

Notice of Decision and Reasons for Decision

Applicant:	'FV4'
Agency:	Department of Premier and Cabinet
Decision date:	8 May 2025
Exemptions and provision considered:	Sections 28(1)(c), 30(1), 25
Citation:	'FV4' and <i>Department of Premier and Cabinet</i> (Freedom of Information) [2025] VICmr 22 (8 May 2025)

FREEDOM OF INFORMATION – attachments to Ministerial briefs – Premier's circular – funding reductions in the Public Service – cyber security – guidelines for Departments – consultation documents – connection to Cabinet process

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 in part and more information is to be released from Document 1.

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

Please refer to the end of this decision for information about review rights through the Victorian Civil and Administrative Tribunal (**VCAT**).

My reasons for decision follow.

Penny Eastman
Public Access Deputy Commissioner
8 May 2025

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to four attachments to Ministerial briefs.
2. The Agency identified the four documents and granted access to one document in full, refusing access to the remaining documents in full or in part, exempting certain information under sections 28(1)(b), 28(1)(d) and 30(1).
3. The Agency also determined certain content in Document 4 was not subject to the FOI Act due to the operation of section 194 of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic).
4. The Agency's decision letter sets out the reasons for its decision.

Review application

5. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
6. The Applicant advised they sought review of Documents 1 and 3. Accordingly, this review relates to these documents only.
7. I have examined a copy 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 relevant communications and submissions 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.
12. 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'.¹ 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

Section 28(1) – Cabinet documents

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

13. For more information about section 28, see the FOI Guidelines.²
14. Section 28 is intended to ensure the Cabinet process remains confidential.
15. Section 28(7)(a) defines 'Cabinet' as including a committee or sub-committee of Cabinet.
16. Section 28(1) does not apply to:
 - (a) a document that is more than 10 years old;
 - (b) a document that contains purely statistical, technical, or scientific material, unless it would disclose any deliberation or decision of Cabinet; or
 - (c) a document by which a decision of the Cabinet was officially published.

Section 28(1)(c) – A copy, draft or extract from a Cabinet document

17. Section 28(1)(c) exempts a document that is a copy or draft of, or contains extracts from, a document referred to in sections 28(1)(a), 28(1)(b) or 28(1)(ba).
18. During the review, the Agency advised it no longer sought to apply section 28(1)(b) to Document 3 and instead considered section 28(1)(c) applied to it for the following reasons:

... it is DPC's belief that s 28(1)(c) would apply to the document, as it is an extract of [named Cabinet document], which is a Cabinet submission previously provided to OVIC. Given that the guidance is a reproduction of the text provided as part of the Cabinet submission, we submit it is an extract. Additionally, as you noted below, the document was created after the Cabinet submission, and therefore can be considered an extract of a submission (*Honeywood v Department of Human Services* [2006] VCAT 2048 [19] (**Honeywood**); *Smith v Department of Sustainability and Environment* (General) [2006] VCAT 1228 [28]). We note the documents are substantively the same, with Document 3 containing a watermark that the Cabinet submission does not. As per *Honeywood*, where VCAT held that a briefing note containing extracts from a Cabinet submission where some paragraphs were changed in subtle ways was exempt under s 28(1)(c), we submit that Document 3 is exempt under s 28(1)(c).

Regarding the public nature of the document, we note that a revised version of the document was later published on the vic.gov.au website. It was on this basis that section 30(1) was applied in part, where Document 3 differed from the version available online. As Document 3 is a draft version of what was eventually published, DPC submits that an exemption under s 28(1)(c) is still able to be claimed and that publishing of a revised version is consistent with the application of the Cabinet exemption.

19. Having reviewed the document and the identified Cabinet submission, I am satisfied Document 3 is an extract of that submission.
20. Further, I am satisfied the specific document subject to review has not been published, rather, it was an earlier version of a published document.
21. Document 3 is therefore exempt under section 28(1)(c).

² <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-28/>.

Section 30(1) – Internal working documents

22. For more information about section 30, see the FOI Guidelines.³
23. Section 30(1) exempts documents that contain opinion, advice or recommendation, or consultation or deliberation, where disclosure would be contrary to the public interest. A document is not exempt simply because it is an internal working document.⁴
24. 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.
25. The Agency applied section 30(1) to Document 1 which is a Premier's Circular relating to cyber security guidelines from [year].
26. I am satisfied Document 1 is matter in the nature of recommendation prepared by an Agency officer, in relation to a deliberative process of the Agency being its cyber security responses.

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

27. In deciding whether disclosure of the information would be contrary to the public interest, I have given weight to the following relevant factors:⁵
- (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 document was created;
 - (c) the stage of a decision or policy development at the time the communications were made;
 - (d) whether disclosure of the document 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

³ <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-30/>.

⁴ *Graze v Commissioner of State Revenue* [2013] VCAT 869, 25.

⁵ See <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-30/#disclosure-would-be-contrary-to-the-public-interest>.

agency's functions (such as an audit or investigation, regulatory or law enforcement function);

- (e) whether disclosure of the document 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 document;
 - (f) the impact of disclosing a document 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.
28. I have decided it would not be contrary to the public interest to disclose the information in Document 1 for the following reasons:
- (a) the information is general in nature;
 - (b) most of the information in the document has now been published by the Agency and reflects its current position; and
 - (c) there is public interest in general information about how the government, which holds a significant amount of public information, manages its cyber security obligations.
29. Document 1 is therefore not exempt under section 30(1).

Section 25 – Deletion of exempt or irrelevant information

30. 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.
31. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁶ and the effectiveness of the deletions.

⁶ *Mickelburgh v Victoria Police (General)* [2009] VCAT 2786, [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967, [82].

Where deletions would render a document meaningless, they are not ‘practicable’ and release of the document is not required under section 25.⁷

- 32. I have determined to release Document 1 in full, so editing of this document is not required.
- 33. I have considered the effect of deleting exempt information from Document 3. In my view, it is not practicable for the Agency to delete the exempt information, because deleting the exempt information would render the document meaningless.

Conclusion

- 34. On the information before me, I am not satisfied Document 1 is exempt under section 30(1), and I am satisfied Document 3 is exempt under section 28(1)(c).
- 35. Access to Document 1 is granted in full, and access to Document 3 is refused in full.

Timeframe to seek a review of my decision

- 36. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.⁸
- 37. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁹
- 38. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁰
- 39. 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.
- 40. 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.¹¹

When this decision takes effect

- 41. 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.

⁷ *Honeywood v Department of Human Services* [2006] VCAT 2048, [26]; *RFJ v Victoria Police FOI Division* (Review and Regulation) [2013] VCAT 1267, [140], [155].

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

⁹ Section 52(5).

¹⁰ Section 52(9).

¹¹ Sections 50(3F) and 50(3FA).

Annexure 1 – Schedule of Documents

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision
1.	[Date]	Premier's Circular No. [year]/01	2	Refused in full Section 30(1)	Release in full
2.	[Date]	Letter to the CPSU regarding reduced funding across the VPS	1	Released in full	Not subject to review
3.	[Date]	Implementing savings in the Victorian Public Service	6	Refused in full Sections 28(1)(b), 30(1) During the review, the Agency advised it no longer sought to apply section 28(1)(b) and instead determined section 28(1)(c) applies to it.	Refused in full Section 28(1)(c)
4.	[Date]	Government response to Operation [name] and IBAC Special Report: Proposed responsibilities for implementation	13	Released in part Section 28(1)(d)	Not subject to review