**Freedom of Information Guidelines**

**Part IV – Exempt documents
Section 29 – Documents containing matter communicated by any other State**

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

**Section 29 – Documents containing matter communicated by any other State**

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

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**Section 29 – Documents containing matter communicated by any other State**

Extract of legislation

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| **29** | **Documents containing matter communicated by any other State** |
|  | (1) | A document is an exempt document if disclosure under this Act would be contrary to the public interest and disclosure— |
|  |  | (a) | would prejudice relations between the State and the Commonwealth or any other State or Territory; or |
|  |  | (b) | would divulge any information or matter communicated in confidence by or on behalf of the government of another country or of the Commonwealth or of any other State or Territory to the government of the State or Territory or a person receiving a communication on behalf of that government. |
|  | (2) | In deciding whether a document is an exempt document under subsection (1), an agency or Minister, if practicable, must— |
|  |  | (a) | notify any of the following that are relevant that the agency or Minister has received a request for access to the document— |
|  |  |  | (i) | another agency or Minister;  |
|  |  |  | (ii) | an agency of another country or the Commonwealth or another State or a Territory |
|  |  |  | (iii) | an authority of another country or the Commonwealth or another State or a Territory; and |
|  |  | (b) | seek the view of that agency, authority or Minister as to whether the document should be disclosed. |

Guidelines

Purpose and scope of section 29

* 1. Under section 29(1), a document is exempt if disclosure:
* would be contrary to the public interest; and
* disclosure would either:
	+ prejudice relations between the State of Victoria and the Commonwealth or between the State of Victoria and any other State or Territory (section 29(1)(a)); or
	+ divulge any information or matter communicated in confidence by or on behalf of the government of another country, or the Commonwealth, or any other State or Territory to the government of the State of Victoria or a person receiving a communication on behalf of the State of Victoria (section 29(1)(b)).
	1. This exemption is hard to establish. Both subsections of the exemption require the agency or Minister to establish that disclosure of the document would be contrary to the public interest. If this hurdle is overcome, the agency or Minister must also establish that disclosure would prejudice relations with another government or divulge information communicated in confidence by another government.
	2. If consultation with the other affected government/s is practicable, an agency or Minister must do so under section 29(2) before applying the exemption.
	3. Section 29 must be read consistently with the objects of the Act in [section 3](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-3/), which is to extend as far as possible the right of the community to access government held information. This right is only limited by exemptions necessary for the protection of essential public interests and private and business affairs.[[1]](#footnote-1) If it is unclear whether section 29 applies to a document, the exemption should be interpreted narrowly, in a way that favours access to information.[[2]](#footnote-2)

Discretion to disclose exempt documents

* 1. The decision to exempt a document under section 29 is a discretionary power.[[3]](#footnote-3)
	2. An agency or Minister can choose to provide access to information that would otherwise be exempt under section 29, where it is proper to do so and where the agency is not legally prevented from providing access.

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| For more information on providing access to information outside of the Act, see [section 16 – Access to documents apart from Act](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-16/). |

Disclosure would be contrary to the public interest

* 1. To be exempt, the agency or Minister must establish that the document’s disclosure would be contrary to the public interest.
	2. “Would” requires certainty that an event will occur, rather than a mere possibility or likelihood.[[4]](#footnote-4)
	3. An agency or Minister’s decision must be made consistently with the object of the Act, which is to release information as far as possible, and to only use exemptions to protect essential public interests. Consequently, the balancing of public interest considerations does not begin from empty scales or a blank page. Instead, the Act requires the balancing to occur from and within a default position that the document or information should be released.[[5]](#footnote-5)

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| For more information about the object of the Act, read [section 3](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-3/) of the FOI Guidelines. |

* 1. An agency or Minister should, in its decision notice under section 27, explicitly state the relevant public interest considerations on which the decision is based. This requires the agency or Minister to carefully consider, on a case-by-case basis, the relevant public interest considerations for and against disclosure. The decision notice should explain how they apply to the specific documents or information in the context of the requested document and the potential consequences of its disclosure, referring to the facts, evidence and reasons for the agency or Minister’s decision.

