

Notice of Decision and Reasons for Decision

Applicant:	'CZ5'
Agency:	Bayside City Council
Decision date:	3 November 2021
Exemptions considered:	Sections 30(1), 34(4)(a)(i), 34(4)(a)(ii), 32(1) and 38 in conjunction with section 125 of the <i>Local Government Act 2020</i> (Vic)
Citation:	'CZ5' and Bayside City Council (Freedom of Information) [2021] VICmr 123 (3 November 2021)

FREEDOM OF INFORMATION – council documents – council decision making – lease extension request – public assets – expression of interest – closed council meeting – meeting minutes – meeting agendas – emails – legal advice – agency not engaged in trade or commerce – secrecy provisions – *Local Government Act* (Vic) 2020 – *Local Government Act* (Vic) 1989

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 as I have decided to release additional information in the documents.

Noting the reduced scope of documents subject to review, I am satisfied information subject to legal privilege is exempt under section 38 of the FOI Act in conjunction with section 125 of the *Local Government Act* (Vic) 2020 (**LG Act 2020**). While the Agency relied on section 32(1), which would otherwise apply to documents subject to legal professional privilege, I consider the application of section 38 is more appropriate in these circumstances.

I am not satisfied the documents are exempt under sections 30(1), 34(4)(a)(i) or 34(4)(a)(ii).

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

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

3 November 2021

Reasons for Decision

Background to review

1. The Applicant, through their legal representatives, made a request to the Agency for access to the following documents:

...we request copies of all documents, including, without limitation all correspondence, briefing notes, reports, memos, letters, emails and notes of meetings, minutes of meetings, records or notes of telephone conversations between [date range] referring or relating to [the Agency] (**Council**) confidential meeting ([date] Meeting) in relation to the extension of lease for the property at [address] (**Property**) including, without limitation the following:

- (a) all correspondence exchanged between Council and third parties (including interested in leasing the Property) and any consultants retained by Council to provide advise [sic] in relation to the EOI Campaign (e.g. valuation, marketing) in relation to the EOI Campaign for the [name] Property;
- (b) all drafts of proposed EOI Campaign timelines for the Property and any comments received in relation to this drafts;
- (c) communications between:
 - (i) Council's officers and Councillors;
 - (ii) Council's officers; and
 - (iii) Councillors,considering arrangements for the EOI Campaign for the property;

We do not require access to personal affairs information and understand this information will be removed from the documents.

2. The Agency identified 114 documents, comprising 1,492 pages, falling within the terms of the Applicant's request. It released 73 documents in full and five documents in part with personal affairs information removed under section 25. The remaining 36 documents were refused in full under sections 30(1), 32(1), 34(1) and 34(4). 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.

Review scope

4. In discussion with OVIC staff, the Applicant confirmed they do not seek a review of documents already assessed in a separate review undertaken ([case number])
5. Accordingly, my review does not consider the following documents: Documents 5, 15, 27–28, 39–40, 44, 50, 52, 62 and 66.
6. Further information regarding the documents subject to this review is detailed at the Schedule of Documents at **Annexure 1**.
7. I have examined copies of the documents subject to review.
8. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
9. I have considered all communications received from the parties.

10. 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.
11. 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.

Local Government Act 2020 (Vic)

12. In undertaking a review under section 49F, I am required by section 49P to make a fresh or new decision. This means my review does not involve determining whether the Agency's original decision is correct, but rather I am required to ensure my fresh decision is the 'correct or preferable decision'.¹ This involves ensuring my decision is correctly made under the FOI Act and any other relevant applicable law in force at the time of making my fresh decision.
13. On 24 October 2020, the LG Act 2020 commenced. The secrecy provision in section 125 of the LG Act 2020 replaces the secrecy provision in section 77 of the LG Act 1989.
14. Section 125 of the LG Act 2020 changes the way a council must process certain FOI requests. It prohibits the disclosure of 'confidential information', which includes 'legal privileged information' in documents held by a council.
15. Therefore, it is appropriate for me to first consider whether the documents subject to review are exempt under section 38 of the FOI Act in conjunction with section 125 of the LG Act 2020.

