

Notice of Decision and Reasons for Decision

Applicant:	'FM6'
Agency:	Department of Premier and Cabinet
Decision date:	29 December 2023
Provisions considered:	Sections 28(1)(d), 30(1), 32(1), 34(1)(b), 34(4)(a)(ii), 25
Citation:	'FM6' and Department of Premier and Cabinet (Freedom of Information) [2023] VICmr 118 (29 December 2023)

FREEDOM OF INFORMATION – major transport infrastructure – Suburban Rail Loop – interdepartmental committee – IDC – meeting minutes – meeting agenda – Cabinet documents – Cabinet sub-committee

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 in the documents is exempt from release under sections 28(1)(d) and section 30(1), I am not satisfied that all information to which the Agency refused access under these exemptions is exempt from release.

I am not satisfied information to which the Agency refused access under sections 32(1), 34(1)(b) 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

29 December 2023

Reasons for Decision

Background to review

1. On 28 September 2021, the applicant made an FOI request to the former Department of Transport, seeking access to:

I seek the terms of reference and the agendas and minutes of all meetings of the Suburban Rail Loop Interdepartmental Committee together with a list of the titles and page lengths of all attachments to the agendas or minutes along with the date of the meeting at which each attachment was considered. I do not seek the personal details of junior agency officers but am interested in the names (only) of senior agency or other departmental or ministerial officers or third parties.

2. The request was subsequently transferred to the Suburban Rail Loop Authority and then to the Department of Premier and Cabinet (the **Agency**) on 5 October 2021.
3. The Agency identified 36 documents falling within the terms of the Applicant's request and granted access to 14 documents in full and refused access to 23 documents in part under sections 28(1)(d), 30(1), 32(1), 34(1)(b) and 34(4)(a)(ii). 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. The Applicant seeks review of the Agency's decision to exempt certain information under sections 28(1)(d), 30(1), 32(1) and 34(4)(a)(ii).

Concerns regarding delay in processing request

6. During the review, the Applicant raised concerns about the length of time taken by the Agency to make the decision, having submitted an FOI request to the Department of Transport on 28 September 2021, being advised it had been transferred to the Agency on 5 October 2021, and not receiving a decision until 19 January 2023.
7. In accordance with section 61B(3), these concerns were dealt with by this review.
8. OVIC staff made enquiries with the Agency regarding this matter, particularly given the delay in responding to the Applicant's request. The Agency advised it had a backlog of requests and was experiencing challenges with staff turnover. This office is continuing to monitor the Agency's timeliness and the resourcing of its FOI unit.
9. I have examined a copy of the documents subject to review.
10. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
11. I have considered all communications and submissions received from the parties.
12. 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.

13. 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.
14. 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.

Provision of an initial view to the Agency

15. OVIC staff provided the Agency with an initial view that certain exemptions were unlikely to apply, based on previous decisions made by the Information Commissioner.
16. The Agency responded by agreeing that some of the information was not exempt, and by maintaining its view that exemptions did apply to certain information.

Review of exemptions

17. The Applicant seeks access to the terms of reference, agenda and meeting minutes of the Suburban Rail Loop Interdepartmental Committee (**IDC**).
18. The terms of reference at Document 1 (released in full to the Applicant) describe the role of the IDC in part as follows:

The Suburban Rail Loop IDC provides high-level coordination and ensures alignment of all agencies contributing to the Suburban Rail Loop infrastructure project.

Reporting to the Suburban Rail Loop Ministerial Taskforce ('the taskforce'), the role of the IDC is to:

- Oversee development of submissions for consideration of the taskforce,
- Review submissions being considered at the taskforce; and
- Provide strategic and operational coordination, coherence and alignment of the SRL project with government priorities.

...

The SRL IDC meets no less than two weeks prior to scheduled Suburban Rail Loop Taskforce meetings to discuss relevant matters relating to the project and review papers to for [sic] consideration by the taskforce. **Section 28(1) – Cabinet documents**

19. 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.

20. 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.³
21. Section 28(7)(a) defines ‘Cabinet’ as including a committee or sub-committee of the Cabinet.⁴

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

22. 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,⁵ other than a document by which a decision of the Cabinet was officially published.
23. 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 put before the Cabinet.⁶
24. In *Asher v Department of Sustainability and Environment*,⁷ 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.
25. The Victoria Court of Appeal has held ‘deliberations’ should be interpreted narrowly to apply to the actual debate that took place rather than the subject matter of a debate.⁸

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 or feasible or may advance an argument for a particular point of view.⁹ The former would say nothing as to Cabinet’s deliberations; the latter might say a great deal.

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

⁴ See also *The Cabinet Handbook* (February 2023), p 6 at <https://www.vic.gov.au/cabinet-handbook>, which states in relation to Cabinet committees that they can be committees, sub-committees and taskforces; are formed by the Premier or the Cabinet; are guided by their terms of reference and receive secretariat support from the Department of Premier and Cabinet.

