encourage both the Agency and the Applicant to conduct any discussions and consultation with a continued spirit of cooperation to strike a reasonable balance between the right of the Applicant to access official information and the work involved in the Agency processing the request.

Review rights

38. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.¹³
39. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁴
40. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁵
41. 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.
42. 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.¹⁶

¹³ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁴ Section 52(5).

¹⁵ Section 52(9).

¹⁶ Sections 50(3F) and 50(3FA).