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| For more information on writing a decision, read [section 27](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-27/) of the FOI Guidelines. |

* 1. For a document to be exempt under section 29, there must be clear evidence supporting the public interest consideration relied on by the agency.[[6]](#footnote-6)

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| **Example** An agency asserts that a document’s disclosure would be contrary to the public interest because it contains information provided in confidence by another State, and its release would inhibit that other State from providing similar information to the State of Victoria in future. However, there is no evidence from the other State as to whether disclosure of the document would have this effect.The exemption would not be made out, without clear evidence that the other State would, in fact, be reluctant to provide information of the same kind in future if the document were released.  |

* 1. Public interest considerations are matters that may be relevant to determining whether disclosure would be contrary to the public interest. They are not a fixed set of criteria.
	2. The Victorian Civil and Administrative Tribunal has found that disclosure of a document would be contrary to the public interest under section 29 where:
* it would impede the free and candid exchange of information between State, Territory or Commonwealth departments in relation to child protection[[7]](#footnote-7) and family violence matters.[[8]](#footnote-8)
* it would impede the frank and confidential communication of intelligence between law enforcement agencies in different jurisdictions in relation to law enforcement matters. [[9]](#footnote-9)

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| **Example**Information sent in confidence by Interpol to Victoria Police referring to named individuals and relaying information concerning those individuals, received from an overseas law enforcement organisation.[[10]](#footnote-10) |

Public interest considerations – against disclosure

* 1. Public interest considerations that may indicate disclosure of a document would be contrary to the public interest include the importance of:[[11]](#footnote-11)
* protecting uninhibited exchanges between the governments of Australia on questions of policy and resource allocation;
* encouraging cooperative federalism within Australia;
* protecting processes that contribute to high quality policy development by the governments of Australia;
* ensuring the public have access to accurate and reliable information that gives a true indication of the basis for government policy;
* protecting against unnecessary confusion and debate by avoiding the premature release of documents that represent a stage in the decision-making process;[[12]](#footnote-12)
* ensuring that the Victorian government remains able to meet private undertakings’ legitimate expectations of confidentiality;
* ensuring that private undertakings remain willing to share information with the State.

Public interest considerations - in favour of disclosure

* 1. Public interest considerations that may indicate disclosure would not be contrary to the public interest include:[[13]](#footnote-13)
* an understanding that the applicant and members of the public may be capable of understanding that a document was produced at a particular point in time and may not represent the government’s final views; and
* the public interest in the community being aware of the information in the documents:
	+ so that they can make decisions about their own safety based on accurate information;
	+ to create greater transparency about the reasons for decisions made by government that have a significant impact on the community; and
	+ to assist members of the public to hold government to account for its decisions.
	1. If a document only sets out part of the reasons for a course of action or decision, or is overtaken by events, and the agency is concerned release of the document would be misleading to the public, agencies should consider releasing the document, accompanied by an explanation that places the document in context and removes the risk of confusion.

Case examples

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| ***[‘DY2’ and Department of Health](https://ovic.vic.gov.au/decision/dy2-and-department-of-health-freedom-of-information-2022-vicmr-11-18-march-2022/)* [[2022] VICmr 11](https://ovic.vic.gov.au/decision/dy2-and-department-of-health-freedom-of-information-2022-vicmr-11-18-march-2022/)** **Background**The applicant requested access to certain documents created by or provided by the Chief Health Officer regarding the return of international students to Victoria during a specified date range.The agency claimed the exemption in sections 29(1)(a) and (b) over one page of guidelines prepared by the Australian Health Protection Principal Committee (**AHPPC**). The AHPPC is a decision-making committee for health emergencies made up of state and territory Chief Health Officers and chaired by the Australian Chief Medical Officer. AHPPC provides advice and recommendations to the Australian Ministerial Advisory Council and the National Cabinet. AHPPC was one of the primary bodies advising the National Cabinet on Australia’s response to the COVID-19 pandemic. **Issue:**Would disclosure of the page in the guidelines be contrary to the public interest?**Public interest factors considered**The Information Commissioner considered the following public interest factors against disclosure, as accepted by the VCAT in [*Millar v Department of Premier and Cabinet*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2011/1230.html):* protecting uninhibited exchanges between the governments of Australia;
* encouraging cooperative Federalism within Australia;
* protecting processes that contribute to high quality policy development by the governments of Australia;
* ensuring the public have access to accurate and reliable information that gives a true indication of the basis for government policy; and
* protecting against unnecessary confusion and debate by avoiding the premature release of documents that represent a stage in the decision—making process.