⁵ Section 28(7).

⁶ *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].

⁷ (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].

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

⁹ *Re Smith and Department of Environment and Sustainability* [2006] VCAT 1228.

26. 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.¹⁰
27. 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.¹¹
28. In relation to the Suburban Rail Loop Ministerial Taskforce (the **Taskforce**) referred to in the IDC Terms of Reference extracted above, the Agency submits the Taskforce and another named committee are both Cabinet sub-committees. OVIC has made inquiries with the Agency regarding the status of the Taskforce and other named committee. The Agency has provided terms of reference for both the Taskforce and the other named committee. Having carefully reviewed the documents before me, including other information in the Agency's submission, the terms of reference, and the *Cabinet Handbook*, I accept that the Taskforce and other named committee are Cabinet sub-committees for the purpose of section 28.
29. My decision in relation to section 28(1) is set out in the Schedule of Documents at **Annexure 1**.

Section 30(1) – Internal working documents

30. 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.
31. The exemption does not apply to purely factual material in a document.¹²
32. In deciding if release is 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. In doing so, I have given weight to the following relevant factors:¹³
 - (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;

¹⁰ *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.

¹¹ *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].

¹² Section 30(3).

¹³ *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

- (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.
33. The Agency submits that some information is deliberative and a final decision has not been made, and that other information is no longer accurate. Further, the Agency submits:

Overall, the disclosure of this content would be contrary to the public interest as it would inhibit the ability of the IDC to carry out its deliberative functions in the development of the SRL program and would cause confusion by revealing options that may have been considered but not adopted, particularly in circumstances where the IDC has no formal decision-making authority.

Given the nature of the documents as meeting agendas and minutes with summarised points rather than full documents with complete details, it is likely that such disclosure would provide only part explanations or details and would not fairly disclose the reasons for a decision made subsequently. This would be likely to prejudice the integrity of the decision-making process and would lead to unnecessary debate regarding the SRL program.

34. My decision in relation to section 30(1) is set out in the Schedule of Documents at **Annexure 1**.

Section 32(1) – Documents affecting legal proceedings

35. Section 32(1) provides a document is an exempt document 'if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege or client legal privilege'.
36. A document will be subject to legal professional privilege and exempt from release where it contains a confidential communication:¹⁴
- (a) between the client (or the client's agent) and the client's professional legal advisers, that was made for the dominant purpose of obtaining or providing legal advice or is referable to pending or contemplated litigation;
 - (b) between the client's professional legal advisers and third parties, that was made for the dominant purpose of pending or contemplated litigation; or

¹⁴ *Graze v Commissioner of State Revenue* [2013] VCAT 869 at [29]; *Elder v Worksafe Victoria* [2011] VCAT 1029 at [22]. See section 119 of the *Evidence Act 2008* (Vic).

- (c) between the client (or the client's agent) and third parties that was made for the purpose of obtaining information to be submitted to the client's professional legal advisers for the dominant purpose of obtaining advice on pending or contemplated litigation.

Has legal professional privilege been waived?

37. Legal privilege exists to protect the confidentiality of communications between a lawyer and a client. Privilege will be lost where the client has acted in a way that is inconsistent with the maintenance of that confidentiality – for instance where the substance of the information has been disclosed with the client's express or implied consent.¹⁵
38. My decision in relation to section 32(1) is set out in the Schedule of Documents at **Annexure 1**.

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

39. 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'. 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.
40. Whether an agency is engaged in trade or commerce depends on the facts and circumstances of each case.¹⁶
41. VCAT has held 'the terms 'trade' and 'commerce' are not words of art; rather they are expressions of fact and terms of common knowledge'.¹⁷ VCAT has adopted the view of the Federal Court of Australia that these terms are 'of the widest import'.¹⁸ 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.¹⁹
42. An agency may be engaged in trade or commerce, even if profit is not one of its express statutory objectives.²⁰
43. While the phrase 'trade and commerce' may be interpreted broadly,²¹ it has been held trade and commerce must 'of their nature, bear a trading or commercial character'.²²

¹⁵ *Mann v Carnell* (1999) 201 CLR 1 at [28]-[29] (for legal professional privilege).

¹⁶ *Stewart v Department of Tourism, Sport and the Commonwealth Games* [2003] VCAT 45 at [41].

¹⁷ *Pallas v Roads Corporation (Review and Regulation)* [2013] VCAT 1967 at [33].

¹⁸ *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].

¹⁹ *Marple v Department of Agriculture* (1995) 9 VAR 29 at [47].

²⁰ *Thwaites v Metropolitan Ambulance Services* (1996) 9 VAR at [473].