Review of exemptions

Section 38 – Documents to which a secrecy provision applies

16. A document is exempt under section 38 if:
 - (a) there is an enactment in force;
 - (b) that applies specifically to the kind of information in the document; and
 - (c) the enactment prohibits persons, referred to in the enactment, from disclosing that specific kind of information (either absolutely or subject to exceptions or qualifications).

Is there an enactment in force?

17. Section 125 of the LG Act 2020 states:

125 Confidential Information

- (1) Unless subsection (2) or (3) applies, a person who is, or has been, a Councillor, a member of a delegated committee or a member of Council staff, must not intentionally or recklessly disclose information that the person knows, or should reasonably know, is confidential information.

Penalty: 120 penalty units.

- (2) Subsection (1) does not apply if the information that is disclosed is information that the Council has determined should be publicly available.

18. I am satisfied the LG Act 2020 is an enactment in force for the purposes of section 38.

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

Does the secrecy provision in the LG Act 2020 apply specifically to information in the documents?

19. To satisfy the second requirement, the enactment must be formulated with such precision that it refers with particularity to the information sought be exempted from release.²
20. As such, it is not sufficient for an enactment to be formulated in general terms that such it does not expressly describe the information.
21. The term ‘confidential information’ in section 125 is defined in section 3 of the LG Act 2020, and relevantly includes under section 3(e) ‘legal privileged information, being information to which legal professional privilege or client legal privilege applies’.
22. I note the definition of ‘confidential information’ in section 3(e) of the LG Act 2020, as set out above, overlaps with the exemption under section 32(1) of the FOI Act, which applies to documents subject to legal privilege.
23. Given this, I have considered established legal principles for the application of section 32(1) in determining whether information in the documents satisfies the definition of ‘confidential information’ for the purposes of the LG Act 2020.

Section 32(1) – Legal professional privilege and client legal privilege

24. 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’.
25. A document will be subject to legal privilege and exempt under section 32(1) where it contains a confidential communication:³
 - (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
 - (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.
26. The term ‘client professional privilege’ is a reference to Part 3.10, Division 1 of the *Evidence Act 2008* (Vic). The differences between the scope of professional legal privilege and client legal privilege (**legal privilege**) are not of significance in this matter.
27. The High Court of Australia has held legal privilege ensures a client can openly and candidly discuss legal matters with their legal representative and seek legal advice:

The rationale of this head of privilege, according to traditional doctrine, is that it promotes the public interest because it assists and enhances the administration of justice by facilitating the representation of clients by legal advisers, the law being a complex and complicated discipline. This it does by keeping secret their communications, thereby inducing the client to retain the solicitor and seek his advice,

² *News Corp Ltd v National Competition & Securities Commission* (1984) 52 ALR 277 at [281].

³ *Graze v Commissioner of State Revenue* [2013] VCAT 869 at [29]; *Elder v WorkSafe Victoria* [2011] VCAT 1029 at [22]. See also section 119 of the *Evidence Act 2008* (Vic).

and encouraging the client to make a full and frank disclosure of the relevant circumstances to the solicitor.⁴

28. The dominant purpose for which a confidential communication was made determines whether the exemption applies.⁵ The 'dominant purpose test' applies to both communications for the purpose of obtaining or giving legal advice.
29. Material gathered by a lawyer or their client in preparation for litigation is privileged as if it were a confidential communication between a lawyer and their client.⁶
30. The Agency relied on section 32(1) to refuse access to Documents 32, 40-42, 49, 58, 67, 68, 70, 71, 77, 85-87, 90-99 and 108 in full.
31. The documents comprise email communications between the Agency and their external lawyers.
32. I am satisfied the documents constitute communication between an Agency officer and the Agency's external lawyers prepared in the context of seeking instructions for and/or the provision of legal advice.
33. There is no information before me to establish legal privilege in the documents has been waived by the Agency.
34. Accordingly, I am satisfied the documents exempted by the Agency under section 32(1) contain 'confidential information' for the purposes of section 125 of the LG Act 2020 and are therefore, exempt under section 38 of the FOI Act.
35. My decision in relation to section 38 is set out in the Schedule of Documents at **Annexure 1**.

