

Notice of Decision and Reasons for Decision

Applicant:	'FW5'
Agency:	Department of Health
Decision date:	19 March 2025
Exemptions and provisions considered:	Sections 30(1), 33(1), 34(1)(b), 34(4)(a)(ii), 35(1)(a), 25
Citation:	'FW5' and Department of Health (Freedom of Information) [2025] VICmr 32 (19 March 2025)

FREEDOM OF INFORMATION – COVID-19 pandemic – public health response – procurement of ventilators – intergovernmental communications – procurement – expenditure of public funds

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

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

A marked-up copy of the documents showing irrelevant information in accordance with my decision has been provided to the Agency.

Please refer to page 14 for information about review rights through the Victorian Civil and Administrative Tribunal (**VCAT**).

My reasons for decision follow.

Penny Eastman
Public Access Deputy Commissioner

19 March 2025

Reasons for Decision

Background to review

1. The Applicant sought access to:
 - 1) (For the period [date range])
 - a. A copy of any document - all types, including emails - related to the instruction and/or direction, either via email or letter, to Monash Health to purchase VG70 ventilators.
 - 2) Any document relating to:
 - a. [Specified companies'] involvement in the procurement of VG70s.
 - b. Victoria Health's selection process and due diligence regarding VG70 ventilators.
 - c. Instructions issued to purchase VG70 ventilators from a specific dealer.

Note: Individual's names and commercial names can be redacted if their released would fall under any exemptions.

2. The Agency identified five documents, with a total of 32 pages falling within the terms of the Applicant's request and granted access to the documents in part under sections 30(1), 33(1), 34(1)(b) and 34(4)(a)(ii). 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.
4. During their review, the Applicant indicated they do not seek access to the information that the Agency removed in accordance with section 25 as irrelevant information. The Agency's decision letter states it removed information that did not meet the terms of the Applicant's request, such as parts of email correspondence that post-date the timeframe specified in the Applicant's request and information that does not relate to VG70 ventilators.
5. The Applicant also advised that they seek access to the names and position titles of third parties, but not their contact details.
6. The Applicant also advised that they do not seek access to BSB and account details.
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.

OVIC initial view

12. During the review, OVIC staff provided the Agency with my preliminary view that further information would likely be released to the Applicant, as I was not satisfied that sections 30(1), 34(1)(b) and 34(4)(a)(ii) applied. The Agency was also provided with a marked-up copy of the documents reflecting my preliminary view.
13. In response to my preliminary view, the Agency sought to rely on an additional exemption under section 35(1)(a), on the basis that a third-party business undertaking considered specific information within the documents would be contrary to the public interest to disclose, as it would negatively impact its relationship with other states and territories.
14. Following this, the Agency was advised that certain personal affairs information would likely also be released and was requested to provide OVIC with some attachments to the documents that had not been provided. This resulted in two further documents being located, which are Documents 9 and 10 in the Schedule of Documents in **Annexure 1**.

Review of exemptions

Section 30(1) – Internal working documents

15. 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.
16. The exemption does not apply to purely factual material in a document.¹

¹ Section 30(3).

Do the documents contain opinion, advice or recommendation, or consultation or deliberation?

17. The term ‘officer’ is defined in section 5(1). It includes independent contractors, consultants and legal advisers engaged by an agency to carry out work or provide services.²
18. The documents contain consultation and deliberations between officers of various government agencies with respect to the procurement and supply of ventilators during the COVID-19 pandemic.

Was the deliberative information was created in a ‘deliberative process’ related to the functions of an agency, Minister, or the government?

19. I am satisfied the information was created during the deliberative processes of the Agency, being the procurement and supply of ventilators during the COVID-19 pandemic.

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

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.³ Public interest factors are not a fixed, determinative set of criteria.⁴ Rather, they are a list of matters that may be relevant. Each request balances these factors based on the unique circumstances of the matter.

21. The Agency’s decision states:

It is essential that officers of the department can engage in open and frank internal discussion and interagency collaboration in real time on live matters of critical significance to public health. It is considered that the release of the material would be contrary to the public interest as the relationship between deliberations and final actions taken has the potential to be misconstrued, which could lead to ill-informed debate among the public and result in officers being less willing to contribute meaningfully to future deliberations of critical public health significance.