²¹ *Re Ku-Ring-Gai Co-operative Building Society (No 12) Ltd* [1978] FCA 50; (1978) 36 FLR 134.

²² *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].

44. 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).²³
45. Whether disclosure of a document would be likely to expose an agency unreasonably to disadvantage depends on the particular facts and circumstances of the matter, and involves objectively considering the consequences for the agency that would be likely to follow from disclosure of the information.
46. The provision contemplates that disclosure of a document under the FOI Act may expose the agency to a certain measure of disadvantage, and that any such exposure must be unreasonable.
47. My decision in relation to section 34(4)(a)(ii) is set out in the Schedule of Documents at **Annexure 1**.

Section 25 – Deletion of exempt or irrelevant information

48. 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.
49. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'²⁴ 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 25.²⁵
50. I have considered the information the Agency deleted from the documents as irrelevant. I agree it is outside the scope of the Applicant's request as it is the names of non-executive Agency officers.
51. I have considered the effect of deleting irrelevant and exempt information from the documents. In my view, it is practicable to delete this information as do so would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

52. On the information before me, I am satisfied certain information in the documents is exempt from release under sections 28(1)(d) and 30(1). However, I am not satisfied all information to which the Agency refused access is exempt from release.
53. I am not satisfied information to which the Agency refused access under sections 32(1), 34(1)(b) and 34(4)(a)(ii) is exempt from release.

²³ *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].

²⁴ *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].

²⁵ *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].

54. 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.
55. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

Review rights

56. If either party to this review is not satisfied with my decision, they are entitled to apply to the VCAT for it to be reviewed.²⁶
57. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.²⁷
58. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.²⁸
59. 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.
60. 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.²⁹

When this decision takes effect

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

²⁶ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

²⁷ Section 52(5).

²⁸ Section 52(9).

²⁹ Sections 50(3F) and 50(3FA).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1	Undated	Suburban Rail Loop Interdepartmental Committee (IDC) Terms of Reference	1	Released in full	Not subject to review	
2	04/12/2019	Minutes of the IDC meeting of 4 December 2019	2	Released in part Section 28(1)(d)	Release in part Sections 28(1)(d), 25 The document is to be released, with the following exempt information deleted in accordance with section 25: <ul style="list-style-type: none"> the information identified by the Agency in point 6. 	<p>Section 28(1)(d): In response to the initial view provided to the Agency by OVIC, the Agency agreed the information to which it refused access at points 5 and 7 do not disclose a decision or deliberation of the Cabinet. Therefore, I am not satisfied this information is exempt from release under section 28(1)(d). However, I am satisfied information at point 6 discloses a decision of a Cabinet sub-committee and is exempt from release under section 28(1)(d).</p> <p>Section 25: I am satisfied it is practicable to provide the Applicant with an edited copy of this document with exempt information deleted.</p>
3	30/01/2020	Agenda for IDC meeting held on 30 January 2020	2	Released in full	Not subject to review	

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
4	30/01/2020	Minutes of the IDC meeting held on 30 January 2020	4	Released in part Section 28(1)(d), 30(1), 34(4)(a)(ii)	Release in part Sections 30(1), 25 The document is to be released, with the following exempt information deleted in accordance with section 25: <ul style="list-style-type: none"> the information exempted by the Agency in the first paragraph of point 5, and the entities named in the last paragraph. 	<p>Section 28(1)(d): In response to the initial view provided to the Agency by OVIC, the Agency agreed the information to which it refused access at points 3 and 5 do not disclose a decision or deliberation of the Cabinet. Therefore, I am not satisfied this information is exempt from release under section 28(1)(d).</p> <p>While the Agency maintains section 28(1)(d) applies to point 9, I do not consider the information is specific enough to disclose the deliberations of the Cabinet. I also note the information is speculative regarding what may form part of a future Cabinet submission. Therefore, I am not satisfied this information is exempt from release under section 28(1)(d).</p> <p>Section 30(1): In response to the initial view provided to the Agency by OVIC, the Agency agreed section 30(1) does not apply to information in point 4. However, it maintains section 30(1) applies to information in point 5 as its disclosure would inhibit frankness and candour among Agency</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>officers. While I note the information relates to an early planning option, I do not consider disclosure of this information would reasonably have such an impact. I also note it is a publicly discussed issue. Therefore, I am not satisfied this information is exempt from release under section 30(1).</p> <p>While the Agency did not apply section 30(1) to other parts of point 5, I have also considered the application of this exemption.</p> <p>The first redaction in point 5 reveals entities with which the Agency is negotiating agreements. In information released to the Applicant, I note the Agency refers to [context] in relation to those negotiations. On this basis I have determined disclosure would be contrary to the public interest as it would likely negatively impact the Agency in those negotiations. I have also not been able to identify any publicly available information about these matters. Therefore, this information is exempt from release</p>