Section 34(4)(a) – Documents relating to trade secrets etc

36. In its decision letter, the Agency states:

... The documents contain information of a business, commercial or financial undertaking, and that information relates to trade secrets or other matters of a business, commercial or financial nature and the disclosure would be likely to expose the agency unreasonably to disadvantage.

The reasons for this decision are:

- The documents detail draft actions and information which may be considered for future debate or discussion, some of which have not been made public. Such information includes indications of possible future action or options available to the Council. The matter that the documents relate to is one that is continuing and has not yet concluded. Release of this information now could cause confusion amongst the parties involved and provide fuel for unnecessary debate.
- The information contained in the documents is currently not in the public domain, and if released the nature of the information is likely to cause reputational damage to the agency. Council officers and Councillors expect a certain amount of confidentiality when preparing alternative actions for later discussion or debate.
- It is also felt that possible mischief or unnecessary further debate may ensue if the documents were to be released, because the documents contain information that is incomplete or without something more, and therefore misleading.

...

37. Section 34(4)(a) applies to a document the disclosure of which would be likely to expose an agency unreasonably to disadvantage.

⁴ *Grant v Downs* (1976) 135 CLR 674 at [19].

⁵ *Esso Australia Resources Ltd v Federal Commissioner of Taxation* (1999) 201 CLR 49.

⁶ *Dingle v Commonwealth Development Bank of Aust* (1989) 23 FCR 63 at [66].

38. The 'disadvantage' contemplated by this provision is disadvantage in a business, commercial or financial sense.⁷
39. The provision contains two exemptions: sections 34(4)(a)(i) and 34(4)(a)(ii). The Agency was not clear in its reasons for decision as to which exemption it seeks to rely, therefore, both exemptions are considered below.

Section 34(4)(a)(i)

40. Section 34(4)(a)(i) provides a document is an exempt document if it contains a trade secret of an agency the disclosure of which under the FOI Act would be likely to expose the agency unreasonably to disadvantage.
41. The Victorian Civil and Administrative Tribunal (VCAT) has observed, the term 'trade secret' has a particular legal meaning and the expression does not include every piece of commercially sensitive information.⁸
42. To be a 'trade secret' the Full Federal Court of Australia has held the information must be a secret and be used or usable in trade.⁹
43. On the face of the documents, I am not satisfied the relevant information is in the nature of a trade secret of the Agency. The documents concern the management of a public asset, in particular considerations concerning the ongoing lease of a publicly owned property and the Agency's management of an expression of interest campaign in relation to said asset. I do not consider the documents contain specialist knowledge or methods utilised by the Agency in trade that would constitute a 'trade secret'.
44. Accordingly, I am not satisfied the documents are exempt under section 34(4)(a)(i).
45. My decision in relation to section 34(4)(a)(i) is set out in the Schedule of Documents at **Annexure 1**.

Section 34(4)(a)(ii)

46. 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'.
47. I accept the terms, 'trade' and 'commerce' are not words of art; rather they are expressions of fact and terms of common knowledge¹⁰ and are considered to be 'of the widest import'.¹¹
48. An agency may be engaged in trade or commerce even if the amount of trade or commerce it engages in is insignificant and incidental to its other functions.¹²
49. While the phrase 'trade and commerce' may be interpreted broadly,¹³ it has been held that trade and commerce must 'of their nature, bear a trading or commercial character'.¹⁴

⁷ *Accident Compensation Commission v Croom* [1991] 2 VAR 322 at 125.

⁸ *Byrne v Swan Hill City Council* (2000) 16 VAR 366 referring to *Ansell Rubber Co Pty Ltd v Allied Rubber Industries Pty Ltd* [1967] VR 37.

⁹ *Searle Australia Pty Ltd v Public Interest Advocacy Centre* (1992) 36 FCR 111.

¹⁰ *Pallas v Roads Corporation (Review and Regulation)* [2013] VCAT 1967 at [33].

¹¹ *Ibid* at [34]; *Re Ku-Ring-Gai Co-operative Building Society (No 12) Ltd* (1978) 22 ALR 621 at [649].

¹² *Marple v Department of Agriculture* (1995) 9 VAR 29 at [47].

¹³ *Re Ku-Ring-Gai Co-operative Building Society (No 12) Ltd* [1978] FCA 50; (1978) 36 FLR 134.

