

Notice of Decision and Reasons for Decision

Applicant:	'FE3'
Agency:	Department of Health
Decision date:	24 May 2023
Exemptions considered:	Sections 28(1)(ba), 28(1)(d), 30(1), 33(1), 35(1)(a) and 35(1)(b)
Citation:	'FE3' and Department of Health (Freedom of Information) [2023] VICmr 47 (24 May 2023)

FREEDOM OF INFORMATION – COVID-19 – schools – survey responses – external research report – air filters – Rapid Antigen Testing – Ministerial briefing – issues to be considered by Cabinet – disclosure not contrary to the public interest – information provided in confidence – personal affairs information

All references to legislation in this document are to the *Freedom of Information Act 1982 (Vic)* (**FOI Act**) unless otherwise stated.

Notice of Decision

I have conducted a review under section 49F of the Agency's decision to refuse access to documents requested by the Applicant under the FOI Act.

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

While I am satisfied certain information is exempt from release under sections 28(1)(ba), 28(1)(d), 33(1) and 35(1)(b), I am not satisfied information to which the Agency refused access under section 35(1)(a) is exempt from release.

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

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

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

24 May 2023

Reasons for Decision

Background to review

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

... Act Research, studies, reports or briefings [date range] specifically related to: The effectiveness of air filters in Victorian schools as a COVID-19 measure. This work was specifically referred to by Victoria's Chief Health Officer in a tweet on [date] [twitter URL] and/or The effectiveness of other COVID-19 interventions in schools including mask mandates or recommendations, free RAT tests. I am not seeking personal information, other than where relevant (e.g signing a report or briefing) names of senior public servants, ministers or elected MPs.
2. The Agency identified seven documents, totalling 135 pages, falling within the terms of the Applicant's request. The Agency granted access to three documents in full with irrelevant information deleted under section 25, refused access to two documents in part and two documents in full under sections 28(1)(ba), 28(1)(d), 33(1), 35(1)(b) and 35(1)(a).
3. The Agency's decision letter sets out the reasons for its decision.

Review application

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. I have examined a copy of the documents subject to review.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered all communications and submissions received from the parties.
8. In undertaking my review, I have had regard to the object of the FOI Act, which is to create a general right of access to information in the possession of the Government or other public bodies, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.
9. I note Parliament's intention the FOI Act must be interpreted so as to further the object of the Act and any discretions conferred by the Act must be exercised, as far as possible, so as to facilitate and promote the disclosure of information in a timely manner and at the lowest reasonable cost.
10. In conducting a review under section 49F, section 49P requires that I make a new or 'fresh decision'. Therefore, my review does not involve determining whether the Agency's decision is correct, but rather requires my fresh decision to be the 'correct or preferable decision'.¹ This involves ensuring my decision is correctly made under the FOI Act and any other applicable law in force at the time of my decision.

Review of exemptions

Section 28(1) – Cabinet Documents

11. In *Ryan v Department of Infrastructure*,² the Victorian Civil and Administrative Tribunal (VCAT) observed:

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

² (2004) VCAT 2346 at [33].

It has been said that a document is not exempt merely because it has some connection with Cabinet, or is perceived by departmental officers or others as being of a character that they believe ought to be regarded as a Cabinet document or because it has some Cabinet “aroma” around it. Rather, for a document to come within the Cabinet document exemption, “it must fit squarely within one of the four exemptions [(now five)]” in section 28(1) of the Act.

12. Section 28(7)(a) defines ‘Cabinet’ as including a committee or subcommittee of Cabinet.
13. An exemption under section 28(1) cannot be claimed because a document has some vague connection with the Cabinet or is perceived by agency officers that it ought to be regarded as a Cabinet document because it has some Cabinet ‘aroma’ about it. To apply, the information must fall squarely within one of the exemptions under section 28(1).³

Section 28(1)(ba) – briefing for Minister on issues to be considered by the Cabinet

