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## Notice of Decision and Reasons for Decision

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Applicant:	'DE1'
Agency:	Department of Jobs, Precincts and Regions
Decision date:	20 December 2021
Exemptions and provision considered:	Sections 30(1), 34(4)(a)(ii), 34(1)(b), 25
Citation:	'DE1' and Department of Jobs, Precincts and Regions (Freedom of Information) [2021] VICmr 164 (20 December 2021)

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FREEDOM OF INFORMATION – COVID-19 pandemic – consultancy services – government contracts – contract negotiations – banking details – section 49KA notice

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.

I am not satisfied certain information in the documents is exempt from release under sections 30(1) or 34(4)(a)(ii). However, I am satisfied certain information is exempt under section 34(1)(b).

Accordingly, my decision on the Applicant's request differs from the Agency's decision in that I have decided to release additional information in the documents.

As I am satisfied it is practicable provide the Applicant with an edited copy of the documents with exempt and irrelevant information deleted in accordance with section 25, access to the documents is granted in part.

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

A marked-up copy of the documents showing information that I am satisfied is exempt has been provided to the Agency with this decision for its reference.

My reasons for decision follow.

**Joanne Kummrow**

Public Access Deputy Commissioner

20 December 2021

## Reasons for Decision

### Background to review

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

All documents associated with the information tabled at the Hotel Quarantine Inquiry on Monday August 31, 2020 (by the DJPR) with respect to what services were actually performed, what consultancy services were performed, what advice was given by these consultants and how many hours were charged for & by each of these 3 consultancy companies (listed below)?

The document tabled at the inquiry yesterday detailed that \$924,000 was spent on consultants, with \$393,000 going to Boston Consulting, \$303,000 going to PwC and \$197,000 going to Deloitte.

2. In its decision, the Agency identified five documents falling within the terms of the Applicant's request and refused access to one document in full and four documents in part under sections 33(1) and 34(1)(b). The Agency's decision letter sets out the reasons for its decision.

### Review application

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. During the review, the Applicant indicated they do not seek access to personal affairs information of third parties.

### *Adequacy of document search complaint*

5. Alongside their review application, the Applicant raised concerns regarding the adequacy of the Agency's document searches and provided evidence in support of their view.
6. In accordance with section 61B(3), OVIC determined to address these concerns as part of this review.
7. OVIC made inquiries with the Agency in relation to the Applicant's concern and provided the Agency's responses to the Applicant for their consideration.

### *Notice under section 49KA – power to require a further search for documents*

8. Sections 49KA(1) and (2) provide that if the Information Commissioner or Public Access Deputy Commissioner reasonably believes an agency has failed to undertake an adequate search for documents that relate to a decision under review, a notice may be given to the agency requiring it to conduct a further document search.
9. On [date], I issued a notice under section 49KA(2)(b) to the Agency requiring it to conduct additional document searches by a specified date.

### *Agency's intended fresh decision*

10. Section 49M(1) permits an agency to make a fresh decision on an FOI request during a review.
11. On [date], following the conduct of further document searches, the Agency notified OVIC and the Applicant of its intention to make a fresh decision.
12. Section 49M(2) requires an agency to make its fresh decision 28 days after notifying the applicant and the Information Commissioner of its intention to do so, unless the agency and the Information Commissioner agree to an extension of time.

13. The Agency was granted with an extension of time to make its fresh decision by [date].
14. On [date], the Agency provided the Applicant with its intended fresh decision, advising it located nine documents, totalling 85 pages, four documents more than considered in its original decision.
15. The Agency refused access to parts of the documents in part under sections 30(1), 33(1), 34(1)(b) and 34(4)(a)(ii). The Agency provided the Applicant with edited copies of the documents and released further information, including in the additional documents located and in the documents located in its original decision.
16. The Agency's intended fresh decision was made outside of the statutory timeframe required under section 49M(2) and is therefore not a valid fresh decision under the FOI Act.
17. Accordingly, I am required to resume my review based on the Agency's original decision in accordance with section 49MA(3).
18. 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 involves ensuring my decision is correctly made under the FOI Act and any other applicable law in force at the time of my decision.
19. Accordingly, while my review is of the original decision made by the Agency on the FOI application, I am obliged to consider new documents and reasons that formed part of the Agency's intended fresh decision. I note this is particularly important, as further documents were released to the Applicant following the Agency's original decision and the Agency altered its decision on the application of exemptions to the documents located under its original decision.
20. I have examined a copy of the documents subject to review, including those identified under the original decision and under the intended fresh decision.
21. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review and I have considered all communications and submissions received from the parties.
22. 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.
23. 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.