**Decision**The Information Commissioner was not satisfied disclosure would be contrary to the public interest because:* The document was watermarked ‘draft’ and the version history was incomplete. The Applicant and members of the public are capable of understanding that the document was produced at a particular point in time and may not represent the final views of the AHPPC.
* The page did not contain substantive information or detail about the matters discussed in the document.
* There is a public interest in ensuring public sector transparency and accountability in relation to how the agency communicated with the Commonwealth regarding responses to the COVID-19 pandemic.
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| [*Millar v Department of Premier and Cabinet* [2011] VCAT 1230](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2011/1230.html) |
| **Background**[[14]](#footnote-14)The applicant requested access to communications between the Premier of Victoria and/or his office and the Prime Minister of Australia and/or his office, relating to a Carbon Pollution Reduction Scheme (**CPRS**) proposed to be introduced by the former Commonwealth Labor government in late 2009.The Department claimed the section 29(1)(a) exemption over 17 documents. The documents were communications from the State of Victoria to the Commonwealth about the transition from Victoria’s emissions reduction scheme to the proposed Commonwealth scheme. The documents contained information directly relating to the implications for Victoria of that transition.At the same time as Victoria’s communications and dialogue with the Commonwealth, the Commonwealth was also receiving submissions and engaging in dialogue with the other States about the CPRS.**Public interest grounds relied on by the Department**:* protecting uninhibited exchanges between the governments of Australia on questions of policy and resource allocation;
* encouraging cooperative Federalism within Australia;
* protecting processes that contribute to high quality policy development by the governments of Australia;
* ensuring the public have access to accurate and reliable information that gives a true indication of the basis for government policy;
* protecting against unnecessary confusion and debate by avoiding the premature release of documents that represent a stage in the decision-making process;
* ensuring that the Victorian government remains able to meet private undertakings’ legitimate expectations of confidentiality;
* ensuring that private undertakings remain willing to share information with the State; and
* protecting the State of Victoria’s negotiating position in relation to present and future proposals concerning climate change.

**Applicant’s public interest grounds**:* The public interest grounds in favour of disclosing the document are at paragraph [29] of the judgement. The applicant’s arguments centred around the public interest in knowing what Commonwealth and State governments are doing about climate change.