14. A document will be exempt from release under section 28(1)(ba) if the sole purpose, or one of the substantial purposes for which it was prepared, was to brief a Minister in relation to an issue to be considered by the Cabinet.⁴
15. ‘Briefing’ means a ‘short accurate summary of the details of a plan or operation. The ‘purpose [of the briefing] ... is to inform’. Therefore, the relevant document should have the character of briefing material. A document will be of such character if it contains ‘information or advice ... prepared for the purpose of being read by, or explained to, a [m]inister’. The exemption requires more than having ‘placed a document before a Minister’.⁵
16. The Agency relies on section 28(1)(ba) to refuse access to Document 5 in full. The document is a Powerpoint presentation prepared by the Department of Education (the **DoE**) (previously the Department of Education and Training).
17. The Agency submits it consulted with the DoE, which advised that the document was prepared by agency officers to brief the Victorian Minister for Education on the impacts of COVID-19. Further, the document ultimately formed part of a Cabinet Submission. Given the nature of the exemptions in section 28(1), I am limited in the amount of information I can provide describing the document and information provided in the Agency’s submission.
18. Having reviewed the document and from the information before me, I am satisfied the sole, or one of the substantial purposes for which the document was created was to brief the Minister of Education in relation to issues that were considered by a subcommittee of the Cabinet.
19. Accordingly, I am satisfied Document 5 is exempt from release under section 28(1)(ba).

Section 28(1)(d) – document that disclosure any deliberation or decision of the Cabinet

20. Section 28(1)(d) provides a document is an exempt document if it is a document the disclosure of which would involve the disclosure of any deliberation or decision of the Cabinet, other than a document by which a decision of the Cabinet was officially published.
21. A ‘decision’ means any conclusion as to the course of action the Cabinet adopts whether it be a conclusion as to a final strategy or to how a matter should proceed.⁶

³ *Birnbauer v Department of Industry, Technology & Resources (Nos 1& 2 and 3)* (1986) 1 VAR 279 at 286.

⁴ *Ryan v Department of Infrastructure* (2004) 22 VAR 226; [2004] VCAT 2346 at [34]. See also *Department of Treasury and Finance v Dalla-Riva* (2007) 26 VAR 96; [2007] VSCA 11 at [13].

⁵ *Ryan v Department of Infrastructure* (2004) 22 VAR 226; [2004] VCAT 2346 at [41].

⁶ *Della-Riva v Department of Treasury and Finance* (2005) 23 VAR 396; [2005] VCAT 2083 at [30].

22. Where a decision of the Cabinet is made public, an announcement in relation to the issue decided will not disclose the Cabinet's decision or deliberation.⁷
23. The Agency applied section 28(1)(d) to Documents 1, 3 and 4 in part.
24. Having viewed the content of the documents, and the exempted material, it is clear that it discloses a decision of a subcommittee of the Cabinet.
25. Accordingly, on the information before me, I am satisfied section 28(1)(d) applies to Documents 1, 3 and 4 in part.

Section 33(1) – Documents affecting personal privacy

26. A document is exempt under section 33(1) if two conditions are satisfied:
 - (a) disclosure of the document under the FOI Act would 'involve' the disclosure of information relating to the 'personal affairs' of a person other than the Applicant (**a third party**);⁸ and
 - (b) such disclosure would be 'unreasonable'.
27. Information relating to a person's 'personal affairs' includes information that identifies any person or discloses their address or location. It also includes any information from which this may be reasonably determined.⁹
28. Disclosure under the FOI Act is not subject to any restrictions or conditions on further dissemination and that information that identifies a person is to be interpreted by the capacity of any member of the public's ability to determine a person's identity from this information.¹⁰
29. The Agency applied section 33(1) to certain responses provided by survey participants. I accept the Agency's reasoning that this information is personal affairs information relating to these individuals as it concerns their private affairs. I also accept that in some cases the content and the context in which information was provided and recorded in the documents would lead to the reidentification of certain individuals. For example, where there are a low number of participants from a focus group located in a regional area.
30. I also note the documents contain personal information such as names, job titles and an email of a third party.
31. Accordingly, I am satisfied disclosure of the documents under the FOI Act would involve the disclosure of personal affair information relating to third parties.

Would disclosure of the personal affairs information be unreasonable?

