

## Notice of Decision and Reasons for Decision

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Applicant:	'FL3'
Agency:	Department of Justice and Community Safety
Decision date:	21 December 2023
Exemptions considered:	Sections 28(1)(d), 30(1), 34(4)(a)(ii)
Citation:	'FL3' and Department of Justice and Community Safety (Freedom of Information) [2023] VICmr 106 (21 December 2023)

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FREEDOM OF INFORMATION – meeting agendas – meeting minutes – Department of Justice and Community Safety Executive Committee – agency not engaged in trade and commerce – Community Safety Building Authority – COVID-19

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 section 28(1)(d), I am not satisfied the remaining information to which the Agency refused access under sections 28(1)(d), 30(1) and 34(4)(a)(ii) is exempt from release.

As 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, I have determined to grant access to the documents in part.

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

My reasons for decision follow.

Joanne Kummrow  
**Acting Information Commissioner**

21 December 2023

## Reasons for Decision

### Background to review

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

The agendas and minutes, including attachments and reports, of meetings of the Department of Justice and Community Safety Executive Committee since 12 September 2020.
2. The Agency identified 66 pages of documents falling within the terms of the Applicant's request and granted access to 16 pages in full and 50 pages in part, refusing access to certain information under sections 28(1)(d), 30(1), 33(1) and 34(4)(a)(ii).
3. The Agency also refused access to information it determined was not subject to the FOI Act under Section 70 of the *Audit Act 1994* (Vic) (**Audit Act**) and deleted this information as irrelevant information pursuant to section 25.
4. The Agency's decision letter sets out the reasons for its decision.

### Review application

5. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
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 examined a copy of the documents subject to review and considered all communications and submissions received from the parties.
8. During the review, the Applicant advised they do not seek review of the Agency's decision to refuse access to information under section 33(1) and in relation to the information the Agency determined is not subject to the FOI Act due to section 70 of the Audit Act. Accordingly, this review relates to the documents to which the Agency granted access in part under sections 28(1)(d), 30(1) and 34(4)(a)(ii).
9. 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.
10. 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.
11. 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'.<sup>1</sup> This

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

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*

12. In *Ryan v Department of Infrastructure*,<sup>2</sup> the Victorian Civil and Administrative Tribunal (VCAT) observed:

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.

13. Section 28(3) provides the exemption in section 28(1) does not apply to a document to the extent it contains purely statistical, technical or scientific material unless the disclosure of the document would involve the disclosure of any deliberation or decision of the Cabinet.<sup>3</sup>
14. Section 28(7)(a) defines ‘Cabinet’ as including a committee or sub-committee of Cabinet.

### *Section 28(1)(d) – Disclosure of any deliberation or decision of the Cabinet*

15. Section 28(1)(d) provides a document is an exempt document if its disclosure would involve the disclosure of any deliberation or decision of the Cabinet or a sub-committee of the Cabinet,<sup>4</sup> other than a document by which a decision of the Cabinet was officially published.
16. A document will be exempt from release under section 28(1)(d) if there is evidence the Cabinet discussed and determined options or issues set out in a document.<sup>5</sup>
17. In *Asher v Department of Sustainability and Environment*,<sup>6</sup> VCAT held that where a document, on its face, does not disclose a decision or deliberation of the Cabinet, or the extent of the Cabinet’s interaction with a document is unclear, section 28(1)(d) will not apply.
18. The Victoria Court of Appeal has held ‘deliberations’ should be given a narrow interpretation such that it means the actual debate that took place rather than the subject matter of a debate:<sup>7</sup>

It all depends upon the terms of the document. At one end of the spectrum, a document may reveal no more than that a statistic or description of an event was placed before Cabinet. At the other end, a document on its face may disclose that Cabinet required information of a particular type for the purpose of enabling Cabinet to determine whether a course of action was practicable

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<sup>2</sup> [2004] VCAT 2346 at [33].

<sup>3</sup> *Mildenhall v Department of Premier & Cabinet (No. 1)* (1995) 8 VAR 284.

