**Freedom of Information Guidelines**

**Part VI – Review of decisions**

**Division 3, sections 50 to 61**

***Freedom of Information Act 1982* (Vic)**

**Part VI – Review of decisions**

All legislative references are to the *Freedom of Information Act 1982* (Vic) (**the Act**) unless otherwise stated.

Contents

[Division 3—Review by the Tribunal 4](#_Toc144804023)

[Section 50 – Applications for review by the Tribunal 4](#_Toc144804024)

[Extract of legislation 4](#_Toc144804025)

[Guidelines 6](#_Toc144804026)

[Review by the Victorian Civil and Administrative Tribunal 6](#_Toc144804027)

[Decisions that VCAT review 7](#_Toc144804028)

[When can an agency or Minister apply to VCAT? 12](#_Toc144804029)

[When can a third party apply to VCAT? 12](#_Toc144804030)

[Decisions that VCAT cannot review 13](#_Toc144804031)

[How much does a VCAT review cost? 16](#_Toc144804032)

[Agencies and Ministers must notify OVIC of a VCAT review 17](#_Toc144804033)

[VCAT’s FOI review powers 18](#_Toc144804034)

[What if you do not agree with a VCAT decision? 22](#_Toc144804035)

[More information 23](#_Toc144804036)

[Section 51 – Information Commissioner may be called on to assist Tribunal 24](#_Toc144804037)

[Extract of legislation 24](#_Toc144804038)

[Guidelines 24](#_Toc144804039)

[OVIC’s involvement in a VCAT review 24](#_Toc144804040)

[Section 52 – Time for applying for review 25](#_Toc144804041)

[Extract of legislation 25](#_Toc144804042)

[Guidelines 25](#_Toc144804043)

[Overview of section 52 25](#_Toc144804044)

[Time for applying for review by VCAT 25](#_Toc144804045)

[More information 28](#_Toc144804046)

[Section 53 – Reviews where decisions delayed 29](#_Toc144804047)

[Extract of legislation 29](#_Toc144804048)

[Guidelines 30](#_Toc144804049)

[Where a decision is not made within the required time 30](#_Toc144804050)

[When can a person apply to VCAT on a deemed refusal? 30](#_Toc144804051)

[VCAT may allow an agency or Minister more time to decide 31](#_Toc144804052)

[Making a decision after the time has passed 31](#_Toc144804053)

[Section 53AA – Procedure where Tribunal determines that there do not exist reasonable grounds for claim under section 29A 33](#_Toc144804054)

[Extract of legislation 33](#_Toc144804055)

[Guidelines 34](#_Toc144804056)

[When VCAT decides section 29A does not apply 34](#_Toc144804057)

[More information 35](#_Toc144804058)

[Section 53A – Notification of reviews regarding documents affecting personal privacy 36](#_Toc144804059)

[Extract of legislation 36](#_Toc144804060)

[Guidelines 36](#_Toc144804061)

[Notifying third parties of a VCAT review 36](#_Toc144804062)

[More information 38](#_Toc144804063)

[Section 54 – Parties 39](#_Toc144804064)

[Extract of legislation 39](#_Toc144804065)

[Guidelines 39](#_Toc144804066)

[Parties in a VCAT review 39](#_Toc144804067)

[More information 39](#_Toc144804068)

[Section 55 – Onus 40](#_Toc144804069)

[Extract of legislation 40](#_Toc144804070)

[Guidelines 40](#_Toc144804071)

[Onus of showing or establishing certain matters in a VCAT review 40](#_Toc144804072)

[Section 56 – Inspection of exempt documents by Tribunal 42](#_Toc144804073)

[Extract of legislation 42](#_Toc144804074)

[Guidelines 42](#_Toc144804075)

[What is section 56 about? 42](#_Toc144804076)

[Maintaining confidentiality of exempt documents 43](#_Toc144804077)

[Sampling documents 45](#_Toc144804078)

[Section 59 – Tribunal may reduce or waive charges 46](#_Toc144804079)

[Extract of legislation 46](#_Toc144804080)

[Guidelines 46](#_Toc144804081)

[Reducing or waiving charges during a VCAT review 46](#_Toc144804082)

[Section 61 – Disciplinary action 47](#_Toc144804083)

[Extract of legislation 47](#_Toc144804084)

[Guidelines 47](#_Toc144804085)

[Where there is evidence of breach of duty or misconduct 47](#_Toc144804086)

Division 3—Review by the Tribunal

Section 50 – Applications for review by the Tribunal

Extract of legislation

|  |  |
| --- | --- |
| **50** | **Applications for review by the Tribunal** |
|  | (1) | Subject to this section, an applicant may apply to the Tribunal for review of— |
|  |  | (b) | a decision of the Information Commissioner refusing to grant access to a document in accordance with a request; |
|  |  | (c) | a decision of the Information Commissioner deferring the provision of access to a document; |
|  |  | (d) | a decision of an agency or Minister refusing to grant access to a document in accordance with a request, if the Information Commissioner has made a determination under section 49G(1) in respect of that request; |
|  |  | (e) | a decision of an agency or a Minister refusing to grant access to a document that is claimed to be exempt under section 29A; |
|  |  | (ea) | a decision of an agency or a Minister refusing to grant access to a document or refusing to amend a document, or a decision of a principal officer refusing to specify a document in a statement, that is taken to have been made under section 53; |
|  |  | (g) | a decision as to the amount of a charge that is required to be paid before access to a document is granted, whether or not the charge has already been paid by the applicant, if the Information Commissioner has certified that the matter is one of sufficient importance for the Tribunal to consider. |
|  | (2) | A person who served a notice under section 12(1) may apply to the Tribunal for a review of a decision under section 12(2)(a) not to specify a document in a statement. |
|  | (3) | Subject to subsection (3AC), a person who is the subject of information in a document referred to in section 33(3) (or in the case of a deceased person, that person's next of kin) may apply to the Tribunal for a review of a decision to disclose that document. |
|  | (3AA) | Subject to subsection (3AC), a business, commercial or financial undertaking may apply to the Tribunal for a review of a decision to disclose a document referred to in section 34. |
|  | (3AB) | Subject to subsection (3AC), a person who communicated information or a matter in confidence, or on whose behalf information or a matter was communicated (or in the case of a deceased person, that person's next of kin), may apply to the Tribunal for a review of a decision to disclose a document referred to in section 35(1). |
|  | (3AC) | A person or undertaking may not apply for review under subsection (3), (3A) or (3AB) if that person or undertaking consented to the disclosure of the document, and the document was disclosed in accordance with that consent. |
|  |  | **Note** |
|  |  | A person or undertaking may consent to disclosure of a document subject to the deletion of certain information in that document—see sections 33(2B), 34(3) and 35(1A). |
|  | (3B) | A person who is the subject of information in a document referred to in section 39 (or, in the case of a deceased person, that person's next-of-kin) may apply to the Tribunal for a review of a decision by the Information Commissioner or a principal officer of an agency or a Minister not to amend the document pursuant to a request under section 39. |
|  | (3C) | An applicant who has applied to the Health Complaints Commissioner under Division 2 for a conciliation in relation to a decision of an agency or Minister refusing to grant access to a document in accordance with a request may apply to the Tribunal for a review of the decision of the agency or Minister if the matter is not conciliated under that Division. |
|  | (3D) | An agency or Minister may apply to the Tribunal for review of a decision of the Information Commissioner under section 49P. |
|  | (3F) | An agency or Minister must notify the Information Commissioner in writing as soon as practicable of an application for review under subsection (3D). |
|  | (3FA) | If an application for review is made under subsection (1)(b), (c), (d) or (g), the agency or Minister concerned must, as soon as practicable, notify the Information Commissioner in writing. |
|  | (3G) | An application for review of a decision cannot be made under this section by a person if— |
|  |  | (a) | a fresh decision has been made by the agency or Minister under Division 1 and the person has accepted the fresh decision; or |
|  |  | (b) | the decision was made by the Information Commissioner in accordance with section 49N. |
|  | (3H) | A person is not entitled to apply to the Tribunal for review of a decision in relation to which subsection (1), (3), (3A) or (3AB) applies if the person has made or caused to be made an application for review of the decision to the Visitor of a University unless—  |
|  |  | (a) | the Visitor has declined to conduct that review; or |
|  |  | (b) | a period of 30 days has elapsed since the day on which that application for review was made. |
|  | (4) | On the hearing of an application for review the Tribunal shall have, in addition to any other power, the same powers as an agency or a Minister in respect of a request, including power to decide that access should be granted to an exempt document (not being a document referred to in section 28, section 29A, section 31(3), section 31A, or in section 33) where the Tribunal is of opinion that the public interest requires that access to the document should be granted under this Act. |
|  | (5) | Where a certificate has been given in respect of a document under section 61ZA(2), the powers of the Tribunal do not extend to reviewing the decision to give the certificate and shall be limited to determining whether a document has been properly classified as an exempt document within the meaning of section 28. |
|  | (5A) | Where a certificate has been given in respect of a document under section 29A(2), the powers of the Tribunal do not extend to reviewing the decision to give the certificate and shall be limited to determining the question whether there exist reasonable grounds for the claim that the document is an exempt document under section 29A. |
|  | (6) | The Tribunal may refuse to review a decision of an agency or Minister to refuse the request of a person for access to a document if the Tribunal is satisfied that it has previously reviewed a decision of the agency or Minister to refuse access to the same document or the same information. |

Guidelines

Review by the Victorian Civil and Administrative Tribunal

* 1. The Victorian Civil and Administrative Tribunal (**VCAT**) is another appeal body that can review freedom of information (**FOI**) decisions.
	2. VCAT is generally the second avenue for appeal, after OVIC. For example, if the applicant or the agency or Minister are not happy with OVIC’s review decision, they can apply to VCAT for a review.
	3. This section of the FOI Guidelines outlines:
* the kinds of decisions that VCAT can and cannot review;
* costs involved in a VCAT review;
* when agencies and Ministers have to notify OVIC of a VCAT review;
* what kind of powers VCAT has when reviewing a decision under the Act including the kinds of decisions VCAT can make and its public interest override;
* when you can appeal a VCAT decision.

|  |
| --- |
| For more information about:* VCAT and its processes, visit VCAT’s [website](https://www.vcat.vic.gov.au/case-types/review-and-regulation/application-for-review-of-a-decision); and
* the timeframes for applying to VCAT for a review, see [section 52 – Time for applying for review](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-52/).
 |

VCAT’s FOI review role

* 1. Like OVIC, the kind of FOI review that VCAT does is called merits review. This means VCAT considers the facts, law and policy of a decision and decides what is the correct and preferable decision. VCAT steps into the shoes of the original decision maker and makes its own decision on the application as if it were making the decision for the first time.[[1]](#footnote-1)
	2. When reviewing an FOI decision, VCAT will apply the same legal test that the original decision-maker applied.[[2]](#footnote-2) For example, if an agency refused access to a document under section 35(1)(b), VCAT will apply the test in section 35(1)(b).
	3. ‘Correct and preferable’ means that VCAT must make the correct decision according to law. Where there are a range of possible correct decisions, the decision must also be the preferable one.[[3]](#footnote-3) A ‘correct’ decision might be taken to be one rightly made. A ‘preferable’ decision refers to a decision that involves discretion.[[4]](#footnote-4)
	4. VCAT is not restricted to the findings, evidence or arguments considered by the original decision maker.[[5]](#footnote-5) This means that in a review, an agency or Minister may raise new grounds of exemption that were not relied upon by the original decision maker. An applicant or agency can also submit new evidence or make different submissions.
	5. During a review, VCAT will only look at the FOI decision that was made. VCAT:
* does not express views on the rightness or wrongness of a particular government policy;
* does not determine whether an agency has gone beyond its statutory powers or unlawfully used information obtained (those are legal questions for the courts);[[6]](#footnote-6)
* will not reopen disputes that have already finished in the courts.
	1. If an agency is alleged to have acted poorly in performing functions under the Act, VCAT does not carry out investigations. This is more properly dealt with by OVIC.[[7]](#footnote-7)
	2. When reviewing a decision under the Act, VCAT has, in addition to any of its other powers, the same powers as an agency or a Minister. This includes the power to decide that access should be granted to an exempt document where it is of the opinion that the public interest requires that access to the document should be granted.[[8]](#footnote-8)

|  |
| --- |
| When conducting an FOI review, VCAT operates under the: * FOI Act;
* [*Victorian Civil and Administrative Tribunal Act 1998* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/victorian-civil-and-administrative-tribunal-act-1998/135); and
* [Victorian Civil and Administrative Tribunal Rules 2018 (Vic)](https://www.legislation.vic.gov.au/in-force/statutory-rules/victorian-civil-and-administrative-tribunal-rules-2018/011).
 |

Decisions that VCAT review

* 1. This part outlines when certain parties can apply to VCAT for a review. This includes, applicants, agencies or Ministers, and third parties.

When can an applicant apply to VCAT?

* 1. Generally, an [applicant](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-5/#definitions-applicant) has to apply to OVIC for a review before applying to VCAT. However, there are some instances where an applicant may apply directly to VCAT without first going through OVIC.
	2. OVIC’s review process can be less formal as OVIC tries to informally resolve matters where it is possible to do so. This helps to resolve matters without needing a formal decision, which can save time.

|  |
| --- |
| For more information on OVIC reviews, see Division 1 of Part VI.  |

Where there is a decision to refuse or defer access to a document

* 1. An applicant must apply to OVIC for review first where an agency or Minister makes an FOI decision on the request which refuses access to part or all of the requested documents. If OVIC makes a formal review decision, the applicant can apply to VCAT for a review where the Information Commissioner:
* makes a review decision which refuses or defers access to a document;[[9]](#footnote-9)

|  |
| --- |
| For more information on deferring access to a document, see [section 24 – Deferment of access](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-24/).  |

* does not accept, or dismisses, the review;[[10]](#footnote-10) or
* does not complete the review within the required time (30 days or longer if agreed) and is deemed to have refused access to the document. [[11]](#footnote-11)

|  |
| --- |
| **Example** |
| An applicant made a request to an agency for access to a document. The agency refused access to the document in full, so the applicant applied to OVIC to review the agency’s decision. On review, OVIC agreed that the document was exempt, and refused access to the document. The applicant may apply to VCAT to review the decision to refuse access to the document. The applicant must apply to VCAT within 60 days of receiving OVIC’s notice of decision.[[12]](#footnote-12) |

* 1. An applicant may apply directly to VCAT without first applying to OVIC where:
* the agency or Minister has not made a decision within the [required time](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-21/), and the agency or Minister is deemed to have refused the request (this is called a deemed refusal);[[13]](#footnote-13)
* the agency or Minister decides to refuse access to a document under [section 29A](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-29a/) (documents affecting national security, defence or international relations).[[14]](#footnote-14) OVIC cannot review these kinds of decisions.[[15]](#footnote-15) If a certificate has been issued under section 29A(2), VCAT cannot review the decision to grant the certificate. Instead, VCAT will consider whether reasonable grounds exist for the claim that the document is exempt under 29A.[[16]](#footnote-16)

|  |
| --- |
| **Example** |
| An applicant made a request to an agency for access to a document. The agency accepted the request and started processing it. More than 30 days have passed, and the applicant has not received a decision from the agency.[[17]](#footnote-17) The agency does not need to consult third parties and did not ask for an extension of time.Because the agency has not made a decision within the required time, the agency is taken to have refused access to the requested document.[[18]](#footnote-18)The applicant may apply directly to VCAT to review the agency’s deemed refusal.[[19]](#footnote-19) |

* 1. An applicant cannot apply to VCAT on a deemed refusal if the agency or Minister has asked the applicant to pay access charges but the applicant has not paid a deposit (if required) or the actual charges.[[20]](#footnote-20)

Where there is a decision to refuse to amend a document

* 1. Part V outlines the process for requesting an amendment to a document containing the individual’s personal information.
	2. An applicant may apply to VCAT to review the Information Commissioner’s, agency’s, or Minister’s decision to not amend a document containing the individual’s personal information.[[21]](#footnote-21)
	3. If the agency or Minister has not made a decision within 30 days of receiving a valid amendment request, the agency or Minister is deemed to have refused to amend the document. The applicant may apply to VCAT to review this deemed refusal.[[22]](#footnote-22)

|  |
| --- |
| For more information on making an amendment request, see [section 39 – Person may request amendment of record](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-39/). |