32. Considering whether disclosure would be unreasonable involves balancing the public interest in the disclosure of official documents with the personal interest in maintaining personal privacy. This involves having regard to any matter that may 'relevantly, logically, and probatively' bear upon whether disclosure of personal affairs information of any person would be unreasonable in its own context.¹¹
33. Having considered the personal affairs information in the documents I am satisfied the release would be unreasonable in the circumstances, because:

⁷ *Honeywood v Department of Innovation, Industry and Regional Development* (2004) 21 VAR 1453; [2004] VCAT 1657 at [26].

⁸ Sections 33(1) and 33(2).

⁹ Section 33(9).

¹⁰ *O'Sullivan v Department of Health and Community Services (No 2)* [1995] 9 VAR 1 at [14]; *Beauchamp v Department of Education* [2006] VCAT 1653 at [42].

¹¹ *Ibid* at [98].

- (a) although I have not been provided with the views of the third parties whose personal affairs information appears in the documents; nonetheless, I consider these individuals would have provided their personal information on the understanding that their identify would not be disclosed widely;
- (b) I consider the Applicant is able to read and understand the information without the inclusion of the personal affairs information as its removal does not affect the integrity of the document;
- (c) I note the terms of the Applicant's request advising personal affairs information is not sought but for limited and relevant matters regarding the signing of a report or briefing by senior officers. I consider the personal affairs information exempted does not concern senior agency staff and their capacity as decision makers; and
- (d) I consider there is some sensitivity to the information where it discusses the participants concerns in relation to their children.

34. Accordingly, I am satisfied personal affairs information in the documents is exempt under section 33(1).

35. In addition to the information the Agency identified as exempt I consider there is further personal affairs information in Documents 1 and 3 that the disclosure of, in the circumstances, would be unreasonable.

Section 35(1) – Documents containing material contained in confidence

36. Section 35(1) applies to documents that, if disclosed, would divulge any information or matter communicated in confidence by or on behalf of a person or a government to an agency. This provision contains two exemptions: sections 35(1)(a) and 35(1)(b).

Section 35(1)(a)

37. A document is exempt under section 35(1)(a) if two conditions are satisfied:

- (a) disclosure would divulge information or matter communicated in confidence by or on behalf of a person or a government to an agency or a Minister; and
- (b) the information would be exempt matter if it were generated by an agency or Minister.

38. The Agency applied section 35(1)(a) to Document 1 in part and Document 3 in full. The Agency submit this information would be exempt from release under section 30(1) if it had been generated by the Agency.

39. Section 30(1) concerns 'internal working documents' of an agency. However, section 35(1)(a) has the effect that so long as the requirements of section 30(1) are met, those communicating information in confidence are 'deemed' to be officers of the agency and the material will be assessed as if it were generated by the agency. Therefore, if the material is capable of being exempt under section 30(1), the exemption under section 35(1)(a) will be made out.¹²

40. However, the first condition I must consider under section 35(1)(a) is whether disclosure would disclose matter communicated in confidence to the Agency.

¹² *Casey City Council v Environment Protection Authority* [2010] VCAT 453 at [28]-[30].

Was the information communicated in confidence to the Agency?

41. Document 3 is a report compiled by [named organisation] in collaboration with the Victorian State Government. Document 1 is an internal briefing report of the Agency, which contains extracts from the report in Document 3.
42. Whether information or matter has been communicated in confidence is a question of fact.¹³
43. Document 3 is a qualitative study regarding the Victorian Government's antigen testing in specialist schools that was undertaken by [named organisation] in collaboration with Victorian Government departments and ultimately, provided to the Agency. I note from my inspection, there are no markings or express language in the document to indicate the information has been communicated to the Agency in confidence.
44. However, I note the Victorian Civil and Administrative Tribunal (**VCAT**) has accepted that a formal confidentiality agreement is not required to establish that information was communicated in confidence.¹⁴ Conversely, the mere fact that a document is marked 'private and confidential' is not sufficient to establish that a document was communicated in confidence.¹⁵
45. The Agency consulted with [named organisation] under section 35(1A) to gain their views on disclosure. A copy of the consultation response has been provided for my consideration.
46. Although I accept there may be some sensitivities surrounding the information; nonetheless, considering the context in which the document was provided, I am not satisfied it has been communicated to the Agency with the intention of complete confidence. Nor has the section 35(1A) response provided any further information on this point. For example, no evidence has been given that demonstrate any discussions regarding confidentiality took place before the creation of the report. In these circumstances, I am not satisfied that at the time the report was produced, the [named organisation] communicated the information contained in the report in confidence.
47. Irrespective of this, given the information is information that has been prepared for the Agency, I believe it is still highly appropriate for me to consider the application of section 30(1) and whether disclosure of the information in the documents would be contrary to the public interest in this case.