**Decision**[[15]](#footnote-15)The Victorian Civil and Administrative Tribunal accepted the respondent’s public interest grounds and summarised them as a public interest in protecting the ability of the State of Victoria to have a sufficient, appropriate and resource efficient mode of access to the Commonwealth, to lobby and perform one-on-one negotiations relating to the detail of relevant federal policy.[[16]](#footnote-16)Release of the documents would harm the public interest under one or more of the grounds set out by the respondent.The public interest in the subject of climate change and the government’s attempts to address it did not outweigh the need for government to be able to correspond with the Commonwealth in a confidential manner when policy is being developed, particularly in a federal system where one State’s interest may be pitted against another State’s interest.There is a greater public interest in ensuring the Victorian government can properly put its case to the Commonwealth in negotiating such policy. Government leaders need to be able to communicate in writing and not be restricted to verbal communications. In such matters, written communications need to be kept confidential. The public interest in ensuring that politicians can negotiate and develop policy by a frank exchange of views and information on a confidential basis outweighs the public interest in knowing about the government’s attempts to address climate change.  |
| [***‘DH3’ and Department of Health* [2021] VICmr 193**](https://ovic.vic.gov.au/decision/dh3-and-department-of-health-freedom-of-information-2021-vicmr-193-25-june-2021/)**Background**The applicant requested access to Australian Health Protection Principal Committee (**AHPPC**) papers sent to or from the Chief Health Officer between 1 May and 31 July 2020 concerning contact tracing, hotel quarantine and other matters relating to the government’s response to the COVID-19 pandemic.The agency refused access under section 25A(5) on the basis that if any documents did exist, they would all be exempt under sections 29(1)(a) and (b). **Issue**Would disclosure of the requested documents be contrary to the public interest?**Decision**The Information Commissioner was not satisfied disclosure would be contrary to the public interest for the following reasons:* disclosure of the documents may serve the public interest by promoting public sector transparency and accountability in relation to how the Department communicated with the Commonwealth regarding the COVID-19 pandemic;
* The applicant, who is a member of the media, and members of the public, are capable of understanding that particular documents are produced at a particular point in time and may not represent the final views of the agency, or that of AHPPC;
* There may be a strong public interest in the disclosure of the requested information for the following reasons:
	+ so that members of the public can make decisions about their own safety based on accurate information;
	+ to create greater transparency about the reasons for decisions made by government that in current circumstances have a significant impact on the community; and
	+ to assist members of the public to hold government to account for its decisions about the management of COVID-19 and related matters.
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| [***‘DU2’ and Department of Health* [2021] VICmr 309**](https://ovic.vic.gov.au/decision/du2-and-department-of-health-freedom-of-information-2021-vicmr-309-15-october-2021/)**Background**The applicant requested access to briefs and attachments provided to the Minister for Health or the Chief Health Officer supporting the Public Health Orders that came into effect on 12 February 2021 instituting a 5 day lockdown.On review, the agency relied on sections 29(1)(a) and (b) to refuse access to an attachment to a briefing. **Issue**Would disclosure of the requested documents be contrary to the public interest?**Decision**The Public Access Deputy Commissioner was not satisfied disclosure would be contrary to the public interest for the following reasons:* the document contains a substantial amount of publicly available information;
* the document contains information that is largely factual;
* the document does not appear to contain any individual contributions of any State or Territory, or the Commonwealth government provided in confidence to the Victorian government;
* disclosure of the document would not have a negative impact on future information sharing and communications between State, Territory and the Commonwealth governments;
* the document appears to be in final form and there is no information to indicate it does not provide an accurate account of the reasons for the Victorian government’s decisions in respect of public health directions; and
* the document contains important information about the way the Victorian government responded to COVID-19, including the rationale for public health orders. There is significant public interest in providing members of the community the ability to participate in such processes and to hold governments to account for the decisions it has made.
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Would prejudice relations – 29(1)(a)

* 1. To be exempt under section 29(1)(a), the agency or Minister must establish that disclosure of the document would prejudice relations:
		+ between the State of Victoria and the Commonwealth; or
		+ between the State of Victoria and any other State or Territory.

Prejudice

* 1. “Prejudice” means “to the detriment of”, or to produce a “loss of faith, to turn bad, or the like” to “sour inter-governmental relationships”.[[17]](#footnote-17)
	2. The word “prejudice” also appears in the [section 31](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-31/) exemptions.
	3. The agency or Minister will need to produce evidence of prejudice. For example, evidence to show that an agency or Minister would be reluctant to provide information of the same kind in future if the document were released and the specific harm this would cause to inter-governmental relations.[[18]](#footnote-18)

Relations

* 1. Relations means “what one person or thing has to do with another”.[[19]](#footnote-19)

Case examples

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| In [*Patrick and Secretary, Department of Prime Minister and Cabinet* [2021] AATA 2719](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/AATA/2021/2719.html)*,* Justice White of the Administrative Appeals Tribunal, considered the equivalent provision in the Commonwealth FOI Act and concluded that disclosure of the minutes of a National Cabinet meeting would not cause damage to relations between the Commonwealth and a State. Relevant to Justice White’s decision was the lack of evidence that any participant in the National Cabinet, acting rationally, would be hesitant to contribute to debates at future meeting of the National Cabinet if the minutes of the meeting were disclosed.[[20]](#footnote-20) |