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						<p>under section 30(1). The names of these entities are also exempt where they appear in the last paragraph of point 5. However the remainder of that paragraph is not exempt.</p> <p>Section 34(4)(a)(ii): In relation to the remainder of the last paragraph of point 5, I do not consider the Agency is engaged in trade or commerce through the work of the IDC, rather it is fulfilling its governmental functions. In any case, while I note the Agency considers disclosure would 'decrease commercial confidence in the Agency', I do not consider the processes described reveal information that would expose the Agency unreasonably to disadvantage in future engagement with the private sector in [nature of project]. Therefore, I am not satisfied the information is exempt from release under section 34(4)(a)(ii).</p>
5	18/03/2020	IDC Agenda – 18 March 2020	1	Released in full	Not subject to review	

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
6	18/03/2020	IDC Minutes of the IDC meeting of 18 March 2020	3	Released in part Section 28(1)(d)	Release in part Sections 28(1)(d), 25 The document is to be released, with the following exempt information deleted in accordance with section 25: <ul style="list-style-type: none"> the information identified as exempt by the Agency under section 28(1)(d). 	Section 28(1)(d): Based on the Agency's submission, I consider the information identified in point 3 discloses a Cabinet deliberation or decision. In relation to the information at point 6, I agree it discloses the deliberations of a Cabinet sub-committee and is exempt from release under section 28(1)(d). Section 25: See comments for Document 2.
7	15/04/2020	Agenda for IDC meeting held on 15 April 2020	1	Released in full	Not subject to review	
8	15/04/2020	Minutes of the IDC meeting of 15 April 2020	3	Released in part Section 28(1)(d)	Release in part Sections 28(1)(d), 25 The document is to be released, with the following exempt information deleted in accordance with	Section 28(1)(d): In response to the initial view provided to the Agency by OVIC, the Agency agreed the information exempted at point 3 does not disclose a Cabinet decision or deliberation. Therefore, I am not satisfied this information is exempt from release under section 28(1)(d).

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					section 25: <ul style="list-style-type: none"> the information identified by the Agency in point 4. 	In relation to the information at point 4, I agree it records the outcome of a meeting of a Cabinet sub-committee and is exempt from release under section 28(1)(d). Section 25: See comments for Document 2.
9	13/05/2020	Agenda for IDC meeting held on 13 May 2020	1	Released in full	Not subject to review	
10	13/05/2020	Minutes of the IDC meeting of 13 May 2020	2	Released in part Sections 28(1)(d), 25	Release in part Sections 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"> the information identified as exempt by the Agency. 	Section 28(1)(d): I am satisfied the information exempted by the Agency records decisions and deliberations of a Cabinet sub-committee and is exempt from release under section 28(1)(d). Section 25: See comments for Document 2. Further, I agree the information identified by the Agency is irrelevant as it is the names of non-executive Agency officers.

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11	01/07/2020	Agenda for IDC meeting held on 1 July 2020	1	Released in part Section 28(1)(d)	Release in full	Section 28(1)(d): In response to the initial view provided to the Agency by OVIC, the Agency agreed the information exempted does not disclose a Cabinet decision or deliberation. Therefore, I am not satisfied this information is exempt from release under section 28(1)(d).
12	22/07/2020	Agenda for IDC meeting held on 22 July 2020	1	Released in part Section 28(1)(d)	Release in full	Section 28(1)(d): In response to the initial view provided to the Agency by OVIC, the Agency agreed the information exempted does not disclose a Cabinet decision or deliberation. Therefore, I am not satisfied this information is exempt from release under section 28(1)(d).
13	22/07/2020	Minutes of the IDC meeting of 22 July 2020	4	Released in part Sections 28(1)(d), 30(1), 25	Release in part Sections 28(1)(d), 25 The document is to be released, with the following irrelevant and exempt information deleted in accordance with section 25:	Section 28(1)(d): In response to the initial view provided to the Agency by OVIC, the Agency agreed the information exempted in points 3, 4, 5 in part, and 6 and 9. Therefore, I am not satisfied this information is exempt from release under section 28(1)(d). Based on the Agency's submission, I consider the remainder of the information (being regarding items 3

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					<ul style="list-style-type: none"> the information identified by the Agency in its submission of 1/11/2023; and the information identified by the Agency as irrelevant. 	<p>and 4 and noted in its submission of 1/11/2023) that it discloses a Cabinet decision or deliberation. Therefore, I not satisfied this information is exempt from release under section 28(1)(d).</p> <p>Section 30(1): The information identified by the Agency at point 8 constitutes Agency officer advice prepared for the deliberative processes of the Agency. However, I am not satisfied there is information before me to support a decision its disclosure would contrary to the public interest. Therefore, I am not satisfied this information is exempt from release under section 30(1).</p> <p>Section 25: See comments for Document 2. Further, I agree the information identified by the Agency is irrelevant, as it is the names of non-executive Agency officers.</p>
14	19/08/2020	Agenda for IDC meeting held on 19 August 2020	1	Released in part Sections 28(1)(d), 25	Release in full	Section 28(1)(d): In response to the initial view provided to the Agency by OVIC, the Agency agreed the information exempted by it does not disclose a Cabinet decision or