Section 30(1) – Internal working documents

48. Section 30(1) has three requirements:
 - (a) the document must disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister;
 - (b) such matter must be made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government; and
 - (c) disclosure of the matter would be contrary to the public interest.
49. The exemption does not apply to purely factual material in a document.¹⁶

¹³ *Ryder v Booth* [1985] VR 869 at 883.

¹⁴ *Corry v Police (Vic)* [2010] VCAT 282; *Hoskin v Department of Education and Training* [2003] VCAT 946 at [18]; *Williams v Police (Vic)* [2005] VCAT 2516 at [48]; *Graze v Commissioner of State Revenue* [2013] VCAT 869 at [33].

¹⁵ *Williams v Victoria Police* (2007) 27 VAR 59; [2007] VCAT 1194 at [75]; *Sportsbet v Department of Justice* [2010] VCAT 8 at [17]; *Graze v Commissioner of State Revenue* [2013] VCAT 869 at [33].

¹⁶ Section 30(3).

50. The term ‘officer of an agency’ is defined in section 5(1) of the FOI Act. It includes a member of an agency as well as any person engaged by, or on behalf of, an agency whether or not that person is one to whom the provisions of the *Public Administration Act 2004* (Vic) apply.

Do the documents disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister?

51. In relation to Document 3, while I note the report has been compiled by an organisation outside the Agency, given the collaborative relationship between [named organisation] and the Victorian Government, coupled with the documents purpose, I am satisfied that in this case the authors of the report would constitute officers of the Agency for the purpose of section 30(1).
52. In relation to Document 1, I note the document is an internal briefing document compiled by officers of the Agency.
53. It is not necessary for a document to be in the nature of opinion, advice or recommendation. Rather, it is enough that release of the document would disclose matter of that nature.¹⁷
54. While I note there is information in the documents that I would consider factual for example, where it sets out the background and methods undertaken in the study; however, considered broadly I also accept the documents contain information in the nature of opinion, advice and recommendations prepared by Agency officers.

Was the document made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government?

55. The term ‘deliberative process’ is interpreted widely and includes any of the processes of deliberation or consideration involved in the functions of an agency, Minister or the government.¹⁸
56. In *Re Waterford and Department of Treasury (No.2)*,¹⁹ the former Victorian Administrative Appeals Tribunal held:

...“deliberative processes” [is] wide enough to include any of the processes of deliberation or consideration involved in the functions of an agency... In short, ...its thinking processes — the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

57. I am satisfied the documents were created in the course of the deliberative processes involved in the functions of the Agency, namely the review of, and the development of advice on, the Victorian Government’s public health orders in response to the COVID-19 pandemic. Specifically, the Victorian Government’s rapid antigen testing program in Victorian specialist schools. Moreover, I accept the documents contain recommendations and would be used as part of the Agency’s ‘thinking processes’.

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

58. In determining if disclosure of a document would be contrary to the public interest, I must consider all relevant facts and circumstances remaining mindful the object of the FOI Act is to facilitate and promote the disclosure of information. This involves a ‘process of the weighing against each other conflicting merits and demerits’.²⁰

¹⁷ *Mildenhall v Department of Education* (1998) 14 VAR 87.

¹⁸ *Brog v Department of Premier and Cabinet* (1989) 3 VAR 201 at 208.

¹⁹ [1984] AATA 67; (1984) 5 ALD 588; 1 AAR 1 at [58].

²⁰ *Sinclair v Maryborough Mining Warden* [1975] HCA 17; (1975) 132 CLR 473 at [485], adopted in *Department of Premier and Cabinet v Hulls* [1999] VSCA 117 at [30].