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

## Review of exemptions

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

24. 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.
25. The exemption does not apply to purely factual material in a document.<sup>2</sup>
26. The Agency did refer to section 30(1) in its reasons provide to the Applicant in its intended fresh decision. However, the Agency has relied on section 30(1) to exempt information in Document 7, which was located during its additional document searches conducted in response to the notice issued under section 49KA(2)(b). Although the intended fresh decision is not subject to review, Document 7 forms part of this review, for the reasons provided above.
27. I am satisfied most information exempted from release by the Agency under section 30(1) is the personal affairs information of third parties, to which the Applicant does not seek access. Accordingly, my review of section 30(1) concerns one line of an email in Document 7, Attachment 7, dated [date] only.

#### *Was the document prepared by an officer of the Agency or a Minister?*

28. The term ‘officer of an Agency’ is defined in section 5(1). It includes a member of an agency, a member of an agency’s staff, and any person engaged by or on behalf of an agency, whether or not that person is subject to the *Public Administration Act 2004* (Vic).
29. I am satisfied the document was prepared by an officer of the Agency.

#### *Does the document contain information in the nature of opinion, advice, recommendation, consultation or deliberation?*

30. For the requirements of section 30(1) to be met, a document must contain matter in the nature of opinion, advice or recommendations prepared by an officer of an agency, or consultation or deliberation between officers.
31. It is not necessary for a document to be in the nature of opinion, advice or recommendation. Rather, the issue is whether release of a document would disclose matter of that nature.<sup>3</sup>
32. Section 30(3) provides purely factual information is not exempt under section 30(1). This provision must be considered in conjunction with section 25, which is discussed below.
33. I am satisfied the document contains matter in the nature of opinion.

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<sup>2</sup> Section 30(3).

<sup>3</sup> *Mildenhall v Department of Education* (1998) 14 VAR 87.

*Was the document made in the course of, or for the purpose of, the deliberative processes involved in the functions of the Agency?*

34. The term 'deliberative process' is interpreted widely and includes any of the processes of deliberation or consideration involved in the functions of an agency, Minister or government.<sup>4</sup>
35. In *Re Waterford and Department of Treasury (No.2)*,<sup>5</sup> the 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.
36. I am satisfied the document was made in the course of, and for the purpose of, the Agency's deliberative processes in procuring services from a consultancy firm.

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

37. In determining if disclosure of a document would be contrary to the public interest, I must consider all relevant facts and circumstances remaining mindful the object of the FOI Act is to facilitate and promote the disclosure of information. In doing so, I have given weight to the following factors in the context of this matter:<sup>6</sup>
- (a) the right of every person to gain access to documents under the FOI Act;
  - (b) the degree of sensitivity of the issues discussed in the documents and the broader context giving rise to the creation of the documents;
  - (c) the stage of a decision or status of policy development or a process being undertaken at the time the communications were made;
  - (d) whether disclosure of the documents would be likely to inhibit communications between Agency officers, essential for the Agency to make an informed and well-considered decision or participate fully and properly in a process in accordance with the Agency's functions and other statutory obligations;
  - (e) whether disclosure of the documents would give merely a part explanation, rather than a complete explanation for the taking of a particular decision or the outcome of a process, which the Agency would not otherwise be able to explain upon disclosure of the documents;
  - (f) the impact of disclosing documents in draft form, including disclosure not clearly or accurately representing a final position or decision reached by the Agency at the conclusion of a decision or process; and
  - (g) the public interest in the community being better informed about the way in which the Agency carries out its functions, including its deliberative, consultative and decision making processes and whether the underlying issues require greater public scrutiny.
38. My decision on the application of section 30(1) to Document 7 is outlined in the Schedule of Documents in **Annexure 1**.