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						deliberation. Therefore, I am not satisfied this information is exempt from release under section 28(1)(d).
15	19/08/2020	Minutes of the IDC meeting of 19 August 2020	3	Released in part Sections 28(1)(d), 30(1), 25	<p>Release in part</p> <p>Sections 28(1)(d), 25</p> <p>The document is to be released, with the following irrelevant and exempt information deleted in accordance with section 25:</p> <ul style="list-style-type: none"> • the information identified as irrelevant by the Agency; • the information identified by the Agency on page 1; • the information identified by the Agency on page 2, except for the fifth dot point; 	<p>Section 28(1)(d): Based on information provided by the Agency during the review, as well as the content of the documents, I am satisfied certain information discloses a Cabinet sub-committee deliberation or decision. However, I am not satisfied all the information the Agency exempted reveals such information and is therefore not exempt from release. See 'OVIC Decision' column for the exempt information.</p> <p>Section 25: See comments for Document 2. Further, I agree the information identified by the Agency is irrelevant, as it is the names of non-executive Agency officers.</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					<ul style="list-style-type: none"> the remainder of the information identified by the Agency in the document. 	
16	30/09/2020	Agenda for IDC meeting held on 30 September 2020	1	Released in part Section 28(1)(d)	Release in full	Section 28(1)(d): In response to the initial view provided to the Agency by OVIC, the Agency agreed the information exempted by it does not disclose a Cabinet decision or deliberation. Therefore, I am not satisfied this information is exempt from release under section 28(1)(d).
17	30/09/2020	Minutes of the IDC meeting of 30 September 2020	4	Released in part Sections 28(1)(d), 34(4)(a)(ii), 25	Release in part Sections 28(1)(d), 25 The document is to be released with the following irrelevant and exempt information deleted in accordance with section 25: <ul style="list-style-type: none"> the information the Agency identified as irrelevant; and 	Section 28(1)(d): In response to the initial view provided to the Agency by OVIC, the Agency agreed the information in point 7 does not disclose a Cabinet decision or deliberation. Therefore, I am not satisfied this information is exempt from release under section 28(1)(d). Based on the Agency's submission, I am satisfied the information in point 3 discloses a Cabinet decision or deliberation. Therefore, I am satisfied this information is exempt from release under section 28(1)(d).

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					<ul style="list-style-type: none"> • the information identified by the Agency in point 3. <p>1.</p>	<p>Section 30(1): The Agency exempted certain information in point 4 relating to [subject]. It also exempted certain information in point 6 regarding procurement processes. I am satisfied this information constitutes Agency officer advice prepared for the deliberative processes of the Agency.</p> <p>I accept the information does not constitute final advice or a decision of the IDC or the Agency. Rather, a decision regarding funding of a project of this size would sit with the Cabinet.</p> <p>However, the IDC membership comprises various heads of government departments and, from the documents subject to review and released by the Agency, clearly plays a significant role in the planning and facilitation of the SRL project.</p> <p>I have carefully considered the nature of the relevant funding information, the role of the IDC and its senior membership and the significant public interest in transparency in government spending of public funds</p>

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						<p>on infrastructure projects. I have also taken into consideration the age of the document, which is more than three years old and the significant developments in relation to decisions and progress made on the SRL project since that time.</p> <p>On balance, I do not consider disclosure of the relevant information would be contrary to the public interest given much of it outlines high level options for funding and procurement only. I also consider its disclosure would serve a number of public interest factors given the broad public interest in this major transport infrastructure project, including providing the public with the ability to be informed about and scrutinise consideration given to funding options noting the size, scale and cost of the SRL project. In this regard, I note audits conducted by the Victorian Auditor General in relation to the planning for major transport projects and scrutiny of business cases for major transport infrastructure and associated project</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>funding.³⁰ Therefore, on balance, I am not satisfied this information is exempt from release under section 30(1).</p> <p>Section 34(4)(a)(ii): In response to the initial view provided to the Agency by OVIC, the Agency no longer relies on this exemption. Therefore, I am not satisfied this information is exempt from release under section 34(4)(a)(ii).</p> <p>Section 25: See comments for Document 2. Further, I agree the information identified by the Agency is irrelevant, as it is the names of non-executive Agency officers.</p>
18	28/10/2020	Agenda for IDC meeting held on 28 October 2020	1	Released in full	Not subject to review	

³⁰ Victorian Auditor General, *Quality of Major Transport Infrastructure Project Business Cases* (tabled 21 September 2022) at <https://www.audit.vic.gov.au/report/quality-major-transport-infrastructure-project-business-cases#34199--adequacy-of-suburban-rail-loop-business-case>; and see also *Major transport projects: planning and early works* at <https://www.audit.vic.gov.au/report/major-transport-projects-planning-and-early-works?section=t>.