<sup>4</sup> Section 28(7).

<sup>5</sup> *Smith v Department of Sustainability and Environment* (2006) 25 VAR 65; [2006] VCAT 1228 at [23]; *Asher v Department of Infrastructure* (2006) 25 VAR 143; [2006] VCAT 1375 at [27].

<sup>6</sup> (General) [2010] VCAT 601 at [42], citing *Re Birrell and Department of Premier and Cabinet [Nos 1 and 2]* (1986) 1 VAR 230 at [239].

<sup>7</sup> *Department of Infrastructure v Asher* (2007) 19 VR 17; [2007] VSCA 272 at [8].

or feasible or may advance an argument for a particular point of view.<sup>8</sup> The former would say nothing as to Cabinet's deliberations; the latter might say a great deal.

19. The Victorian Supreme Court of Appeal also held:

The deliberative process involves the weighing up or evaluating of the competing arguments or considerations that may have a bearing upon Cabinet's course of action – its thinking processes<sup>9</sup> - with a view to the making of a decision. It encompasses more than mere receipt of information in the Cabinet room for digestion by Cabinet ministers then or later.<sup>10</sup>

20. A 'decision' means any conclusion as to the course of action the Cabinet adopts whether it is a conclusion as to final strategy on a matter or conclusions about how a matter should proceed.<sup>11</sup>

21. Where a decision made by the Cabinet is public, an announcement in relation to the issue decided will not disclose the Cabinet's decision or deliberation.<sup>12</sup>

22. The Agency refused access to certain information in Documents 2, 4, 6, 9, 10 and 16 under section 28(1)(d).

23. In its decision, the Agency states:

Some of the minutes contain discussions about [description of subject] and decisions of the [cabinet sub-committee]. The minutes also refer in places to the department's [description of activity] which are currently the subject of submissions for Cabinet consideration. This information is exempt under section 28(1)(d) of the FOI Act as disclosure would involve the disclosure of the deliberations and decisions of Cabinet.

24. During the review, the Agency was invited to provide further information to support its decision to exempt information under section 28(1)(d). At the time of writing my decision, the Agency had not provided any further information.

25. Given the contents of Document 2, I am satisfied certain information would disclose a decision of a Cabinet subcommittee. Accordingly, I am satisfied this information is exempt from release under section 28(1)(d).

26. However, I am not satisfied the remaining information in Document 2 and the information in Documents 4, 6, 9, 10 and 16 is exempt from release under section 28(1)(d) as:

- (a) the information is not sufficiently detailed to record actual decisions of the Cabinet or a Cabinet subcommittee;
- (b) general discussions about [description of subjects] are not automatically exempt from release under section 28(1)(d) without further information that those decisions were subject of Cabinet deliberation or a decision; and

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<sup>8</sup> *Re Smith and Department of Environment and Sustainability* [2006] VCAT 1228.

<sup>9</sup> *Re Waterford and the Department of the Treasury (No 2)* [1984] AATA 67; [1984] 1 AAR 1.

<sup>10</sup> *Re Birrell and Department of the Premier and Cabinet* [1986] 1 VAR 230. *Department of Infrastructure v Asher* [2007] 19 VR 17; [2007] VSCA 272 at [17].

<sup>11</sup> *Dalla-Riva v Department of Treasury and Finance* (2005) 23 VAR 396; [2005] VCAT 2083 at [30], citing *Toomer and Department of Agriculture, Fisheries and Forestry and Ors* [2003] AATA 1301.

<sup>12</sup> *Honeywood v Department of Innovation, Industry and Regional Development* (2004) 21 VAR 1453; [2004] VCAT 1657 at [26]. *Ryan v Department of Infrastructure* [2004] VCAT 2346 at [46].

- (c) noting the decision of the Supreme Court of Victoria in *Department of Infrastructure v Asher*,<sup>13</sup> I do not consider the broad topics referred to in the documents reveal deliberations of the Cabinet or a Cabinet subcommittee. As described above, Cabinet having received information does not reveal the ‘thinking processes’ or the evaluation of competing arguments or options.

