

## Notice of Decision and Reasons for Decision

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Applicant:	'DN6'
Agency:	Department of Jobs, Precincts and Regions
Decision date:	18 August 2021
Exemptions considered:	Sections 28(1)(ba), 28(1)(d), 30(1), 31(1)(b), 33(1), 34(4)(a)(ii)
Citation:	'DN6' and Department of Jobs, Precincts and Regions (Freedom of Information) [2021] VICmr 250 (18 August 2021)

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FREEDOM OF INFORMATION – ministerial briefing – document prepared for the purpose of briefing a Minister on matters to be considered by a subcommittee of Cabinet – disclosure would reveal the deliberation or a decision of Cabinet – agency engaged in trade or commerce

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 satisfied certain information in the documents is exempt from release under sections 28(1)(ba), 28(1)(d), 31(1)(b) and 33(1). However, I am not satisfied the documents are exempt under section 30(1).

With the exception of Document 2, I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with irrelevant and exempt information deleted in accordance with section 25. Accordingly, access to these documents is granted in part. In relation to Document 2, access is refused in full.

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

18 August 2021

## Reasons for Decision

### Background to review

The Applicant, a Member of Parliament, made a request to the Agency seeking access to [eight Briefs to the Minister for Creative Industries, identified by BMIN number and title].

1. The Agency identified eight documents falling within the terms of the Applicant's request and refused access to four documents in full and four documents in part. The Agency relied on sections 28(1)(ba), 28(1)(d), 30(1), 33(1), 34(4)(a)(ii) and 35(1)(b) to refuse access to parts of the documents. The Agency's decision letter sets out the reasons for its decision.

### Review

2. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
3. The Applicant advised they did not seek contact numbers or email addresses exempted by the Agency under section 33(1). Therefore it is irrelevant information for the purposes of section 25.
4. Section 49M(1) permits an agency to make a fresh decision on an FOI request during a review. However, while the Agency advised it intended to make a fresh decision in this matter, it did not do so within the required timeframe under section 49M(2). Therefore, my review is of the original decision made by the Agency on the FOI application, informed by subsequent submissions made by the Agency in respect of the application of exemptions to the documents.
5. I have examined copies of the documents subject to review.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered all communications and submissions received from the parties.
8. 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.
9. I note Parliament's intention the FOI Act must be interpreted 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 exemptions

10. As stated above, the Agency refused access to the documents under sections sections 28(1)(ba), 28(1)(d), 30(1), 33(1), 34(4)(a)(ii) and 35(1)(b).

### Section 28(1) – Cabinet documents

11. Section 28(7)(a) defines 'Cabinet' as including a committee or sub-committee of the Cabinet.
12. In *Ryan v Department of Infrastructure*,<sup>1</sup> the Victorian Civil and Administrative Tribunal (VCAT) observed:

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<sup>1</sup> (2004) VCAT 2346 at [33].

It has been said that a document is not exempt merely because it has some connection with Cabinet, or is perceived by departmental officers or others as being of a character that they believe ought to be regarded as a Cabinet document or because it has some Cabinet “aroma” around it. Rather, for a document to come within the Cabinet document exemption, “it must fit squarely within one of the four exemptions [(now five)]” in section 28(1) of the Act.

*Section 28(1)(ba) – Document prepared for the purpose of submission for consideration by the Cabinet*

13. Section 28(1)(ba) provides a document is an exempt document if it is a document prepared for the purpose of briefing a Minister in relation to issues to be considered by the Cabinet.
14. A document will be exempt under section 28(1)(ba) if the sole purpose or one of the substantial purposes for which the document was prepared was to brief a Minister in relation to an issue to be considered by the Cabinet.<sup>2</sup>
15. The Cabinet briefing purpose must be ‘immediately contemplated’ when the document is created. The exemption cannot apply merely because Cabinet ultimately considered the issue.<sup>3</sup>
16. The word ‘briefing’ means a ‘short accurate summary of the details of a plan or operation. The purpose...is to inform’. Therefore, the document should have the character of briefing material.
17. A document will be of such character if it contains ‘information or advice...prepared for the purpose of being read by, or explained to, a [m]inister’. It requires more than having ‘placed a document before a Minister’.<sup>4</sup>
18. The term ‘issues to be considered by the Cabinet’ within the meaning of section 28(1)(ba), requires that it must be more than just ‘likely’ the Cabinet will consider it. There must be an intention or expectation the relevant issue will be considered by the Cabinet, even if it was not ultimately considered by the Cabinet. Evidence that a matter was included on the agenda for a Cabinet meeting will meet this test.<sup>5</sup>