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<sup>4</sup> *Brog v Department of Premier and Cabinet* (1989) 3 VAR 201 at 208.

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

<sup>6</sup> *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

**Section 34(1)(b) – Business, commercial or financial information of an undertaking**

39. A document will be an exempt from release under section 34(1)(b), if it contains information:
- (a) acquired from a business, financial or commercial undertaking;
  - (b) that relates to matters of a business, commercial or financial nature; and
  - (c) the disclosure of which, having regard to the matters listed in section 34(2), would be likely to expose the undertaking unreasonably to disadvantage.

*Was the information acquired from a business, commercial or financial undertaking?*

40. The phrase ‘information acquired’ in section 34(1) signifies the need for some positive handing over of information in some precise form.<sup>7</sup>
41. The phrase ‘business, commercial or financial undertaking’ generally refers to an entity, such as a company or organisation, that is engaged in business, trade, or commerce for a financial profit or gain.
42. The information was obtained by three professional services firms (the **Undertakings**), which I am satisfied are business, commercial or financial undertakings for the purposes of section 34.

*Does the information relate to matters of a business, commercial or financial nature?*

43. The phrase ‘information of a business, commercial or financial nature’ is not defined in the FOI Act. Therefore, the words ‘business, commercial or financial nature’ should be given their ordinary meaning.<sup>8</sup>
44. The documents concern the procurement of services by the Agency from the Undertakings.
45. The following is a summary of the types of information the Agency exempted from release under section 34(1)(b):
- (a) the scope and nature of the services provided or to be provided;
  - (b) delivery timeframes and contract periods, such as the start and end dates of the original contracts and variations;
  - (c) fees/rates and invoicing information;
  - (d) contract variation values;
  - (e) total approval values/ total cost of contract inclusive of variations;
  - (f) estimated expenditure per financial year in 2020-2021; and
  - (g) contract authorisation/decision dates.
46. I am satisfied this information relates to matters of a business, commercial or financial nature.

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<sup>7</sup> *Thwaites v Department of Human Services* (1999) 15 VAR 1.

<sup>8</sup> *Gibson v Latrobe CC (General)* [2008] VCAT 1340 at [25].

*Would disclosure of the information be likely to expose the Undertakings unreasonably to disadvantage?*

47. Section 34(2) provides that in determining whether disclosure of information would expose an undertaking unreasonably to disadvantage for the purposes of section 34(1)(b), the following considerations may be taken into account:

- (a) whether the information is generally available to competitors of the undertaking;
- (b) whether the information would be exempt matter if it were generated by an agency or a Minister;
- (c) whether the information could be disclosed without causing substantial harm to the competitive position of the undertaking; and
- (d) whether there are any considerations in the public interest in favour of disclosure which outweigh considerations of competitive disadvantage to the undertaking, for instance, the public interest in evaluating aspects of government regulation of corporate practices or environmental controls—

and of any other consideration or considerations which in the opinion of the agency or Minister is or are relevant.

48. I have also had regard to the decision in *Dalla- Riva v Department of Treasury and Finance*,<sup>9</sup> in which the Victorian Civil and Administrative Tribunal (VCAT) held documents are exempt under section 34(1)(b) if their disclosure would:

- (a) give competitors of a business undertaking a financial advantage;
- (b) enable competitors of a business undertaking to engage in destructive competition with the business undertaking; and
- (c) would lead to the drawing of unwarranted conclusions as to a business undertaking's financial affairs and position with detrimental commercial and market consequences.

49. I consider the phrase 'expose the undertaking unreasonably to disadvantage' in section 34(1)(b) contemplates disclosure of documents under the FOI Act may expose a business undertaking to a certain measure of disadvantage in a commercial or competitive context.