Where there is a decision to not specify a document as required under Part II

* 1. Sections 8 and 11 require agencies to make certain documents available for inspection or purchase and to publish a statement which outlines certain kinds of documents. Under [section 12(1)](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-12/), a person may serve a notice on a principal officer of an agency which states the person’s belief that a statement prepared under sections [8(2)(a)](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-8/), [8(2)(b)](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-8/), [11(2)(a)](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-11/) or [11(2)(b)](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-11/) is missing one or more documents.
	2. If the agency decides not to specify the document, the person who served the notice on the agency may apply to VCAT to review that decision.[[23]](#footnote-23)
	3. The agency has 21 days from when it received the notice to decide whether to specify the document in the next statement.[[24]](#footnote-24) If the agency has not made a decision on the notice within 21 days, the agency is deemed to have refused to specify the document in the notice.[[25]](#footnote-25) If this happens, the person who served the notice may apply to VCAT to review the deemed refusal.[[26]](#footnote-26)

|  |
| --- |
| For more information, see Part II – Publication of certain documents and information. |

Where there is a decision to apply access charges

* 1. An agency or Minister can ask the applicant to pay access charges under [section 22](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-22/). If the applicant is not satisfied with the amount of access charges that they have been asked to pay, the applicant may apply to VCAT to review the amount being charged. They may apply to VCAT even if they have previously paid a deposit or actual access charges.
	2. Before an applicant can apply to VCAT to review the access charges amount, they must apply to OVIC first. The Information Commissioner has to certify that the matter is one of sufficient importance for VCAT to consider before an applicant can apply to VCAT.[[27]](#footnote-27)
	3. An applicant cannot apply to VCAT on a deemed refusal of an agency or Minister where the applicant has been asked to pay access charges but the applicant has not paid the requested deposit or the actual charges.[[28]](#footnote-28)
	4. In reviewing an access charges decision, VCAT may order the agency or Minister to waive or reduce the access charges.[[29]](#footnote-29)

|  |
| --- |
| For more information on access charges, see:* [section 22 – Charges for access to documents](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-22/); and
* [Freedom of Information (Access charges) Regulations 2014](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/access-charges-regulations/).
 |

Considering whether the matter is of ‘sufficient importance’

* 1. The Act does not set out matters to consider when deciding if the matter is of sufficient importance for VCAT to consider. However, the following matters are generally considered relevant:
* A real or significant argument that there is an error in the decision to either impose the access charges or to impose the amount of access charges to be paid:
	+ Whether there has been an error in calculating the access charges (for example, the agency incorrectly applied items in the Regulations resulting in substantially higher access charges than permitted).
	+ Whether access charges should be waived because of financial hardship where the requested documents relate to the personal affairs of the applicant.
	+ Whether access charges for search time have been imposed where the applicant seeks access to a document containing their own personal affairs information.
	+ Whether an applicant has been charged for a search that was previously completed by an agency during an earlier FOI request.
	+ Whether access charges for search time have been imposed where the applicant’s intended use of the document is of general public interest or benefit.
	+ Whether access charges have been imposed for a routine request.
* A matter of public or general importance in the context of the Act that VCAT should determine:
	+ Whether the access charges have been calculated in a manner that furthers the object of the Act – to facilitate and promote the disclosure of information at the lowest reasonable cost.
	+ Whether there has been a change in the way an agency stores information resulting in changes to how access charges are calculated.
	+ Whether there is a rare, unconventional, or new method of storing information that agencies use to retrieve or make copies of documents which increases access charges.
	+ Whether the matter should otherwise be certified for VCAT to review in the interests of fairness and justice.
	+ Whether the agency has, at the request of the applicant, discussed practicable alternatives for altering the request or reducing the anticipated charge.
* The significance of the error in calculating the access charges, that resulted in substantially high access charges than permitted:
	+ The circumstances of the request and the access charges decision. This may include factors such as the type of applicant and the documents requested, the applicant’s proposed use of the documents and the agency’s decision on the request, including the type or number of documents proposed to be released.

How OVIC approaches a request for an access charges certificate

Informal resolution

* 1. Where possible, OVIC will try to resolve access charges matters informally. OVIC may ask for more information from an agency or Minister about its reasons for imposing access charges and discuss this with the applicant.
	2. The Commissioner may also form a preliminary view on whether the matter may be of sufficient importance for VCAT to consider:
* Where the preliminary view is that the Commissioner will decline to certify the matter, OVIC will tell the applicant and provide them with an opportunity to respond. Alternatively, the applicant may decide to withdraw their request for an access charges certificate.
* Where the Commissioner’s preliminary view is that they will certify the matter, OVIC will provide the agency or Minister with the Commissioner’s reasons and an opportunity to respond. The agency or Minister may decide to reconsider the access charges decision. This may result in an agency or Minister revising the amount of access charges or providing a full or partial refund.

Formal determination

* 1. If the Commissioner is satisfied the matter is of sufficient importance for VCAT to consider, OVIC will issue a certificate which permits the applicant to apply to VCAT for review.
	2. If the Commissioner is not satisfied the matter is one of sufficient importance for VCAT to consider, the applicant cannot apply to VCAT for review of the access charges amount.
	3. In these circumstances, the applicant may consider taking the following steps:
* pay the access charges that have been imposed by the agency to release the documents;
* re-scope the request to reduce the number of documents, which may result in a reduction in the access charges amount;
* withdraw the request and make a new amended or narrower request; or
* do not pay the access charges and no further action will be taken by the agency or Minister.

When can an agency or Minister apply to VCAT?

* 1. If the Information Commissioner makes a decision under [section 49P](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-49p/) on review and the agency or Minister is not satisfied with the decision, the agency or Minister may apply to VCAT for review.[[30]](#footnote-30)

When can a third party apply to VCAT?

* 1. Third parties may apply to VCAT to review a decision to release their information under [section 33](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-33/), [34](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-34/) or [35](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-35/) provided the third party did not consent to the disclosure of their information.[[31]](#footnote-31) If they consented to the disclosure, they cannot apply for a review.

|  |
| --- |
| **Example** |
| An agency decides to release a document containing a third party’s personal information. When processing the request, the agency consulted with the third party and the third party did not agree to release their information to the applicant. Despite the third party’s preference to not release their information, the agency considered the exemption in section 33 was not made out in the circumstances and decided to release their personal information. The agency notified the third party of its decision to release their personal information. The third party may apply to VCAT if they are not happy with the agency’s decision. The third party has 60 days to apply to VCAT from when they were notified of the decision. |

* 1. VCAT can review a decision:
* to disclose a document containing a third party’s personal affairs information (as referred to in [section 33(3)](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-33/)) where a person (or, in the case of a deceased person, that person's next of kin) is the subject of information in that document and they did not consent to the disclosure;[[32]](#footnote-32)
* to disclose a document containing a business, commercial or financial undertaking’s trade secrets or business affairs (as referred to in [section 34](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-34/)) where the undertaking did not consent to the disclosure;[[33]](#footnote-33)
* to disclose a document containing information communicated in confidence (as referred to in [section 35(1)](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-35/)) where the person (or, in the case of a deceased person, that person's next of kin) did not consent to the disclosure.[[34]](#footnote-34)

Decisions that VCAT cannot review

* 1. There are some decisions that VCAT cannot review. VCAT cannot review:
* a decision to disclose a third party’s information for the purpose of sections 33, 34 or 35 if the third party consented to the disclosure;[[35]](#footnote-35)
* a fresh decision made under [section 49L](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-49l/) or [49M](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-49m/) if the applicant agrees with the decision (or the applicant is taken to agree with the fresh decision because they have not advised OVIC within 28 days of being notified of the decision whether they agree with it or not);[[36]](#footnote-36)
* the decision was made by the Information Commissioner under section 49N;[[37]](#footnote-37)
* a decision to refuse to waive or reduce the application fee.[[38]](#footnote-38) However, OVIC can review this;[[39]](#footnote-39)
* a decision of an agency where the applicant applied to the Visitor of a University to review it, unless the Visitor declines to review the decision or it has been 30 days or longer since the day the applicant applied to the Visitor for a review;[[40]](#footnote-40)
* a decision to give a certificate under [section 61ZA(2)](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-61za/), which certifies that information or a document is, or would be if it existed, an exempt document under [section 28](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-28/). VCAT cannot review the decision to issue the certificate, but VCAT can review whether a document has been properly classified as an exempt document under section 28;[[41]](#footnote-41)
* a decision to give a certificate under section 29A(2), which certifies that a document is, or would be if it existed, exempt under section 29A(1), 29A(1A), or 29A(1B). VCAT cannot review the decision to give a certificate, but VCAT can determine whether there are reasonable grounds to claim that the document is exempt under [section 29A](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-29a/).[[42]](#footnote-42)
	1. VCAT may refuse to review an agency or Minister’s decision to refuse access if VCAT is satisfied that it has previously reviewed the agency or Minister’s decision to refuse access to the same document or the same information.[[43]](#footnote-43)

|  |
| --- |
| **Example** |
| *Parker v Court Services Victoria* [[44]](#footnote-44)The applicant requested access to unedited CCTV footage at the Magistrates’ Court at a particular time and date. He was concerned that someone had signed in as him at the front desk for a nefarious purpose and wished to identify who that person was. The agency refused access to the document. On appeal at VCAT, VCAT agreed with the decision to refuse access. The applicant made another request asking for edited footage to remove the faces of everyone except himself and two other specified persons. He also asked for an opportunity to view the unedited footage so he could see if there were any other people present.VCAT dismissed the proceeding under section 75(1)(b) of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) because the second request was the same at the first one which VCAT had refused. Although the applicant tried to exclude identifying information of some people, his request to have access to the faces of certain people meant he was still seeking the same information in his first request. VCAT also said that requesting access by viewing is not material to whether the requests are the same for the purposes of the Act. That is because regardless of the form of access, access is still being given. |

* 1. An applicant cannot use section 50 to ask VCAT to consider disciplinary action against an agency or Minister under section 61*.*[[45]](#footnote-45)

Where a certificate has been issued under section 61ZA(2) or 29A(2)

* 1. For documents claimed to be exempt under [section 28](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-28/) (Cabinet documents) or [section 29A](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-29a/) (documents affecting national security, defence or international relations), the agency or Minister may certify that the document is (or would be if it existed) of the kind described in the exemption.
	2. These kinds of certificates are call ‘conclusive certificates’. They establish that the document is or, if it existed, would be an exempt document.
	3. OVIC cannot conduct a review, handle a complaint or conduct an investigation in relation to a conclusive certificate.[[46]](#footnote-46) Similarly, OVIC cannot question whether a document is of a kind falling within the categories over which a conclusive certificate can be issued.
	4. While VCAT cannot review the decision to issue a certificate, VCAT can determine on review:
* for certificates under section 61ZA(2) (Cabinet documents), whether a document has been properly classified as an exempt document within the meaning of section 28.[[47]](#footnote-47)
* for certificates under section 29A(2) (documents affecting national security, defence or international relations), the question whether there exist reasonable grounds for the claim that the document is an exempt document under section 29A.[[48]](#footnote-48)

Deciding whether reasonable grounds exist

* 1. Deciding whether reasonable grounds exist for the claim that the document is exempt under section 29A is objective and requires consideration of competing facets of the public interest.[[49]](#footnote-49)

|  |
| --- |
| **Example** |
| In *Willner v City of Melbourne*,[[50]](#footnote-50) the applicant requested 24 hours of continuous CCTV footage recorded of the entrance to Flinders Street Station on a particular day for an art installation. A certificate was issued under section 29A(2).VCAT considered whether reasonable grounds existed for the certificate. VCAT found that there were reasonable grounds for issuing a certificate for the following reasons:* the entrance to Flinders Street is iconic and integral to Victoria’s public transport network;
* tens of thousands of people pass through the station every day. It is a possible, even likely, target for a terrorist attack;
* the CCTV footage would permit the identification of the location of CCTV cameras. The precise location of the cameras is not publicly known;
* disclosure would allow the viewer to determine the scope of coverage of the cameras;
* disclosure would identify premises or parts of premises which are not within the view of the camera;
* disclosure would provide information to the viewer of the horizontal movement, tilt and swivel capacity and default settings of the cameras;
* access would provide information as to the capacity of the cameras to operate in different light conditions
* disclosure would provide information as to the use of the cameras for law enforcement and evidence collection;
* disclosure could increase the risk of vandalism or damage to the cameras; and
* disclosure may cause embarrassment to persons observed by the cameras.
 |

VCAT process for deciding whether reasonable grounds exist for section 29A

* 1. VCAT’s procedures in relation to determining the question whether there exist reasonable grounds for the claim in a section 29A certificate are set out in Schedule 1 Part 8 of the VCAT Act (clauses 29B, 29C and 29D).
	2. VCAT must hold in private any part of the proceeding during which evidence or information is given or any documents are produced by:
* an agency or an officer of an agency; or
* a Department Head or a member of staff of a Department Head; or
* the Chief Commissioner of Police or a member of Victoria Police personnel.[[51]](#footnote-51)
	1. VCAT must also hold the proceeding in private where a submission is made to it by or on behalf of an agency, Department Head or the Chief Commissioner of Police in relation to the claim that the document is an exempt document.[[52]](#footnote-52)
	2. For any other part of the proceeding, VCAT must hold the hearing in public.[[53]](#footnote-53) This may be subject to VCAT’s other powers to hold the hearing in private. For example, under section 17 of the [*Open Courts Act* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/open-courts-act-2013/015), VCAT may make a suppression order to prohibit or restrict the disclosure by publication or otherwise of:
* a report of the whole or any part of a proceeding;
* any information derived from a proceeding.[[54]](#footnote-54)

How much does a VCAT review cost?

* 1. There are fees associated with a VCAT review (such as an application fee in some instances, hearing fees in some instances and additional fees after VCAT makes an order).
	2. If you are facing financial hardship, you may be eligible for [fee relief](https://www.vcat.vic.gov.au/fees/concessions-fee-relief).
	3. However, there are no application fees for FOI matters where:
* the agency has not made a decision on time (deemed refusal); or
* the document relates to the applicant’s personal affairs.[[55]](#footnote-55)
	1. For cases where no application fee applies, there is also no hearing fee (normally, there are daily hearing fees).[[56]](#footnote-56)
	2. The default position is that each party is to meet its own costs.[[57]](#footnote-57) However, in some instances, VCAT may order one party to pay the other party’s costs. This might be where:
* one party conducted the proceeding in a way that unnecessarily disadvantaged another party;
* a party was responsible for unreasonably prolonging the time taken to complete the proceeding;
* the relative strengths of the claims made by each of the parties, including whether a party has made a claim that has no tenable basis in fact or law;
* the nature and complexity of the proceeding; and
* any other matter the Tribunal considers relevant.[[58]](#footnote-58)

|  |
| --- |
| Answer a few quick questions on VCAT’s [website](https://www.vcat.vic.gov.au/fees) to get a better understanding of the fees that might apply to your matter. |

Agencies and Ministers must notify OVIC of a VCAT review

* 1. An agency or Minister has to tell OVIC when it or someone else applies to VCAT for a review of the agency or Minister’s FOI decision or decision to ask the applicant to pay access charges.
	2. As soon as practicable, the relevant agency or Minister must notify the Information Commissioner if:
* the agency or Minister applies to VCAT to review the Information Commissioner’s review decision made under [section 49P](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-49p/);[[59]](#footnote-59) or
* an application for review has been made to VCAT by the applicant about:
	+ the Information Commissioner’s review decision made under section 49P;
	+ a review of an agency or Minister’s decision to refuse access to a document where the Information Commissioner decides to not accept or dismisses the review;
	+ the amount of access charges to be paid, where the Information Commissioner has certified the matter.[[60]](#footnote-60)

VCAT’s FOI review powers

What kind of decision can VCAT make on review?

