

## Notice of Decision and Reasons for Decision

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Applicant:	'FU7'
Agency:	Central Gippsland Health Service
Decision date:	2 February 2025
Exemptions and provision considered:	Sections 30(1), 33(1), 35(1)(a), 25
Citation:	'FU7' and Central Gippsland Health Service (Freedom of Information) [2024] VICmr 74 (2 February 2025)

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FREEDOM OF INFORMATION – hospital funding – model budgets – purely factual information – disclosure not contrary to 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 and more information is to be released.

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

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**

2 February 2025

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency for access to the following documents:
  - A copy of all pre-Budget submissions, briefing notes or proposals provided by Central Gippsland Health Service, to the Department of Health, between [date range].
  - A copy of the latest 2024-25 model budget sent to Central Gippsland Health Service by the Department of Health.
2. The Applicant advised they do not seek the personal information of non-executive staff such as names and addresses.
3. The Agency identified documents falling within the terms of the Applicant's request and refused access to them in full under sections 30(1) and 35(1)(a). 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. I have examined a copy 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 relevant 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 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.
10. In conducting a review under section 49F, section 49P requires that I make a new or 'fresh decision'. Therefore, my review does not involve determining whether the Agency's decision is correct, but rather requires my fresh decision to be the 'correct or preferable decision'.<sup>1</sup> This involves ensuring my decision is correctly made under the FOI Act and any other applicable law in force at the time of my decision.

### Review of exemptions

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

*Section 30(1) – Internal working documents*

11. To be exempt under section 30(1), three conditions must be satisfied:
  - (a) the document or information is matter in the nature of:
    - (i) opinion, advice or recommendation prepared by an agency officer or a Minister; or
    - (ii) consultation or deliberation that has taken place between agency officers or Ministers; and
  - (b) the matter was created during the deliberative process of an agency, Minister, or the government's functions; 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.<sup>2</sup>
13. The documents contain:
  - Information concerning budget outcomes and processes.
  - Information regarding the Agency's itemised budget funding amounts for its 2023-2024 budget.
  - Certain funding amounts for the 2024-2025 budget, that I understand, at the time the document was created, are forecasted amounts.
14. In my view the information in the documents is purely factual. It contains factual statements about the Agency's budget including for example the indexation amount, specified adjustments and individual funding amounts.
15. However, for the purposes of this decision I have further considered, if that information could be considered opinion, advice and recommendations of agency officers, in the broadest sense, whether the remaining limbs of section 30(1) would apply.
16. The documents also contain two emails and a policy document. I consider these documents contain opinion, advice and recommendations of Agency officers.
17. Further, I am satisfied the documents were created during the deliberative processes of the Agency, being budgeting for the health services it provides.

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

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

18. In deciding whether the information exempted by the Agency would be contrary to the public interest, I have given weight to the following relevant factors:<sup>3</sup>
- (a) the right of every person to gain access to documents under the Act;
  - (b) the sensitivity of the issues involved and the broader context of how the documents were created;
  - (c) the stage of a decision or policy development at the time the communications were made;
  - (d) whether disclosure of the documents would be likely to inhibit communications between agency officers that are essential for the agency to make an informed and well-considered decision or for those officers to properly participate in a process of the agency's functions (such as an audit or investigation, regulatory or law enforcement function);
  - (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, but only where 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 decision by an agency or Minister;
  - (g) the likelihood that disclosure would inhibit the independence of officers, including their ability to conduct proper research and make detailed submissions;
  - (h) the public interest in the community being better informed about an agency's deliberative, consultative and decision-making processes;
  - (i) the public interest in government transparency and accountability by enabling scrutiny or criticism of decisions and the decision-making process and building the community's trust in government and its decision making processes;
  - (j) whether there is controversy or impropriety around the decision or the decision-making process.
19. The Agency's decision letter states:
- Noting the draft nature of the information, and that it was provided in confidence for the purpose of further discussion and consultation, CGHS is of the view that releasing it would do more harm than good at this point in time, and is therefore not in a position to release the requested information.
20. I have also considered the Department of Health's response when consulted by the Agency prior to making its decision.

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<sup>3</sup> See <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-30/#the-exemption>.

21. I have decided it would not be contrary to the public interest to disclose the information in the documents for the following reasons:
- (a) The public interest weighs in favour of disclosure of the draft budgets, so that the Agency is transparent about the way it makes decisions regarding public expenditure on health.
  - (b) All agencies are subject to changes in budget, and these changes affect the services provided to the community. While I note some of the changes and budget items would be more sensitive, the Agency has not identified any particular information where its sensitivity rises to a level where the public interest weighs against disclosure.
  - (c) The part of the budget process is evident from the date and contents of the documents. Members of the community are capable of understanding that such budgets are subject to change.
  - (d) We are now well into the 2024/25 financial year such that I consider any sensitivity regarding the disclosure of certain line items in the documents would have been reduced.
  - (e) One of the documents is a policy document setting out the model budget process. I also consider the public interest weighs in favour of transparency around government decision making processes.
  - (f) These are foundational documents which are relied on by hospitals in setting their yearly budgets.
22. The documents are therefore not exempt under section 30(1).

***Section 33(1) – Documents affecting personal privacy of third parties***

23. A document or information is exempt under section 33(1) if two conditions are satisfied:
- (a) the document or information relates to the ‘personal affairs’ of a natural person (living or deceased); and
  - (b) disclosure of that personal affairs information is unreasonable in all the circumstances.

*Do the documents contain personal affairs information of individuals other than the Applicant?*

24. The Applicant is not seeking the personal affairs information of non-executive Agency officers. However, the documents also contain the names of executives that is within scope of the request. This is personal affairs information.