50. By the introduction of the word 'unreasonably' in section 34(1)(b), I consider Parliament determined this exemption applies where an undertaking would be exposed 'unreasonably' to disadvantage only. Therefore, the question is whether any such disclosure would expose an undertaking unreasonably to disadvantage, rather than whether there would be exposure to any disadvantage.

51. In determining whether disclosure of commercially sensitive information would expose an undertaking unreasonably to disadvantage, if practicable, an agency must notify the undertaking and seek its views on disclosure.<sup>10</sup> The Agency provided copies of each Undertaking's response for my consideration.

#### Breakdown of service provider fees

52. I have considered the case of *Coulson v Department of Premier and Cabinet*<sup>11</sup> (**Coulson decision**), in which VCAT held that 'itemised lists of the professional services' in relation to legal fees were exempt under section 34(1)(b). This was on the basis that the charge-out rates identified in the relevant documents could, if released, expose the legal consultants to disadvantage in the open market. A

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<sup>9</sup> [2007] VCAT 1301 at [33].

<sup>10</sup> Section 34(3).

<sup>11</sup> [2018] VCAT 229.

similar finding was made in *Commissioner of State Revenue v Tucker (Review and Regulation)* [2021] VCAT 238.

53. In this matter, the fees relate to the procurement of services on behalf of the State. The documents include contracts made under the Professional Advisory Service Panel Agreement.
54. Whilst the Applicant may not be a competitor of the relevant Undertakings, I am satisfied disclosure of the breakdown of the Undertakings' negotiated commercial rates and fees could expose them unreasonably to disadvantage for the following reasons:
  - (a) rates under the Professional Advisory Service Panel Agreement are not made available to the public;
  - (b) negotiated rates would not be available to competitors of the Undertakings;
  - (c) other professional services consultancies could reasonably take advantage of the standard rates or negotiated rates disclosed in the documents, such as by providing lower estimates for services when tendering for future government work; and
  - (d) disclosure of this type of information could enable competitors of the Undertaking to engage in destructive competition with the Undertakings, causing them commercial harm.
55. Accordingly, I accept disclosure of the breakdown of the Undertakings' negotiated commercial rates and fees would be likely to expose the Undertakings unreasonably to disadvantage and is exempt from release under section 34(1)(b).

#### Other pricing information

56. In addition to the cases cited above, I have considered VCAT's findings in *Asher v Victorian WorkCover Authority*,<sup>12</sup> in which the Tribunal held that while releasing pricing information that is not available to an undertaking's competitors may cause an undertaking some disadvantage, the disadvantage did not outweigh the public interest factors in favour of disclosure, given the greater need for transparency and accountability.
57. The Agency is a large government department which would be reasonably likely to procure regular external services from external consultants and service providers associated with its statutory and governmental functions. The costs incurred by a government department in relation to such services will likely be influenced by the nature, scope and timing of the services required.
58. Private companies tendering for government contracts should reasonably expect a greater degree of transparency and accountability given the use of public funds for the procurement of services.
59. I am of the view promoting good governance, transparency and accountability in government decision making and the oversight of the spending of public funds is in the public interest.
60. Further, disclosure in this instance serves the public interest as it can assist members of the public in their understanding and scrutiny of the Government's response to the COVID-19 pandemic. I am of the view that where documents concern sensitive matters affecting the community, the public and government is better served by transparency and rather than maintaining secrecy.
61. In most of the documents, disclosing commercial information, such as total variation costs, contract periods/timeframes and other pricing information, could not be reverse engineered to reveal a breakdown of the rates that I have determined are exempt under section 34(1)(b).

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<sup>12</sup> [2002] VCAT 369 at [36].



62. I am not satisfied the nature of this information is commercially sensitive such that it could be used by competitors of the Undertakings to gain a commercial advantage. Rather, as discussed above, I consider there is a greater public interest in transparency and accountability. Therefore, I am not satisfied such information is exempt under section 34(1)(b).
63. However, as the Agency released the variation start date and end date with respect to the second contract variation, I am satisfied disclosure of information regarding the second contract variation, including the value of the second variation, estimated expenditure per financial year and total approval value could be reverse engineered to reveal the daily negotiated rates of the relevant consultant. Accordingly, for the reasons outlined above with respect to the breakdown of service provider fees, I am satisfied this information is exempt under section 34(1)(b).