* 1. If a VCAT review goes to a hearing, VCAT has the same powers as an agency or Minister regarding a request.[[61]](#footnote-61)
	2. VCAT may make an order to:
* affirm the decision under review (this means VCAT upholds the decision being reviewed as the correct and preferable decision and the decision does not change);[[62]](#footnote-62)
* vary the decision under review (this means VCAT changes part of, but not the entire, decision);[[63]](#footnote-63)
* set aside the decision under review and make another decision in substitution for it (this means VCAT replaces the original decision with a new decision);[[64]](#footnote-64) or
* set aside the decision under review and send the matter back to the decision-maker to reconsider in line with any VCAT directions or recommendations.[[65]](#footnote-65)
	1. VCAT will provide a written decision with reasons for its decision.[[66]](#footnote-66)

|  |
| --- |
| For more information on VCAT decisions and orders, visit VCAT’s website ([decisions and orders](https://www.vcat.vic.gov.au/the-vcat-process/decisions/decisions-and-orders)). VCAT publishes decisions on the Australasian Legal Information Institute (AustLII) website. Read VCAT decisions [here](http://www.austlii.edu.au/cgi-bin/viewdb/au/cases/vic/VCAT/).  |

The public interest override

* 1. In addition to having the same powers as an agency or Minister during an FOI review, VCAT also has the power to grant access to an exempt document.[[67]](#footnote-67)
	2. VCAT also has the power to decide that access should be granted where VCAT is of the opinion that the public interest requires that access to the document should be granted under the Act.[[68]](#footnote-68) This is referred to as the ‘public interest override.’
	3. VCAT cannot exercise the public interest override in relation to:
* documents that are exempt under section 28, section 29A, section 31A, section 31(3) and section 33; or
* a decision under section 25A(1). [[69]](#footnote-69)
	1. VCAT can exercise the public interest override in relation to:
* documents that are exempt under sections 29, 30,[[70]](#footnote-70) 31, 32,[[71]](#footnote-71) 34,[[72]](#footnote-72) 35, 36,[[73]](#footnote-73) 37, 38,[[74]](#footnote-74) and 38A;[[75]](#footnote-75) and
* a decision under section 25A(5).[[76]](#footnote-76)
	1. The agency or Minister must show that disclosure under the Act would be contrary to the public interest.[[77]](#footnote-77)

What is the public interest?

* 1. Public interest refers to matters such as standards of human conduct and the functioning of government and government instrumentalities that are accepted and acknowledged as being for the good order of society and for the wellbeing of its members.[[78]](#footnote-78)
	2. The interest is the interest of the public, not the interest of an individual or individuals.[[79]](#footnote-79)
	3. However, there may be a public interest in righting injustice done to an individual.[[80]](#footnote-80)

|  |
| --- |
| **Example** |
| In *AB v Department of Human Services*, VCAT noted that where an individual has been the victim of an unlawful act, there is a public interest in facilitating that individual’s right to discover the circumstances giving rise to that unlawful act and the identity of the person responsible.[[81]](#footnote-81)  |

* 1. The Act does not define or limit what may be relevant to the public interest.[[82]](#footnote-82) The expression ‘public interest’:

*classically imports a discretionary value judgment to be made by reference to undefined factual matters, confined only 'in so far as the subject matter and the scope and purpose of the statutory enactments may enable … given reasons to be [pronounced] definitely extraneous to any objects the legislature could have had in view.[[83]](#footnote-83)*

Using the public interest override

* 1. VCAT may exercise the public interest override if:
* VCAT is of the view that the document is exempt (if it is not exempt, the document should be released); [[84]](#footnote-84)
* there is sufficient evidence to support an opinion that the public interest requires that access should be granted to the exempt document; and
* VCAT actually forms the opinion that the public interest requires that access should be granted (this is an evaluation that VCAT does based on the facts).*[[85]](#footnote-85)*
	1. Whether the public interest requires disclosure is a question of fact in each case. In deciding whether to use the public interest override, the public interest must require release of the document (it is not enough that it is in the public interest to release the document).[[86]](#footnote-86) The public interest must be so strong that it overrides the factors that made the document exempt in the first place.[[87]](#footnote-87) The strength of the public interest depends on the nature and strength of the factors that made the document exempt.[[88]](#footnote-88)
	2. Release must be in the public interest, not just ‘of public interest’.[[89]](#footnote-89)

|  |
| --- |
| **Example** |
| In Director of Public Prosecutions v Smith, the Supreme Court said:*… in the daily affairs of the community events occur which attract public attention. Such events of interest to the public may or may not be ones which are for the benefit of the public; it follows that such form of interest per se is not a facet of the public interest.*[[90]](#footnote-90)  |

* 1. Factors in favour of establishing the public interest:
* the documents reveal some illegality, impropriety, sharp practice, or wrongdoing by government;[[91]](#footnote-91)
* holding government to account for its actions and enabling the public to have enough information consider and debates the issues at hand.

|  |
| --- |
| **Example** |
| In *Thwaites v Department of Health and Community Services* (unreported, AAT of Vic, Nedovic OM, 22 August 1994), the Administrative Appeals Tribunal found that there was a public interest in disclosing the amount that the government spent on offices for Ministers and other persons funded by the taxpayer.  |

* 1. The need to “clear the air” or to have “transparency in government” may not be sufficient.[[92]](#footnote-92)

The public interest override and exemptions with public interest tests

* 1. Some exemptions in Part IV have a public interest test. To find a document is exempt under those exemptions means it has been decided that it would be contrary to the public interest to release the document (or otherwise depending on the wording of the public interest test).
	2. In these scenarios, considering whether the public interest requires disclosure of the document may involve considering a wider range of public interests than what may be considered under the specific exemption.[[93]](#footnote-93)
	3. Because of the nature of the public interest in preserving confidentiality of documents that are exempt under section 32 or section 38, there must be public interest factors ‘of a high order’ requiring disclosure for the override to apply.[[94]](#footnote-94)

|  |
| --- |
| **Examples** |
| **Section 32**[*Roberts v Southern Rural Water [2002] VCAT 1423*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2002/1423.html)The applicant argued that documents that were exempt under section 32 should be released because the public interest required it. The applicant believed the agency had conducted a malicious prosecution campaign against him, was involved in corruption, made false answers to questions, tampered with witnesses and tampered with tape recordings. VCAT acknowledged that there is an element of public interest in knowing that the officers of a public authority conducted themselves in a proper and just manner. However, in this case there was no evidence that the applicant’s allegations were true. VCAT was not satisfied the public interest in disclosure overrode the public interest in preserving legal professional privilege. **Section 38***David Syme and Co v Victorian Casino and Gaming Authority* (1995) 8 VAR 212The AAT held that Parliament’s intention that certain documents remain secret under the *Casino Control Act 1991* had to be taken into account in deciding whether the public interest required disclosure. The AAT said that:… *if it could be established that there has been a breakdown in the licensing process or if some illegality, impropriety or potential wrongdoing can be demonstrated, and the documents would reveal that, then it would be in the public interest to release the documents*.*Seaman v Victoria Legal Aid* [2008] VCAT 589The applicant sought access to an unrevised transcript of a Judge’s charges to a jury in a criminal trial and the full statement of appeal grounds prepared by a Legal Aid solicitor. The documents were claimed to be exempt under section 38 (with section 43 of the *Legal Aid Act 1978*).[[95]](#footnote-95) VCAT was satisfied that section 38 applied to the documents. VCAT then had to consider whether the public interest override applied. VCAT noted that the protection afforded by section 38 is of the utmost importance and did not use the public interest override to grant access to the documents. Explaining the decision not to use the override, VCAT stated: *To release these documents would be to place an impediment in the way of VLA giving frank and fearless advice, of obtaining relevant documents, and would destroy the trust between practitioner and client which was essential to the operation of VLA.* |

What if you do not agree with a VCAT decision?

* 1. A party to a VCAT review may appeal a VCAT decision on a question of law only (if the person believes VCAT made a mistake in the way it applied the law).[[96]](#footnote-96) There are time limits and certain permissions a person must seek before they may apply for an appeal.

|  |
| --- |
| For more information on how to appeal a VCAT decision (including who to apply to, time limits, fees, and legal advice), visit VCAT’s webpage ‘[Appeal a VCAT decision’](https://www.vcat.vic.gov.au/the-vcat-process/decisions/appeal-a-decision). |

* 1. The Supreme Court can hear appeals from VCAT and conduct judicial review of administrative decisions.[[97]](#footnote-97) Relief may also be available from the Supreme Court via originating motion for judicial review under order 56 of the *Supreme Court (General Civil Procedure) Rules 2015*.
	2. See also, [section 63BA](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-63ba/) which relates to applications to the Supreme Court for determining whether the Information Commissioner or the Public Access Deputy Commissioner has jurisdiction to serve a notice to produce or attend.

More information

|  |
| --- |
| For more information on: * VCAT and its processes visit VCAT’s [website](http://www.vcat.vic.gov.au/);
* who the parties are in a VCAT review, see [section 54 – Parties](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-54/);
* applying to OVIC for a review, see [section 49A – Applications to Information Commissioner for review](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-49a/);
* the Victorian Supreme Court and its processes, visit the Court’s [website](https://www.supremecourt.vic.gov.au/).
 |

Section 51 – Information Commissioner may be called on to assist Tribunal

Extract of legislation

|  |  |
| --- | --- |
| **51** | **Information Commissioner may be called on to assist Tribunal** |
|  | (1) | The Tribunal, on its own motion or on the application of the Information Commissioner, may call on the Commissioner to assist the Tribunal in respect of a review. |
|  | (1A) | If a review under section 50 relates to a decision made by the Public Access Deputy Commissioner, the Tribunal, on its own motion or on the application of the Deputy Commissioner, may call on the Deputy Commissioner to assist the Tribunal in respect of the review. |
|  | (2) | Despite anything to the contrary in the **Victorian Civil and Administrative Tribunal Act 1998**, the Information Commissioner is not and cannot be joined as a party to a review under section 50 unless it is a review of a decision of the Information Commissioner as the principal officer of the office of the Information Commissioner. |

Guidelines

OVIC’s involvement in a VCAT review

* 1. If a person applies to the Victorian Civil and Administrative Tribunal (**VCAT**) for a review of a decision, the parties to the VCAT review are the agency or Minister and the person applying for the review.[[98]](#footnote-98)
	2. The Office of the Victorian Information Commissioner (**OVIC**) is not a party to the VCAT review, even where the review relates to a review decision made by OVIC.[[99]](#footnote-99)
	3. OVIC will only be a party to the VCAT review if the applicant made a request to OVIC, and the Information Commissioner made a decision on the request as OVIC’s [principal officer](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-5/#definitions-principal-officer).[[100]](#footnote-100)
	4. However, VCAT can ask OVIC to assist with a VCAT review, even if OVIC is not a party to it.[[101]](#footnote-101) OVIC can also apply to assist VCAT.[[102]](#footnote-102) In deciding whether to apply to assist VCAT, OVIC considers:
* Whether there are significant legal questions that arise under the Act. For example, if the case involves a new or unsettled area of law, or it would clarify a disputed interpretation of the Act.
* Whether there are broader implications for FOI policy and practice. For example, where the information rights of third parties not in VCAT or a strategic function of OVIC is affected.
* The impact to VCAT and the parties to the proceeding. For example, whether OVIC’s issue is central or peripheral to the proceeding and whether OVIC can help VCAT by making new or informed submissions.

Section 52 – Time for applying for review

Extract of legislation

|  |  |
| --- | --- |
| **52** | **Time for applying for review** |
|  | (1) | An application to the Tribunal under section 50(1)(e) or (g) must be made within 60 days from the day on which notice in writing of a decision on the request is given to the applicant. |
|  | (2) | An application to the Tribunal under section 50(2) must be made within 60 days from the day on which notice in writing of the decision under section 12(2)(a) is given to the person. |
|  | (3) | An application to the Tribunal under section 50(3), (3A) or (3AB) must be made within 60 days from the day on which notice in writing of a decision to disclose the document is given to the person or undertaking, as the case requires. |
|  | (4) | An application to the Tribunal under section 50(3B) in relation to a decision by the principal officer of an agency or a Minister must be made within 60 days from the day on which notice in writing of the decision is given to the applicant. |
|  | (5) | An application to the Tribunal under section 50(1)(b) or (c) must be made within 60 days from the day on which notice in writing of the decision of the Information Commissioner on the review is given to the applicant under Division 1. |
|  | (6) | An application to the Tribunal under section 50(3B) in relation to a decision by the Information Commissioner must be made within 60 days from the day on which notice in writing of the decision of the Information Commissioner on the review is given to the applicant under Division 1. |
|  | (7) | An application to the Tribunal under section 50(1)(d) must be made within 60 days from the day on which notice in writing of a decision of the Information Commissioner under section 49G is given to the applicant. |
|  | (8) | An application to the Tribunal under section 50(3C) must be made within 60 days from the day on which notice in writing of the decision under Division 2 is given to the applicant. |
|  | (9) | An application to the Tribunal under section 50(3D) must be made within 14 days from the day on which notice in writing of the decision under Division 1 is given to the agency or Minister. |

Guidelines

Overview of section 52

* 1. Section 52 outlines the time within which a person must apply to the Victorian Civil and Administrative Tribunal (**VCAT**) to review a decision, with reference to the different kinds of decisions that VCAT can review in [section 50](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-50/).

Time for applying for review by VCAT

* 1. The following table outlines the timeframe within which a person must apply to VCAT for review, based on the type of decision that was made.
	2. Generally, a person will have 60 days to apply to VCAT for a review. One exception is if an agency or Minister would like to appeal the Information Commissioner’s review decision (made under section 49P). In this circumstance, the agency or Minister has 14 days to apply to VCAT for review.

|  |  |
| --- | --- |
| Type of decision | Timeframe for applying to VCAT |
| 60 days |
| Decision to refuse access under [section 29A](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-29a/) (documents affecting national security, defence or international relations).[[103]](#footnote-103) | Application must be made within 60 days from the day the decision was given to the applicant.[[104]](#footnote-104) |
| Decision to apply access charges under [section 22](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-22/) and the Information Commissioner certified the matter.[[105]](#footnote-105)An applicant may apply to VCAT to review an agency or Minister’s decision to request the applicant to pay access charges if the Information Commissioner certifies the matter as one of sufficient importance for VCAT to consider. | Application must be made within 60 days from the day the decision was given to the applicant.[[106]](#footnote-106) |
| Decision under [section 12(2)](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-12/) not to specify a document in section 8(2)(b) or section 11(2)(b).[[107]](#footnote-107)  | Application must be made within 60 days from the day the decision was given to the person.[[108]](#footnote-108) |
| Third party applications – personal affairs information ([section 33](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-33/))Decision to disclose a third party’s personal affairs information (where the third party did not consent to the disclosure).[[109]](#footnote-109) | Application must be made within 60 days from the day the decision was given to the person.[[110]](#footnote-110) |
| Third party applications – information communicated in confidence ([section 35(1)](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-35/))Decision to disclose information communicated in confidence (where the third party did not consent to the disclosure). [[111]](#footnote-111) | Application must be made within 60 days from the day the decision was given to the person.[[112]](#footnote-112) |
| Third party applications – business, commercial or financial undertaking ([section 34](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-34/))Decision to disclose a business, commercial or financial undertaking’s trade secrets, or other matters of a business, commercial or financial nature (where the undertaking did not consent to the disclosure). [[113]](#footnote-113) | Application must be made within 60 days from the day the decision was given to the undertaking.[[114]](#footnote-114) |
| Decision to not amend a document containing the individual’s personal affairs information ([section 39](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-39/)).[[115]](#footnote-115) | Application must be made within 60 days from the day the decision was given to the person.[[116]](#footnote-116) |
| Review decision by the Information Commissioner to refuse access to a document.[[117]](#footnote-117) | Application must be made within 60 days from the day the decision was given to the person.[[118]](#footnote-118) |
| Review decision by the Information Commissioner to defer access to a document.[[119]](#footnote-119) | Application must be made within 60 days from the day the decision was given to the person.[[120]](#footnote-120) |
| Decision by an agency or Minister to refuse access to a document and the Information Commissioner does not accept, or dismisses, the review under [section 49G(1)](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-49g/).[[121]](#footnote-121) | Application must be made within 60 days from the day the decision by the Information Commissioner to not accept, or to dismiss, the review was given to the person.[[122]](#footnote-122) |
| Where conciliation by the Health Complaints Commissioner under [section 49Q](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-49q/) is not successful.[[123]](#footnote-123) | Application must be made within 60 days from the day the written notice was given to the person.[[124]](#footnote-124) |
| 14 days |
| Decision made by the Information Commissioner under section 49P.[[125]](#footnote-125) | An agency or Minister may apply for a review of the Information Commissioner’s decision within 14 days from the day the written notice of decision was given to the agency or Minister. [[126]](#footnote-126) |
| No time limit |
| The required time for making a decision in [section 21](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-21/) has passed and no decision has been made (deemed refusal).An applicant may apply for review of a decision of an agency or Minister that has been taken to be made under [section 53](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-53/). An applicant may apply directly to VCAT.  | Application may be made at any time until a decision is made. |