¹⁴ *Concrete Constructions (NSW) Pty Ltd v Nelson* [1990] HCA 17; (1990) 169 CLR 594 at 690 and *Gibson v Latrobe City Council* [2008] VCAT 1340 at [35].

Is the Agency engaged in trade or commerce?

50. I have considered the commercial nature of the activity being undertaken by the Agency in the context of the documents and am of the view it has interpreted the terms 'trade and commerce' more broadly than contemplated by the FOI Act.
51. The documents concern the Agency's discussions regarding possible leasing arrangements for the relevant property, following the expiry of an existing lease. While such discussions may contain information of a business, commercial and financial nature, they were not conducted in a purely commercial sense, but rather in the context of the Agency's obligation to ensure the proper use and management of a publicly-owned asset.
52. If such negotiations and activities were to be routinely considered as demonstrating an agency being engaged in trade or commerce, there would be no meaningful distinction between commercial and governmental activities – as is clearly intended by the FOI Act.
53. I also consider the Agency's broad interpretation of section 34(4)(a)(ii) is contrary to the object of the FOI Act, which is to provide the community with access to documents limited only by exceptions in cases where 'essential' public, private and business interests require protection. Therefore, I am not satisfied the first limb of section 34(4)(a)(ii) is met.
54. Even if I were satisfied the Agency is engaged in trade and commerce, I do not consider disclosure of the documents would be likely to expose the Agency unreasonably to disadvantage in the context of commercial or financial detriment. While I acknowledge concerns raised by the Agency in its reasons for decision, including that the documents disclose information that is preliminary in nature and may not reflect a final decision or outcome of the Agency, I am mindful of the passage of time since the documents were created and that the Agency's decision on the matter has been made public.
55. Further, I consider it is in the public interest for certain documents to be disclosed as:
 - (a) they provide public access to information the Agency used to inform its decision making in this matter;
 - (b) such decisions affect local residents and other members of the community who use the local park and surrounding parklands in which the subject property is located; and
 - (c) disclosure would allow members of the community to be better informed and participate in Agency decision making regarding the use and management of publicly owned properties and land.
56. Accordingly, I am satisfied that, even if the Agency was engaged in trade or commerce, disclosure of the documents would not expose it unreasonably to disadvantage, and the documents are not exempt under section 34(4)(a)(ii).
57. My decision in relation to section 34(4)(a)(ii) is set out in the Schedule of Documents at **Annexure 1**.

Section 30(1) – Internal working documents

58. 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.
59. The exemption does not apply to purely factual material in a document.¹⁵
60. In determining whether disclosure of the information exempted from release by the Agency would be contrary to the public interest, I have given weight to the following relevant factors:¹⁶
- (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; and
 - (f) 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 in the documents require greater public scrutiny.
61. The Agency exempted Documents 39 and 56 under section 30(1). In its decision, the Agency states release of information in these documents would be contrary to the public interest as:
- ...
- Disclosure of the contents of the document could be misleading as it does not (without something more) necessarily disclose the whole reasons for a particular action and commentary or cause flowing from the particular events or decisions. Release of the information could cause confusion and unnecessary public debate.
 - Certain matters are of a continuing nature and any release would be seen as contrary to the public interest.
62. My decision in relation to section 30(1) is set out in the Schedule of Documents at **Annexure 1**.

Section 25 – Deletion of exempt or irrelevant information

63. 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.
64. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹⁷ and the effectiveness of the deletions.

¹⁵ Section 30(3).

¹⁶ *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

¹⁷ *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].

Where deletions would render a document meaningless, they are not 'practicable', and release of the document is not required under section 25.¹⁸

65. The Agency deleted the personal affairs information of individuals', such as their names, email addresses, telephone numbers, addresses and position titles, which may lead to their identification. I am satisfied the deleted information is personal affairs information that the Applicant agreed to exclude from their request.
66. The Agency also deleted information relating to other Council matters that falls outside the terms of the Applicant's request. I am satisfied it remains practicable to delete irrelevant information from the documents in accordance with section 25, as to do so will not require substantial time and effort, and the edited documents will retain meaning. However, where deletion of irrelevant and exempt information would render a document meaningless, I have determined to refuse access to the document in full.

