[Insert agency letterhead]

[Date]

Ref: [agency reference]

[Applicant name]

**By email: [insert email]**

Dear [Name]

**Notice of decision – request for documents under the *Freedom of Information Act 1982* (Vic)**

1. This letter contains my decision on behalf of [insert agency name] regarding your request for documents under the *Freedom of Information Act 1982* (Vic) (**FOI Act**).
2. I have decided to apply section 25A(1) of the FOI Act to refuse to grant access to documents without processing your request, because the work involved in processing it would substantially and unreasonably divert the resources of this agency from its other operations.
3. This letter explains why processing your request would substantially and unreasonably divert this agency’s resources, and outlines your right to seek review of this decision by the Information Commissioner.
4. In making my decision, I have had regard to the object of the FOI Act, which is to create a general right of access to information, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.

**Background**

[Use the below paragraph if the request is clear and valid from the outset, otherwise delete]

1. On [insert date] you requested:

[*Insert the terms of the request*]

[Use the two paragraphs below if clarification was required, otherwise delete]

1. On [insert date] you made a request. On [insert date] we advised your request was not valid under section 17(2) of the FOI Act because the terms of your request were not clear enough to enable us to reasonably identify documents relevant to your request.
2. After you clarified your request, we considered it to be valid under section 17 of the FOI Act. Your request sought access to:

[*Insert the terms of the clarified request*]

[Use the two paragraphs below if the application fee was not paid or evidence of hardship not provided, otherwise delete]

1. On [insert date] you made a request. On [insert date] we advised your request was not valid under section 17(2A) of the FOI Act, because you did not pay the application fee. We requested you to pay the application fee of $XX.XX or provide evidence that paying the application fee would cause you hardship.
2. On [insert date] you [paid the application fee **OR** we decided to reduce the application fee and you paid the reduced amount **OR** we decided to waive the application fee] and we considered your request valid.

Add contextual or other relevant information regarding the request where necessary. It may be useful to describe the context in which the document was created or what the request relates to generally. For example, ‘your request seeks access to various documents relating to your hospital admission on 3 May 2018’.

**Reasons for decision**

Under section 27(1)(a) of the FOI Act, an agency must state the findings on any material questions of fact, referring to the material on which those findings were based, and the reasons for the decision. Similarly, *Professional Standard 8.2* requires an agency to explain why each exception or exemption applies and address each limb of the exception or exemption.

***Section 25A(1) of the FOI Act***

1. An agency may refuse a request under section 25A(1) of the FOI Act if it is satisfied the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations.
2. Before an agency may refuse a request, it must notify the applicant of its intention to refuse and provide the applicant with a reasonable opportunity to consult in order to remove the ground for refusal.

*Notification and consultation*

1. On [insert date] I notified you of my intention to refuse your request on the basis that processing your request as it was currently framed would substantially and unreasonably divert the resources of this agency from its other operations.
2. I also invited you to consult with me with a view of sufficiently narrowing the scope of your request, and I provided some suggestions for how you may narrow your request.

[Use the two paragraphs below if the applicant consulted but did not sufficiently narrow the request, otherwise delete]

1. Between [insert date] and [insert date], we consulted on the scope of the request and you amended your request to seek access to:

[*Insert the terms of the amended request*]

1. As we discussed on [insert date], your amended request does not sufficiently narrow the scope of your request. I provided additional opportunities to consult, however you did not provide a further amended request. As such, on [insert date] I advised I would proceed to make a decision on your request on the basis of your amended request.

[Insert below paragraph if the applicant did not consult, otherwise delete]

[You declined to consult on your request **OR** I did not hear from you after I sent you the notice] and so I proceeded to make a decision on your original request.

*The diversion of our resources would be substantial*

1. Processing your request would be a substantial diversion of our resources because [explain why processing the applicant’s request would be a substantial diversion of resources].

Provide enough detail for the applicant to understand why processing the request would be a substantial diversion of resources. For example, outline how long it would take to identify, locate, collate and assess all relevant documents with reference to:

* the number of documents likely to fall within the scope of the request;
* the kinds of document searches that would be required and the resources required to conduct those searches (for example, searching multiple email accounts, manual search of hard copy records, consulting with your agency’s IT department to access archived emails or documents);
* an estimate of how long it would take to conduct third party consultation;
* how many documents or pages of documents would likely be involved;
* the number of FOI matters currently being processed by your agency;
* the number of officers available to process the request;
* an estimate of how long it would take to assess the documents.

Depending on the level of detail in your section 25A(6) notice to the applicant, you may be able to rely on the same reasons as previously communicated to the applicant, however these reasons must also be set out in the decision letter. If, however, the applicant amended the scope of their request, you will need to address why the amended request is still a substantial diversion of resources.

*The diversion of our resources would be unreasonable*

1. This substantial diversion of resources would be unreasonable because [explain why processing the applicant’s request would be unreasonable in the circumstances].

Provide enough detail for the applicant to understand why processing the request would be an unreasonable diversion of resources. For example, the Victorian Civil and Administrative Tribunal in *The Age Company Pty Ltd v CenITex* [2013] VCAT 288 at [43-45] outlines some factors when considering unreasonableness:

* Whether the terms of the request offer a sufficiently precise description to permit the agency, as practical matter, to locate the documents sought within a reasonable time and with the exercise of reasonable effort.
* The public interest in disclosure of documents relating to the subject matter of the request.
* Whether the request is a reasonably manageable one, giving due but not conclusive regard to the size of the agency and the extent of its resources usually available for dealing with FOI applications.
* The reasonableness or otherwise of the agency’s initial assessment and whether the applicant has taken a co-operative approach to redrawing the boundaries of the application.
* The statutory time limit under the FOI Act for making a decision

**Your review rights**

1. If you are not satisfied with my decision you have the right to apply for a review by the Information Commissioner under section 49A(1)(a) of the FOI Act.
2. A review application must be in writing, identify the decision to be reviewed and the agency who made it.
3. An application must be made to the Information Commissioner within 28 days from the day you receive this letter.
4. The Office of the Victorian Information Commissioner’s (**OVIC**) website has a review form you may download, which contains more information about the review process and what you can expect from it. OVIC’s contact details are:

Office of the Victorian Information Commissioner

PO Box 24274

Melbourne VIC 3001

Email: enquiries@ovic.vic.gov.au

Phone: 1300 00 6842 (1300 00 OVIC)

www.ovic.vic.gov.au

1. If you have any questions about this decision, please contact me on [insert phone] or by email at [insert email] and quote [agency reference].

Yours sincerely

[Name of officer]

[Position title]

Under section 27(1)(b) of the FOI Act, where a decision relates to an agency, it must state the name and designation of the person giving the decision. Further, section 26(1) of the FOI Act outlines a decision on a request can only be made on behalf of an agency by the responsible Minister or the principal officer of the agency or by an authorised agency officer.