#### Information concerning the nature of services to be provided and methodologies

64. I note in the decision of *Green v Department of Human Services*,<sup>13</sup> VCAT held disclosure of a management consulting firm's methodology would allow competitors to take the information and knowledge developed by the undertaking and have a ready-made starting point. Disclosure would diminish the undertaking's competitive advantage, erode its position and would result in few engagements and cause commercial disadvantage.
65. However, in the circumstances of this matter, I am not satisfied the Agency, or the Undertakings have provided sufficient evidence to satisfy me the information in the documents would reveal any special methodology, intellectual property, or ideas outlined in the Undertakings' proposals or contractual terms of engagement that, if released, would negatively impact upon their competitive position. In my view, the methodology and ideas detailed in the documents are tailored to the specified nature of the services sought and procured by the Agency.
66. I note there is a concern the public would be misled on the scope of the services an Undertaking provided to the Agency compared with what is written in the documents.
67. While I note this concern, disclosure of business, financial or commercial information is not unreasonable where its disclosure is in the public interest. As mentioned above, there is a strong public interest in disclosure of information concerning the government's response to the COVID-19 pandemic, particularly where it concerns the expenditure of public funds.
68. Should the Undertakings consider disclosure of information in the documents would mislead the public on the scope of the services provided, they or the Agency may provide the Applicant with further or updated information to assist the public's understanding of the information in the documents and mitigate any potential ambiguity on the scope of services provided.
69. On balance, I am not satisfied disclosure of this information would expose the Undertakings unreasonably to disadvantage.

#### Banking account details

70. I do not consider the banking details of the business undertakings to be commercially sensitive information that could be exploited by third parties. I am not satisfied disclosure would expose the Undertaking unreasonably to disadvantage and is not exempt under section 34(1)(b).

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<sup>13</sup> [2014] VCAT 1233 at [25].

### *Conclusion on section 34(1)(b)*

71. Having carefully considered all information before me, I am not satisfied disclosure of certain information, exempted by the Agency under section 34(1)(b), would be likely to expose the Undertakings unreasonably to disadvantage.
72. However, I have decided to release additional information in the documents to the Applicant where I am satisfied it is not exempt under section 34(1)(b).
73. My decision is outlined in the Schedule of Documents in **Annexure 1**.

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

74. 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 the FOI Act be likely to expose the agency unreasonably to disadvantage.

#### *Is the Agency engaged in trade and commerce?*

75. The first limb of the exemption requires me to be satisfied the Agency is engaged in trade and commerce.
76. Whether an agency is engaged in trade and commerce depends on the facts and circumstances of each case.<sup>14</sup>
77. 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>15</sup> It has adopted the view of the Federal Court of Australia that these terms are ‘of the widest import’.<sup>16</sup>
78. The fact an agency’s main functions may be described as governmental does not preclude it from relying on the exemption in section 34(4)(a)(ii).<sup>17</sup>
79. In my view, whether information is governmental or relates to an agency engaged in trade or commerce depends on the specific circumstances and purpose of an engagement between an agency and a business undertaking. This is supported by the decision of *Pallas v Roads Corporation*<sup>18</sup> in which VCAT made the distinction between government and commercial activities at [56]:

VicRoads no more engages in trade or commerce when it undertakes a major arterial road construction or revision project than does a Government analyst in giving a certificate as to what a particular substance is or Law professor in providing an opinion under a statutory process as to Aboriginal heritage issues. The exemptions claimed under Section 34(4) of the Freedom of Information Act therefore, are not made out. Whatever property transactions are in prospect here are carried out for Governmental purposes, not for commercial purposes. The property purchases that might be involved here would be compulsory acquisition, an exercise of sovereign power, not a commercial process.