More information

|  |
| --- |
| For more information on:* what VCAT can review, see [section 50 – Applications for review by the Tribunal](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-50/);
* VCAT, visit its website [here](https://www.vcat.vic.gov.au/).
 |

Section 53 – Reviews where decisions delayed

Extract of legislation

|  |  |
| --- | --- |
| **53** | **Reviews where decisions delayed** |
|  | (1) | Subject to this section, where— |
|  |  | (a) | a request has been made to an agency or Minister; |
|  |  | (b) | the time period provided in section 21(1) or section 43 as the case may be has elapsed; and |
|  |  | (c) | notice of a decision on the request has not been received by the applicant— |
|  |  | for the purposes of making an application to the Tribunal under section 50(1)(ea), the agency or Minister is taken to have made a decision refusing to grant access to the document in accordance with the request or, in the case of a request under section 39, refusing to amend the document in accordance with the request, on the last day of the relevant period. |
|  | (2) | Subject to this section, where— |
|  |  | (a) | a notice has been served on the principal officer under section 12(1); and |
|  |  | (b) | the time period provided in section 12(2) has elapsed; and |
|  |  | (c) | notice of the principal officer's decision has not been received by the applicant— |
|  |  | for the purposes of making an application to the Tribunal under section 50(1)(ea), the principal officer is taken to have made a decision refusing to specify the document in a statement on the last day of that period.  |
|  | (5) | Where, after an application has been made to the Tribunal by virtue of this section but before the Tribunal has finally heard the application, a decision is given, subject to subsection (5A), the Tribunal may, at the request of the applicant, treat the application as extending to an application for review of that decision in accordance with this Part. |
|  | (5A) | Subsection (5) does not apply to— |
|  |  | (a) | a decision of the agency or Minister to grant access to the document without deferment; or |
|  |  | (b) | in the case of a request under section 39, a decision of the agency or Minister to amend the document in accordance with the request; or |
|  |  | (c) | in the case of a notice under section 12(1), a decision of the principal officer to specify the document in a statement. |
|  | (6) | Before further hearing an application made by virtue of this section, the Tribunal, may on the application of the agency or Minister concerned, make an order allowing further time to the agency or Minister to deal with the request. |
|  | (7) | The Tribunal may make an order under subsection (6) subject to such conditions as the Tribunal thinks fit, including a condition that if a decision is made during the further time to grant access to a document any charge that, under the regulations, is required to be paid before access is granted shall be reduced or waived. |

Guidelines

Where a decision is not made within the required time

* 1. Section 53 ‘deems’ the agency or Minister to have refused the request if they have not provided the decision to the applicant within the required time. This is known as a deemed refusal. It allows an applicant to apply directly to VCAT for review (without applying to the Office of the Victorian Information Commissioner for review first), before receiving a decision from the agency or Minister once the time for providing the decision has passed.
	2. Section 53 applies to:
* a request for access to documents made under [section 17](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-17/);
* an amendment request made under [section 39](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-39/); and
* a notice made under [section 12(1)](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-12/) for an agency to specify a document in Part II.
	1. There is no time limit by which an applicant must apply to VCAT, provided they have not received the decision before applying to VCAT.[[127]](#footnote-127)

|  |
| --- |
| For more information on when to apply for a VCAT review, see [section 52 – Time for applying for review](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-52/). |

* 1. An applicant is not required to apply to VCAT in relation to a deemed refusal. They may decide to wait until the agency or Minister makes the decision.[[128]](#footnote-128)
	2. Section 53 sets out what happens if an agency or Minister makes a decision after the applicant applies to VCAT for review, but before VCAT makes a decision on the review.[[129]](#footnote-129) It also allows an agency or Minister to apply to VCAT for more time to deal with the request.[[130]](#footnote-130)

When can a person apply to VCAT on a deemed refusal?

* 1. To apply to VCAT on a deemed refusal, three conditions must be satisfied:
* an FOI request for documents, request for amendment of personal records, or notice requiring documents be specified in Part II, has been made to an agency or Minister;
* the relevant time period in [section 21](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-21/), [section 43](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-43/), or [section 12(2)](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-12/) respectively has passed;
* a notice of a decision on the request has not been received by the applicant, claimant or person who served the notice respectively.

When is a decision ‘deemed’ to have been made?

* 1. An agency or Minister is deemed to have made a decision on the last day of the relevant period, where that period has passed.[[131]](#footnote-131)
	2. The relevant period refers to how long the agency or Minister has to provide a decision to the person depending on the kind of request that was made:
* for a request made under section 17 – the relevant period is outlined in [section 21](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-21/). Generally, an agency or Minister has 30 days to provide a decision to the applicant.[[132]](#footnote-132) However, this period can change for a number of reasons;
* for an amendment request made under section 39 – the relevant period is outlined in [section 43](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-43/). An agency or Minister has 30 days to provide a decision to a claimant;[[133]](#footnote-133)
* for a notice made under section 12(1) – the relevant period is outlined in [section 12(2)(a)](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-12/). An agency must make a decision within 21 days of receiving the notice and provide the decision to the person who served the notice on the agency.[[134]](#footnote-134)

VCAT may allow an agency or Minister more time to decide

* 1. VCAT may make an order that allows an agency or Minister more time to make a decision before VCAT starts hearing the review. This may be done before the hearing so that VCAT can postpone hearing the matter until the agency or Minister has searched for documents, assessed them, and made a decision.
	2. When making this order, VCAT may include any conditions it thinks fit. This may include adding a condition that any [access charges](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-22/) should be reduced or waived.[[135]](#footnote-135)

Making a decision after the time has passed

* 1. An agency or Minister should continue processing a request until or unless the applicant applies to VCAT for review on a deemed refusal. An agency or Minister may make a decision even after the time period has run out.
	2. If the agency or Minister makes a decision before the applicant applies to VCAT, then the applicant must first apply to OVIC for review*.*[[136]](#footnote-136) If the applicant is not satisfied with OVIC’s decision, they can then apply for a VCAT review.[[137]](#footnote-137)

|  |
| --- |
| **Example** |
| [*Burns v Victorian WorkCover Authority*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2003/958.html?context=1;query=burns%20v%20victorian%20workcover%20authority;mask_path=au/cases/vic/VSC%20au/cases/vic/VicSC%20au/cases/vic/VSCA%20au/cases/vic/VicCorC%20au/cases/vic/VCC%20au/cases/vic/VMC%20au/cases/vic/VicRp%20au/cases/vic/VicLawRp%20au/cases/vic/VicLawTLegO%20au/cases/vic/VicWABWRp%20au/cases/vic/VicWWABRp%20au/cases/vic/VicWWRp%20au/cases/vic/VicAATRp%20au/cases/vic/VBAB%20au/cases/vic/VDPB%20au/cases/vic/VHerCl%20au/cases/vic/VMPB%20au/cases/vic/VMPBPSP%20au/cases/vic/VPrivCmr%20au/cases/vic/VPYRB%20au/cases/vic/VicPABRp%20au/cases/vic/PPV%20au/cases/vic/VPSRB%20au/cases/vic/VCAT%20au/cases/vic/aat%20au/cases/vic/VADT%20au/cases/vic/VCGLR%20au/cases/vic/VDBT%20au/cases/vic/VICmr%20au/cases/vic/VLSC%20au/cases/vic/VLPT%20au/cases/vic/VMHRB%20au/cases/vic/VMHT%20au/cases/vic/VicPRp%20au/cases/vic/VRAT%20au/legis/vic/consol_act%20au/legis/vic/num_act%20au/legis/vic/hist_act%20au/legis/vic/reprint_act%20au/legis/vic/anglican%20au/legis/vic/repealed_act%20au/legis/vic/consol_reg%20au/legis/vic/consol_reg%20au/legis/vic/num_reg%20au/legis/vic/reprint_reg%20au/legis/vic/repealed_reg%20au/legis/vic/bill%20au/legis/vic/bill_em%20au/other/VicBillsRR%20au/other/vic_gazette%20au/other/VicOmbPRp%20au/other/VicSARCAD%20au/other/rulings/vicsro/VICSROBF%20au/other/rulings/vicsro/VICSRODT%20au/other/rulings/vicsro/VICSRODA%20au/other/rulings/vicsro/VICSROFHOG%20au/other/rulings/vicsro/VICSROFID%20au/other/rulings/vicsro/VICSROGEN%20au/other/rulings/vicsro/VICSROLT%20au/other/rulings/vicsro/VICSROLTA%20au/other/rulings/vicsro/VICSROPT%20au/other/rulings/vicsro/VICSROPTA%20au/other/rulings/vicsro/VICSROSD%20au/other/rulings/vicsro/VICSROTAA) [2003] VCAT 958VCAT received the applicant’s review application the day after the agency faxed its decision to the applicant. This meant the applicant could not apply to VCAT for review under section 53(1) and VCAT dismissed the application.VCAT endorsed Judge Rowlands P’s reasoning in *Borthwick v University of Melbourne* that an applicant can either wait for the agency’s decision or apply for review on a deemed refusal under section 53(1).[[138]](#footnote-138)  |

After the applicant applies to VCAT for review

* 1. If an agency or Minister makes a decision after an applicant applies to VCAT, VCAT may, at the applicant’s request, treat the application as including a review of the agency or Minister’s actual decision.[[139]](#footnote-139)
	2. The actual decision does not replace the deemed decision.[[140]](#footnote-140) VCAT will review both the deemed refusal and the actual decision.[[141]](#footnote-141) However, practically speaking, VCAT generally only reviews the actual decision because the decision outlines the exemptions that the agency or Minister claims.[[142]](#footnote-142)
	3. It has been argued that where an agency makes a decision, but that decision is one that VCAT does not have power to review under section 50 (for instance, a decision that no documents within the request exist), then VCAT loses jurisdiction to review the deemed refusal.[[143]](#footnote-143)
	4. However, VCAT has said that where its jurisdiction has been properly engaged by an application to review a deemed refusal, it retains its jurisdiction to consider whether or not there are documents relevant to a request, and to order further searches where there is evidence that documents responsive to a request exist.[[144]](#footnote-144) This proposition was later qualified in *Myers*, where VCAT found that it did not have jurisdiction to review a subsequent decision that no documents exist because there was no evidence that the documents existed.[[145]](#footnote-145)

Where the decision is to grant access to, amend, or specify, a document

* 1. If an agency or Minister makes a decision after an application to VCAT has been made, VCAT cannot extend the application for review to the new decision where the decision is to:
* grant access to a document (without deferring access under section 24);
* amend a document; or
* specify a document under Part II. [[146]](#footnote-146)

Section 53AA – Procedure where Tribunal determines that there do not exist reasonable grounds for claim under section 29A

Extract of legislation

|  |  |
| --- | --- |
| **53AA** | **Procedure where Tribunal determines that there do not exist reasonable grounds for claim under section 29A** |
|  | (1) | If, after hearing a proceeding referred to in clause 29C(1) of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**, the Tribunal determines in relation to a document in respect of which a certificate under section 29A(2) is in force that there do not exist reasonable grounds for the claim that the document is an exempt document under section 29A, the Tribunal must notify the responsible Minister in writing of that determination. |
|  | (2) | The responsible Minister must, within 28 days after being notified under subsection (1), make a decision to revoke, or not to revoke, the certificate. |
|  | (3) | If the responsible Minister makes a decision under subsection (2) to revoke a certificate— |
|  |  | (a) | any claim made in the certificate is to be taken, for the purposes of this Act, to have been withdrawn; and |
|  |  | (b) | the Minister must immediately inform the applicant of the existence or non-existence of the document to which the certificate related. |
|  | (4) | If the Minister makes a decision under subsection (2) not to revoke a certificate, he or she must— |
|  |  | (a) | cause written notice of the decision to be given to the applicant immediately; and |
|  |  | (b) | cause a copy of the notice to be laid before each House of the Parliament within 5 sitting days of that House after the notice is given. |
|  | (5) | A notice under subsection (4) must state the Minister's findings on any material question of fact, the material on which those findings are based, the reasons for the decision and attach a copy of the Tribunal's notification to the responsible Minister of its determination. |
|  | (6) | The Minister is not required to include in a notice under subsection (4) matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document under section 28, 29A, 31(3), 31A or 33. |
|  | (7) | The Minister is not required to include in a notice under subsection (4) information as to the existence or non-existence of a document or the existence or non-existence of a state of fact if that information would, if included in a document of an agency, cause that document to be an exempt document under section 28, 29A, 31(3), 31A or 33. |
|  | (8) | Nothing in this section is to be taken to imply that a certificate under section 29A(2) cannot be revoked otherwise than in accordance with this section. |

Guidelines

When VCAT decides section 29A does not apply

* 1. The Victorian Civil and Administrative Tribunal (**VCAT**) cannot review a decision to issue a certificate under section 29A(2), but VCAT can determine whether reasonable grounds exist for claiming that [section 29A](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-29a/) applies.[[147]](#footnote-147) Section 53AA sets out the procedure where VCAT determines that there are no reasonable grounds for the claim under section 29A.
	2. If VCAT decidest there are no reasonable grounds for claiming the exemption in section 29A, VCAT must notify the responsible Minister of that decision.[[148]](#footnote-148)
	3. The Minister has 28 days to decide whether or not to revoke the certificate.[[149]](#footnote-149)

Minister decides to revoke the certificate

* 1. If the Minister revokes the certificate, any claim made within the certificate is taken to be withdrawn. The Minister must immediately inform the applicant of the existence or non-existence of the relevant document.[[150]](#footnote-150)

Minister decides not to revoke the certificate

* 1. If the Minister does not revoke the certificate, the Minister must immediately give a written notice of that decision to the applicant. The Minister must also give a copy of the notice to each House of Parliament within five sitting days of that House.[[151]](#footnote-151)
	2. The notice must:
* state the Minister’s findings on any material questions of fact;
* state the material on which those findings are based;
* state the reasons for the decision; and
* attach a copy of VCAT’s notification of its determination.[[152]](#footnote-152)
	1. The agency or Minister does not have to include any material in the notice that would make it exempt under section 28, 29A, 31(3), 31A, or 33.[[153]](#footnote-153) The notice is also not required to include information about whether a document or a fact exists or not, if that information would make the notice exempt under section 28, 29A, 31(3), 31A or 33.[[154]](#footnote-154)
	2. A Minister may revoke a certificate under section 29A(2) at any time, they do not need to wait for a determination from VCAT.