59. In doing so, I have given weight to the following relevant factors in the context of this matter:²¹
- (a) the right of every person to gain access to documents under the FOI Act;
 - (b) the degree of sensitivity of the issues discussed in the documents and the broader context giving rise to the creation of the documents;
 - (c) the stage of a decision or status of policy development or a process being undertaken at the time the communications were made;
 - (d) whether disclosure of the documents would be likely to inhibit communications between Agency officers, essential for the Agency to make an informed and well-considered decision or participate fully and properly in a process in accordance with the Agency's functions and other statutory obligations;
 - (e) whether disclosure of the documents would give merely a part explanation, rather than a complete explanation for the taking of a particular decision or the outcome of a process, which the Agency would not otherwise be able to explain upon disclosure of the documents;
 - (f) the impact of disclosing documents in draft form, including disclosure not clearly or accurately representing a final position or decision reached by the Agency at the conclusion of a decision or process; and
 - (g) the public interest in the community being better informed about the way in which the Agency carries out its functions, including its deliberative, consultative and decision-making processes and whether the underlying issues require greater public scrutiny.
60. In relation to why disclosure would be contrary to the public interest, the Agency submitted:
- The particular area of research presented in the documents has a clear public health interest and it is important that the public, health providers and policy makers can access a scientifically peer reviewed version of the results prior to their public release. A balanced and thorough analysis of the results should be available prior to the release of information to a journalist and subsequently to a general audience, who may not be qualified to correctly interpret the results or may only provide a limited summary of the results. There could be a negative impact on public health if the research is not published appropriately by the research team prior to this release.
 - It is important for researchers in this space to publish their results following a thorough peer-review process, which is essential for academic promotion, building reputation and ensuring that their work is accurately represented. If the report is released by others in a public forum prior to the researchers publishing, it makes it extremely unlikely that a publisher will accept the researcher's paper for publication.
 - The release of such material prior to official publication may discourage future research collaborations between the Department and researchers. It is in the public interest that the Department maintains its relationship and continues to work with researchers and academics, particularly in the area of public health.
61. Having reviewed each document and considered factors both in favour and against disclosure, I am satisfied that disclosure would not be contrary to the public interest, for the following reasons:
- (a) The information has been prepared for the consideration of the Agency to assist the evaluation of the government's rapid antigen testing program. I accept the Agency's submission that there is a clear public health interest in policy makers having access to reliable information.

²¹ *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

- (b) While I acknowledge the intention of [named organisation] to publish the document at some point in the future following peer review, I am also mindful of the significant impacts the public health measures had on Victorian communities. In this context, I consider the importance of the public having access to information where it can assist their understanding and scrutiny of public health schemes implemented by the Government in response to COVID-19.
- (c) I note the Agency's submission that disclosure would have a negative impact to the public health; however, no further information has been provided to address what those negative impacts may be beyond the possibility that the public may draw an incorrect inference, or the Applicant may reproduce a limited summary, which may not accurately reflect the report's findings. In considering if disclosure would be contrary to the public interest, noting there are no restrictions on a document released under FOI, the possibility that a document and its contents may be misconstrued will always exist to greater or lesser degree. However, for a document to be contrary to the public interest and exempt from release to my mind requires something more than a mere possibility that an event occurs or assumption on a document's further use.
- (d) While there may be some members of the public which may question the accuracy of the information, there is no evidence before me to suggest such a consequence would arise, noting the document is in final form and the limitations of the data are clearly set out within. Therefore, I do not accept the general inference that disclosure would lead to wide misinterpretations amongst the public, impacting public health.
- (e) Nor has the Agency pointed to evidence concerning any gross inaccuracies within the documents, which would have the negative consequence of circulating misinformation. On the information provided, such a consequence does not appear to be the case for this matter. Further, if the information was completely unreliable presumably it would not be used as part of the Agency's deliberative processes.
- (f) In the circumstances where the document is in final form, I do not accept disclosure would negatively impact the ability of the Agency to obtain similar advice in the future or discourage future collaborations between the Agency and researchers, particularly where it concerns the significance of the public health directions and the impact of those directions on the Victorian community.
- (g) Relevantly, I also note the views of VCAT in *Victorian National Parks Association Inc v Department of Sustainability & Environment*,²² which accepted evidence that experts who provide advice to government on 'notorious public issues', such as in this case, must consider that their advice may become public and therefore, any degree of impairment would likely be minimal.
- (h) Concerning the Agency's submission raised around impacts to the reputation of individual researchers or possibility of promotion, I am not satisfied I have been provided evidence that disclosure would, to a sufficient degree, cause such a consequence.

