

Notice of Decision and Reasons for Decision

Applicant:	'FQ4'
Agency:	Department of Jobs, Skills, Industry and Regions
Decision date:	24 May 2024
Exemption considered:	Section 30(1)
Citation:	'FQ4' and Department of Jobs, Skills, Industry and Regions (Freedom of Information) [2024] VICmr 35 (24 May 2024)

FREEDOM OF INFORMATION – Regional Development Advisory Committee – meeting agenda and minutes – preparation for a meeting with a Minister – opinion – not contrary to the public interest

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. I am not satisfied section 30(1) applies to Document 4 and therefore, the information that the Agency exempted from release under section 30(1) in Document 4 is to be released.

Please refer to page 5 for information about review rights through the Victorian Civil and Administrative Tribunal (**VCAT**).

My reasons for decision follow.

Sean Morrison
Information Commissioner

24 May 2024

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency which was subsequently clarified to seek access to:

...the agendas and minutes of meetings of the RDAC¹ held over the 18 months prior to the date of this request.
2. There is an agreement between the Agency and Applicant that personal affairs information of non-executive staff and the direct contact details of executive staff is excluded from the request.
3. The Agency identified 11 documents falling within the terms of the Applicant's request and granted access to all documents in part under sections 25, 30(1) and 28(1)(d). The Agency's decision letter sets out the reasons for its decision.

Review application

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. The Applicant advised they only seek review of information exempted under section 30(1) in Document 4. Accordingly, the remaining documents are not subject to review.
6. I have examined a copy of the document subject to review.
7. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
8. I have considered relevant communications and submissions received from the parties.
9. In undertaking my review, I have had regard to the object of the FOI Act, which is to create a general right of access to information in the possession of the Government or other public bodies, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.
10. I note Parliament's intention the FOI Act must be interpreted so as to further the object of the Act and any discretions conferred by the Act must be exercised, as far as possible, so as to facilitate and promote the disclosure of information in a timely manner and at the lowest reasonable cost.

Review of exemption

Section 30(1) – Internal working documents

11. Section 30(1) has three requirements:

¹ Regional Development Advisory Committee.

- (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; and
 - (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.
12. The exemption does not apply to purely factual material in a document.²
13. The document subject to review is the agenda and minutes for a meeting of the Regional Development Advisory Committee (RDAC) on [date]. The Agency exempted some information in the notes relating to a meeting with a Minister with respect to agricultural value-adding work.

Does the document 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?

14. For the requirements of section 30(1) to be met, a document must contain matter in the nature of opinion, advice or recommendation prepared by an agency officer, or consultation or deliberation between agency officers.
15. It is not necessary for a document to be in the nature of opinion, advice or recommendation. Rather, the issue is whether release of the document would disclose matter of that nature.³
16. The exempted information is an opinion expressed by the RDAC members to the Minister on the topic of agricultural value-adding.

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

17. The term 'deliberative process' is interpreted broadly and includes any of the processes of deliberation or consideration involved in the functions of an agency, Minister or government.⁴
18. The RDAC is an independent committee established under the *Regional Development Victoria Act 2002* (Vic) to, amongst other things, provide advice to the Minister for Regional Development on policies, projects and issues related to rural and regional Victoria.⁵ I am satisfied that the document was created in the course of, and for the purpose of, advising the Minister with respect to issues related to rural and regional Victoria.

² Section 30(3).

³ *Mildenhall v Department of Education* (1998) 14 VAR 87.

⁴ *Brog v Department of Premier and Cabinet* (1989) 3 VAR 201 at [208].

⁵ See <https://www.rdv.vic.gov.au/about-us/regional-development-advisory-committee>; sections 11 and 12 of the *Regional Development Victoria Act 2002* (Vic).

Would disclosure of the information in the document be contrary to the public interest?

19. In deciding if release is contrary to the public interest, I must consider all relevant facts and circumstances, remaining mindful that the object of the FOI Act is to facilitate and promote the disclosure of information.
20. There are many factors that may be relevant to determining whether it would be contrary to the public interest to disclose a document or information.⁶ These are not a fixed or determinative set of criteria.⁷
21. The Agency submits disclosure of the information would be contrary to the public interest on the following grounds:
 - The high-level nature of the information will be prone to misinterpretation, which cannot be corrected with additional information being provided to the Applicant.
 - The comment was a proposed question/discussion point to raise in a meeting with the Minister that may never have eventuated.
 - The information is sensitive.
 - The position in relation to the proposed question/discussion point has likely changed since the time of these meeting notes, making the information largely outdated and inaccurate.
22. On the information before me, I am satisfied that disclosure of the information would not be contrary to the public interest for the following reasons:
 - (a) The document provides the RDAC's frank advice and opinion in relation to strategic directions for the agriculture sector and the Minister's preliminary response to the advice. While the advice is high-level, I am not satisfied that it would be prone to misinterpretation. It can be inferred that further discussions would have taken place during the meeting to discuss the reasoning behind the advice provided to the Minister, that is not reflected in the document due to the brief nature of meeting minutes.
 - (b) Having considered that one of the main statutory functions of the RDAC is to provide advice to the Minister on policies, projects and issues related to rural and regional Victoria,⁸ the record of the RDAC's opinion in Document 4 merely reflects that the RDAC is undertaking its statutory functions to advise the Minister.
 - (c) I am not satisfied that the opinion discloses sensitive information, particularly considering information that has already been released in the document about the Minister's response to the points raised by the RADAC with respect to agricultural value-adding.
 - (d) I note the Agency has not provided any evidence that the opinion/discussion point has changed. As such, I have not placed weight on this argument.

⁶ For example, see *Coulson v Department of Premier and Cabinet* [2018] VCAT 229 at [25]; *Hulls v Victorian Casino and Gaming Authority* (1998) 12 VAR 483, 488; *Secretary to Department of Justice v Osland* (2007) 26 VAR 425 at [77].

⁷ *Landes v Vic Roads* [2009] VCAT 2403 at [46]

⁸ Section 12(1)(a) of the *Regional Development Victoria Act 2002* (Vic).

23. Accordingly, I am not satisfied the information in Document 4 is exempt under section 30(1).

Section 25 – Deletion of exempt or irrelevant information

24. 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.
25. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’⁹ and the effectiveness of the deletions. Where deletions would render a document meaningless, they are not ‘practicable’ and release of the document is not required under section 25.¹⁰
26. I am satisfied that it is practicable to provide the Applicant with an edited copy of Document 4 with irrelevant information deleted, being the personal affairs information that was not sought by the Applicant.

Conclusion

27. On the information before me, I am not satisfied information in Document 4 is exempt from release under section 30(1). Accordingly, that information is to be released to the Applicant.
28. As I am satisfied it is practicable to provide the Applicant with an edited copy of the document with irrelevant information deleted in accordance with section 25, access is granted in part.

Timeframe to seek a review of my decision

29. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.¹¹
30. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹²
31. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹³
32. 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.
33. 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.¹⁴

⁹ *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].

¹⁰ *Honeywood v Department of Human Services* [2006] VCAT 2048 at [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140], [155].

¹¹ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹² Section 52(5).

¹³ Section 52(9).

¹⁴ Sections 50(3F) and 50(3FA).

When this decision takes effect

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