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

19. Section 28(1)(d) provides a document is an exempt document if it is a document the disclosure of which would involve the disclosure of any deliberation or decision of the Cabinet, other than a document by which a decision of the Cabinet was officially published.
20. A document will be exempt under section 28(1)(d) if there is evidence the Cabinet discussed various options in the document and deliberated upon and/or adopted one of more of the options for its consideration.<sup>6</sup>
21. A ‘decision’ means any conclusion as to the course of action the Cabinet adopts whether it is a conclusion as to final strategy on a matter or conclusions about how a matter should proceed.<sup>7</sup>

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<sup>2</sup> *Ryan v Department of Infrastructure* (2004) 22 VAR 226; [2004] VCAT 2346 at [34]. See also *Department of Treasury and Finance v Della-Riva* (2007) 26 VAR 96; [2007] VSCA 11 at [13].

<sup>3</sup> *Hennessy v Minister Responsible for the Establishment of an Anti-Corruption Commission* [2013] VCAT 822.

<sup>4</sup> *Ryan v Department of Infrastructure* (2004) 22 VAR 226; [2004] VCAT 2346 at [41].

<sup>5</sup> *Mildenhall v Department of Treasury and Finance* (unreported, AAT of Vic, Macnamara DP, 18 March 1996). See also *Batchelor v Department of Premier and Cabinet* (unreported, AAT of Vic, Fagan P and Coghlan M, 29 January 1998); *Hulls v Department of Treasury and Finance (No 2)* (1994) 14 VAR 295 at [320]-[321]; reversed on other grounds by the Court of Appeal: *Department of Premier & Cabinet v Hulls* [1999] 3 VR 331; 15 VAR 360; [1999] VSCA 117.

<sup>6</sup> *Smith v Department of Sustainability and Environment* (2006) 25 VAR 65; [2006] VCAT 1228 at [23].

<sup>7</sup> *Della-Riva v Department of Treasury and Finance* (2005) 23 VAR 396; [2005] VCAT 2083 at [30].

22. Where a decision of the Cabinet is made public, the announcement in relation to the issue decided will not disclose the Cabinet's decision or deliberation.<sup>8</sup>
23. My decision in relation to sections 28(1)(ba) and 28(1)(d) is set out in the Schedule of Documents at **Annexure 1**.

**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>9</sup>
26. 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.
27. In this case, I have given weight to the following relevant factors:<sup>10</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.

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<sup>8</sup> *Honeywood v Department of Innovation, Industry and Regional Development* (2004) 21 VAR 1453; [2004] VCAT 1657 at [26].

<sup>9</sup> Section 30(3).

<sup>10</sup> *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

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

***Section 31(1)(b) – Disclosure would prejudice a person’s fair trial or the impartial adjudication of a case***

29. Subject to section 31, section 31(1)(b) provides a document is exempt if its disclosure would or would be reasonably likely to ‘prejudice the fair trial of a person or the impartial adjudication of a particular case’.

30. In relation to the impartial adjudication of a particular case, section 31(1)(b) can apply in relation to current as well as contemplated litigation.<sup>11</sup>

31. The ‘impartial adjudication of a particular case’ includes the enforcement of criminal and civil rights and the use of the common law by agencies to recover damages. This phrase is not limited to criminal law or regulatory powers of Government agencies.<sup>12</sup>

32. My decision in relation to the application of section 31(1)(b) to the documents is set out in the Schedule of Documents at **Annexure 1**.