* 1. In contrast, disclosure may prejudice relations between the Victorian government and the Commonwealth government and between the State of Victoria and other States where the disclosure:
* would publicly reveal negotiations between the Victorian government and the Commonwealth government on a matter where there is competition between the States as to Commonwealth funding and resource allocation; and
* the negotiations are at a premature stage where no final decision has been reached.[[21]](#footnote-21)

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| **Examples**[***Clark v Department of Treasury and Finance* [2002] VCAT 1040**](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2002/1040.html) |
| VCAT determined that disclosure of the State of Victoria’s secret position or secret advice in relation to its preferred position if the Commonwealth government sought to change the Goods and Services Tax: * would prejudice relations between the State of Victoria and the Commonwealth, in that it would be detrimental to future negotiations between the State of Victoria and the Commonwealth, by compromising the State of Victoria’s ability to negotiate effectively; and
* would prejudice relations between the State of Victoria and the other States it is competing with, in that it would be detrimental to its position in relation to its competitors in future negotiations, and the attitudes of the other States towards the State of Victoria may turn sour if they became aware of a position adopted by the State of Victoria in relation to distribution of “slices of the same pie”.[[22]](#footnote-22)
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| [***Millar v Department of Premier and Cabinet* [2011] VCAT 1230**](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2011/1230.html) |
| **Background[[23]](#footnote-23)**The applicant requested access to communications between the Premier of Victoria and/or his office and the Prime Minister of Australia and/or his office, relating to a Carbon Pollution Reduction Scheme (**CPRS**) proposed to be introduced by a former Commonwealth Labor government in late 2009.The Department claimed the section 29(1)(a) exemption over 17 documents. The documents were communications from the State of Victoria to the Commonwealth about the transition from Victoria’s emissions reduction scheme to the proposed Commonwealth scheme. The documents contained information directly relating to the implications for Victoria of that transition.At the same time as Victoria’s communications and dialogue with the Commonwealth, the Commonwealth was also receiving submissions and engaging in dialogue with the other States about the CPRS.**Issue**Would disclosure of the communications prejudice relations between Victoria and the Commonwealth and/or between Victoria and other States and Territories?**Decision**VCAT accepted that release of otherwise confidential documents between the State of Victoria and the Commonwealth would prejudice relations between Victoria and the Commonwealth and Victoria and other States in that it:* would result in frank exchanges in the course of negotiations being revealed to the public prematurely;
* was liable to reduce the ability of Victoria to convey information to the Commonwealth and seek to be heard by it;
* could damage Victoria’s position in negotiating with the Commonwealth on future climate change policy that is yet to be determined; and
* would impact on Victoria’s relations with other States in a context where the states and territories were competing for resources and seeking to be accommodated in the development of climate change policy.
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Would divulge information communicated in confidence – 29(1)(b)

* 1. To be exempt under section 29(1)(b), the agency or Minister must establish that disclosure would divulge information communicated in confidence by another government to the State of Victoria.

Communicated from

* 1. The confidential communication must come from (by or on behalf of):
* the government of another country;
* the Commonwealth government; or
* a State or Territory government other than Victoria.

Communicated to

* 1. The recipient of the confidential communication must be the State of Victoria or a person receiving the communication on behalf of the State of Victoria.[[24]](#footnote-24)

Communicated in confidence

* 1. “Communicated in confidence” is a phrase that is also used in the [section 35](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-35/) exemption.
	2. The agency or Minister will need to produce evidence to prove the communication was made in confidence.

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| **Example**In [*Millar v Department of Premier and Cabinet* [2011] VCAT 1230](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2011/1230.html), VCAT held that part of an email chain sent from the Commonwealth to the State of Victoria was exempt under section 29(1)(b). The email was sent during negotiations relating to the implications for the State of Victoria of Commonwealth government climate change policy. VCAT held: * it did not matter that the email was not marked as being sent ‘in confidence’.
* a presumption of confidentiality arose because the email chain related to a policy in development.[[25]](#footnote-25)
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Consultation with third parties under section 29(2)

* 1. When considering whether to apply the exemption in section 29(1) to a document, an agency or Minister must:
* notify relevant third parties that the agency has received a request for the document; and
* obtain the third party’s views about whether the document or information should be disclosed.
	1. Identifying the relevant third parties will depend on the context and nature of the requested document. Relevant third parties may be another Victorian government agency or Minister, or an agency or authority of another country, the Commonwealth or another State or Territory.