80. I consider being party to a contractual agreement does not in itself amount to an agency being engaged in trade or commerce. Where a government agency enters into a contract on behalf of the State of Victoria with a commercial provider in exchange for the provision of services for the benefit of the public, it does not do so as an activity in trade or commerce, but rather to fulfil its role to

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<sup>14</sup> *Stewart v Department of Tourism, Sport and the Commonwealth Games* [2003] VCAT 45 at [41].

<sup>15</sup> *Pallas v Roads Corporation (Review and Regulation)* [2013] VCAT 1967 at [33].

<sup>16</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>17</sup> *Stewart v Department of Tourism, Sport and the Commonwealth Games* (2003) 19 VAR 363; [2003] VCAT 45 at [41].

<sup>18</sup> *(Review and Regulation)* [2013] VCAT 1967.

deliver governmental services, functions and/or projects on behalf of the community, using public funds.

81. I do not consider the provision was intended to be interpreted in a way that would expand its application to a broad range of governmental activities.
82. The information exempted by the Agency under section 34(4)(a)(ii) concerns contractual arrangements between the Agency and the Undertaking for the procurement for resources to assist the Agency with the implementation of the Working for Victoria initiative. The exempted information includes:
  - (a) the total contract value;
  - (b) the estimated contract value;
  - (c) the proposed contract value of the procurement;
  - (d) the approved value of the procurement;
  - (e) variations values;
  - (f) estimated expenditure per financial year for [specified years]; and
  - (g) the negotiated daily rates for resources.
83. I accept contractual arrangements are inherently commercial in nature and the Undertaking is engaged in trade and commerce.
84. However, the nature of the Agency's engagement in the transaction is not conducted in a purely commercial sense. Rather, it is in the context of procurement of resources to assist the Agency with its governmental services, which in this instance was the implementation of the Working for Victoria initiative.
85. There is no information before me to be satisfied the Agency is subject to commercial pressures or engaged in competition with other entities, as it is the only entity responsible for carrying out this initiative.
86. If such activities were to be routinely considered as demonstrating an agency is engaged in trade or commerce, there would be no meaningful distinction between commercial and governmental activities – as is clearly intended by the FOI Act.
87. As I consider the Agency is engaged in governmental activities, I am not satisfied it is engaged in trade or commerce.
88. As I am not satisfied the first limb of the exemption under section 34(4)(a)(ii) is satisfied, it is not necessary for me to consider whether the documents contain information of a business, commercial or financial nature, and whether its disclosure would be likely to expose the Agency (on behalf of the State Government) unreasonably to disadvantage.
89. On the information before me, I am not satisfied the relevant information in the documents is exempt under section 34(4)(a)(ii).
90. 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**

91. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
92. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’<sup>19</sup> and the effectiveness of the deletions. Where deletions would render the document meaningless, they are not ‘practicable’, and release of the document is not required under section 25.<sup>20</sup>
93. As the Applicant does not seek access to personal affairs information in the documents, personal affairs information is to be deleted from the documents in accordance with section 25.
94. I am also not satisfied all information exempted by the Agency in page 2 of Document 1 under section 33(1) is personal affairs information, because it is not information that is capable of identifying a person. Accordingly, this information is not irrelevant information for the purposes of this review.
95. I have considered the effect of deleting exempt and irrelevant information from the documents. In my view, it is practicable for the Agency to delete the exempt and irrelevant information, because it would not require substantial time and effort, and the edited documents would retain meaning.

## **Conclusion**

96. On the information before me, I am not satisfied certain information in the documents is exempt from release under sections 30(1) or 34(4)(a)(ii). However, I am satisfied certain information is exempt under section 34(1)(b).
97. As I am satisfied it is practicable provide the Applicant with an edited copy of the documents with exempt and irrelevant information deleted in accordance with section 25, access to the documents is granted in part.
98. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.
99. A marked-up copy of the documents showing information that I am satisfied is exempt has been provided to the Agency with this decision for its reference.

## **Review rights**

100. 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>21</sup>
101. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>22</sup>
102. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>23</sup>

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<sup>19</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>20</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>21</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>22</sup> Section 52(5).

<sup>23</sup> Section 52(9).