27. My decision in relation to section 28(1)(d) is set out in the Schedule of Documents in **Annexure 1**.

***Section 30(1) – Internal working documents***

28. 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.

29. The exemption does not apply to purely factual material in a document.<sup>14</sup>

30. I must also be satisfied releasing this information is not contrary to the public interest. This requires a ‘process of the weighing against each other conflicting merits and demerits’.<sup>15</sup>

31. The Agency refused access to certain information in Documents 2, 4, 6, 8, 9, 10, 12, 14, 16, 18 and 20 under section 30(1). The documents comprise minutes of various board meetings, except for Document 9, which consists of a board meeting agenda.

*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?*

32. For the requirements of section 30(1) to be met, a document must contain matter in the nature of opinion, advice or recommendation prepared by an agency officer, or consultation or deliberation between agency officers.

33. It is not necessary for a document to be in the nature of opinion, advice or recommendation. Rather, the issue is whether release of the document would disclose matter of that nature.<sup>16</sup>

34. The following do not constitute matter in the nature of opinion, advice or recommendation:

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<sup>13</sup> [2007] 19 VR 17; [2007] VSCA 272 at [6].

<sup>14</sup> Section 30(3).

<sup>15</sup> *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].

<sup>16</sup> *Mildenhall v Department of Education* (1998) 14 VAR 87.

- (a) the recitation of present existing facts;<sup>17</sup>
- (b) the recording of events such as a conversation with the applicant;<sup>18</sup>
- (c) a statement of intention,<sup>19</sup> and
- (d) an internal document by which one officer informed another of a sequence of events.<sup>20</sup>

35. While I note some information in the document could be categorised as described above, I am satisfied a majority of the information exempted by the Agency under section 30(1) is in the nature of an opinion, advice or recommendation of an Agency officer or consultation or deliberation between Agency officers.

*Were the documents 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?*

36. The term ‘deliberative process’ is interpreted broadly and includes any of the processes of deliberation or consideration involved in the functions of an agency, Minister or government.<sup>21</sup>

37. In *Re Waterford and Department of Treasury (No.2)*,<sup>22</sup> 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.

38. I am satisfied the documents were made in the course of the Agency’s deliberative process, in relation to discussing various matters, such as policy issues, strategic, financial and legislative priorities, internal departmental operations, the impact of Covid-19 on the Agency’s operations, staff wellbeing and stakeholder engagement and relations.

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

39. In deciding if release is contrary to the public interest, I must consider all relevant facts and circumstances remaining mindful that the object of the FOI Act is to facilitate and promote the disclosure of information.

40. In deciding whether the information exempted by the Agency would be contrary to the public interest, I have given weight to the following relevant factors:<sup>23</sup>

- (a) the right of every person to gain access to documents under the FOI Act;

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<sup>17</sup> *Pullen v Alpine Resorts Commission* (unreported, AAT of Vic, Macnamara DP, 23 August 1996).

<sup>18</sup> *Re City Parking Pty Ltd* [1996] 10 VAR 170.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.* See also *Porter v Police* (Vic) [2005] VCAT 962, where VCAT stated at [23] that it took the AAT to be saying that ‘advice’ must be ‘something better’ than mere ‘informing’.

<sup>21</sup> *Brog v Department of Premier and Cabinet* (1989) 3 VAR 201 at [208].

<sup>22</sup> [1984] AATA 67; (1984) 5 ALD 588; 1 AAR 1 at [58].

<sup>23</sup> *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

- (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.

41. In its decision, the Agency states disclosure of the information exempted under section 30(1) would be contrary to the public interest for the following reasons:

The discussions are confidential, and some consist of preliminary proposals where a final decision has not been made. The formulation of departmental policy involves consideration of a variety of factors to determine the most appropriate approach to various matters under discussion. This is part of the consultative or investigative processes. There is public interest in promoting effective discussion and decision-making about reform, direction, and priorities by the senior executives of the department. Release of this information would impair this decision-making process and may inhibit the free and frank exchange of information and advice between officers in future, which is not in the public interest.