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| **Example**A request is made to the Victorian Department of Premier and Cabinet (**DPC**) for access to an email sent from the Commonwealth Department of the Prime Minister and Cabinet (**PMC**) to DPC and the Victorian Department of Treasury and Finance (**DTF**). DPC considers the email was sent in confidence and that its disclosure would be contrary to the public interest under section 29(1).DPC should consult with both PMC and DTF to seek each agency’s views on whether the email should be disclosed. |

* 1. An agency or Minister is only required to notify and seek the views of a third party where it is practicable to do so.

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| For more information on whether consultation is practicable, see [section 33](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-33/) of the FOI Guidelines.  |

* 1. Consultation may occur in any manner or form. For example, by telephone, email, post, or a meeting.
	2. [Professional Standard 7.3](https://ovic.vic.gov.au/freedom-of-information/resources-for-agencies/professional-standards/#7-practicability-of-consulting-third-parties) requires a record of the consultation to be kept. This includes who was consulted, whether they consented or objected, and any reasons provided.
	3. When undertaking consultation, a third party should be made aware of the applicable exemption and what must be established for the exemption to apply. For the section 29 exemption, this means informing the third party that the agency or Minister must establish that:
* disclosure would be contrary to the public interest; and
* would prejudice relations between the State of Victoria and the Commonwealth or any other State or Territory; or
* would divulge information communicated in confidence by another government to the State of Victoria.
	1. Informing the third party of the elements of the exemption will enable the third party to provide an informed response and ensure their reasons are relevant, if they object to the document being released.
	2. There is no requirement to notify the third party of the agency or Minister’s decision on the request. However, an agency or Minister should consider whether to inform the third party of the outcome of the decision – whether it is to release or refuse access to the document under the Act.
	3. The third party does not have any review rights if they object to disclosure or disagree with a decision to release information.