More information

|  |
| --- |
| [Section 50 – Applications for review by the Tribunal](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-50/)[Section 29A – Documents affecting national security, defence or international relations](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-29a/) |

Section 53A – Notification of reviews regarding documents affecting personal privacy

Extract of legislation

|  |  |
| --- | --- |
| **53A** | **Notification of reviews regarding documents affecting personal privacy** |
|  | (1) | If— |
|  |  | (a) | an agency or Minister or the Information Commissioner makes a decision refusing to grant access to a document; and |
|  |  | (b) | a reason for the decision is that the document is an exempt document under section 33(1) because its disclosure would involve the unreasonable disclosure of information relating to the personal affairs of a person; and |
|  |  | (c) | an application is made to the Tribunal under section 50(1)(b) or (d) for review of the decision— |
|  |  | the agency or Minister or the Information Commissioner (as the case requires), as soon as practicable after being notified of the application, must, if practicable, give written notice in accordance with subsection (2) to the person to whom the information relates. |
|  | (2) | A notice under subsection (1) must— |
|  |  | (a) | inform the person to whom it is directed of their right to intervene in the review; and |
|  |  | (b) | request the person to inform the Tribunal, within 21 days after the day on which the notice was given, whether or not the person intends to intervene. |
|  | (3) | If— |
|  |  | (a) | the person does not intervene in the review; and |
|  |  | (b) | the Tribunal orders that access be granted to the document— |
|  |  | the Tribunal must, if practicable, give notice of the order to the person. |
|  | (4) | An order referred to in subsection (3)(b) does not take effect until 28 days after the day on which it is made. |

Guidelines

Notifying third parties of a VCAT review

* 1. Section 53A requires that third parties are notified of a review at the Victorian Civil and Administrative Tribunal (**VCAT**), and that they have a right to intervene in that review. This allows the third party to be involved in the review proceeding and provide information to VCAT about whether releasing their information would be reasonable or not.[[155]](#footnote-155)
	2. Where practicable, a third party must be notified of their right to intervene at VCAT where:
* an agency or Minister refused access to a document containing the third party’s personal affairs information under [section 33(1)](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-33/);
* the applicant applied to the Office of the Victorian Information Commissioner to review the agency or Minister’s decision to refuse access;
* the Information Commissioner refused access to the document on review, or the Information Commissioner did not accept or dismissed the review; and
* the applicant applied to VCAT to review the decision to refuse access.[[156]](#footnote-156)
	1. When notifying the third party, the agency or Minister must let the third party know of their right to intervene in the review and request that the third party tell VCAT within 21 days after the day of the notice whether or not the third party intends to intervene in the review.[[157]](#footnote-157)
	2. VCAT must notify the third party if the third party does not intervene in the review and VCAT decides to grant access to a document containing their personal affairs information.[[158]](#footnote-158) If VCAT orders release of the personal affairs information, the agency or Minister cannot release the information to the applicant until 28 days after the day on which the order was made.[[159]](#footnote-159)

‘If practicable’

* 1. A third party only needs to be notified under section 53A where it is practicable to do so.

|  |
| --- |
| **Example** |
| In *Schubert and Department of Premier and Cabinet* (which considered the meaning of ‘practicable’ in section 25), VCAT considered that the use of the word ‘practicable’ ‘connotes a legislative intention to apply common sense principles.’[[160]](#footnote-160) |

* 1. Agencies and Ministers should exercise their judgment when deciding whether providing notice is practicable. The following factors may be relevant:
* the age of the information or a document;
* the number of third parties to be notified;
* whether the agency or Minister has, or is reasonably able to ascertain, current contact details for a third party.

|  |
| --- |
| **Examples** |
| *Coulston v Office of Public Prosecutions Victoria* (General) [2010] VCAT 1234 The applicant sought photographs and hand-drawn plans of a house where he committed murder.VCAT agreed that it was not practicable to provide notice under section 53A because it would cause the victims’ family distress and cause anxiety for the new residents of the house. |
| *Vaughan v Department of Sustainability and Environment* 12 VAR 207The documents in this case were two videotapes containing visual images of over 20 Departmental officers, over 10 Police Officers, many protestors, and other individuals such as bulldozer and crane operators. While Departmental Officers were notified, it was not practicable to notify all third parties. |

More information

|  |
| --- |
| [Section 33 – Document affecting personal privacy](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-33/) |

Section 54 – Parties

Extract of legislation

|  |  |
| --- | --- |
| **54** | **Parties**  |
|  | For the purposes of this Division and of the application of the **Victorian Civil and Administrative Tribunal Act 1998** in respect of proceedings under this Division— |
|  | (a) | a decision given by a person on behalf of an agency shall be deemed to have been given by the agency; and |
|  | (b) | in the case of proceedings by virtue of section 53, the agency or Minister to which or to whom the request was made shall be a party to the proceedings. |

Guidelines

Parties in a VCAT review

* 1. If an authorised officer or Principal Officer makes a decision on a request on behalf of the agency, the agency is taken to have made the decision.[[161]](#footnote-161) This means the agency is a party to a Victorian Civil and Administrative Tribunal (**VCAT**) review proceeding instead of the individual agency officer who made the decision.
	2. If a decision on a request is not provided to the applicant within the required time, the agency or Minister is deemed to have refused access to the requested documents.[[162]](#footnote-162) If an applicant applies to VCAT on this deemed refusal, the agency or Minister to whom the request was made is a party to the review proceeding.

OVIC’s role at VCAT

* 1. The Office of the Victorian Information Commissioner (**OVIC**) is not a party to a VCAT review.[[163]](#footnote-163) This includes where the applicant is seeking a review of OVIC’s review decision. The parties will be the applicant and the agency or Minister that made the decision.
	2. VCAT may call on OVIC to assist in a review.[[164]](#footnote-164)
	3. The Information Commissioner can only be a party to a VCAT review proceeding where the applicant made a request to OVIC for access to a document, the Information Commissioner (as OVIC’s Principal Officer) refused access to it, and the applicant applied for a review of the Information Commissioner’s decision.[[165]](#footnote-165)

More information

|  |
| --- |
| [Section 51 – Information Commissioner may be called on to assist Tribunal](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-51/) |

Section 55 – Onus

Extract of legislation

|  |  |
| --- | --- |
| **55** | **Onus** |
|  | (1) | In proceedings under this Division by virtue of section 12, the principal officer upon whom the notice was served has the onus of establishing that the document concerned is not a document as described in section 8(1) or section 11(1). |
|  | (2) | In proceedings under this Division (except under section 50(3D)), the agency or Minister to which or to whom the request was made has the onus of establishing that a decision given in respect of the request was justified or that the Tribunal should give a decision adverse to the applicant. |

Guidelines

Onus of showing or establishing certain matters in a VCAT review

* 1. Section 55 outlines which party is required to show or establish certain matters in a Victorian Civil and Administrative Tribunal (**VCAT**) review. This is referred to as the ‘onus.’

Where a decision is made to refuse access to a document

* 1. If an agency or Minister refuses access to a document, the agency or Minister that made the decision must show that their decision was justified or that VCAT should make a decision that is adverse to the applicant.[[166]](#footnote-166) For example, if an agency refuses access to a document under an exemption, the agency must establish why the document is exempt.
	2. If an agency or Minister is appealing a review decision from the Office of the Victorian Information Commissioner, VCAT will determine what is the correct and preferable decision.[[167]](#footnote-167) The agency or Minister does not have the onus of establishing that a decision on the request was justified.[[168]](#footnote-168)

Where notice is given under section 12 to specify a document in a Part II statement

* 1. If a person gives an agency a notice under [section 12](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-12/) to specify a document in the agency’s Part II statement, in a VCAT review the principal officer upon whom notice was served must show that the relevant document is not a document as described in [section 8(1)](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-8/) or [section 11(1)](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-11/).

Where a decision is to refuse to amend a record

* 1. A claimant and the agency or Minister bear the onus of showing different matters.
	2. The claimant must establish why the document should be amended or corrected.[[169]](#footnote-169) The agency or Minister must then justify the decision to not amend the document.

|  |
| --- |
| **Example** |
| ***Roberts v Victoria Police* [2004[ VCAT 1660**The applicant made several applications to the agency requesting amendment of records in police documents. VCAT decided that the applicant bore the initial burden to provide evidence making out the case against the agency. After this, the burden fell on the agency to justify the decision it had made to not correct the documents. |

Other circumstances

* 1. VCAT has articulated which party bears the onus in certain circumstances:
* If a factual matter is disputed, the party who bears the onus will be expected to tender some evidence.[[170]](#footnote-170)
* If an agency refuses to neither confirm nor deny the existence of certain documents (under [section 27(2)](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-27/)), they must show that they are entitled to do so.[[171]](#footnote-171)

Section 56 – Inspection of exempt documents by Tribunal

Extract of legislation

|  |  |
| --- | --- |
| **56** | **Inspection of exempt documents by Tribunal** |
|  | (2) | Subject to subsection (3) and to any order made by the Tribunal under section 51(2) of the **Victorian Civil and Administrative Tribunal Act 1998**, the Tribunal shall do all things necessary to ensure that any document produced to the Tribunal in proceedings under this Act that is claimed to be an exempt document, or the contents of that document, is not disclosed to any person other than a member of the Tribunal as constituted for the proceedings, or a member of the staff of the Tribunal in the course of the performance of his duties as a member of that staff, and to ensure the return of the document to the defendant at the conclusion of the proceedings. |
|  | (3) | The Tribunal may make any orders as it thinks fit having regard to the nature of the proceedings, including where the applicant is represented by an Australian lawyer, an order that the contents of a document produced to the Tribunal that is claimed to be an exempt document be disclosed to that practitioner. |
|  | (4) | In making an order under subsection (3), the Tribunal must be guided by the principle that the contents of a document should not normally be disclosed except in accordance with an order of the Tribunal under section 51(2) of the **Victorian Civil and Administrative Tribunal Act 1998**. |
|  | (5) | Where an application under section 50(1) or (3D) relates to a document or part thereof in relation to which disclosure has been refused on the grounds specified in section 28, section 29A, section 31 or section 31A, the Tribunal may, if it regards it as appropriate to do so, announce its findings in terms which neither confirm nor deny the existence of the document in question. |
|  | (5A) | If an application under section 50(1) or (3D) relates to a document or part of a document in relation to which disclosure has been refused on the grounds that it would involve an unreasonable disclosure of personal affairs for the reason that it would increase the risk to a primary person's safety from family violence, the Tribunal may, if it regards it as appropriate to do so, announce its findings in terms which neither confirm nor deny the existence of the document in question. |
|  | (6) | If an application under section 50(1) or (3D) relates to a document or part of a document in relation to which disclosure has been refused on the grounds that it would involve an unreasonable disclosure of personal affairs for the reason that it would increase the risk to the safety of a child or group of children, the Tribunal may, if it regards it as appropriate to do so, announce its findings in terms which neither confirm nor deny the existence of the document in question. |

Guidelines

What is section 56 about?

* 1. Section 56 relates to how the Victorian Civil and Administrative Tribunal (**VCAT**) may handle and talk about documents in a review proceeding.

Maintaining confidentiality of exempt documents

* 1. Generally, when an agency or Minister provides a document that is claimed to be exempt to VCAT for the purpose of the VCAT review, VCAT cannot disclose the exempt document to anyone outside of VCAT.[[172]](#footnote-172)
	2. However, there is an exception to this, outlined below.
	3. The VCAT member who is handling the review and VCAT staff may receive the exempt document for the purpose of the review.[[173]](#footnote-173)
	4. VCAT must return the document to the agency or Minister after the review is complete.[[174]](#footnote-174)

When can VCAT disclose an exempt document during a review?

* 1. While VCAT must generally maintain the confidentiality of documents claimed to be exempt, VCAT may make any orders it thinks fit.[[175]](#footnote-175) In making an order, VCAT is guided by the principle that the contents of a document should not normally be disclosed except in accordance with an order under section 51(2) of the [*Victorian Civil and Administrative Tribunal Act 1998* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/victorian-civil-and-administrative-tribunal-act-1998/135)(**VCAT Act**).[[176]](#footnote-176)
	2. Section 51(2) of the VCAT Act outlines that VCAT may make the following orders:
* affirm the decision under review; or
* vary the decision under review; or
* set aside the decision under review and make another decision in substitution for it; or
* set aside the decision under review and remit the matter for re-consideration by the decision-maker in accordance with any directions or recommendations of the Tribunal.
	1. VCAT may order that the contents of an exempt document produced to VCAT be disclosed to an Australian lawyer representing an applicant.[[177]](#footnote-177)
	2. By looking at the exempt documents, the applicant’s lawyer may consider there is little interest in them, or it may be agreed that large sections of the documents are not in dispute.[[178]](#footnote-178) Further, it can help with taking evidence, making submissions, and making enquiries.[[179]](#footnote-179)
	3. If a qualified legal practitioner gives an undertaking that confidentiality will be observed, VCAT may consider this as a factor in support of granting inspection access under section 56(3).[[180]](#footnote-180) Lawyers have an overarching duty to the courts.[[181]](#footnote-181) Breaching an undertaking may constitute a serious misconduct.[[182]](#footnote-182)

|  |
| --- |
| **Example** |
| [*Environment Victoria Inc v Department of Primary Industries*](https://www.westlaw.com.au/maf/wlau/app/document?docguid=I257ae3933bdd11e586fbf6935eab92ba&&src=doc&hitguid=I13f6fc40feb711e298cba8c7e929f634&snippets=true&startChunk=1&endChunk=1&isTocNav=true&tocDs=AUNZ_AU_LEGCOMM_TOC#anchor_I13f6fc40feb711e298cba8c7e929f634) [2013] VCAT 39The agency’s lawyer opposed the applicant’s lawyer having access to the documents.The agency’s lawyer argued that the documents contained material that delved deeply into the Cabinet process. VCAT ordered that access be given to the applicant’s lawyer because the lawyer was well aware of the seriousness of the undertaking she would be giving, including that it could continue to operate indefinitely, beyond the end of the case. |

* 1. VCAT will not always make an order allowing an applicant’s lawyer to see the documents.

|  |
| --- |
| **Examples** |
| [*Rizza v Boroondara CC* [2000] VCAT 2062](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2000/2062.html)VCAT declined to allow the applicant’s lawyer to inspect relevant documents because the lawyer was the applicant’s daughter. [*Thompson v Department of Infrastructure* [2003] VCAT 44.](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2003/44.html)VCAT observed that if a claim for inspection had been made, it would unlikely have granted it, as the applicant’s wife was acting as his instructing solicitor.  |

Neither confirming nor denying the existence of certain documents

* 1. Where the review relates to a document claimed to be exempt under:
* [section 28 (Cabinet documents)](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-28/);
* [section 29A (documents affecting national security, defence and international relations)](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-29a/);
* [section 31 (law enforcement documents)](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-31/); or
* [section 31A (documents relating to IBAC)](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-31a/),

VCAT may announce its findings in terms which neither confirm nor deny the existence of the document.[[183]](#footnote-183)

* 1. VCAT may also announce its findings in terms which neither confirm nor deny the existence of a particular document where the review relates to a document claimed to be exempt because it would involve an unreasonable disclosure of personal affairs information because it would increase the risk to:
* a primary person’s safety from family violence;[[184]](#footnote-184) and
* the safety of a child or group of children.[[185]](#footnote-185)

Sampling documents

* 1. Where there is a high volume of documents, VCAT can order that a proceeding be conducted with reference to a sample of documents. VCAT has power to decide the matter on the basis of a representative sample of documents.
	2. To ensure the sample is representative, VCAT can inspect all relevant documents.[[186]](#footnote-186)
	3. It has been submitted that VCAT must be careful when making and supervising orders about sampling to ensure that such orders do not operate unfairly to either party.

|  |
| --- |
| **Example** |
| [*Tucker v Commissioner of State Revenue* (Review and Regulation) (No 2) [2020] VCAT 273](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2020/273.html) The applicant submitted that VCAT’s task was not complete because it had only made decisions in relation to sample documents. In response, VCAT said:*Considering each of these documents individually would prolong the time until final resolution of these proceedings in circumstances where it was envisaged by both parties and the Tribunal, that the matter would be decided by sample.* |

Section 59 – Tribunal may reduce or waive charges

Extract of legislation

|  |  |
| --- | --- |
| **59** | **Tribunal may reduce or waive charges** |
|  | (1) | In a review under this Division, the Tribunal may order that any charge payable under this Act or the regulations in respect of access to a document be reduced or waived. |
|  | (2) | The Tribunal cannot make an order under subsection (1) if it confirms the decision the subject of the review. |

Guidelines

Reducing or waiving charges during a VCAT review

* 1. The Victorian Civil and Administrative Tribunal (**VCAT**) may order an agency or Minister to reduce or waive access charges.[[187]](#footnote-187)
	2. However, VCAT may only order the charge to be reduced or waived if VCAT does not agree with the agency or Minister’s decision.[[188]](#footnote-188) If VCAT confirms the decision, then VCAT cannot order the charge to be reduced or waived.

Section 61 – Disciplinary action

Extract of legislation

|  |  |
| --- | --- |
| **61** | **Disciplinary action** |
|  | (1) | Where the Tribunal, at the completion of proceedings under this Act, is of opinion that there is evidence that a person, being an officer of an agency, has been guilty of a breach of duty or of misconduct in the administration of this Act and that the evidence is, in all the circumstances, of sufficient force to justify it in doing so, the Tribunal shall bring the evidence to the notice of— |
|  |  | (a) | if the person is the principal officer of a department or prescribed authority—the responsible Minister of that department or prescribed authority; or |
|  |  | (aa) | if a person is the principal officer of a council—to the council; |
|  |  | (b) | if the person is an officer of an agency but not the principal officer of that agency—the principal officer of that agency. |
|  | (2) | In the circumstances set out in subsection (1), the Tribunal must also bring the evidence to the notice of the Information Commissioner. |

Guidelines

Where there is evidence of breach of duty or misconduct

* 1. During a review, the Victorian Civil and Administrative Tribunal (**VCAT**) may come across evidence that an agency officer is guilty of a breach of duty or misconduct when administering the Act.
	2. Where there is sufficient evidence, VCAT may bring the evidence of this breach of duty or misconduct to the attention of the responsible person.[[189]](#footnote-189) VCAT must also tell the Information Commissioner.[[190]](#footnote-190)
	3. Section 61 is not intended to give VCAT the power to conduct a broad enquiry into concerns an applicant may have.[[191]](#footnote-191) Instead, it allows VCAT to act on evidence that comes to light during the review process.