***Section 33(1)***

33. A document is exempt under section 33(1) if two conditions are satisfied:

(a) disclosure of the document under the FOI Act would ‘involve’ the disclosure of information relating to the ‘personal affairs’ of a person other than the Applicant (a **third party**);<sup>13</sup> and

(b) such disclosure would be ‘unreasonable’.

34. Information relating to a person’s ‘personal affairs’ includes information that identifies any person or discloses their address or location. It also includes any information from which such information may be reasonably determined.<sup>14</sup>

35. The concept of ‘unreasonable disclosure’ involves balancing the public interest in the disclosure of official information with the protection of a third party’s personal privacy in the circumstances.

36. In determining whether the disclosure of a document would involve the unreasonable disclosure of information relating to the personal affairs of any person, I must consider whether the disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person.<sup>15</sup> However, I do not consider this to be a relevant factor in the circumstances.

37. In deciding whether disclosure of a document would involve the unreasonable disclosure of a third party’s personal affairs information, an agency must notify that person (or their next of kin, if deceased) an FOI request has been received for documents containing their personal information and seek their view as to whether disclosure of the document should occur.<sup>16</sup> However, this obligation does not arise if:

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<sup>11</sup> *Mond v Department of Justice* [2005] VCAT 2817 at [42].

<sup>12</sup> *Thwaites v Department of Human Services* [1998] VCAT 580 at [36].

<sup>13</sup> Sections 33(1) and (2).

<sup>14</sup> Section 33(9).

<sup>15</sup> Section 33(2A).

<sup>16</sup> Section 33(2B).

- (a) the notification would be reasonably likely to endanger the life or physical safety of a person, or cause them undue distress, or is otherwise unreasonable in the circumstances;
- (b) the notification would be reasonably likely to increase the risk to the safety of a person experiencing family violence; or
- (c) it is not practicable to do so.<sup>17</sup>

38. The Agency did not consult with the third parties in this matter.

39. My decision in relation to section 33(1) is set out in the Schedule of Documents at **Annexure 1**.

***Section 34(4)(a)(ii) – Document of an agency engaged in trade and commerce containing commercially sensitive information***

40. 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’.

41. VCAT has held ‘the terms ‘trade’ and ‘commerce’ are not words of art; rather they are expressions of fact and terms of common knowledge’.<sup>18</sup> VCAT has adopted the view of the Federal Court of Australia that these terms are ‘of the widest import’.<sup>19</sup>

42. The provision contemplates disclosure of a document under the FOI Act may expose an agency to a certain measure of disadvantage. However, that any such exposure must be unreasonable in the circumstances.

43. My decision in relation to section 34(4)(ii)(a) is set out in the Schedule of Documents at **Annexure 1**.

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

44. 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.

45. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’<sup>20</sup> and the effectiveness of the deletions. Where deletions would render a document meaningless, they are not ‘practicable’, and release of the document is not required under section 25.<sup>21</sup>

46. I have considered the effect of deleting irrelevant and exempt information from the documents in accordance with section 25. Where I am satisfied it is practicable to delete irrelevant and exempt information, I have granted access to the document in part. In relation to Document 2, I am not satisfied it is practicable to do so as the edited document would not retain meaning.

47. My decision in relation to section 34(4)(ii)(a) is set out in the Schedule of Documents at **Annexure 1**.

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<sup>17</sup> Section 33(2C).

<sup>18</sup> *Pallas v Roads Corporation (Review and Regulation)* [2013] VCAT 1967 at [33].

<sup>19</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>20</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>21</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].

## **Conclusion**

48. On the information before me, I am satisfied certain information in the documents is exempt from release under sections 28(1)(ba), 28(1)(d), 31(1)(b) and 33(1). However, I am not satisfied the documents are exempt under section 30(1).
49. With the exception of Document 2, I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with irrelevant and exempt information deleted in accordance with section 25. Accordingly, access to these documents is granted in part. In relation to Document 2, access is refused in full.
50. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

## **Review rights**

51. 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>22</sup>
52. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>23</sup>
53. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>24</sup>
54. 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.
55. 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>25</sup>

## ***Third party review rights***

56. As I have determined to release documents that contain the personal affairs information of third parties, if practicable, I am required to notify those individuals of their right to seek review by VCAT of my decision within 60 days from the date they are given notice of the decision.<sup>26</sup>
57. In this case, I am satisfied it is practicable to notify the third parties of their review rights and confirm they will be notified on the date of decision.