Conclusion

67. On the information before me, noting the reduced scope of documents subject to review, I am satisfied information subject to legal privilege is exempt under section 38 of the FOI Act in conjunction with section 125 of the LG Act 2020, rather than section 32(1) of the FOI Act.
68. I am not satisfied the documents are exempt under sections 30(1), 34(4)(a)(i) or 34(4)(a)(ii).
69. Where I am satisfied it is practicable to provide the Applicant with an edited copy of a document with irrelevant and exempt information deleted in accordance with section 25, access to the document is granted in part. Where deletion of irrelevant and exempt information would render a document meaningless, access is refused in full.
70. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

Review rights

71. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.¹⁹
72. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.²⁰
73. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.²¹
74. 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.
75. 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.²²

¹⁸ *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].

¹⁹ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

²⁰ Section 52(5).

²¹ Section 52(9).

²² Sections 50(3F) and (3FA).

When this decision takes effect

76. My decision does not take effect until the Agency's 14 day review period (stated above) expires.
77. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

Annexure 1 - Schedule of Documents [case reference]

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
Bundle 1						
1.	[date]	Emails	2	Released in full With personal affairs information deleted	Not subject to review	
2.	[date]	Emails	9	Released in full With personal affairs information deleted	Not subject to review	
3.	[date]	Emails	1	Released in full With personal affairs information deleted	Not subject to review	
4.	[date]	Emails	1	Released in full With personal affairs information deleted	Not subject to review	
5.	[date]	Emails	6	Refused in full Section 34(4)(a)	Not subject to review	This document was considered in OVIC review [reference number]. As the Applicant does not seek review of documents previously assessed, the document is not subject to this review.
6.	[date]	Emails	2	Released in full With personal affairs information deleted	Not subject to review	

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
7.	[date]	Emails	2	Released in full With personal affairs information deleted	Not subject to review	
8.	[date]	Emails	2	Released in full With personal affairs information deleted	Not subject to review	
9.	[date]	Emails	2	Released in full With personal affairs information deleted	Not subject to review	
10.	[date]	Emails	2	Released in full With personal affairs information deleted	Not subject to review	
11.	[date]	Emails	4	Released in full With personal affairs information deleted	Not subject to review	
12.	[date]	Emails	3	Released in full With personal affairs information deleted	Not subject to review	

Annexure 1 - Schedule of Documents [case reference]

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
13.	[date]	Emails and attachment	3	Released in full With personal affairs information deleted	Not subject to review	
14.	[date]	Letter	1	Released in full With personal affairs information deleted	Not subject to review	
15.	[date]	Emails	2	Refused in full Section 34(4)(a)	Not subject to review	See comments for Document 5.
16.	[date]	Emails	1	Released in full With personal affairs information deleted	Not subject to review	
17.	[date]	Emails	1	Released in full With personal affairs information deleted	Not subject to review	
18.	[date]	Emails	4	Released in part Section 34(4)(a)	Release in part Section 25 The document is to be released with names, position titles, emails and contact numbers deleted under section 25	The Agency exempted one sentence on page 2 of the document under section 34(4)(a). Sections 34(4)(a)(i) and 34(4)(a)(ii): I am not satisfied the document discloses information that would constitute a trade secret of the Agency. Accordingly, I

Annexure 1 - Schedule of Documents [case reference]

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>am not satisfied the document is exempt under section 34(4)(a)(i).</p> <p>For the reasons set out in the Notice of Decision above, I am not satisfied the Agency is engaged in trade or commerce for the purposes of section 34(4)(a)(ii). Even if I were satisfied, I am not satisfied the document discloses information that would expose the Agency unreasonably to disadvantage in a business, financial or competitive sense. Accordingly, I am not satisfied the document is exempt under section 34(4)(a)(ii).</p> <p>Section 25: I am satisfied information deleted by the Agency is irrelevant information for the purpose of section 25 as it concerns other Council matters not captured by the terms of the Applicant's request.</p> <p>The Applicant does not seek access to third party personal affairs information. Therefore, the document is to be released in part with irrelevant information deleted in accordance with section 25.</p>
19.	[date]	Ordinary Meeting of Council Agenda	143	Released in full	Not subject to review	