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19	28/10/2020	Minutes of the IDC meeting of 28 October 2020	3	Released in part Sections 28(1)(d), 34(4)(a)(ii), 25	Release in part Sections 28(1)(d), 25 The document is to be released with the following irrelevant and exempt information deleted in accordance with section 25: <ul style="list-style-type: none"> • the information the Agency identified as irrelevant; • the information identified by the Agency in point 5; and • the second dot point in point 7. 	<p>Section 28(1)(d): In response to the initial view provided to the Agency by OVIC, the Agency agreed the information exempted by it in the second dot point of point 7 and the information in point 8 does not disclose a Cabinet decision or deliberation. Therefore, I am not satisfied this information is exempt from release under section 28(1)(d).</p> <p>Based on information provided by the Agency during the review, as well as the content of the documents, I am satisfied certain information discloses a Cabinet sub-committee deliberation or decision. However, I am not satisfied all information the Agency exempted is specific enough to disclose such information. See 'OVIC Decision' column for the exempt information. Therefore, I am also not satisfied this information is exempt from release under section 28(1)(d).</p> <p>Section 34(4)(a)(ii): See comments for Document 17.</p> <p>Section 25: See comments for Document 2. Further, I agree the</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						information identified by the Agency is irrelevant, as it is the names of non-executive Agency officers.
20	25/11/2020	Agenda for IDC meeting held on 25 November 2020	1	Released in full	Not subject to review	
21	25/11/2020	Minutes of the IDC meeting of 25 November 2020	3	Released in part Sections 28(1)(d), 34(4)(a)(ii), 25	Release in part Sections 28(1)(d), 25 The document is to be released with the following irrelevant and exempt information deleted in accordance with section 25: <ul style="list-style-type: none"> the information the Agency identified as irrelevant; and the information exempted by the Agency under section 28(1)(d). 	Section 28(1)(d): Based on information provided by the Agency during the review, as well as the content of the documents, I am satisfied the information identified by the Agency discloses a Cabinet sub-committee deliberation or decision. Therefore, I am satisfied this information is exempt from release under section 28(1)(d). Section 34(4)(a)(ii): See comments for Document 17. Section 25: See comments for Document 2. Further, I agree the information identified by the Agency is irrelevant, as it is the names of non-executive Agency officers.
22	16/12/2020	Agenda for IDC meeting held on	1	Released in full	Not subject to review	

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		16 December 2020				
23	16/12/2020	Minutes of the IDC meeting of 16 December 2020	6	Released in part Sections 28(1)(d), 25	Release in part Sections 28(1)(d), 25 The document is to be released with the following irrelevant and exempt information deleted in accordance with section 25: <ul style="list-style-type: none"> the information the Agency identified as irrelevant; and the information exempted by the Agency under section 28(1)(d). 	Section 28(1)(d): Based on the Agency's submission and the content of the document, I am satisfied the information identified by the Agency discloses Cabinet deliberations and decisions. Therefore, I am satisfied this information is exempt from release under section 28(1)(d). Section 25: See comments for Document 2. Further, I agree the information identified by the Agency is irrelevant, as it is the names of non-executive Agency officers.
24	01/2021	Minutes of the IDC meeting of January 2021 (Out of session)	2	Released in part Sections 28(1)(d), 25	Release in part Sections 28(1)(d), 25 The document is to be released with the following irrelevant and exempt information	Section 28(1)(d): I am satisfied, based on the content, that the first, second and fifth dot points of point 2, as well as the information identified by the Agency in point 3 disclose Cabinet decisions. Therefore, I am satisfied this information is exempt from release under section 28(1)(d).