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

58. Accordingly, my decision does not take effect until the third parties' 60 day review period expires.
59. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

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<sup>22</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>23</sup> Section 52(5).

<sup>24</sup> Section 52(9).

<sup>25</sup> Sections 50(3F) and (3FA).

<sup>26</sup> Sections 49P(5), 50(3) 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]	Ministerial brief - BMIN [reference] [subject]	34	Released in part Sections 28(1)(d), 33(1)	<b>Release in part</b> Section 25 The document is to be released with irrelevant information deleted in accordance with section 25.	The Agency no longer relies on the application of section 28(1)(d) to the document. I agree information in the document has been published and is therefore not exempt from release under section 28(1)(d).  <b>Section 33(1):</b> The names of Agency officers constitute their personal affairs information. In the circumstances, I am satisfied its disclosure would not be unreasonable as it is not particularly sensitive, and is recorded in the context of the relevant third parties carrying out their professional roles only.  <b>Section 25:</b> The Applicant does not seek access to email addresses or telephone numbers. Therefore, this information is irrelevant for the purposes of section 25 and is to remain deleted.
2	[date]	Ministerial brief – BMIN [reference] [subject]	7	Refused in full Sections 28(1)(ba), 33(1)	<b>Refuse in full</b> Section 28(1)(ba)	<b>Section 28(1)(ba):</b> I am satisfied the document was prepared for the purpose of briefing a Minister on matters to be submitted for consideration by a subcommittee of the Cabinet. Therefore, I am satisfied the document is exempt from release under section 28(1)(ba).  <b>Section 25:</b> I am not satisfied it is practicable to provide the Applicant with an edited copy of



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						this document as to do so would render the information to be released meaningless.
3	[date]	Ministerial Briefing – BMIN [reference] [subject]	4	Released in part Sections 28(1)(d), 33(1), 34(4)(a)(ii)	<b>Release in part</b> Sections 28(1)(d), 25  The document is to be released with irrelevant and exempt information deleted in accordance with section 25.	The Agency no longer relies on the application of section 34(4)(a)(ii) to the document. Therefore, I am satisfied the document is not exempt from release under section 34(4)(a)(ii).  <b>Section 28(1)(d):</b> I am satisfied, based on the content of the document, disclosure of the information exempted by the Agency under section 28(1)(d) would disclose the deliberation or a decision of the Cabinet. Therefore, I am satisfied this information is exempt under section 28(1)(d).  <b>Section 33(1):</b> See comments for Document 1.  <b>Section 25:</b> See comments for Document 1.
4	[date]	Ministerial Briefing – BMIN [reference] [subject]	13	Refused in full  Section 34(4)(a)(ii)	<b>Release in part</b> Sections 28(1)(d), 34(4)(a)(ii), 25  The document is to be released with irrelevant and exempt information deleted in accordance with section 25.	The Agency no longer seeks to exempt this document in full and has provided OVIC with a copy of the document with certain parts now exempted under sections 28(1)(d), 30(1), 33(1) and 34(4)(a)(ii).  <b>Section 28(1)(d):</b> I am satisfied the following information identified by the Agency discloses the deliberation or a decision of a subcommittee of the Cabinet:  <ul style="list-style-type: none"> <li>the first paragraph under ‘core message’;</li> </ul>