22. The documents date back to March and April 2020, during the initial phase of the COVID-19 pandemic, and concern the Government’s initial response, specifically, the procurement of ventilators. Victoria reported the first case of COVID-19 in Australia on 25 January 2020.⁵ The first wave of new cases occurred in late March 2020,⁶ which is around the time in which the documents subject to review were created. By August 2020, the Premier had declared a state of Disaster across Victoria.⁷

23. The Victorian Government’s response to the COVID-19 pandemic concerns important matters of public health and has been the subject of public interest. Notably, the Public Accounts and

² See example, *Mees v University of Melbourne (General)* [2009] VCAT 782, [31].

³ For example, see *Coulson v Department of Premier and Cabinet* [2018] VCAT 229, [25]; *Hulls v Victorian Casino and Gaming Authority* (1998) 12 VAR 483, 488; *Secretary to Department of Justice v Osland* (2007) 26 VAR 425, [77]

⁴ *Landes v Vic Roads* [2009] VCAT 2403, [46].

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

Estimates Committee conducted an *Inquiry into the Victorian Government's response to the COVID-19 pandemic*, publishing its final report in February 2021.⁸

24. At the time in which the documents were created, the Government's response to the pandemic was a sensitive and evolving issue. I accept that disclosure of the documents at the time in which they were created, which contain consultation and deliberation on procuring ventilators, could have had an adverse effect on the integrity and effectiveness of their deliberations and decisions.
25. However, several years have passed, and the public's knowledge and understanding of issues associated with the Government's response to the COVID-19 pandemic and outcomes of government decisions during that period has advanced over the passage of time. Given the documents relate to the COVID-19 pandemic, which concerns significant public health matters, I consider the public interest weighs in favour of disclosure. Importantly, disclosure serves the public interest where it can assist members of the public in their understanding and scrutiny of public health responses to the COVID-19 pandemic.
26. Having considered the passage of time since the documents were created, I do not consider that disclosure now would have an adverse effect on the integrity and effectiveness of the Government's deliberations and decisions.
27. Further, I do not accept the Agency's view that the documents have a potential to be misconstrued. I consider they are a clear picture of what was being considered with respect to the procurement of ventilators at a point in time and would not be misconstrued as representing the Government's final decision on the matter. As such, I also do not accept that disclosure would lead to ill-informed debate, if the documents are misconstrued, which would result in agency officers being less willing to meaningfully contribute to future deliberations of critical public health issues.
28. I also consider that agency officers have professional and ethical duties to meaningfully contribute to critical public health matters, and as such, it is unlikely that disclosure of documents containing deliberation on procuring ventilators is unlikely to influence how agency officers may communicate in the future should a critical public health issue arise.
29. Given the strong public interest in disclosing documents concerning the COVID-19 pandemic, and consideration of other factors referred to above, I am not satisfied disclosure of the information in the documents would be contrary to the public interest.
30. Accordingly, I am satisfied the documents are not exempt under section 30(1).

Section 33(1) – Personal affairs information

31. A document will disclose personal affairs information if the applicant or any member of the public could directly or indirectly identify an individual or their address or location from the information.⁹

⁸Available at https://www.parliament.vic.gov.au/4af800/contentassets/9c4e489fe9834121826347ad523e87d2/paec_59-08_vic_gov_response_to_covid-19_pandemic.pdf

⁹ *O'Sullivan v Department of Health & Community Services (No 2)* (1995) 9 VAR 1, 14; *Beauchamp v Department of Education* [2006] VCAT 1653 [42]; *NKY v Department of Education and Training* [2022] VCAT 302, [67]-[68].

32. A document is only exempt under section 33(1) if the disclosure of personal affairs information would be ‘unreasonable’ in the circumstances.¹⁰
33. An agency or Minister must carefully weigh the facts and matters that ‘relevantly, logically, and probatively’ bear upon whether disclosure of the personal affairs information is unreasonable in the circumstances.¹¹ This will vary with each case.
34. The documents contain names, position titles and contact details of various agency officers and external persons (**external third parties**). However, the Applicant has advised that they do not seek access to contact details.
35. In deciding whether disclosure of the personal affairs information would be unreasonable in the circumstances, I have considered the following:
- (a) the personal affairs information is not sensitive, as it concerns people in their professional capacity rather than their private lives;
 - (b) some of the third parties involved held senior positions and had decision-making responsibilities;
 - (c) the passage of time since the documents were created, noting almost five years have passed;
 - (d) the documents concern part of the Victorian Government’s response to the COVID-19 pandemic, which is a matter of public interest, and I consider the public interest extends to transparency around the persons involved;
 - (e) the documents relate to decisions made regarding expenditure of public funds in the context of a significant public health issue;
 - (f) the Applicant considers disclosure would promote transparency regarding the procurement of ventilators and would be in the public interest;
 - (g) there is minimal information before me concerning the views of the third parties regarding disclosure of their personal affairs information; and
 - (h) disclosure of the personal affairs information would be unlikely to lead to the third parties suffering stress and anxiety or endanger the life or physical safety of any person.
36. On balance of the above factors, I have decided the following:
- (a) Many of the agency officers, involved either directly or peripherally (for example, copied into emails) hold senior positions. It would not be unreasonable to disclose their names and position titles given their seniority.
 - (b) It would not be unreasonable to disclose the names and position titles of agency officers who had substantial involvement in facilitating the procurement of ventilators, including