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					<p>deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the information the Agency identified as irrelevant; and the information exempted by the Agency under section 28(1)(d), except for the fourth dot point in point 2. 	<p>In response to the initial view, the Agency advised there is insufficient evidence the fourth dot point in point 2 discloses a Cabinet decision or deliberation. Therefore, I am not satisfied this information is exempt from release under section 28(1)(d).</p> <p>However I am not satisfied the remainder of the information identified by the Agency is exempt, as there is insufficient information to support the view that it was the subject of Cabinet deliberations.</p> <p>Section 25: See comments for Document 2. Further, I agree the information identified by the Agency is irrelevant, as it is the names of non-executive Agency officers.</p>
25	02/2021	Minutes of the IDC meeting of February 2021 (Out of session)	1	Released in part Section 28(1)(d)	<p>Release in part</p> <p>Sections 28(1)(d), 25</p> <p>The document is to be released with the following exempt information deleted in</p>	<p>Section 28(1)(d): Based on the Agency's submission and the content of the document, I am satisfied the information identified by the Agency discloses Cabinet deliberations and decisions. Therefore, I am not satisfied this information is exempt from release under section 28(1)(d).</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					<p>accordance with section 25:</p> <ul style="list-style-type: none"> the information exempted by the Agency under section 28(1)(d). 	Section 25: See comments for Document 2.
26	17/03/2021	Agenda for IDC meeting held on 17 March 2021	1	Released in part Section 25	Not subject to review	
27	17/03/2021	Minutes of the IDC meeting of 17 March 2021	5	Released in part Sections 28(1)(d), 32(1), 34(4)(a)(ii), 25	<p>Release in part Sections 28(1)(d), 25</p> <p>The document is to be released with the following irrelevant and exempt information deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the information the Agency identified as irrelevant; and the information exempted by the Agency under section 	<p>Section 28(1)(d): In response to the initial view provided to the Agency by OVIC, the Agency agreed the information exempted by it in the second sentence in the first dot point of point 1 does not disclose a Cabinet decision or deliberation. Therefore, I am not satisfied this information is exempt from release under section 28(1)(d).</p> <p>I am satisfied the remainder of the information identified by the Agency discloses Cabinet deliberations or decisions and is exempt from release under section 28(1)(d).</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					28(1)(d), except for second sentence of the first dot point in point 3.	<p>Section 32(1): I am not satisfied the information identified by the Agency is exempt from release under section 32(1) as it is not a confidential communication between the Agency and its legal advisers, nor was it communicated for the purpose of obtaining or receiving legal advice.</p> <p>Section 34(4)(a)(ii): I am not satisfied the Agency is engaged in trade or commerce, rather it is engaging with business undertakings in relation to its governmental functions. In any case, there is no information before me that the disclosure of the general high level information in the document would have any impact on the Agency.</p> <p>Section 25: See comments for Document 2. Further, I agree the information identified by the Agency is irrelevant, as it is the names of non-executive Agency officers.</p>
28	19/05/2021	Agenda for IDC meeting held on	1	Released in part Section 25	Not subject to review	

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		19 May 2021				
29	19/05/2021	Minutes of the IDC meeting of 19 May 2021	3	Released in part Sections 28(1)(d), 30(1), 32(1), 34(1)(b), 34(4)(a)(ii)	Release in part Sections 28(1)(d), 25 The document is to be released with the following irrelevant and exempt information deleted in accordance with section 25: <ul style="list-style-type: none"> the information the Agency identified as irrelevant; the information exempted by the Agency under section 28(1)(d), except for the second sentence the thirteenth dot point of point 4; the information identified by the Agency as exempt under section 30(1); 	<p>Section 28(1)(d): In response to the initial view provided to the Agency by OVIC, the Agency agreed the information exempted by it in the thirteenth dot point of point 4 does not disclose a Cabinet decision or deliberation. Therefore, I am not satisfied this information is exempt from release under section 28(1)(d).</p> <p>Section 30(1): I am satisfied the information identified by the Agency is in the nature of advice and opinion prepared by Agency officers for the deliberative processes of the Agency. Further, I am satisfied its disclosure would be contrary to the public interest as I consider the information is commercially sensitive and disclosure would likely negatively affect the Agency in undertaking its functions. Therefore, I am satisfied this information is exempt from release under section 30(1).</p> <p>I also consider certain other information in the document is exempt under section 30(1) where it</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					<ul style="list-style-type: none"> the information identified by the Agency in dot points four and five in point 4. 	<p>relates to the same issue. This is the information identified in dot points four and five in point 4.</p> <p>Section 32(1): See comments for Document 27.</p> <p>Sections 34(4)(a)(ii): As I have determined this information is exempt from release under section 30(1), I have not further considered other exemptions to that same information.</p> <p>Section 25: See comments for Document 2. Further, I agree the information identified by the Agency is irrelevant, as it is the names of non-executive Agency officers.</p>
30	16/06/2021	Agenda for IDC meeting held on 16 June 2021	1	Released in part Section 25	Not subject to review	
31	14/07/2021	Agenda for IDC meeting held on 14 July 2021	1	Released in part Section 25	Not subject to review	