Additionally, discussions of items at BoM meetings are high-level and reveal iterations of documents, thinking and deliberations that may not necessarily be acted upon. Disclosure of preliminary proposals would give rise to pointless and unfair debate about what might happen on matters that may never come to realisation which is also contrary to the public interest.

42. Having reviewed the documents, I am not satisfied disclosure of the information identified as exempt under section 30(1) by the Agency would be contrary to the public interest for the following reasons:

- (a) The documents are more than two years old. The matters discussed would likely be resolved or sufficiently advanced such that disclosure at this time would have no material impact on the Agency dealing with these or similar matters.
- (b) While I appreciate the sensitivity of some of the topics discussed and acknowledge discussions took place at a senior level, in my view, much of the information in the documents is brief and general in nature, such that its disclosure would not have any impact on the deliberation on similar matters in the future.

- (c) I do not consider disclosure would negatively impact on the ability of Agency officers to provide future similar advice given the responsibilities of public sector employees under the Public Sector Values, including to provide frank, impartial and timely advice to the Government (Responsiveness); making decisions and providing advice on merit and without bias, caprice, favouritism or self-interest (Impartiality); submitting themselves to appropriate scrutiny (Accountability); and making decisions and providing advice consistent with human rights (Human Rights).<sup>24</sup>
  - (d) I do not accept disclosure of the documents could mislead the Applicant or members of the public. Rather, I consider members of the public are capable of understanding the information was provided at a point in time and subject to change.
  - (e) In my view the public interest weighs in favour of disclosure to demonstrate the agency meeting its governance obligations through its board of management meetings.
  - (f) While I acknowledge the documents include discussion of decisions yet to be made, this is not in and of itself a reason disclosure would be contrary to the public interest. Rather, disclosure of such information can inform the public on how decisions are made and the robustness of decision-making processes. In my view transparency around decision making can improve trust in governmental processes.
43. As I have determined it would not be contrary to the public interest to disclose the documents, I am satisfied they are not exempt from release under section 30(1).
44. My decision in relation to section 30(1) is set out in the Schedule of Documents in **Annexure 1**.

***Section 34(4)(a)(ii) – Information that would expose the Agency unreasonably to disadvantage***

45. Section 34(4)(a)(ii) provides a document is an exempt document if it contains, ‘in the case of an agency engaged in trade or commerce, information of a business, commercial or financial nature that would if disclosed under this Act be likely to expose the agency unreasonably to disadvantage’.
46. Therefore, a document is exempt from release under section 34(4)(a)(ii) if:
- (a) the agency is engaged in trade or commerce;
  - (b) the document contains information of a business, commercial or financial nature; and
  - (c) disclosure of which would be likely to expose the agency unreasonably to disadvantage.

*Is the Agency engaged in trade and commerce?*

47. Whether an agency is engaged in trade or commerce depends on the facts and circumstances of each case.<sup>25</sup>

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<sup>24</sup> Section 7(1) of the *Public Administration Act 2004* (Vic).

<sup>25</sup> *Stewart v Department of Tourism, Sport and the Commonwealth Games* [2003] VCAT 45 at [41].



48. VCAT has held 'the terms 'trade' and 'commerce' are not words of art; rather they are expressions of fact and terms of common knowledge'.<sup>26</sup> VCAT has adopted the view of the Federal Court of Australia that these terms are 'of the widest import'.<sup>27</sup> An agency may be regarded as being engaged in trade or commerce, even if the amount of trade or commerce engaged in is insignificant and incidental to the agency's other functions.<sup>28</sup>
49. Further, an agency may be engaged in trade or commerce, even if profit is not one of its express statutory objectives.<sup>29</sup>
50. While the phrase 'trade and commerce' may be interpreted broadly,<sup>30</sup> it has been held trade and commerce must 'of their nature, bear a trading or commercial character'.<sup>31</sup>
51. The fact an agency's predominant activities may be described as 'governmental' does not preclude it from relying on the exemption under section 34(4)(a)(ii).<sup>32</sup>
52. I take the view described in *Pallas v Roads Corporation*<sup>33</sup> that a government agency engaged in meeting its public functions is not engaged in trade or commerce, for example in relation to VicRoads:

In carrying out its road building functions the Corporation engages in Governmental activities rather than in trade or commerce...