¹⁰ *AB v Department of Human Services* [2001] VCAT 2020, [38]; *Victoria Police v Marke* [2008] VSCA 218, [22].

¹¹ *Victoria Police v Marke* [2008] VSCA 218, [98].

those who were not responsible for the purchase and negotiation of sale conditions during that period;

- (c) It would not be unreasonable to disclose the names and position titles of agency officers who were decision-makers with respect to the purchase of ventilators;
- (d) It would be unreasonable to disclose the personal affairs information of other agency officers where they did not have decision-making responsibilities or who are not senior; and
- (e) It would be unreasonable to disclose the personal affairs information of external third parties and public interest in transparency is fulfilled via release of the names of the undertakings.

37. Accordingly, I am satisfied certain information in the documents is exempt from release under section 33(1).

Section 34(1)(b) – Business, commercial or financial information of an undertaking

38. A document or information is exempt under section 34(1)(b) if three conditions are satisfied:

- (a) the document or information was acquired from a business, commercial, or financial undertaking; and
- (b) the information relates to matters of a business, commercial or financial nature; and
- (c) disclosure of the information is likely to expose the undertaking unreasonably to disadvantage (based on matters listed in section 34(2) and any other relevant considerations).

Was information acquired from a business, commercial or financial undertaking?

- 39. The phrase ‘information acquired’ involves some positive handing over of information to an agency in a precise form.¹²
- 40. The actual document itself does not need to be acquired from an undertaking.¹³ It may also disclose relevant information acquired from the undertaking.¹⁴
- 41. However, information generated by an agency about the undertaking, or mutual information arising out of negotiations or collaboration between an agency and an undertaking, is generally not ‘acquired’ by the agency from the undertaking.¹⁵
- 42. The documents contain information that was acquired from a third party.

¹² *Thwaites v Department of Human Services* (1999) 15 VAR 1, 14.

¹³ *Gill v Department of Industry, Technology and Resources* (1985) 1 VAR 97, 106.

¹⁴ *Gill v Department of Industry, Technology and Resources* (1985) 1 VAR 97, 106; *Holbrook v Department of Natural Resources* (1997) 13 VAR 1, 8.

¹⁵ *Holbrook v Department of Natural Resources* (1997) 13 VAR 1, 8.

Does the information relate to matters of a business, commercial or financial nature?

43. 'Business', 'commercial' and 'financial' should each be given their ordinary meaning.¹⁶
44. Information will 'relate to' matters of a business, financial or commercial nature if there is a sufficient or material connection or relationship between the information that would be disclosed by the disclosure of the documents and matters of a business, financial or commercial nature.¹⁷
45. I am satisfied information in the documents relate to matters of a business, financial or commercial nature, being the commercial procurement of ventilators from an external third party.

Would disclosure of the information be likely to expose the undertaking unreasonably to disadvantage?

46. In considering whether disclosure will expose an undertaking unreasonably to disadvantage, I must have regard to the factors set out in section 34(2) along with any other relevant consideration. These are:
 - (a) whether the information is generally available to competitors of the undertaking;
 - (b) whether the information would be exempt if it were generated by an agency or a Minister;
 - (c) whether the information could be disclosed without causing substantial harm to the competitive position of the undertaking; and
 - (d) whether there are any considerations in the public interest in favour of disclosure which outweigh considerations of competitive disadvantage to the undertaking, for instance, the public interest in evaluating aspects of government regulation of corporate practices or environmental controls.
47. Other relevant considerations include whether disclosure would:
 - (a) give a competitor of the undertaking a competitive financial advantage;
 - (b) enable that competitor to engage in destructive competition with the undertaking; or
 - (c) lead to unwarranted conclusions about the undertaking's financial affairs and position that result in commercial and market consequences.¹⁸
48. Under section 34(2)(d), examples of public interest factors in favour of disclosure include:
 - (a) transparency and accountability, particularly in the expenditure of public money;

¹⁶ *Gibson v Latrobe CC* [2008] VCAT 1340, [25].