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						<ul style="list-style-type: none"> <li>• point 3 on pages 3 and 4; and</li> <li>• the second paragraph on page 1 of Attachment 2.</li> </ul> <p>I note the Agency no longer relies on the application of section 28(1)(d) to the fourth paragraph on page 1 of attachment 2. Therefore, I am satisfied this information is not exempt from release under section 28(1)(d).</p> <p><b>Section 30(1):</b> I consider the information identified by the Agency as exempt from release under section 30(1) contains opinion, advice and recommendation prepared by an Agency officer for the deliberative processes of the Agency – that of determining whether to fund various projects.</p> <p>However, I have determined it would not be contrary to the public interest to release this information for the following reasons:</p> <ul style="list-style-type: none"> <li>• similar information appears elsewhere in the document which was released to the Applicant;</li> <li>• the information relates to procedural matters. In my view, this information will</li> </ul>

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						<p>assist members of the public to understand the funding of such projects; and</p> <ul style="list-style-type: none"> <li>the information is general in nature or could be reasonably deduced from the remainder of the document which has been released by the Agency.</li> </ul> <p>Therefore, I am not satisfied this information is exempt from release under section 30(1).</p> <p><b>Section 34(4)(a)(ii):</b> I am satisfied the Agency, in relation to this particular activity, is engaged in trade or commerce. That is, it is engaged in competitive activities with other entities, including other governments.</p> <p>Further, I am satisfied the disclosure of information in the document would be likely to expose the Agency unreasonably to disadvantage as it would reveal its negotiating position and such information could be used by other entities to obtain an advantage in future similar negotiations. Accordingly, I am satisfied the information identified by the Agency is exempt under section 34(4)(a)(ii).</p> <p>Additionally, for the same reasons, I have determined the amount that appears under 'Recommendations' at point (d) on page 2 is also exempt under section 34(4)(a)(ii).</p>

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						<p><b>Section 33(1):</b> See comments for Document 1.</p> <p><b>Section 25:</b> See comments for Document 1.</p>
5	[date]	Ministerial Briefing – BMIN [reference] [subject]	4	Released in part Sections 28(1)(d), 33(1), 35(1)(b)	<p><b>Release in part</b></p> <p>Section 25</p> <p>The document is to be released with irrelevant information deleted in accordance with section 25.</p>	<p>The Agency advised it no longer seeks to apply section 35(1)(b) to parts of the document, however, it maintains sections 28(1)(d), 30(1) and 33(1) apply to certain information in the document.</p> <p><b>Section 28(1)(d):</b> I have considered the Agency’s submission on section 28(1)(d) in relation to point 4(f) and point 5(d) in the document.</p> <p>I am not satisfied the information is exempt from release under section 28(1)(d) as the information is general in nature in that I do not consider broad topics of discussion by the Cabinet are intended to be captured by this exemption. I also note certain information is publicly available. My determination on the application of this exemption is based on the information available at the time of making my decision.</p> <p><b>Section 30(1):</b> In broad terms, I accept the document discloses opinion, advice or recommendation prepared by Agency officers for the deliberative processes of the Agency. However, I do not consider disclosure of the</p>

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						<p>document would be contrary to the public interest for the following reasons:</p> <ul style="list-style-type: none"> <li>• the information is general in nature;</li> <li>• it is not sensitive, rather, it relates to broad policy recommendations;</li> <li>• I note the Agency's concern disclosure could affect the ability of government to engage consultancies in the future. However, I am not persuaded by this submission given such consultancies are paid to undertake such work on a commercial basis; and</li> <li>• I consider it is in the public interest for disclosure of such consultancy work that informs government policy to be open to public scrutiny, including the use of public funds to engage consultancies.</li> </ul> <p>Accordingly, I am not satisfied the information identified by the Agency is exempt under section 30(1).</p> <p><b>Section 33(1):</b> See comments for Document 1.</p> <p><b>Section 25:</b> See comments for Document 1.</p>