*Would disclosure of the personal affairs information be unreasonable?*

25. The concept of ‘unreasonable disclosure’ involves balancing the public interest in the disclosure of official information with the personal interest in privacy in the particular circumstances of a matter.

26. In determining whether disclosure of the personal affairs information would be unreasonable in the circumstances, I have considered the following factors:<sup>4</sup>
- (a) the nature of the personal affairs information;
  - (b) the circumstances in which the information was obtained;
  - (c) the extent to which the information is available to the public;
  - (d) the applicant's interest in the information;
  - (e) whether any public or important interest would be promoted by release of the information;
  - (f) whether the individuals to whom the information relates object, or would be likely to object, to the release of the information;
  - (g) whether disclosure of the information would or would be reasonably likely to endanger the life or physical safety of any person.<sup>5</sup>
27. I have determined that it would not be unreasonable to release the names of executive officers named in the documents. This is because they are senior and responsible for the conduct of their agencies. They are therefore not exempt under section 33(1).
28. However, I have determined other personal information about them, being email addresses and telephone numbers would be unreasonable to release and is exempt under section 33(1).
29. My decision in relation to section 33(1) is set out in the Schedule of Documents at **Annexure 1**.

***Section 35(1)(a) – information communicated in confidence to an agency that would be exempt if generated by an agency***

30. A document is exempt under section 35(1)(a) if two conditions are satisfied:
- (a) disclosure would divulge information or matter communicated in confidence by or on behalf of a person or a government to an agency or a Minister; and
  - (b) the information would be exempt matter if it were generated by an agency or Minister.

*Was the information communicated in confidence to the Agency?*

31. Document 1 and its attachments were communicated to the Agency from the Department of Health. Based on the consultation the Agency conducted with the Department, I consider the information was communicated in confidence.
32. Document 2 and one of its attachments were not communicated to the Agency, however the second attachment, being a letter to the Agency from the Department of Health was provided to it. There is no information before me to confirm that that letter was provided to the Agency

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<sup>4</sup> <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-33/#the-exemption>.

<sup>5</sup> Section 33(2A).

in confidence, however for the purposes of this decision I will consider whether the remaining limb of section 35(1)(b) applies to it.

*Would the information be exempt matter if it were generated by an Agency or Minister?*

33. While not explicit in the Agency's decision letter, I note the consultation with the Department of Health contends that the documents would be exempt under section 30(1) if generated by the Agency.
34. I have determined the documents are not exempt under section 30(1) for the reasons described above.
35. The documents are therefore not exempt under section 35(1)(a).

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

36. 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.
37. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>6</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>7</sup>
38. A small amount of information in the documents is the personal affairs information of non-executive officers not sought by the Applicant. This information is therefore irrelevant to the request.
39. I have considered the effect of deleting irrelevant and exempt information from the documents. In my view, it is practicable for the Agency to delete the irrelevant and exempt information, because it would not require substantial time and effort, and the edited documents would retain meaning.

#### **Conclusion**

40. On the information before me, I am not satisfied the documents are exempt from release under sections 30(1) or 35(1)(a). However, I am satisfied a small amount of personal affairs information is exempt under section 33(1).
41. Where the documents contain irrelevant information they are to be released in part, where they do not, they are to be released in full.

#### **Timeframe to seek a review of my decision**

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<sup>6</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>7</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], [155].

42. If either party to this review is not satisfied with my decision, they are entitled to apply to the Victorian Civil and Administrative Tribunal (VCAT) for it to be reviewed.<sup>8</sup>
43. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>9</sup>
44. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>10</sup>
45. 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.
46. 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>11</sup>

### Third party review rights

47. As I have determined to release documents that contain the personal affairs information of people other than the Applicant, I am required to notify those persons of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.<sup>12</sup>
48. In this case, I am satisfied it is practicable to notify the relevant third parties of their review rights and I will provide notices to the Agency to distribute notices to relevant parties.
49. I have also determined to release information the Agency determined exempt under section 35(1)(a). I am also required, if practicable, to notify the party from whom the information was received in confidence. I have decided it is practicable to notify the Department of Health of my decision. Notice will be provided by my office at the time of the decision.

### When this decision takes effect

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

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<sup>8</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>9</sup> Section 52(5).

<sup>10</sup> Section 52(9).

<sup>11</sup> Sections 50(3F) and 50(3FA).

<sup>12</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
1.	[Date]	Email to agency from Department of Health	2	Refused in full Sections 30(1), 35(1)(a)	Release in part Sections 33(1), 25 The document is to be released with the following irrelevant information deleted in accordance with section 25: <ul style="list-style-type: none"> <li>any non-executive names;</li> <li>the name of the [specified position title];</li> <li>all email addresses and telephone numbers.</li> </ul>
1A.	Undated	Budget Spreadsheet	NA	Refused in full Sections 30(1), 35(1)(a)	Release in full
1B.	Undated	Spreadsheet – Grants	NA	Refused in full Sections 30(1), 35(1)(a)	Release in full
1C.	[Month, year]	Department of Health – 2024-25 Guide	18	Refused in full Sections 30(1), 35(1)(a)	Release in full
2.	[Date]	Email to Department of Health from Agency	1	Refused in full Sections 30(1), 35(1)(a)	Release in part Sections 33(1), 25 The document is to be released with the following irrelevant information deleted in accordance with section 25:

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Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision
					<ul style="list-style-type: none"> <li>any non-executive names;</li> <li>all email addresses and telephone numbers.</li> </ul>
2A.	Undated	Spreadsheet attachment to email	NA	<p>Refused in full</p> <p>Sections 30(1), 35(1)(a)</p>	Release in full
2B.	[Date]	Letter to Agency from Secretary Department of Health	2	<p>Refused in full</p> <p>Sections 30(1), 35(1)(a)</p>	Release in full