Can an applicant ask VCAT to consider evidence of breach of duty or misconduct?

* 1. An applicant cannot apply to VCAT to ask that it take action under section 61 (bring the evidence of the breach of duty or misconduct to the attention of the responsible person). Section 61 requires VCAT to consider disciplinary action when the proceedings are complete.[[192]](#footnote-192)
	2. The exercise of that power is subject to the requirement in section 98(1) of the [*Victorian Civil and Administrative Tribunal Act 1998* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/victorian-civil-and-administrative-tribunal-act-1998/135) which requires VCAT to act fairly. This would normally require VCAT to give the officer an opportunity to be heard first.

‘In the administration of the Act’

* 1. If the breach is due to the administrative burden the Act imposes on an agency, invoking section 61 may not be justified.[[193]](#footnote-193) Similarly, VCAT may be reluctant to use the powers in section 61 if the misconduct is by a new FOI officer, still undertaking the learning process.[[194]](#footnote-194)
	2. If the misconduct of one officer represents the broader attitudes of an agency, it has been said that it would be unfair to single out that officer, which VCAT may also take into account.[[195]](#footnote-195)

|  |
| --- |
| **Examples** |
| *Birnbauer v Department of Industry, Technology & Resources* (Nos 1, 2 and 3) (1986) 1 VAR 279 The applicant said the Administrative Appeals Tribunal (**AAT**) should take disciplinary action under section 61 against certain agency officers because some aspects of how they handled the request had prolonged the hearing.The applicant argued that the agency had told him there were no documents responding to his request. However, the agency then found documents but said that they could not be released because they were covered by confidentiality clauses. After proceedings had started, the agency found a further hundred relevant documents. While the AAT agreed that the agency had misled the applicant, it did not exercise its powers under section 61.*Roberts v Southern Rural Water* (unreported, VCAT, Preuss SM, 20 April 2000)VCAT found the agency had misled them by describing documents as ‘draft’ witness statements, and that the agency failed to list three documents when required.VCAT said that it was essential that agencies take all reasonable steps to ensure that the existence of all documents relevant to the request are disclosed to the applicant. However, VCAT chose not to invoke section 61.*Chopra v Department of Education and Training* (Review and Regulation) [2019] VCAT 1941The applicant invited the Tribunal to take action under section 61. The applicant alleged there had been breaches of the Act in relation to the search for documents. The applicant said that a document released under FOI was different to a version he had received earlier. The agency did a search and found the earlier version and released it to the applicant. VCAT found that because the differences between the documents were minimal, they were not satisfied that there was evidence of a breach of the Act.  |

1. Encyclopaedic Australian Legal Dictionary, ‘merits review.’ [↑](#footnote-ref-1)
2. [*BFK v Victims of Crime Assistance Tribunal*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2017/289.html?context=1;query=BFK;mask_path=au/cases/vic/VSC+au/cases/vic/VicSC+au/cases/vic/VSCA+au/cases/vic/VicCorC+au/cases/vic/VCC+au/cases/vic/VMC+au/cases/vic/VicRp+au/cases/vic/VicLawRp+au/cases/vic/VicLawTLegO+au/cases/vic/VicWABWRp+au/cases/vic/VicWWABRp+au/cases/vic/VicWWRp+au/cases/vic/VicAATRp+au/cases/vic/VBAB+au/cases/vic/VDPB+au/cases/vic/VHerCl+au/cases/vic/VMPB+au/cases/vic/VMPBPSP+au/cases/vic/VPrivCmr+au/cases/vic/VPYRB+au/cases/vic/VicPABRp+au/cases/vic/PPV+au/cases/vic/VPSRB+au/cases/vic/VCAT+au/cases/vic/aat+au/cases/vic/VADT+au/cases/vic/VCGLR+au/cases/vic/VDBT+au/cases/vic/VICmr+au/cases/vic/VLSC+au/cases/vic/VLPT+au/cases/vic/VMHRB+au/cases/vic/VMHT+au/cases/vic/VicPRp+au/cases/vic/VRAT+au/legis/vic/consol_act+au/legis/vic/num_act+au/legis/vic/hist_act+au/legis/vic/reprint_act+au/legis/vic/anglican+au/legis/vic/repealed_act+au/legis/vic/consol_reg+au/legis/vic/consol_reg+au/legis/vic/num_reg+au/legis/vic/reprint_reg+au/legis/vic/repealed_reg+au/legis/vic/bill+au/legis/vic/bill_em+au/other/VicBillsRR+au/other/vic_gazette+au/other/VicOmbPRp+au/other/VicSARCAD+au/other/rulings/vicsro/VICSROBF+au/other/rulings/vicsro/VICSRODT+au/other/rulings/vicsro/VICSRODA+au/other/rulings/vicsro/VICSROFHOG+au/other/rulings/vicsro/VICSROFID+au/other/rulings/vicsro/VICSROGEN+au/other/rulings/vicsro/VICSROLT+au/other/rulings/vicsro/VICSROLTA+au/other/rulings/vicsro/VICSROPT+au/other/rulings/vicsro/VICSROPTA+au/other/rulings/vicsro/VICSROSD+au/other/rulings/vicsro/VICSROTAA)[2017] VSC 736 [21]. [↑](#footnote-ref-2)
3. *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577. [↑](#footnote-ref-3)
4. *Shi v Migration Agents Registration Authority (*2008) 235 CLR 286 [147] per Kiefel J (with whom Crennan J agreed). [↑](#footnote-ref-4)
5. *Osland v Department of Justice* (2008) 234 CLR 275; Towie v Medical Practitioners Board (Vic) [2004] VCAT 2545 [20]. [↑](#footnote-ref-5)
6. *Roy Morgan Research Centre Pty Ltd v State Revenue* Office (unreported, VCAT, Coghlan DP, 17 June 1999). [↑](#footnote-ref-6)
7. *Roy Morgan Research Centre Pty Ltd v State Revenue* Office (unreported, VCAT, Coghlan DP, 17 June 1999). [↑](#footnote-ref-7)
8. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(4). [↑](#footnote-ref-8)
9. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), sections 50(1)(a) and 50(1)(b). [↑](#footnote-ref-9)
10. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(1)(d). [↑](#footnote-ref-10)
11. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 49J. See section 49J(3) for information on timeframes and OVIC’s review. [↑](#footnote-ref-11)
12. See section 52 for more information about how long an applicant has to apply for review at VCAT. [↑](#footnote-ref-12)
13. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), sections 50(1)(ea) and 53. [↑](#footnote-ref-13)
14. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(1)(e). [↑](#footnote-ref-14)
15. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 49A(4). [↑](#footnote-ref-15)
16. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(5A). [↑](#footnote-ref-16)
17. See section 21 for more information on how long an agency or Minister has to make a decision on a request. [↑](#footnote-ref-17)
18. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 53. [↑](#footnote-ref-18)
19. See section 52 for more information about how long an applicant has to apply for review at VCAT. [↑](#footnote-ref-19)
20. *Chopra v Victorian Institute of Teaching* (Review and Regulation) [2023] VCAT 341. [↑](#footnote-ref-20)
21. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(3B). [↑](#footnote-ref-21)
22. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), sections 50(1)(ea) and 53. [↑](#footnote-ref-22)
23. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(2). [↑](#footnote-ref-23)
24. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 12(2)(a). [↑](#footnote-ref-24)
25. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 53(2). [↑](#footnote-ref-25)
26. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(1)(ea). [↑](#footnote-ref-26)
27. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(1)(g). [↑](#footnote-ref-27)
28. *Chopra v Victorian Institute of Teaching* (Review and Regulation) [2023] VCAT 341. [↑](#footnote-ref-28)
29. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 59. [↑](#footnote-ref-29)
30. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), sections 50(3D). [↑](#footnote-ref-30)
31. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), sections 50(3), 50(3A), 50(3AB) and 50(3AC). [↑](#footnote-ref-31)
32. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), sections 50(3) and 50(3AC). [↑](#footnote-ref-32)
33. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), sections 50(3A) and 50(3AC). [↑](#footnote-ref-33)
34. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(3AB). [↑](#footnote-ref-34)
35. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(3AB). [↑](#footnote-ref-35)
36. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), sections 49MA(1), 49L(7), 49M(7), 50(3G)(a). [↑](#footnote-ref-36)
37. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), sections 49N, 50(3G)(b). [↑](#footnote-ref-37)
38. *Gordon v Mornington Peninsula Shire Council* (2005) 23 VAR 394; [2005] VCAT 1710 at [13]; [*McKechnie v Department of Justice and Community Safety*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2019/432.html?context=1;query=mckechnie%20v%20department%20of%20justice%20and%20community%20safety;mask_path=au/cases/vic/VSC+au/cases/vic/VicSC+au/cases/vic/VSCA+au/cases/vic/VicCorC+au/cases/vic/VCC+au/cases/vic/VMC+au/cases/vic/VicRp+au/cases/vic/VicLawRp+au/cases/vic/VicLawTLegO+au/cases/vic/VicWABWRp+au/cases/vic/VicWWABRp+au/cases/vic/VicWWRp+au/cases/vic/VicAATRp+au/cases/vic/VBAB+au/cases/vic/VDPB+au/cases/vic/VHerCl+au/cases/vic/VMPB+au/cases/vic/VMPBPSP+au/cases/vic/VPrivCmr+au/cases/vic/VPYRB+au/cases/vic/VicPABRp+au/cases/vic/PPV+au/cases/vic/VPSRB+au/cases/vic/VCAT+au/cases/vic/aat+au/cases/vic/VADT+au/cases/vic/VCGLR+au/cases/vic/VDBT+au/cases/vic/VICmr+au/cases/vic/VLSC+au/cases/vic/VLPT+au/cases/vic/VMHRB+au/cases/vic/VMHT+au/cases/vic/VicPRp+au/cases/vic/VRAT+au/legis/vic/consol_act+au/legis/vic/num_act+au/legis/vic/hist_act+au/legis/vic/reprint_act+au/legis/vic/anglican+au/legis/vic/repealed_act+au/legis/vic/consol_reg+au/legis/vic/consol_reg+au/legis/vic/num_reg+au/legis/vic/reprint_reg+au/legis/vic/repealed_reg+au/legis/vic/bill+au/legis/vic/bill_em+au/other/VicBillsRR+au/other/vic_gazette+au/other/VicOmbPRp+au/other/VicSARCAD+au/other/rulings/vicsro/VICSROBF+au/other/rulings/vicsro/VICSRODT+au/other/rulings/vicsro/VICSRODA+au/other/rulings/vicsro/VICSROFHOG+au/other/rulings/vicsro/VICSROFID+au/other/rulings/vicsro/VICSROGEN+au/other/rulings/vicsro/VICSROLT+au/other/rulings/vicsro/VICSROLTA+au/other/rulings/vicsro/VICSROPT+au/other/rulings/vicsro/VICSROPTA+au/other/rulings/vicsro/VICSROSD+au/other/rulings/vicsro/VICSROTAA)[2019] VCAT 432. [↑](#footnote-ref-38)
39. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 49A(1)(c). [↑](#footnote-ref-39)
40. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(3H). [↑](#footnote-ref-40)
41. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(5). [↑](#footnote-ref-41)
42. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(5A). [↑](#footnote-ref-42)
43. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(6). [↑](#footnote-ref-43)
44. #  [*Parker v Court Services Victoria* (Review and Regulation) [2022] VCAT 431 (21 April 2022)](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2022/431.html?context=1;query=CCTV%20%20freedom%20of%20information;mask_path=au/cases/vic/VCAT).