Annexure 1 - Schedule of Documents [case reference]

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
20.	[date]	Ordinary Meeting of Council Minutes	28	Released in full	Not subject to review	
21.	[date]	Special meeting of Council Agenda	16	Released in full	Not subject to review	
22.	[date]	Special Meeting of Council Minutes	7	Released in full	Not subject to review	
23.	[date]	Emails	10	Released in full With personal affairs information deleted	Not subject to review	
24.	[date]	Letter	8	Released in full With personal affairs information deleted	Not subject to review	
25.	[date]	Letter	4	Released in full With personal affairs information deleted	Not subject to review	
26.	[date]	Emails	5	Released in full With personal affairs information deleted	Not subject to review	
27.	[date]	Alternate Officer Recommendations	3	Refused in full Section 34(4)(a)	Not subject to review	See comments for Document 5.

Annexure 1 - Schedule of Documents [case reference]

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
28.	[date]	Emails	4	Refused in full Section 34(4)(a)	Not subject to review	See comments for Document 5.
29.	[date]	Letter	2	Released in full With personal affairs information deleted	Not subject to review	
30.	[date]	Meeting Invitation	1	Released in full With personal affairs information deleted	Not subject to review	
31.	[date]	Email and attachments	17	Released in full With personal affairs information deleted	Not subject to review	
32.	Various	Document bundle	116	Refused in full Section 32(1)	Refuse in full Section 38	<p>Section 38: I am satisfied the document concerns a communication between an Agency officer and its external legal adviser made for the dominant purpose of providing legal services. Accordingly, I am satisfied the information is 'confidential information' under the LG Act 2020 and is exempt under section 38 in conjunction with section 125 of the LG Act 2020.</p> <p>Section 25: I am not satisfied it is practicable to provide the Applicant with an edited copy of this document with</p>

Annexure 1 - Schedule of Documents [case reference]

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
						exempt information deleted as to do so would render the document meaningless. Therefore, access to the document is refused in full.
33.	[date]	Email and attachments	5	Released in full With personal affairs information deleted	Not subject to review	
34.	[date]	Email	1	Released in full With personal affairs information deleted	Not subject to review	
35.	[date]	Email	1	Released in full With personal affairs information deleted	Not subject to review	
36.	[date]	Email	2	Released in full With personal affairs information deleted	Not subject to review	
37.	[date]	Emails	1	Released in full With personal affairs information deleted	Not subject to review	
38.	[date]	Emails	2	Released in full With personal affairs information deleted	Not subject to review	

Annexure 1 - Schedule of Documents [case reference]

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
39.	Undated	Billilla Lease comment	3	Refused in full Section 30(1)	Not subject to review	See comments for Document 5.
40.	[date]	Email to Maddocks with attachments	60	Refused in full Section 32(1)	Not subject to review	See comments for Document 5.
Bundle 2						
41.	[date]	Emails	3	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.
42.	[date]	Emails with attachments	117	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.
43.	[date]	Emails	2	Released in full With personal affairs information deleted	Not subject to review	
44.	[date]	Emails	6	Refused in full Section 34(4)(a)	Not subject to review	See comments for Document 5.
45.	[date]	Emails	1	Released in full With personal affairs information deleted	Not subject to review	
46.	[date]	Emails	2	Released in full	Not subject to review	

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
				With personal affairs information deleted		
47.	[date]	Emails	4	Released in full With personal affairs information deleted	Not subject to review	
48.	[date]	Email with attachment	8	Released in full With personal affairs information deleted	Not subject to review	
49.	[date]	Emails and attachment	10	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.
50.	[date]	Agenda for Confidential Council Meeting Agenda for Closed Council Meeting	225	Refused in full Section 34(4)(a)	Not subject to review	See comments for Document 5.
51.	[date]	Emails and attachment	5	Released in full With personal affairs information deleted	Not subject to review	
52.	[date]	Email with attachment Alternate Officer Recommendations	4	Refused in full Section 34(4)(a)	Not subject to review	See comments for Document 5.