¹⁷ *Commissioner of State Revenue v Tucker* [2021] VCAT 238, [158], citing *J & G Knowles & Associates Pty Ltd v Commissioner of Taxation* [2000] FCA 196.

¹⁸ *Dalla Riva v Department of Treasury and Finance* [2007] VCAT 1301, [33].

- (b) scrutiny of government decisions, especially involving allegations of wrong-doing;
 - (c) allowing the public to be better informed about decisions like the privatisation of government services; and
 - (d) contributing to informed public debate.
49. Government transparency and accountability requires private organisations contracting with government to expect more public scrutiny over their dealings. This includes the possibility that their business, financial or commercial information may be disclosed to the public under the FOI Act.¹⁹ The exemption in section 34(1)(b) balances government transparency and public accountability against protecting legitimate commercial interests.
50. In this matter, the Agency consulted with an undertaking who objected to disclosure on several grounds. The Agency provided me with a copy of the undertaking's consultation response, which I have carefully considered.
51. The documents also contain information that the Agency generated about another business undertaking and discloses matters relating to the supply and distribution of its product. The Agency did not consult with this undertaking.
52. On the information before me, I am not satisfied disclosure of the information to which the Agency refused access would expose the undertakings unreasonably to disadvantage, for the following reasons:
- (a) I do not consider disclosing the number of ventilators that the undertakings were able to source in March 2020 would provide competitors with a commercial advantage over the undertaking in the present day. The documents were created at a point in time in which ventilators were in high demand and needed to be acquired urgently in response to the pandemic. The pandemic has ended and there is no longer an urgent demand for ventilators. While a pandemic could occur in future and may require sourcing of future products from the undertaking, the undertaking's ability to source products would be dependent on several factors, and the demand, supply, and prices would differ now from March/April 2020. It is unlikely that a competitor could outbid the undertaking due to the knowledge of the number of ventilators the undertakings could supply in March/April 2020.
 - (b) Some information regarding a quote to supply ventilators from one of the business undertakings for VG70 ventilators dated March 2020 is publicly available.
 - (c) I also consider businesses should expect that because government is accountable to the public for its decision making and the expenditure of public funds, particularly in the context of a global pandemic, greater transparency and public scrutiny will necessarily require disclosure of information about those businesses. Even if disclosure may affect the relationship between the government and those businesses, I consider the public interest still weighs in favour of disclosure.

¹⁹ *Re Thwaites and Metropolitan Ambulance Service* (1996) 9 VAR 427, [477].

- (d) There is a legitimate public interest in the way in which the Government undertakes its financial and operational arrangements, particularly in relation to the Government's response to the initial phase of the COVID-19 pandemic in 2020. Therefore, I consider any potential disadvantage to which the business undertakings may be exposed to due to disclosure of the documents is outweighed by the public interest in favour of government transparency and accountability and the use of public funds.

53. Accordingly, I am not satisfied that disclosure of the document would expose the business undertakings unreasonably to disadvantage and, therefore, information in the documents is not exempt from release under section 34(1)(b).

Section 34(4)(a)(ii) – Information that would expose the Agency unreasonably to disadvantage

54. A document or information is exempt under section 34(4)(a)(ii) if three conditions are satisfied:

- (a) the agency is engaged in trade or commerce; and
- (b) the document contains information of a business, commercial or financial nature; and
- (c) disclosure of the information would be likely to expose the agency unreasonably to disadvantage.

Is the Agency engaged in trade and commerce?

- 55. The words trade or commerce are expressions of fact and terms of common knowledge.²⁰
- 56. Whether an agency is engaged in trade or commerce depends on the specific facts and circumstances. It requires clear evidence that the agency is doing more than delivering government services or functions.
- 57. Trade or commerce activities must 'of their nature, bear a trading or commercial character'.²¹
- 58. An agency can be engaged in trade or commerce even if its activities are mainly governmental.²²
- 59. The business, commercial or financial information must be connected to the trade or commerce activity that the agency is engaged in (not government services or functions).
- 60. The documents involve intergovernmental communications involving several public sector agencies. At the time in which the documents were created, the Government had a need to procure healthcare ventilators for the public during the initial phase of the COVID-19 pandemic and was evaluating which businesses were the most appropriate to procure ventilators from.

²⁰ *Re Ku-Ring-Gai Co-operative Building Society (No 12) Ltd* [1978] FCA 50, per Deane J, Brennan J agreeing, [44].