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6	[date]	Ministerial Briefing – BMIN [reference]  [subject]	4	Released in part  Sections 30(1), 33(1), 34(4)(a)(ii), 35(1)(b)	<b>Release in part</b>  Section 28(1)(d), 25  The document is to be released with irrelevant and exempt information deleted in accordance with section 25.	<p>The Agency advised it no longer seeks to apply section 28(1)(d) to some parts of the document, however, maintains it applies to point 6(b). Furthermore, the Agency no longer seeks to apply section 30(1) to point 6(f) of the document, however, maintains it applies to certain other parts of the document, including information previously exempted under section 35(1)(b). The Agency no longer seeks to apply sections 34(4)(a)(ii) or 35(1)(b) to the document.</p> <p><b>Section 28(1)(d):</b> I agree that point 6(b) discloses a deliberation of Cabinet. Accordingly, I am satisfied this information is exempt from release under section 28(1)(d).</p> <p><b>Section 30(1):</b> I note the Agency seeks to rely on section 30(1) to exempt from release an additional part of the document, being points 7(b) to 7(f). I consider the information identified by the Agency contains opinion, advice and recommendation prepared by an Agency officer for the deliberative processes of the Agency – that of determining whether to fund various projects. However, I have determined it would not be contrary to the public interest to release this information for the following reasons:</p>

Document No.	Date of Document	Document Description	No. of Pages	Agency Decision	OVIC decision	OVIC comments
						<ul style="list-style-type: none"> <li>• while I note this information is more specific and sensitive than other information reviewed in this decision, I consider the public interest weighs in favour of disclosure;</li> <li>• I note the information relates to funding arrangements that are subject to change, however, I consider members of the public can understand such arrangements will change over time; and</li> <li>• I note the Agency's submission, however, from the information before me, I am not satisfied disclosure of the information will deter businesses from submitting tenders for the project when it is in their interests to do so.</li> </ul> <p>In relation to points 7(a) to 7(f), this is the same information as in Document 5. Accordingly, I am not satisfied the information is exempt under section 30(1) for the same reasons. Moreover, the Agency no longer considers point 7(a) is exempt.</p> <p><b>Section 33(1):</b> See comments for Document 1.</p> <p><b>Section 25:</b> See comments for Document 1.</p>

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7	[date]	Ministerial Briefing – BMIN [reference] [subject]	37	Refused in full Sections 33(1), 35(1)(b)	<p><b>Release in part</b> Sections 31(1)(b), 33(1), 25</p> <p>The document is to be released with irrelevant and exempt information deleted in accordance with section 25.</p>	<p>The Agency no longer seeks to exempt this document in full and has provided OVIC with a copy of the document with certain parts exempted under sections 31(1)(b) and 33(1) rather than section 35(1)(b), together with a written submission regarding the application of the claimed exemptions.</p> <p><b>Section 30(1):</b> The Agency no longer claims the document is exempt under section 30(1).</p> <p><b>Section 31(1)(b):</b> I am satisfied, based on the information before me, the information identified by the Agency is information that, if disclosed, would prejudice the fair trial of a person or the impartial adjudication of a particular case. Therefore, I am satisfied it is exempt under section 31(1)(b). This includes information identified by the Agency as exempt under section 35(1)(b).</p> <p><b>Section 33(1):</b> I am satisfied information identified by the Agency is personal affairs information. Further I am satisfied it would be unreasonable to release the information as it is sensitive, relates to an ongoing court matter, and it is likely the person concerned would object to its release. At this point in time, I do not consider the factors weighing in favour of disclosure outweigh the factors in favour of personal privacy, in the circumstances of this</p>



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						<p>matter. The information is therefore exempt under section 33(1).</p> <p>However, I am not satisfied the name of the Lead Author on page 3 of the document is exempt under section 33(1) for the reasons described above in Document 1.</p> <p><b>Section 25:</b> See comments for Document 1.</p>
8	[date]	Ministerial Briefing – BMIN [reference] [subject]	9	Refused in full Sections 28(1)(b), 33(1), 34(4)(a)(ii)	<p><b>Release in part</b></p> <p>Section 25</p> <p>The document is to be released with irrelevant information deleted in accordance with section 25.</p>	<p>The Agency no longer seeks to exempt this document in full and has provided OVIC with a copy of the document with certain parts exempted under section 33(1) only.</p> <p><b>Section 33(1):</b> See comments for Document 1.</p> <p><b>Section 25:</b> See comments for Document 1.</p>