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
53.	[date]	Councillor Briefing Updated Expression of Interest	22	Refused in full Section 34(4)(a)	<p>Release in part Section 25</p> <p>The document is to be released with names, position titles and emails of Agency officers deleted under section 25</p>	<p>The document comprises a briefing to councillors on options to be considered regarding the ongoing leasing of the relevant property.</p> <p>Sections 34(4)(a)(i) and 34(4)(a)(ii): See comments for Document 18.</p> <p>Section 30(1): While the Agency did not rely on section 30(1), given it is an internal document providing advice, opinion and recommendations to the Agency as part of its deliberative processes, I consider it is necessary to consider this exemption.</p> <p>Based on the document's content, I accept the relevant issues and weight given to the various factors, options and recommendations were provided at a particular point in time, and may not accurately reflect the final decision made or arrived at by the Agency. Nonetheless, while the information was quite sensitive at that point in the process, given the passage of time and the fact a decision on the matter has been made and publicly announced, I consider the sensitivity of the information has significantly reduced and disclosure of the document would not be contrary to the public interest. Accordingly, I am not</p>

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
						satisfied the document is exempt under section 30(1). Section 25: See comments for Document 18.
54.	[date]	Emails	1	Released in full With personal affairs information deleted	Not subject to review	
55.	[date]	Letter	2	Released in full With personal affairs information deleted	Not subject to review	
56.	[date]	Emails with attachments	7	Released in part Sections 30(1), 34(4)(a)(ii)	Release in part Section 25 The document is to be released with names, initials, position titles, emails and telephone numbers deleted under section 25	Sections 34(4)(a)(i) and 34(4)(a)(ii): See comments for Document 18. Section 30(1): I am satisfied the document contains both factual information and matter in the nature of opinion and advice. I understand the Agency may consider such information is sensitive and that its disclosure may affect the detailed recording of such matters in the future. However, I am not satisfied disclosure of this document will have this effect where Agency officers are required to record such conversations accurately. Further, I consider public disclosure of such information can have the effect of

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
						improving the quality of such record keeping. Accordingly, I am not satisfied the document is exempt under section 30(1). Section 25: See comments for Document 18.
57.	[date]	Emails	1	Refused in full Section 34(4)(a)	Release in part Section 25 The document is to be released with names, position titles, emails and contact numbers deleted under section 25.	See comments for Document 18.
58.	[date]	Emails and attachments	5	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.
59.	[date]	Emails and attachments	3	Released in full With personal affairs information deleted	Not subject to review	
60.	[date]	Emails and attachments	5	Released in full With personal affairs information deleted	Not subject to review	

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
61.	[date]	Emails	1	Released in full With personal affairs information deleted	Not subject to review	
62.	[date]	Emails and attachment - Lease proposal	18	Released in part Section 34(4)(a)	Not subject to review	See comments for Document 5.
63.	[date]	Email	6	Released in full With personal affairs information deleted	Not subject to review	
64.	[date]	Email	6	Released in full With personal affairs information deleted	Not subject to review	
65.	[date]	Email	4	Released in full With personal affairs information deleted	Not subject to review	
66.	[date]	Emails and attachment - Lease proposal	15	Released in part Section 34(4)(a)	Not subject to review	See comments for Document 5.
67.	[date]	Email and attachments	10	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
68.	[date]	Email and attachments	179	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.
69.	[date]	Emails	2	Released in full With personal affairs information deleted	Not subject to review	
70.	[date]	Emails and attachment	4	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.
71.	[date]	Emails	6	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.
72.	[date]	Emails and attachment - Lease proposal	14	Released in full With personal affairs information deleted	Not subject to review	
73.	[date]	Email and attachment - Invitation for expression of interest (draft)	33	Released in full With personal affairs information deleted	Not subject to review	
74.	[date]	Emails and attachment - Extension of lease	10	Released in full With personal affairs information deleted	Not subject to review	

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
75.	[date]	Emails	1	Released in full With personal affairs information deleted	Not subject to review	
76.	[date]	Emails	2	Released in full With personal affairs information deleted	Not subject to review	
77.	[date]	Emails	2	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.
78.	[date]	Email and attachment - Memo of meeting	3	Refused in part Section 34(4)(a)	Release in part Section 25 The document is to be released with names, initials, emails, contact numbers and position titles deleted under section 25	See comments for Document 56.
79.	[date]	Email and attachment - updated billilla EOI	7	Released in full With personal affairs information deleted	Not subject to review	
80.	[date]	Email	2	Released in full With personal affairs information deleted	Not subject to review	