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32	14/07/2021	Minutes of the IDC meeting of 14 July 2021	5	Released in part Sections 28(1)(d), 30(1), 34(4)(a)(ii), 25	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"> the information identified irrelevant by the Agency. 	<p>Section 28(1)(d): In response to the initial view provided to the Agency by OVIC, the Agency agreed the information exempted by it does not disclose a Cabinet decision or deliberation. Therefore, I am not satisfied this information is exempt from release under section 28(1)(d).</p> <p>Section 30(1): In response to the initial view provided to the Agency by OVIC, the Agency agreed the information exempted in point 4 is not exempt from release under section 30(1). Therefore, I am not satisfied this information is exempt from release under section 30(1).</p> <p>I note the information in this document could appear more sensitive and detailed than that in Document 17. However, I do not consider its disclosure would be contrary to the public interest for the reasons set out in relation to Document 17.</p> <p>The information is therefore not exempt under section 30(1).</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>Section 34(4)(a)(ii): See comments for Document 27.</p> <p>Section 25: See comments for Document 2. Further, I agree the information identified by the Agency is irrelevant, as it is the names of non-executive Agency officers.</p>
33	18/08/2021	Agenda for IDC meeting held on 18 August 2021	1	Released in part Section 25	Not subject to review	
34	18/08/2021	Minutes of the IDC meeting of 18 August 2021	3	Released in part Sections 28(1)(d), 30(1), 34(4)(a)(ii), 25	<p>Release in part Sections 28(1)(d), 25</p> <p>The document is to be released with the following irrelevant and exempt information deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the information the Agency identified as irrelevant; the information the Agency identified 	<p>Section 28(1)(d): Based on the Agency's submission and the content of the document, I am satisfied the information identified by the Agency is exempt from release under section 28(1)(d).</p> <p>Section 30(1): In response to the initial view provided to the Agency by OVIC, the Agency no longer relies on this exemption. I am satisfied the information is not exempt from release under section 30(1).</p> <p>However, I have further considered the information exempted by the Agency under section 34(4)(a)(ii) in</p>

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					<p>exempt under section 28(1)(d); and</p> <ul style="list-style-type: none"> the information exempted by the Agency in point 5 under section 34(4)(a)(ii) as it is exempt under section 30(1). 	<p>point 5 under section 30(1). In my view, disclosure of this information would be contrary to the public interest for similar reasons as described in Document 29.</p> <p>Section 34(4)(a)(ii): As I have determined the information exempted by the Agency in point 5 is exempt from release under section 30(1), I have not further considered the application of section 34(4)(a)(ii) to that information.</p> <p>Section 25: See comments for Document 2. Further, I agree the information identified by the Agency is irrelevant, as it is the names of non-executive Agency officers.</p>
35	15/09/2021	Agenda for the IDC meeting held on 15 September 2021	1	Released in part Section 25	Not subject to review	
36	15/09/2021	Minutes of the IDC meeting of 15 September 2021	3	Released in part Sections 28(1)(d), 34(1)(b), 34(4)(a)(ii)	Release in part Sections 28(1)(d), 25 The document is to be released with the	Section 28(1)(d): In response to the initial view provided to the Agency by OVIC, the Agency agreed the information exempted in dot point 4 of point 4 does not disclose a Cabinet decision or deliberation. Therefore,

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					<p>following irrelevant and exempt information deleted in accordance with section 25:</p> <ul style="list-style-type: none"> • the information the Agency identified as irrelevant and exempt under section 34(1)(b); and • the information the Agency identified exempt under section 28(1)(d), except for the information in dot point 4 of point 4. 	<p>I am not satisfied this information is exempt from release under section 28(1)(d).</p> <p>I am satisfied the remainder of the information identified by the Agency discloses a Cabinet sub-committee deliberation or decision and is exempt from release under section 28(1)(d).</p> <p>Sections 34(1)(b): As the Applicant does not seek review of this information, it is irrelevant information and is to be deleted under section 25.</p> <p>Section 34(4)(a)(ii): See comments for Document 27. While I consider this information may have been sensitive at a certain point in time, given the passage of time and the status of the negotiations, I am not satisfied its disclosure, at this time, would expose the Agency unreasonably to disadvantage.</p> <p>Section 25: See comments for Document 2. Further, I agree the information identified by the Agency</p>

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						is irrelevant, as it is the names of non-executive Agency officers.
37	Undated	Table of attachments	5	Released in part Section 28(1)(d)	<p>Release in part</p> <p>Sections 28(1)(d), 25</p> <p>The document is to be released with the following exempt information deleted in accordance with section 25:</p> <ul style="list-style-type: none"> the second redaction in point 8 and the first redaction in point 9. 	<p>Section 28(1)(d): In response to the initial view provided to the Agency by OVIC, the Agency agreed certain information exempted by it does not disclose a Cabinet decision or deliberation. The Agency also agreed that the second redaction in point 8 and the first redaction in point 9 does disclose such information. Therefore, I am not satisfied this information is exempt from release under section 28(1)(d).</p>