62. On the information before me, I consider the public interest weighs in favour of the public having access to information that informs government decision making in the interest of transparency and public scrutiny. Accordingly, I am satisfied the information identified as exempt by the Agency in Documents 1 and 3 is not contrary to the public interest to release, therefore is not exempt under sections 35(1)(a) or 30(1).

Section 35(1)(b)

63. Section 35(1)(b) provides that a document is exempt if:

²² (General) [2012] VCAT 710 at [129].

- (a) its disclosure under the FOI Act would divulge any information or matter communicated in confidence by or on behalf of a person or a government to an agency or Minister; and
- (b) the disclosure of the information would be contrary to the public interest by reasons that the disclosure would be reasonably likely to impair the ability of an agency or Minister to obtain similar information in the future.

64. The Agency advise section 35(1)(b) has been applied to specific responses contained in Document 3.

Was the information communicated in confidence?

- 65. I accept the Agency's submission that survey participants provided certain information under the assumption of confidence.
- 66. Accordingly, I am satisfied that disclosure of the identified text in the document would divulge information communicated in confidence.

Would disclosure of the information be contrary to the public interest by reason that it would be likely to impair the ability of the Agency to obtain similar information in the future?

- 67. I accept the Agency's submission that disclosure in this case would impair the Agency, or those in the Agency's position, from receiving similar information in the future.
- 68. I am of the view that if individuals became aware that their responses were disclosed, without due consideration to deidentification of those responses, there exists a reasonable likelihood that the Agency's ability to conduct similar studies in the future would be impacted, as it may cause a reluctance of individuals to participate in Government surveys or impair the quality of information provided.
- 69. Accordingly, I am satisfied the information identified by the Agency is exempt under section 35(1)(b) as disclosure would divulge matter communicated in confidence, which would be contrary to the public interest by reason that it would impair the Agency's ability to obtain similar information in the future.
- 70. In addition to the information identified by the Agency, I also consider there is further responses by participants in Documents 3 and replicated in Document 1 that is exempt under section 35(1)(b) for the reasons provided above.

Section 25 – Deletion of exempt or irrelevant information

- 71. Section 25 requires an agency to grant access to an edited copy of a document where it is practicable to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
- 72. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'²³ and the effectiveness of the deletions. Where deletions would render a document meaningless, they are not 'practicable' and release of the document is not required under section 25.²⁴
- 73. I have considered the information the Agency deleted from the documents as irrelevant. I agree it falls outside the scope of the Applicant's request as it does not concern the effectiveness of COVID-19 measures in schools.

²³ *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 at [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

²⁴ *Honeywood v Department of Human Services* [2006] VCAT 2048 at [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140], [155].

74. I have considered the effect of deleting irrelevant and exempt information from the documents. In my view, it is practicable for the Agency to delete the irrelevant and exempt information, because it would not require substantial time and effort, and the edited documents would retain meaning.
75. However, in relation to Document 5, I am not satisfied it is practicable to provide the Applicant with an edited copy of this document as to do would render the document meaningless, therefore the document is exempt in full.

Conclusion

76. On the information before me, I am satisfied sections 28(1)(ba), 28(1)(d), 33(1) and 35(1)(b) apply to the documents. However, I am not satisfied documents are exempt under sections 35(1)(a) or 30(1).
77. As I am satisfied it is practicable to provide the Applicant with an edited copy of certain documents with irrelevant and exempt information deleted in accordance with section 25, access is granted to Documents 1, 3, 4, 6 and 7 in part. However, I am not satisfied it is practicable to provide an edited copy of Document 5 and this document is exempt in full.
78. A marked-up copy of Documents 1 and 3 indicating exempt or irrelevant information in accordance with my decision has been provided to the Agency.