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
Bundle 3						
81.	[date]	Emails and attachment - meeting agenda - memorandum	7	Released in full With personal affairs information deleted	Not subject to review	
82.	[date]	Emails	7	Released in full With personal affairs information deleted	Not subject to review	
83.	[date]	Emails	4	Released in full With personal affairs information deleted	Not subject to review	
84.	[date]	Emails	15	Refused in full Section 34(4)(a)	<p>Release in part Section 25</p> <p>The document is to be released with names, emails, position titles and telephone number deleted under section 25</p>	<p>Sections 34(4)(a)(i) and 34(4)(a)(ii): See comments for Document 18.</p> <p>Section 30(1): While the Agency does not rely on section 30(1), given the document's purpose, I have also considered this exemption and whether it would apply in the circumstances.</p> <p>While I accept the preliminary nature of the information and sensitivity where the Agency is considering advice before making a decision, I am not satisfied this is a sufficient basis to refuse access to</p>

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>the document given the public interest in transparency in government decision making and processes. In particular, where it concerns the local community and the Agency's management of a public asset.</p> <p>Further, I acknowledge the nature of the information which concerns the Agency's management of a public asset, which involves the weighing of various factors in making a determination. In such circumstances, I consider the Agency is entitled to manage a public asset within its responsibility having regard to a number of available options and recommendations. However, I do not consider it necessarily follows that disclosure of such information would be contrary to the public interest. Accordingly, I do not consider disclosure of the document would be contrary to the public interest, and I am not satisfied the document is exempt under section 30(1).</p> <p>Section 25: See comments for Document 18.</p>
85.	[date]	Emails	2	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
86.	[date]	Emails	6	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.
87.	[date]	Emails	3	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.
88.	[date]	Emails	2	Refused in full Section 34(4)(a)	Release in part Section 25 The document is to be released with names, position titles, emails, telephone numbers and gender pronouns of individuals deleted under section 25	See comments for Document 18.
89.	[date]	Emails	3	Released in full With personal affairs information deleted	Not subject to review	
90.	[date]	Emails and attachments	7	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.
91.	[date]	Emails	6	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
92.	[date]	Emails	7	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.
93.	[date]	Emails	4	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.
94.	[date]	Emails	3	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.
95.	[date]	Emails	6	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.
96.	[date]	Emails	6	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.
97.	[date]	Emails	5	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.
98.	[date]	Emails	8	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.
99.	[date]	Emails and attachments	49	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.
100.	[date]	Emails	9	Released in full	Not subject to review	

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
				With personal affairs information deleted		
101.	[date]	Emails and attachment	13	Released in full With personal affairs information deleted	Not subject to review	
102.	[date]	Emails	2	Released in full With personal affairs information deleted	Not subject to review	
103.	[date]	Emails	3	Released in full With personal affairs information deleted	Not subject to review	
104.	[date]	Emails	2	Released in full With personal affairs information deleted	Not subject to review	
105.	[date]	Emails and attachment - Billilla website EOI campaign	4	Released in full With personal affairs information deleted	Not subject to review	
106.	[date]	Emails	2	Released in full With personal affairs information deleted	Not subject to review	

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
107.	[date]	Emails and attachment	5	Released in full With personal affairs information deleted	Not subject to review	
108.	[date]	Emails	8	Refused in full Section 32(1)	Refuse in full Section 38	See comments for Document 32.
109.	[date]	Emails	2	Released in full With personal affairs information deleted	Not subject to review	
110.	[date]	Emails and attachment	19	Released in full With personal affairs information deleted	Not subject to review	
111.	[date]	Emails and attachment	20	Released in full With personal affairs information deleted	Not subject to review	
112.	[date]	Emails and attachment	17	Released in full With personal affairs information deleted	Not subject to review	
113.	[date]	Email	1	Released in full With personal affairs information deleted	Not subject to review	

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Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC Decision	OVIC Comments
114.	[date]	Emails	4	Released in full With personal affairs information deleted	Not subject to review	