Nor can it be said that VicRoads is engaged in trade or commerce in putting a road project out to tender or in awarding a contract which has been the subject of a tender process. No doubt the contracting process in a general sense is a manifestation of trade or commerce. The construction companies which might tender for and undertake the contract clearly are engaged in trade or commerce. That fact does not mean that the Corporation is. A consumer who purchases a consumer item from a department store is not, for that reason, engaged in trade or commerce, although the department store most certainly is and the sale transaction must be regarded as part of the processes of trade or commerce.<sup>34</sup>

53. The Agency exempted information under section 34(4)(a)(ii) in Document 8 that broadly relates to discussions regarding project management and project budget costs relating to the Community Safety Building Authority (**CSBA**).
54. The Agency states in its decision:
 

... disclosure of the information would unreasonably expose the agency to disadvantage because disclosing discussion of financial positions and contract management would be detrimental to competitive advantage, especially around references to contracts in the meeting minutes.

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<sup>26</sup> *Pallas v Roads Corporation (Review and Regulation)* [2013] VCAT 1967 at [33].

<sup>27</sup> *Pallas v Roads Corporation (Review and Regulation)* [2013] VCAT 1967 at [34]; *Re Ku-Ring-Gai Co-operative Building Society (No 12) Ltd* (1978) 22 ALR 621 at [649].

<sup>28</sup> *Marple v Department of Agriculture* (1995) 9 VAR 29 at [47].

<sup>29</sup> *Thwaites v Metropolitan Ambulance Services* (1996) 9 VAR at [473].

<sup>30</sup> *Re Ku-Ring-Gai Co-operative Building Society (No 12) Ltd* [1978] FCA 50; (1978) 36 FLR 134.

<sup>31</sup> *Concrete Constructions (NSW) Pty Ltd v Nelson* [1990] HCA 17; (1990) 169 CLR 594 at 690; *Gibson v Latrobe City Council* [2008] VCAT 1340 at [35].

<sup>32</sup> *Stewart v Department of Tourism, Sport and the Commonwealth Games* (2003) 19 VAR 363; [2003] VCAT 45 at [41]; *Fyfe v Department of Primary Industries* [2010] VCAT 240 at [23].

<sup>33</sup> [2013] VCAT 1967 (per Judge Macnamara, Vice President).

<sup>34</sup> *Pallas v Roads Corporation (Review and Regulation)* [2013] VCAT 1967 at [57]-[58].

55. The Agency has not advised how it considers it is engaged in trade or commerce. In my view, the activities described in the documents relate only to the Agency's and CSBA's ordinary governmental functions and as such is not engaged in trade or commerce.
56. Accordingly, I am not satisfied information in Document 8 is exempt under section 34(4)(a)(ii).
57. My decision in relation to section 34(4)(a)(ii) is set out in the Schedule of Documents in **Annexure 1**.

### ***Section 25 – Deletion of exempt or irrelevant information***

58. 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.
59. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>35</sup> 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.<sup>36</sup>
60. I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with exempt and irrelevant information deleted as to do so will not require substantial time and effort, and the edited documents will retain sufficient meaning for the Applicant.

### **Conclusion**

61. My decision on the Applicant's request differs from the Agency's decision.
62. While I am satisfied certain information in the documents is exempt from release under section 28(1)(d), I am not satisfied the remaining information to which the Agency refused access under sections 28(1)(d), 30(1) and 34(4)(a)(ii) is exempt from release.
63. I am also satisfied that certain information is irrelevant information and is to be deleted in accordance with section 25.
64. As 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, I have determined to grant access to the documents in part.
65. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

### **Review rights**

66. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.<sup>37</sup>

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<sup>35</sup> *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].