 [↑](#footnote-ref-44)
45. *Roberts v Southern Rural Water* (unreported, VCAT, Preuss SM, 20 April 2000). [↑](#footnote-ref-45)
46. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 29A(3). [↑](#footnote-ref-46)
47. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/110), section 50(5). [↑](#footnote-ref-47)
48. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/110),section 50(5A). [↑](#footnote-ref-48)
49. *McKinnon v Secretary, Department of Treasury.* [↑](#footnote-ref-49)
50. [*Willner v City of Melbourne* (Review and Regulation) [2015] VCAT 1594](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2015/1594.html). [↑](#footnote-ref-50)
51. [*Victorian Civil and Administrative Tribunal Act 1998* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/victorian-civil-and-administrative-tribunal-act-1998/135), Schedule 1, clause 29D(1)(a)(i)-(iii). [↑](#footnote-ref-51)
52. [*Victorian Civil and Administrative Tribunal Act 1998* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/victorian-civil-and-administrative-tribunal-act-1998/135), Schedule 1, clause 29D(1)(b). [↑](#footnote-ref-52)
53. [*Victorian Civil and Administrative Tribunal Act 1998* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/victorian-civil-and-administrative-tribunal-act-1998/135), Schedule 1, clause 29D. [↑](#footnote-ref-53)
54. *Open Courts Act* 2013 (Vic) s 17. [↑](#footnote-ref-54)
55. Victorian Civil and Administrative Tribunal, Fees at VCAT, viewed online 1 September 2023 (<https://www.vcat.vic.gov.au/fees>). [↑](#footnote-ref-55)
56. Victorian Civil and Administrative Tribunal, Fees at VCAT, viewed online 1 September 2023 (<https://www.vcat.vic.gov.au/fees>). [↑](#footnote-ref-56)
57. [*Victorian Civil and Administrative Tribunal Act 1998* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/victorian-civil-and-administrative-tribunal-act-1998/135), section 109(1). [↑](#footnote-ref-57)
58. See sections 109(3)(a)-(e) of the [*Victorian Civil and Administrative Tribunal Act 1998* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/victorian-civil-and-administrative-tribunal-act-1998/135). [↑](#footnote-ref-58)
59. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(3F). [↑](#footnote-ref-59)
60. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(3FA). [↑](#footnote-ref-60)
61. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(4). [↑](#footnote-ref-61)
62. [*Victorian Civil and Administrative Tribunal Act 1998* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/victorian-civil-and-administrative-tribunal-act-1998/135), section 51(2)(a). [↑](#footnote-ref-62)
63. [*Victorian Civil and Administrative Tribunal Act 1998* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/victorian-civil-and-administrative-tribunal-act-1998/135), section 51(2)(b). [↑](#footnote-ref-63)
64. [*Victorian Civil and Administrative Tribunal Act 1998* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/victorian-civil-and-administrative-tribunal-act-1998/135), section 51(2)(c). [↑](#footnote-ref-64)
65. [*Victorian Civil and Administrative Tribunal Act 1998* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/victorian-civil-and-administrative-tribunal-act-1998/135), section 51(2)(d)*.* [↑](#footnote-ref-65)
66. [*Victorian Civil and Administrative Tribunal Act 1998* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/victorian-civil-and-administrative-tribunal-act-1998/135), sections 116 and 117. [↑](#footnote-ref-66)
67. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(4). [↑](#footnote-ref-67)
68. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(4). [↑](#footnote-ref-68)
69. *Wright v State Electricity Commission* [No 1] (unreported, VCAT, Mega SM, 29 July 1998). [↑](#footnote-ref-69)
70. See [*Department of Premier & Cabinet v Hulls*](https://www.westlaw.com.au/maf/wlau/app/document?docguid=I5428ef569e8611e0a619d462427863b2&&src=doc&hitguid=Ia97b2fe89c3411e0a619d462427863b2&snippets=true&startChunk=1&endChunk=1&isTocNav=true&tocDs=AUNZ_AU_LEGCOMM_TOC#anchor_Ia97b2fe89c3411e0a619d462427863b2)[[1999] 3 VR 331](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSCA/1999/117.html). [↑](#footnote-ref-70)
71. See [*Osland v Department of Justice*](https://www.westlaw.com.au/maf/wlau/app/document?docguid=Ifcf2639d9d6b11e0a619d462427863b2&&src=doc&hitguid=I5c9103a39c2711e0a619d462427863b2&snippets=true&startChunk=1&endChunk=1&isTocNav=true&tocDs=AUNZ_AU_LEGCOMM_TOC#anchor_I5c9103a39c2711e0a619d462427863b2)[(2010) 241 CLR 320;](https://www.westlaw.com.au/maf/wlau/app/document?docguid=Ifcf263969d6b11e0a619d462427863b2&&src=doc&hitguid=I5c90dcb49c2711e0a619d462427863b2&snippets=true&startChunk=1&endChunk=1&isTocNav=true&tocDs=AUNZ_AU_LEGCOMM_TOC#anchor_I5c90dcb49c2711e0a619d462427863b2)[84 ALJR 528;](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2010/24.html)[[2010] HCA 24](https://www.westlaw.com.au/maf/wlau/app/document?docguid=Ifcf2638b9d6b11e0a619d462427863b2&&src=doc&hitguid=I5c90dcc79c2711e0a619d462427863b2&snippets=true&startChunk=1&endChunk=1&isTocNav=true&tocDs=AUNZ_AU_LEGCOMM_TOC#anchor_I5c90dcc79c2711e0a619d462427863b2). [↑](#footnote-ref-71)
72. See *Marple v Department of Agriculture* (1995) 9 VAR 29; *Thwaites v Department of Health and Community Services* (unreported, AAT of Vic, Nedovic PM, 22 August 1994). [↑](#footnote-ref-72)
73. See [*Department of Premier & Cabinet v Hulls*](https://www.westlaw.com.au/maf/wlau/app/document?docguid=I5428ef569e8611e0a619d462427863b2&&src=doc&hitguid=Ia97b2fe89c3411e0a619d462427863b2&snippets=true&startChunk=1&endChunk=1&isTocNav=true&tocDs=AUNZ_AU_LEGCOMM_TOC#anchor_Ia97b2fe89c3411e0a619d462427863b2)[[1999] 3 VR 331](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSCA/1999/117.html). [↑](#footnote-ref-73)
74. See *David Syme & Co Ltd v Victorian Casino & Gaming Authority* (1995) 8 VAR 212; [*Department of Premier & Cabinet v Hulls*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSCA/1999/117.html)[[1999] 3 VR 331;](https://www.westlaw.com.au/maf/wlau/app/document?docguid=Ie0b9ff6066f711e6881a84759648e093&&src=doc&hitguid=Ia97b30eb9c3411e0a619d462427863b2&snippets=true&startChunk=1&endChunk=1&isTocNav=true&tocDs=AUNZ_AU_LEGCOMM_TOC#anchor_Ia97b30eb9c3411e0a619d462427863b2) . [↑](#footnote-ref-74)
75. [*Osland v Department of Justice*](https://www.westlaw.com.au/maf/wlau/app/document?docguid=I6e37a6c19d6a11e0a619d462427863b2&&src=doc&hitguid=Id8409db09c8d11e0a619d462427863b2&snippets=true&startChunk=1&endChunk=1&isTocNav=true&tocDs=AUNZ_AU_LEGCOMM_TOC#anchor_Id8409db09c8d11e0a619d462427863b2)[(2008) 234 CLR 275;](https://www.westlaw.com.au/maf/wlau/app/document?docguid=I6e37a6b59d6a11e0a619d462427863b2&&src=doc&hitguid=Id8409de19c8d11e0a619d462427863b2&snippets=true&startChunk=1&endChunk=1&isTocNav=true&tocDs=AUNZ_AU_LEGCOMM_TOC#anchor_Id8409de19c8d11e0a619d462427863b2)[82 ALJR 1288;](https://www.westlaw.com.au/maf/wlau/app/document?docguid=I6e37a6bc9d6a11e0a619d462427863b2&&src=doc&hitguid=I2d3eab8f9caa11e088a4c4b2eb8a5af1&snippets=true&startChunk=1&endChunk=1&isTocNav=true&tocDs=AUNZ_AU_LEGCOMM_TOC#anchor_I2d3eab8f9caa11e088a4c4b2eb8a5af1)[[2008] HCA 37](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2008/37.html), 287-288 (CLR) (Gleeson CJ, Gummow, Heydon and Keifel JJ). [↑](#footnote-ref-75)
76. [*Knight v Corrections Victoria* [2010] VSC 338 [58]](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2010/338.html). [↑](#footnote-ref-76)
77. [*Department of Premier & Cabinet v Hulls*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSCA/1999/117.html)[[1999] VSCA 117](https://www.westlaw.com.au/maf/wlau/app/document?docguid=I5428ef549e8611e0a619d462427863b2&&src=doc&hitguid=Ia97b30319c3411e0a619d462427863b2&snippets=true&startChunk=1&endChunk=1&isTocNav=true&tocDs=AUNZ_AU_LEGCOMM_TOC#anchor_Ia97b30319c3411e0a619d462427863b2), *Coulson v Department of Premier and Cabinet* [2018] VCAT 229 [↑](#footnote-ref-77)
78. [*Director of Public Prosecutions v Smith* [1991] 1 VR 63](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VicRp/1991/6.html) per Kaye, Fullagar and Ormiston JJ, 75. [↑](#footnote-ref-78)
79. [*Director of Public Prosecutions v Smith* [1991] 1 VR 63](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VicRp/1991/6.html) per Kaye, Fullagar and Ormiston JJ, 75. *Pratt v Psychologists Registration Board of Victoria* (unreported, AAT of Vic, Judge Wood p, 28 April 1998). [↑](#footnote-ref-79)
80. [*Ambikapathy v Victorian Legal Aid* [1999] VCAT 1361.](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/1999/1361.html) [↑](#footnote-ref-80)
81. [*AB v Department of Human Services* [2001] VCAT 2020](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2001/2020.html). [↑](#footnote-ref-81)
82. [*Osland v Department of Justice* [2010] HCA 24, [13]](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2010/24.html). [↑](#footnote-ref-82)
83. [*O'Sullivan v Farrer* (1989) 168 CLR 210](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1989/61.html), 216. [↑](#footnote-ref-83)
84. [*Department of Premier and Cabinet v Hulls* [1999] VSCA 117](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSCA/1999/117.html), 24. [↑](#footnote-ref-84)
85. [*Osland v Department of Justice* (2010) 241 CLR 320; 84 ALJR 528; [2010] HCA 24](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2010/24.html). [↑](#footnote-ref-85)
86. [*Department of Premier and Cabinet v Hulls* [1999] VSCA 117](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSCA/1999/117.html), 31. [↑](#footnote-ref-86)
87. [*Department of Premier and Cabinet v Hulls* [1999] VSCA 117](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSCA/1999/117.html), 26, 35. [↑](#footnote-ref-87)
88. [*Department of Premier and Cabinet v Hulls* [1999] VSCA 117](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSCA/1999/117.html), 31; [*Trotter v Department of Justice* [2003] VCAT 394](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2003/394.html) (27 March 2003) [15]. [↑](#footnote-ref-88)
89. [*Director of Public Prosecutions v Smith* [1991] 1 VR 63](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VicRp/1991/6.html). [↑](#footnote-ref-89)
90. [*Director of Public Prosecutions v Smith* [1991] 1 VR 63](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VicRp/1991/6.html). [↑](#footnote-ref-90)
91. [*Gill v Department of Industry, Technology and Resources* (1985) 1 VAR 97](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VicRp/1987/58.html). [↑](#footnote-ref-91)
92. [*Osland v Department of Justice* (2008) 234 CLR 275](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2008/37.html). [↑](#footnote-ref-92)
93. [*Mildenhall v Department of Education*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/1998/465.html?context=1;query=Mildenhall%20v%20Department%20of%20Education%20;mask_path=au/cases/vic/VSC%20au/cases/vic/VicSC%20au/cases/vic/VSCA%20au/cases/vic/VicCorC%20au/cases/vic/VCC%20au/cases/vic/VMC%20au/cases/vic/VicRp%20au/cases/vic/VicLawRp%20au/cases/vic/VicLawTLegO%20au/cases/vic/VicWABWRp%20au/cases/vic/VicWWABRp%20au/cases/vic/VicWWRp%20au/cases/vic/VicAATRp%20au/cases/vic/VBAB%20au/cases/vic/VDPB%20au/cases/vic/VHerCl%20au/cases/vic/VMPB%20au/cases/vic/VMPBPSP%20au/cases/vic/VPrivCmr%20au/cases/vic/VPYRB%20au/cases/vic/VicPABRp%20au/cases/vic/PPV%20au/cases/vic/VPSRB%20au/cases/vic/VCAT%20au/cases/vic/aat%20au/cases/vic/VADT%20au/cases/vic/VCGLR%20au/cases/vic/VDBT%20au/cases/vic/VICmr%20au/cases/vic/VLSC%20au/cases/vic/VLPT%20au/cases/vic/VMHRB%20au/cases/vic/VMHT%20au/cases/vic/VicPRp%20au/cases/vic/VRAT%20au/legis/vic/consol_act%20au/legis/vic/num_act%20au/legis/vic/hist_act%20au/legis/vic/reprint_act%20au/legis/vic/anglican%20au/legis/vic/repealed_act%20au/legis/vic/consol_reg%20au/legis/vic/consol_reg%20au/legis/vic/num_reg%20au/legis/vic/reprint_reg%20au/legis/vic/repealed_reg%20au/legis/vic/bill%20au/legis/vic/bill_em%20au/other/VicBillsRR%20au/other/vic_gazette%20au/other/VicOmbPRp%20au/other/VicSARCAD%20au/other/rulings/vicsro/VICSROBF%20au/other/rulings/vicsro/VICSRODT%20au/other/rulings/vicsro/VICSRODA%20au/other/rulings/vicsro/VICSROFHOG%20au/other/rulings/vicsro/VICSROFID%20au/other/rulings/vicsro/VICSROGEN%20au/other/rulings/vicsro/VICSROLT%20au/other/rulings/vicsro/VICSROLTA%20au/other/rulings/vicsro/VICSROPT%20au/other/rulings/vicsro/VICSROPTA%20au/other/rulings/vicsro/VICSROSD%20au/other/rulings/vicsro/VICSROTAA) [1998] VCAT 465. [*Department of Premier and Cabinet v Hulls*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSCA/1999/117.html?context=1;query=Department%20of%20Premier%20and%20Cabinet%20v%20Hulls%20;mask_path=au/cases/vic/VSC%20au/cases/vic/VicSC%20au/cases/vic/VSCA%20au/cases/vic/VicCorC%20au/cases/vic/VCC%20au/cases/vic/VMC%20au/cases/vic/VicRp%20au/cases/vic/VicLawRp%20au/cases/vic/VicLawTLegO%20au/cases/vic/VicWABWRp%20au/cases/vic/VicWWABRp%20au/cases/vic/VicWWRp%20au/cases/vic/VicAATRp%20au/cases/vic/VBAB%20au/cases/vic/VDPB%20au/cases/vic/VHerCl%20au/cases/vic/VMPB%20au/cases/vic/VMPBPSP%20au/cases/vic/VPrivCmr%20au/cases/vic/VPYRB%20au/cases/vic/VicPABRp%20au/cases/vic/PPV%20au/cases/vic/VPSRB%20au/cases/vic/VCAT%20au/cases/vic/aat%20au/cases/vic/VADT%20au/cases/vic/VCGLR%20au/cases/vic/VDBT%20au/cases/vic/VICmr%20au/cases/vic/VLSC%20au/cases/vic/VLPT%20au/cases/vic/VMHRB%20au/cases/vic/VMHT%20au/cases/vic/VicPRp%20au/cases/vic/VRAT%20au/legis/vic/consol_act%20au/legis/vic/num_act%20au/legis/vic/hist_act%20au/legis/vic/reprint_act%20au/legis/vic/anglican%20au/legis/vic/repealed_act%20au/legis/vic/consol_reg%20au/legis/vic/consol_reg%20au/legis/vic/num_reg%20au/legis/vic/reprint_reg%20au/legis/vic/repealed_reg%20au/legis/vic/bill%20au/legis/vic/bill_em%20au/other/VicBillsRR%20au/other/vic_gazette%20au/other/VicOmbPRp%20au/other/VicSARCAD%20au/other/rulings/vicsro/VICSROBF%20au/other/rulings/vicsro/VICSRODT%20au/other/rulings/vicsro/VICSRODA%20au/other/rulings/vicsro/VICSROFHOG%20au/other/rulings/vicsro/VICSROFID%20au/other/rulings/vicsro/VICSROGEN%20au/other/rulings/vicsro/VICSROLT%20au/other/rulings/vicsro/VICSROLTA%20au/other/rulings/vicsro/VICSROPT%20au/other/rulings/vicsro/VICSROPTA%20au/other/rulings/vicsro/VICSROSD%20au/other/rulings/vicsro/VICSROTAA) [1999] 3 VR 331. [↑](#footnote-ref-93)
94. *Chadwick v Department of Property and Services* (1987) 1 VAR 444 455-456. [*Seaman v Victorian Legal Aid* [2008] VCAT 589](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2008/589.html) at [32]. *Re Coburg Brunswick Community Legal and Financial Counselling Centre and Department of Justice* (1999) 15 VAR 208. [↑](#footnote-ref-94)
95. The documents were also claimed to be exempt under section 33 (unreasonable disclosure of a person’s personal affairs). [↑](#footnote-ref-95)
96. [*Victorian Civil and Administrative Tribunal Act 1998* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/victorian-civil-and-administrative-tribunal-act-1998/135), section 148(1). [↑](#footnote-ref-96)
97. [*Administrative Law Act 1978* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/administrative-law-act-1978/054), section 3; Supreme Court of Victoria, *How the Court Works*, Trial Division (viewed on 4 August 2023) <https://www.supremecourt.vic.gov.au/about-the-court/how-the-court-works>. [↑](#footnote-ref-97)
98. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 54. [↑](#footnote-ref-98)
99. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 51(2). [↑](#footnote-ref-99)
100. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 51(2). [↑](#footnote-ref-100)
101. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 51(1) and section 52(1A). [↑](#footnote-ref-101)
102. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 51(1) and section 52(1A). [↑](#footnote-ref-102)
103. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(1)(e). [↑](#footnote-ref-103)
104. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 52(1). [↑](#footnote-ref-104)
105. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(1)(g). [↑](#footnote-ref-105)
106. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 52(1). [↑](#footnote-ref-106)
107. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(2); see Part II for more information. [↑](#footnote-ref-107)
108. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 52(2). [↑](#footnote-ref-108)
109. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(3). [↑](#footnote-ref-109)
110. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), sections 52(3) and 52(3AC). [↑](#footnote-ref-110)
111. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(3AB). [↑](#footnote-ref-111)
112. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), sections 52(3) and 52(3AC). [↑](#footnote-ref-112)
113. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(3A). [↑](#footnote-ref-113)
114. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), sections 52(3) and 52(3AC). [↑](#footnote-ref-114)
115. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), sections 50(1)(ea) and 50(3B). [↑](#footnote-ref-115)
116. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 52(4). [↑](#footnote-ref-116)
117. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(1)(b). [↑](#footnote-ref-117)
118. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), sections 52(4) and 52(6). [↑](#footnote-ref-118)
119. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(1)(c). [↑](#footnote-ref-119)
120. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 52(5). [↑](#footnote-ref-120)
121. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(1)(d). [↑](#footnote-ref-121)
122. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 52(7). [↑](#footnote-ref-122)
123. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(3C). [↑](#footnote-ref-123)
124. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 52(8). [↑](#footnote-ref-124)
125. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(3D). [↑](#footnote-ref-125)
126. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 52(9). [↑](#footnote-ref-126)
127. See [OVIC website](https://ovic.vic.gov.au/freedom-of-information/for-the-public/apply-for-a-review-at-vcat/). [↑](#footnote-ref-127)
128. *Borthwick v University of Melbourne* (1985) 1 VAR 33; *Burns v Victorian WorkCover Authority* [[2003] VCAT 958](https://www.westlaw.com.au/maf/wlau/app/document?docguid=Ie7238ae031c611e5960feb5a5b726e12&&src=doc&hitguid=I691025b19d5d11e088a4c4b2eb8a5af1&snippets=true&startChunk=1&endChunk=1&isTocNav=true&tocDs=AUNZ_AU_LEGCOMM_TOC#anchor_I691025b19d5d11e088a4c4b2eb8a5af1). [↑](#footnote-ref-128)
129. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 53(5). [↑](#footnote-ref-129)
130. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 53(6). [↑](#footnote-ref-130)
131. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), sections 53(1) and 53(2). [↑](#footnote-ref-131)
132. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 21(1). [↑](#footnote-ref-132)
133. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 43. [↑](#footnote-ref-133)
134. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 12(2). [↑](#footnote-ref-134)
135. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 53(6). [↑](#footnote-ref-135)
136. See section 50 for the grounds on which a person may seek review at VCAT. See also [*McLeod v Police (Vic)*](https://www.westlaw.com.au/maf/wlau/app/document?docguid=I56a928f16dab11e5b7bcd632878d2485&&src=doc&hitguid=I60810050236a11e4b8c8d6764bae49d7&snippets=true&startChunk=1&endChunk=1&isTocNav=true&tocDs=AUNZ_AU_LEGCOMM_TOC#anchor_I60810050236a11e4b8c8d6764bae49d7)[[2013] VCAT 1912](https://www.westlaw.com.au/maf/wlau/app/document?docguid=Iff0c3a416e3d11e5b7bcd632878d2485&&src=doc&hitguid=I60810052236a11e4b8c8d6764bae49d7&snippets=true&startChunk=1&endChunk=1&isTocNav=true&tocDs=AUNZ_AU_LEGCOMM_TOC#anchor_I60810052236a11e4b8c8d6764bae49d7) [16]. [↑](#footnote-ref-136)
137. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50. [↑](#footnote-ref-137)
138. *Borthwick v University of Melbourne* (1985) 1 VAR 33. [↑](#footnote-ref-138)
139. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 53(5). [↑](#footnote-ref-139)
140. [*Davis v Department of Health*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2021/1490.html?context=1;query=davis;mask_path=au/cases/vic/VCAT) (Review and Regulation) [2021] VCAT 1490 [69] [↑](#footnote-ref-140)
141. *Re Corrs Pavey Whiting and Byrne and Department of Health* (1987) 14 ALD 239, 240; [*Cashman & Partners v Department of Human Services & Health*](https://www.westlaw.com.au/maf/wlau/app/document?docguid=I3aef95bb9cf711e0a619d462427863b2&&src=doc&hitguid=Ie812e0339ca611e088a4c4b2eb8a5af1&snippets=true&startChunk=1&endChunk=1&isTocNav=true&tocDs=AUNZ_AU_LEGCOMM_TOC#anchor_Ie812e0339ca611e088a4c4b2eb8a5af1)[(1995) 61 FCR 301](https://www.westlaw.com.au/maf/wlau/app/document?docguid=I3aef95b09cf711e0a619d462427863b2&&src=doc&hitguid=Ie812df549ca611e088a4c4b2eb8a5af1&snippets=true&startChunk=1&endChunk=1&isTocNav=true&tocDs=AUNZ_AU_LEGCOMM_TOC#anchor_Ie812df549ca611e088a4c4b2eb8a5af1), 30; *Davis v Department of Premier and Cabinet* (Review and Regulation) [2022] VCAT 254. [↑](#footnote-ref-141)
142. *Davis v Department of Premier and Cabinet* (Review and Regulation) [2022] VCAT 254. [↑](#footnote-ref-142)
143. [*Davis v Department of Health*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2021/1490.html?context=1;query=davis;mask_path=au/cases/vic/VCAT) (Review and Regulation) [2021] VCAT 1490. [↑](#footnote-ref-143)
144. [↑](#footnote-ref-144)
145. *Myers v Victoria Police* (Review and Regulation) [2022] VCAT 749. [↑](#footnote-ref-145)
146. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 53(5A). [↑](#footnote-ref-146)
147. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 50(5A). [↑](#footnote-ref-147)
148. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 53AA(1). [↑](#footnote-ref-148)
149. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 53AA(2). [↑](#footnote-ref-149)
150. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 53AA(3). [↑](#footnote-ref-150)
151. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 53AA(4). [↑](#footnote-ref-151)
152. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 53AA(5). [↑](#footnote-ref-152)
153. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 53AA(6). [↑](#footnote-ref-153)
154. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 53AA(7). [↑](#footnote-ref-154)
155. [Second reading speech](https://hansard.parliament.vic.gov.au/?IW_INDEX=Hansard91-94-NoCommon&IW_FIELD_TEXT=SpeechIdKey%20CONTAINS%20(6May1999-1666-15766)%20AND%20OrderId%20CONTAINS%20(1890120)&LDMS=Y), Freedom of Information (Amendment) Bill 1999, Wade. [↑](#footnote-ref-155)
156. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 53A(1). [↑](#footnote-ref-156)
157. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 53A(2). [↑](#footnote-ref-157)
158. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 53A(3). [↑](#footnote-ref-158)
159. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 53A(4). [↑](#footnote-ref-159)
160. *Schubert and Department of Premier and Cabinet* (2001) 19 VAR 35 [45]. [↑](#footnote-ref-160)
161. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 54(a). [↑](#footnote-ref-161)
162. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 54(b). [↑](#footnote-ref-162)
163. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 51(2). [↑](#footnote-ref-163)
164. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 51(1). [↑](#footnote-ref-164)
165. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 51(2). [↑](#footnote-ref-165)
166. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 55(2). [↑](#footnote-ref-166)
167. [*Department of Health and Human Services v Herald and Weekly Times Pty Ltd*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2015/291.html?context=1;query=Department%20of%20Health%20and%20Human%20Services%20v%20Herald%20and%20Weekly%20Times%20Pty%20Ltd%20;mask_path=au/cases/vic/VSC%20au/cases/vic/VicSC%20au/cases/vic/VSCA%20au/cases/vic/VicCorC%20au/cases/vic/VCC%20au/cases/vic/VMC%20au/cases/vic/VicRp%20au/cases/vic/VicLawRp%20au/cases/vic/VicLawTLegO%20au/cases/vic/VicWABWRp%20au/cases/vic/VicWWABRp%20au/cases/vic/VicWWRp%20au/cases/vic/VicAATRp%20au/cases/vic/VBAB%20au/cases/vic/VDPB%20au/cases/vic/VHerCl%20au/cases/vic/VMPB%20au/cases/vic/VMPBPSP%20au/cases/vic/VPrivCmr%20au/cases/vic/VPYRB%20au/cases/vic/VicPABRp%20au/cases/vic/PPV%20au/cases/vic/VPSRB%20au/cases/vic/VCAT%20au/cases/vic/aat%20au/cases/vic/VADT%20au/cases/vic/VCGLR%20au/cases/vic/VDBT%20au/cases/vic/VICmr%20au/cases/vic/VLSC%20au/cases/vic/VLPT%20au/cases/vic/VMHRB%20au/cases/vic/VMHT%20au/cases/vic/VicPRp%20au/cases/vic/VRAT%20au/legis/vic/consol_act%20au/legis/vic/num_act%20au/legis/vic/hist_act%20au/legis/vic/reprint_act%20au/legis/vic/anglican%20au/legis/vic/repealed_act%20au/legis/vic/consol_reg%20au/legis/vic/consol_reg%20au/legis/vic/num_reg%20au/legis/vic/reprint_reg%20au/legis/vic/repealed_reg%20au/legis/vic/bill%20au/legis/vic/bill_em%20au/other/VicBillsRR%20au/other/vic_gazette%20au/other/VicOmbPRp%20au/other/VicSARCAD%20au/other/rulings/vicsro/VICSROBF%20au/other/rulings/vicsro/VICSRODT%20au/other/rulings/vicsro/VICSRODA%20au/other/rulings/vicsro/VICSROFHOG%20au/other/rulings/vicsro/VICSROFID%20au/other/rulings/vicsro/VICSROGEN%20au/other/rulings/vicsro/VICSROLT%20au/other/rulings/vicsro/VICSROLTA%20au/other/rulings/vicsro/VICSROPT%20au/other/rulings/vicsro/VICSROPTA%20au/other/rulings/vicsro/VICSROSD%20au/other/rulings/vicsro/VICSROTAA) [2015] VCAT 291 [9]. [↑](#footnote-ref-167)
168. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 55(2). [↑](#footnote-ref-168)
169. *Mawkes v Department of Human Services* [2001] VCAT 1758. [↑](#footnote-ref-169)
170. *Penhalluriack v Department of Labour and Industry*(unreported, County Court, Vic, Lazarus J, 19 December 1983) 56. [↑](#footnote-ref-170)
171. [*Thorne v Victoria Police*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/1998/499.html?context=1;query=Thorne%20v%20Victoria%20Police%20;mask_path=au/cases/vic/VSC%20au/cases/vic/VicSC%20au/cases/vic/VSCA%20au/cases/vic/VicCorC%20au/cases/vic/VCC%20au/cases/vic/VMC%20au/cases/vic/VicRp%20au/cases/vic/VicLawRp%20au/cases/vic/VicLawTLegO%20au/cases/vic/VicWABWRp%20au/cases/vic/VicWWABRp%20au/cases/vic/VicWWRp%20au/cases/vic/VicAATRp%20au/cases/vic/VBAB%20au/cases/vic/VDPB%20au/cases/vic/VHerCl%20au/cases/vic/VMPB%20au/cases/vic/VMPBPSP%20au/cases/vic/VPrivCmr%20au/cases/vic/VPYRB%20au/cases/vic/VicPABRp%20au/cases/vic/PPV%20au/cases/vic/VPSRB%20au/cases/vic/VCAT%20au/cases/vic/aat%20au/cases/vic/VADT%20au/cases/vic/VCGLR%20au/cases/vic/VDBT%20au/cases/vic/VICmr%20au/cases/vic/VLSC%20au/cases/vic/VLPT%20au/cases/vic/VMHRB%20au/cases/vic/VMHT%20au/cases/vic/VicPRp%20au/cases/vic/VRAT%20au/legis/vic/consol_act%20au/legis/vic/num_act%20au/legis/vic/hist_act%20au/legis/vic/reprint_act%20au/legis/vic/anglican%20au/legis/vic/repealed_act%20au/legis/vic/consol_reg%20au/legis/vic/consol_reg%20au/legis/vic/num_reg%20au/legis/vic/reprint_reg%20au/legis/vic/repealed_reg%20au/legis/vic/bill%20au/legis/vic/bill_em%20au/other/VicBillsRR%20au/other/vic_gazette%20au/other/VicOmbPRp%20au/other/VicSARCAD%20au/other/rulings/vicsro/VICSROBF%20au/other/rulings/vicsro/VICSRODT%20au/other/rulings/vicsro/VICSRODA%20au/other/rulings/vicsro/VICSROFHOG%20au/other/rulings/vicsro/VICSROFID%20au/other/rulings/vicsro/VICSROGEN%20au/other/rulings/vicsro/VICSROLT%20au/other/rulings/vicsro/VICSROLTA%20au/other/rulings/vicsro/VICSROPT%20au/other/rulings/vicsro/VICSROPTA%20au/other/rulings/vicsro/VICSROSD%20au/other/rulings/vicsro/VICSROTAA)(1998) 13 VAR 324. [↑](#footnote-ref-171)
172. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 56(2). [↑](#footnote-ref-172)
173. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 56(2). [↑](#footnote-ref-173)
174. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 56(2). [↑](#footnote-ref-174)
175. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 56(3). [↑](#footnote-ref-175)
176. Freedom of Information Act 1982 (Vic) section 56(4). [↑](#footnote-ref-176)
177. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 56(3). An Australian lawyer is a person who has been admitted to practice as a lawyer in Victoria or another Australian jurisdiction (see section 6 of the *Legal Profession Uniform Law Application Act 2014*). [↑](#footnote-ref-177)
178. *Stewart v Department of Tourism, Sport and the Commonwealth Games* (2003) 19 VAR 363; [2003] VCAT 45 [14]. [↑](#footnote-ref-178)
179. *Stewart v Department of Tourism, Sport and the Commonwealth Games* (2003) 19 VAR 363; [2003] VCAT 45 [14]. [↑](#footnote-ref-179)
180. *Stewart v Department of Tourism, Sport and the Commonwealth Games* (2003) 19 VAR 363; [2003] VCAT 45 [14]; [*Environment Victoria Inc v Department of Primary Industries*](https://www.westlaw.com.au/maf/wlau/app/document?docguid=I257ae3933bdd11e586fbf6935eab92ba&&src=doc&hitguid=I13f6fc40feb711e298cba8c7e929f634&snippets=true&startChunk=1&endChunk=1&isTocNav=true&tocDs=AUNZ_AU_LEGCOMM_TOC#anchor_I13f6fc40feb711e298cba8c7e929f634) [2013] VCAT 39. [↑](#footnote-ref-180)
181. *Australian Solicitors Conduct Rules*, r 3. [↑](#footnote-ref-181)
182. *Australian Solicitors Conduct Rules*, r 6. [↑](#footnote-ref-182)
183. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 56(5). [↑](#footnote-ref-183)
184. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 56(5A). [↑](#footnote-ref-184)
185. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 56(6). [↑](#footnote-ref-185)
186. [*Smeaton v Victorian WorkCover Authority*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2013/1128.html?context=1;query=smeaton%20%20v%20victorian%20workcover%20authority;mask_path=au/cases/vic/VSC+au/cases/vic/VicSC+au/cases/vic/VSCA+au/cases/vic/VicCorC+au/cases/vic/VCC+au/cases/vic/VMC+au/cases/vic/VicRp+au/cases/vic/VicLawRp+au/cases/vic/VicLawTLegO+au/cases/vic/VicWABWRp+au/cases/vic/VicWWABRp+au/cases/vic/VicWWRp+au/cases/vic/VicAATRp+au/cases/vic/VBAB+au/cases/vic/VDPB+au/cases/vic/VHerCl+au/cases/vic/VMPB+au/cases/vic/VMPBPSP+au/cases/vic/VPrivCmr+au/cases/vic/VPYRB+au/cases/vic/VicPABRp+au/cases/vic/PPV+au/cases/vic/VPSRB+au/cases/vic/VCAT+au/cases/vic/aat+au/cases/vic/VADT+au/cases/vic/VCGLR+au/cases/vic/VDBT+au/cases/vic/VICmr+au/cases/vic/VLSC+au/cases/vic/VLPT+au/cases/vic/VMHRB+au/cases/vic/VMHT+au/cases/vic/VicPRp+au/cases/vic/VRAT+au/legis/vic/consol_act+au/legis/vic/num_act+au/legis/vic/hist_act+au/legis/vic/reprint_act+au/legis/vic/anglican+au/legis/vic/repealed_act+au/legis/vic/consol_reg+au/legis/vic/consol_reg+au/legis/vic/num_reg+au/legis/vic/reprint_reg+au/legis/vic/repealed_reg+au/legis/vic/bill+au/legis/vic/bill_em+au/other/VicBillsRR+au/other/vic_gazette+au/other/VicOmbPRp+au/other/VicSARCAD+au/other/rulings/vicsro/VICSROBF+au/other/rulings/vicsro/VICSRODT+au/other/rulings/vicsro/VICSRODA+au/other/rulings/vicsro/VICSROFHOG+au/other/rulings/vicsro/VICSROFID+au/other/rulings/vicsro/VICSROGEN+au/other/rulings/vicsro/VICSROLT+au/other/rulings/vicsro/VICSROLTA+au/other/rulings/vicsro/VICSROPT+au/other/rulings/vicsro/VICSROPTA+au/other/rulings/vicsro/VICSROSD+au/other/rulings/vicsro/VICSROTAA) [2013] VCAT 1433. [↑](#footnote-ref-186)
187. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 59(1). [↑](#footnote-ref-187)
188. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 59(1). [↑](#footnote-ref-188)
189. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 61(1). [↑](#footnote-ref-189)
190. [*Freedom of Information Act 1982* (Vic)](https://www.legislation.vic.gov.au/in-force/acts/freedom-information-act-1982/111), section 61(2). [↑](#footnote-ref-190)
191. *Chopra v Department of Education and Training* (Review and Regulation) [2019] VCAT 1941. [↑](#footnote-ref-191)
192. *Roberts v Southern Rural Water* (unreported, VCAT, Preuss SM, 20 April 2000). [↑](#footnote-ref-192)
193. [↑](#footnote-ref-193)
194. Birnbauer v Department of Industry, Technology & Resources (Nos 1, 2 and 3) (1986) 1 VAR 279, 292–294. [↑](#footnote-ref-194)
195. Birnbauer v Department of Industry, Technology & Resources (Nos 1, 2 and 3). [↑](#footnote-ref-195)