Review rights

79. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.²⁵
80. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.²⁶
81. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.²⁷
82. Information about how to apply to VCAT is available online at www.vcat.vic.gov.au. Alternatively, VCAT may be contacted by email at admin@vcat.vic.gov.au or by telephone on 1300 018 228.
83. The Agency is required to notify the Information Commissioner in writing as soon as practicable if either party applies to VCAT for a review of my decision.²⁸

Third party review rights

84. As I have determined to release documents that contain information claimed exempt under section 35(1)(a). If practicable, I am required to notify those persons, in this case the organisation, of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.²⁹
85. I am satisfied it is practicable to notify the relevant third-party organisation of their review rights and confirm they will be notified of my decision on the date of decision.

When this decision takes effect

²⁵ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

²⁶ Section 52(5).

²⁷ Section 52(9).

²⁸ Sections 50(3F) and (3FA).

²⁹ Sections 49P(5), 50(3AB) and 52(3).

86. My decision does not take effect until the third parties' 60-day review period expires. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

Annexure 1 – Schedule of Documents [case reference]

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.	[date]	COVID screening in schools report	47	Released in part Sections 28(1)(d), 33(1), 35(1)(a), 35(1)(b)	<p>Release in part Sections 28(1)d), 33(1), 35(1)(b), 25</p> <p>A marked-copy of the document has been provided to the Agency indicating exempt material in line with my decision.</p>	<p>Section 28(1)(d): I am satisfied information in the document is exempt from release under section 28(1)(d) for the reasons outlined in the Notice of Decision above.</p> <p>Section 33(1): I am satisfied information exempted by the Agency is exempt under section 33(1). In addition to the information identified by the Agency as exempt, I am satisfied further information in the document is personal affairs information the disclosure of which would be unreasonable for the reasons set out in the Notice of Decision above.</p> <p>Sections 35(1)(a) and 30(1): I note the document is an internal briefing report of the Agency. On the information before me, I am not satisfied the information exempted by the Agency under sections 35(1)(a) and 30(1) is exempt</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>for the reasons set out in the Notice of Decision.</p> <p>Section 35(1)(b): I am satisfied disclosure of participant responses would be contrary to the public interest. In addition to the information identified as exempt by the Agency, I consider further information is exempt under section 35(1)(b) as it discloses information communicated by participants in confidence and I am satisfied the Agency (or those in the Agency's position) would be impaired from receiving similar information, if the material were to be disclosed.</p> <p>Section 25: I consider it is practicable to provide the Applicant with an edited copy of the document with exempt information deleted. Accordingly, the document is exempt in part.</p>
2.	Undated	Situation	2	Released in full	Not subject to review	

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
3.	[date]	[Research Report]	25	Refused in full Sections, 28(1)(d), 33(1), 35(1)(a), 35(1)(b)	Release in part Sections 28(1)(d), 33(1), 35(1)(b) A marked-copy of the document has been provided to the Agency indicating exempt material in line with my decision.	Section 28(1)(d): See comments for Document 1. Section 33(1): See comments for Document 1. Section 35(1)(a) and 30(1): While I am not entirely satisfied the document has been communicated to the Agency in complete confidence, nonetheless I am satisfied the document has been provided for a deliberative function of the Agency. However, I am not satisfied its release would be contrary to the public interest for the reasons set out in the Notice of the Decision. Section 35(1)(b): See comments for Document 1.
4.	[date]	COVID screening in School report	31	Released in part Section 28(1)(d)	Release in part Section 28(1)(d) No further information to be released	Section 28(1)(d): See comments for Document 1. Section 25: I am satisfied it is practicable for the document to be edited under section 25.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
5.	[date]	Cabinet Submission document – Presentation to Minister	5	Refused in full 28(1)(ba)	Refuse in full Section 28(1)(ba)	<p>Section 28(1)(ba): I am satisfied this document is exempt from release under section 28(1)(ba) for the reasons outlined in the Notice of Decision above.</p> <p>Section 25: I am not satisfied it is practicable for the Agency to provide an edited copy of this document as to do so would render the document meaningless. Therefore, the document is refused in full.</p>
6.	[date]	Evidence Review document	8	Released in full with irrelevant information deleted under section 25	Not subject to review	Section 25: I am satisfied the information deleted by the Agency in the document falls outside the scope of the Applicant's request.
7.	Various	Emails	17	Released in full with irrelevant information deleted under section 25	Not subject to review	Section 25: I am satisfied the information deleted by the Agency in the document falls outside the scope of the Applicant's request.