<sup>36</sup> *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] and [155].

<sup>37</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

67. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>38</sup>
68. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>39</sup>
69. Information about how to apply to VCAT is available online at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au). Alternatively, VCAT may be contacted by email at [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au) or by telephone on 1300 018 228.
70. 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.<sup>40</sup>

### **Third party review rights**

71. As I have determined to release documents that contain information claimed exempt under section 34(4)(a)(ii), if practicable, I am required to notify those persons of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.<sup>41</sup>
72. In the circumstances, I have decided notifying the relevant parties of their review rights is not practicable for the following reasons:
  - (a) the nature of the information; and
  - (b) the passage of time since the documents were created.

### **When this decision takes effect**

73. My decision does not take effect until the Agency's 14 day review period expires.
74. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

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<sup>38</sup> Section 52(5).

<sup>39</sup> Section 52(9).

<sup>40</sup> Sections 50(3F) and 50(3FA).

<sup>41</sup> Sections 49P(5) and 50(3A).

**Annexure 1 – Schedule of Documents –**

Doc. No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.	[date]	Agenda – Board of Management	2	Released in part Section 33(1)	Not subject to review	
2.	[date]	Minutes – Board of Management	5	Released in part Sections 28(1)(d), 30(1), 33(1)	Release in part Section 28(1)(d), 25  The document is to be released with the following exempt and irrelevant information deleted in accordance with section 25: <ul style="list-style-type: none"> <li>the information in the first three dot points of Item 3, which is exempt from release under section 28(1)(d); and</li> <li>the information refused by the Agency under section 33(1), which is to be deleted as irrelevant information.</li> </ul>	<p><b>Section 28(1)(d):</b> While I am satisfied certain information is exempt from release under section 28(1)(d), I am not satisfied the remaining information to which the Agency refused access, is exempt from release under section 28(1)(d) for the reasons provided in the Notice of Decision above.</p> <p><b>Section 30(1):</b> I am not satisfied the information is exempt from release under section 30(1) for the reasons provided in the Notice of Decision above.</p> <p><b>Section 25:</b> Given the Applicant does not seek review of the information refused by the Agency under section 33(1), this information is to be deleted as irrelevant information, pursuant to section 25.</p> <p>I am satisfied it is practicable to provide the Applicant with an edited copy of this document with exempt and irrelevant information deleted in accordance with section 25.</p>
3.	[date]	Agenda – Board of Management	2	Released in part Section 33(1)	Not subject to review	

Doc. No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
4.	[date]	Minutes – Board of Management	3	Released in part Sections 28(1)(d), 30(1), 33(1)	Release in part Section 25  The document is to be released with the following irrelevant information deleted in accordance with section 25: <ul style="list-style-type: none"> <li>the information the Agency determined is not subject to the FOI Act under section 70 of the Audit Act; and</li> <li>the information refused by the Agency under section 33(1), which is to be deleted as irrelevant information.</li> </ul>	<p><b>Section 28(1)(d):</b> I am not satisfied the information is exempt from release under section 28(1)(d), for the reasons provided in the Notice of Decision above.</p> <p><b>Section 30(1):</b> See comments for Document 2.</p> <p><b>Section 25:</b> Given the Applicant does not seek review of the information the Agency determined is not subject to the FOI Act under section 70 of the Audit Act, this information is to be deleted as irrelevant information, pursuant to section 25.</p> <p>In relation to the information refused by the Agency under section 33(1), see comments for Document 2.</p>
5.	[date]	Agenda – Board of Management	2	Released in part Section 33(1)	Not subject to review	
6.	[date]	Minutes – Board of Management	6	Released in part Sections 28(1)(d), 30(1), 33(1)	Release in part Section 25  The document is to be released with the information refused by the Agency under section 33(1) being deleted as irrelevant information in accordance with section 25.	<p><b>Section 28(1)(d):</b> See comments for Document 4.</p> <p><b>Section 30(1):</b> See comments for Document 2.</p> <p><b>Section 25:</b> See comments for Document 2.</p>