More information

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| See [section 33](https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-33/) of the FOI Guidelines for more information about:* determining whether consultation is practicable
* how to conduct consultation
* privacy considerations
* keeping records of consultation under the Professional Standards
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1. [*Ryan v Department of Infrastructure*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2004/2346.html) [2004] VCAT 2346, [32]. [↑](#footnote-ref-1)
2. [*Hennessy v Minister Responsible for the Establishment of an Anti-Corruption Commission*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2013/822.html) [2013] VCAT 822, [21] and [*Environment Victoria Inc v Department of Primary Industries* [2013] VCAT 39](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2013/39.html#fnB4), [29], both referring to *Ryder v Booth* (1989) VR 869, 877. While these decisions do not deal with section 29, they refer to the principle set out in *Ryder v Booth* that because the FOI Act is remedial legislation, where ambiguity is encountered the rights given by the Act should be construed liberally and exceptions narrowly.  [↑](#footnote-ref-2)
3. [*Victorian Public Service Board v Wright*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1986/16.html) [1986] HCA 16, [3]. [↑](#footnote-ref-3)
4. [*‘DY2’ and Department of Health* [2022] VICmr 11](https://ovic.vic.gov.au/decision/dy2-and-department-of-health-freedom-of-information-2022-vicmr-11-18-march-2022/), [18]. See also, [*Victoria Police v Marke*](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSCA/2008/218.html) [2008] VSCA 218, [97] in the context of the word “would” in the section 33 exemption. [↑](#footnote-ref-4)
5. [*McKinnon v Department of Treasury* [2006] HCA 45](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2006/45.html), [19], in the context of the *Freedom of Information Act 1982* (Cth). [↑](#footnote-ref-5)
6. *Pescott v Department of Conservation and Environment* (1991) 5 VAR 54. [↑](#footnote-ref-6)
7. *O’Sullivan and Department of Health and Community Services (No 2)* (1995) 9 VAR 1. [↑](#footnote-ref-7)
8. [*Akers v Victoria Police* [2003] VCAT 398](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2003/398.html), [21]. [↑](#footnote-ref-8)
9. See *Nilsen v Victoria Police* (unreported, AAT of Vic, Megay DP, 15 January 1997). [↑](#footnote-ref-9)
10. *Nilsen v Victoria Police* (unreported, AAT of Vic, Megay DP, 15 January 1997). [↑](#footnote-ref-10)
11. These factors were submitted by the Respondent and accepted by VCAT in [*Millar v Department of Premier and Cabinet* [2011] VCAT 1230](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2011/1230.html)and considered by the Information Commissioner in [*‘DY2’ and Department of Health* [2022] VICmr 11](https://ovic.vic.gov.au/decision/dy2-and-department-of-health-freedom-of-information-2022-vicmr-11-18-march-2022/)*.* [↑](#footnote-ref-11)
12. See example [*Clark v Department of Treasury and Finance* [2002] VCAT 1040](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2002/1040.html). [↑](#footnote-ref-12)
13. See [*‘DY2’ and Department of Health* [2022] VICmr 11](https://ovic.vic.gov.au/decision/dy2-and-department-of-health-freedom-of-information-2022-vicmr-11-18-march-2022/); [*‘DH3’ and Department of Health* [2021] VICmr 193](https://ovic.vic.gov.au/decision/dh3-and-department-of-health-freedom-of-information-2021-vicmr-193-25-june-2021/)[; *‘DU2’ and Department of Health* [2021] VICmr 309](https://ovic.vic.gov.au/decision/du2-and-department-of-health-freedom-of-information-2021-vicmr-309-15-october-2021/). [↑](#footnote-ref-13)
14. See [*Millar v Department of Premier and Cabinet* [2011] VCAT 1230](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2011/1230.html), [4]-[22]. [↑](#footnote-ref-14)
15. [*Millar v Department of Premier and Cabinet* [2011] VCAT 1230](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2011/1230.html), [61]-[65]. [↑](#footnote-ref-15)
16. [*Millar v Department of Premier and Cabinet* [2011] VCAT 1230](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2011/1230.html), [63]. [↑](#footnote-ref-16)
17. [*Clark v Department of Treasury and Finance* [2002] VCAT 1040](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2002/1040.html), [23]-[27]. [↑](#footnote-ref-17)
18. *Pescott v Department of Conservation and Environment* (1991) 5 VAR 54. [↑](#footnote-ref-18)
19. [*Clark v Department of Treasury and Finance* [2002] VCAT 1040](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2002/1040.html), [24]. [↑](#footnote-ref-19)
20. [*Patrick and Secretary, Department of Prime Minister and Cabinet* [2021] AATA 2719](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/AATA/2021/2719.html), [267]-[268]. [↑](#footnote-ref-20)
21. See examples, [*Clark v Department of Treasury and Finance* [2002] VCAT 1040](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2002/1040.html); *Evans v Ministry for the Arts* (1986) 1 VAR 315, 323; [*Millar v Department of Premier and Cabinet* [2011] VCAT 1230](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2011/1230.html). [↑](#footnote-ref-21)
22. [*Clark v Department of Treasury and Finance* [2002] VCAT 1040](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2002/1040.html), [26]. [↑](#footnote-ref-22)
23. See [*Millar v Department of Premier and Cabinet* [2011] VCAT 1230](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2011/1230.html), [4]-[22]. [↑](#footnote-ref-23)
24. Commentators have expressed the view that the words “or Territory” (where second occurring) in section 29(1)(b) is a legislative drafting error, because the recipient of the information is the State of Victoria: see Emrys Nekvapil SC, Westlaw AU, *Victorian Administrative Law* (online at 6 November 2023) [FOI.29.120]. [↑](#footnote-ref-24)
25. [*Millar v Department of Premier and Cabinet* [2011] VCAT 1230](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2011/1230.html), [67]. [↑](#footnote-ref-25)