103. 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.
104. 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>24</sup>

***Third party review rights***

105. As I have determined to release information claimed exempt under section 34(1)(b), if practicable, I am required to notify the relevant undertakings of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.<sup>25</sup>
106. In this case, I am satisfied it is practicable to notify the Undertakings of their review rights and confirm they will be notified of my decision.

***When this decision takes effect***

107. My decision does not take effect until the Undertakings' 60 day review rights period expires.
108. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

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<sup>24</sup> Sections 50(3F) and (3FA).

<sup>25</sup> Sections 49P(5), 50(3A) and 52(3).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
1.	[Date]	Letter	4	Released in part  Sections 33(1), 34(1)(b)	Release in part  Sections 34(1)(b), 25  The document is to be released, except for exempt and irrelevant information as recorded in the marked-up version of the document provided to the Agency with this decision, which is to be deleted in accordance with section 25.	<p><i>As detailed at paragraphs 14-15 above, in the course of the review the Agency revised the information it claims exempt in this document and provided the Applicant with an updated version with further information released.</i></p> <p><b>Section 34(1)(b):</b> I am satisfied the document contains information that is exempt under section 34(1)(b). However, I have determined further information can be released where I am not satisfied it is exempt under section 34(1)(b). My reasons are outlined in the Notice of Decision above.</p> <p><b>Section 25:</b> The Applicant does not seek access to personal affairs information in the documents. Accordingly, personal affairs information is to remain deleted as it is irrelevant information.</p> <p>I am satisfied it is practicable to edit this document to delete exempt and irrelevant information in accordance with section 25. Accordingly, access is granted in part.</p>
2.	[Date]	Professional Advisory Services Panel Order (Letter of Engagement)	5	Refused in full in original decision / released in part during the review  Sections 33(1), 34(1)(b)	Release in part  Sections 34(1)(b), 25  The document is to be released, except for exempt and irrelevant information as recorded in the marked-up version of the document	<p><i>As detailed at paragraphs 14-15 above, in the course of the review, the Agency revised its position in relation to this document which it originally claimed was exempt in full. The Agency provided an updated copy of this document to the Applicant with further information released.</i></p> <p><b>Section 34(1)(b):</b> See comments for Document 1.</p>

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
					provided to the Agency with this decision, which is to be deleted in accordance with section 25.	<b>Section 25:</b> See comments for Document 1.
3.	[Date]	Invoice	2	Released in part  Sections 33(1), 34(1)(b)	Release in part  Section 25  The document is to be released, except for irrelevant information as recorded in the marked-up version of the document provided to the Agency with this decision, which is to be deleted in accordance with section 25.	<b>Section 34(1)(b):</b> I am not satisfied the banking details are exempt under section 34(1)(b) for the reasons provided in the Notice of Decision, above.  <b>Section 25:</b> See comments for Document 1.
4.	[Date]	Professional Advisory Services Panel Order (Letter of Engagement)	4	Released in part  Sections 33(1), 34(1)(b)	Release in part  Section 25  The document is to be released, except for irrelevant information as recorded in the marked-up version of the document provided to the Agency with this decision, which is to be deleted in accordance with section 25.	<i>As detailed at paragraphs 14-15 above, in the course of the review the Agency revised the information it claims exempt in this document and provided the Applicant with an updated version with further information released.</i>  <b>Section 34(1)(b):</b> I am not satisfied this document contains information that is exempt under section 34(1)(b) for the reasons outlined in the Notice of Decision, above.  <b>Section 25:</b> See comments for Document 1.