Doc. No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
7.	[date]	Agenda – Board of Management	2	Released in part Section 33(1)	Not subject to review	
8.	[date]	Minutes – Board of Management	4	Released in part Sections 30(1), 33(1), 34(4)(a)(ii)	Release in part Section 25  The document is to be released with the information refused by the Agency under section 33(1) being deleted as irrelevant information in accordance with section 25.	Section 30(1): See comments for Document 2.  Section 34(4)(a)(ii): The information is not exempt under section 34(4)(a)(ii), for the reasons described in the Notice of Decision above.  Section 25: See comments for Document 2.
9.	[date]	Agenda – Board of Management	2	Released in part Sections 28(1)(d), 30(1), 33(1)	Release in part Section 25  The document is to be released with the information refused by the Agency under section 33(1) being deleted as irrelevant information in accordance with section 25.	Section 28(1)(d): See comments for Document 4.  Section 30(1): See comments for Document 2.  Section 25: See comments for Document 2.
10.	[date]	Minutes – Board of Management	5	Released in part Sections 28(1)(d), 30(1), 33(1)	Release in part Section 25  The document is to be released with the information refused by the Agency under section 33(1) being deleted as irrelevant	Section 28(1)(d): See comments for Document 4.  Section 30(1): See comments for Document 2.  Sections 25: See comments for Document 2.

Doc. No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					information in accordance with section 25.	
11.	[date]	Agenda – Board of Management	2	Released in part Section 33(1)	Not subject to review	
12.	[date]	Minutes – Board of Management	5	Released in part Sections 30(1), 33(1)	Release in part Section 25  The document is to be released with the information refused by the Agency under section 33(1) being deleted as irrelevant information in accordance with section 25.	Section 30(1): See comments for Document 2. Section 25: See comments for Document 2.
13.	[date]	Agenda – Board of Management	2	Released in part Section 33(1)	Not subject to review	
14.	[date]	Minutes – Board of Management	4	Released in part Sections 30(1), 33(1)	Release in part Section 25  The document is to be released with the information refused by the Agency under section 33(1) being deleted as irrelevant information in accordance with section 25.	Section 30(1): See comments for Document 2. Section 25: See comments for Document 2.
15.	[date]	Agenda – Board of Management	2	Released in part Section 33(1)	Not subject to review	

Doc. No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
16.	[date]	Minutes – Board of Management	4	Released in part Sections 28(1)(d), 30(1), 33(1)	Release in part Section 25  The document is to be released with the information refused by the Agency under section 33(1) being deleted as irrelevant information in accordance with section 25.	Section 28(1)(d): See comments for Document 4. Section 30(1): See comments for Document 2. Section 25: See comments for Document 2.
17.	[date]	Agenda – Board of Management	2	Released in part Section 33(1)	Not subject to review	
18.	[date]	Minutes – Board of Management	3	Released in part Sections 30(1), 33(1)	Release in part Section 25  The document is to be released with the information refused by the Agency under section 33(1) being deleted as irrelevant information in accordance with section 25.	Section 30(1): See comments for Document 2. Section 25: See comments for Document 2.
19.	[date]	Agenda – Board of Management	2	Released in part Section 33(1)	Not subject to review	
20.	[date]	Agenda with meeting notes – Board of Management	5	Released in part Sections 30(1), 33(1)	Release in part Section 25  The document is to be released with the information refused by	Section 30(1): See comments for Document 2. Section 25: See comments for Document 2.



Doc. No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					the Agency under section 33(1) being deleted as irrelevant information in accordance with section 25.	
21.	[date]	Agenda – Board of Management	2	Released in full	Not subject to review	