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
5.	[Date]	Presentation - COVID-19 Accommodation Support	4	Released in part Sections 33(1), 34(1)(b)	Release in part Sections 34(1)(b), 25  The document is to be released, except for exempt and irrelevant information as recorded in the marked-up version of the document provided to the Agency with this decision, which is to be deleted in accordance with section 25.	Section 34(1)(b): See comments for Document 1. Section 25: See comments for Document 1.
<p>Documents 6-9 were located by the Agency in response to the further document search conducted in response to the notice under section 49KA(2)(b). These documents were released to the Applicant in part during the review, as part of the Agency’s intended fresh decision</p>						
Document No.	Date of Document	Document Description	No. of Pages	Agency’s Decision	OVIC Decision	OVIC Comments
6.	[Date]	Brief and attachments	14	Released in part Sections 33(1), 34(1)(b), 34(4)(a)(ii)	Release in part Sections 34(1)(b), 25  The document is to be released, except for exempt and irrelevant information as recorded in the marked-up version of the document provided to the Agency with this decision, which is to be	Section 34(1)(b): See comments for Document 1. Section 34(4)(a)(ii): I am not satisfied the document contains information that is exempt under section 34(4)(a)(ii) for the reasons provided in the Notice of Decision, above. Section 25: See comments for Document 1.



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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
					deleted in accordance with section 25.	
7.	[Date]	Brief with attachments	35 (inclusive of incorrect Attachment 1 and the correct Attachment 1)	Released in part  Sections 33(1), 34(1)(b), 34(4)(a)(ii)	Release in part  Sections 34(1)(b), 25  The document is to be released, except for exempt and irrelevant information as recorded in the marked-up version of the document provided to the Agency with this decision, which is to be deleted in accordance with section 25.	<p>This document is a Brief with multiple attachments. Attachments 3, 4, 5, 6, 7, 9 and 10 are included within this document. Attachments 2 and 8 have been assessed above in Document 6 and are not included in Document 7.</p> <p>During the review, the Agency advised it had provided the incorrect brief for Attachment 1 to Document 7 (pages 6 to 8 in Document 7) to OVIC and the Applicant. Subsequently, the correct brief, including its attachment was provided to OVIC during this review. For completeness, I have reviewed both versions and these additional pages are reflected in the page number recorded in the No. of Pages column.</p> <p><b>Section 30(1):</b> Most of the information exempted by the Agency under section 30(1) is intertwined with personal affairs information. As personal affairs information does not fall within the scope of this review, it is not necessary for me to consider whether the same information is exempt under section 30(1).</p> <p>With respect to the remaining information exempted under section 30(1), I am not satisfied it would be contrary to the public interest to disclose the opinion because:</p>

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						<ul style="list-style-type: none"> <li>I do not consider disclosure of the information would inhibit Agency officers expressing similar opinions in the future; and</li> <li>the opinion does not disclose any sensitive information and is innocuous in nature.</li> </ul> <p>As the purpose of the FOI Act is to provide the maximum amount of information that is not exempt from release to members of the public, I have determined to disclose the information as it is not exempt under section 30(1).</p> <p><b>Section 34(1)(b):</b> See comments for Document 1.</p> <p><b>Section 34(4)(a)(ii):</b> See comments for Document 6.</p> <p><b>Section 25:</b> See comments for Document 1.</p>
8.	[Date]	Brief	19	Released in part  Sections 33(1), 34(1)(b), 34(4)(a)(ii)	Release in part  Section 34(1)(b), 25  The document is to be released, except for exempt and irrelevant information, as recorded in the marked-up version of the document provided to the Agency with this decision, which is to be	<p>This document contains 6 attachments.</p> <p>Attachments 1, 3 and 5 are included within this 19-page document. Attachments 2, 4 and 6 have already been assessed above in Documents 6 and 7 and are not included within this 19-page document.</p> <p><b>Section 34(1)(b):</b> See comments for Document 1.</p> <p><b>Section 34(4)(a)(ii):</b> See comments for Document 6.</p> <p><b>Section 25:</b> See comments for Document 2.</p>

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					deleted in accordance with section 25.	
9.	[Date]	Invoice	2	Released in part  Sections 33(1), 34(1)(b)	Release in part  Section 25  The document is to be released, except for irrelevant information, as recorded in the marked-up version of the document provided to the Agency with this decision, which is to be deleted in accordance with section 25.	Section 34(1)(b): I am not satisfied the banking details are exempt under section 34(1)(b) for the reasons provided in the Notice of Decision above.  Section 25: See comments for Document 1.