²¹ *Gibson v Latrobe City Council* [2008] VCAT 1340, [35]; *Concrete Constructions (NSW) Pty Ltd v Nelson* [1990] HCA 17; (1990) 169 CLR 594, 604.

²² *Commissioner of State Revenue v Tucker* [2021] VCAT 238, [175] citing *Gibson v Latrobe City Council* [2008] VCAT 1340; *Marple v Department of Agriculture* (1995) 9 VAR 29; *Stewart v Department of Tourism, Sport and the Commonwealth Games* [2003] VCAT 45 and *Re Thwaites and Metropolitan Ambulance Service* (1996) 9 VAR 427.

61. Although the procurement of ventilators was responsive to a public health crisis and is a governmental function, the purchasing of ventilators is nevertheless a trade and commerce activity.

Do the documents contain information of a business, commercial or financial nature?

62. The information must have a business, commercial, or financial nature. ‘Business’, ‘commercial’ and ‘financial’ should each be given their ordinary meaning.²³
63. The documents contain business, commercial and financial information with respect to the procurement of ventilators.

Would disclosure be likely to expose the agencies unreasonably to disadvantage?

64. Tribunals and courts describe ‘disadvantage’ in terms of the business, commercial or financial implications of disclosure. In particular, whether disclosure is likely to:
- (a) reduce an agency’s capacity to compete in a competitive market for buying and selling goods or services;²⁴
 - (b) reduce an agency’s capacity to negotiate future commercial contracts;²⁵
 - (c) strengthen the bargaining position of entities the agency negotiates with, at the expense of the agency competing for marketplace share;²⁶ or
 - (d) expose the rates that an agency is prepared to accept for various services – and if so, the likely impact on the agency’s operations.
65. Whether disclosure is likely to expose the agency unreasonably to disadvantage depends on the particular facts and circumstances of the matter, considering the consequences that are likely to follow from disclosure of the information.
66. Whether disadvantage would be unreasonable involves the consideration of all circumstances, including factors both in favour of, and against disclosure, such as:²⁷
- (a) the nature of the information;
 - (b) whether there is any public interest in disclosure or nondisclosure;
 - (c) the circumstances in which the information was obtained or created;
 - (d) whether the information has any current relevance; and
 - (e) the identity of the applicant and the likely motives of the applicant.

²³ *Gibson v Latrobe CC* [2008] VCAT 1340, [25].

²⁴ *Binnie v Department of Industry, Technology & Resources* (1986) 1 VAR 345, 348.

²⁵ *Ibid*; *Davis v Department of Transport* [2022] VCAT 721, [58].

²⁶ *Save Albert Park Inc v Australian Grand Prix Corporation* [2008] VCAT 168, [77].

²⁷ *Asher v Department of Innovation, Industry & Regional Development* [2005] VCAT 2702, [42]-[43]; *Fitzherbert v Department of Health and Human Services* [2019] VCAT 201, [61].

67. The Agency's decision letter states:

Business, commercial and financial material relating to the department's procurement process and expenditure has been removed using this section on the basis that the release of this material would expose the department to unreasonable disadvantage in its business dealings, especially in the context of affecting the department's ability to purchase competitively in this procurement stream in future, in that disclosure has the potential to undermine future tender processes for the provision of work to third parties by the department.

68. As noted above, several public sector agencies were involved in the communications regarding the procurement of the ventilators.

69. As discussed above, I accept the documents contain information that would have been sensitive at the time they were created. Further, the communications took place at a time in which the COVID-19 pandemic was rapidly evolving and there was a sense of urgency to acquire ventilators. Therefore, the circumstances to which the commercial negotiations were taking place are not equivalent to standard procurement processes that would occur today.

70. I consider that there is no current relevance or sensitivity to the commercial information within the documents given the passage of time. Therefore, I do not accept that disclosure would affect the State's ability to purchase competitively in the procurement stream in future or future tender processes.

71. As such, I consider disclosure would not be reasonably likely to expose the Agency to disadvantage and information is not exempt from release under section 34(4)(a)(ii).

Section 35(1)(a) – Information that would be exempt if generated by an agency

72. A document may be considered 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 a Minister.

73. Section 35(2) provides that section 35(1)(a) does not apply to information that was acquired from a business, commercial or financial undertaking and that relates to trade secrets or other matters of a business, commercial or financial matter.

74. Certain information that the Agency sought to exempt under section 35(1)(a) following my preliminary view is information that was communicated by a business undertaking. Accordingly, section 35(1)(a) does not apply given the operation of section 35(2).

75. The Agency also applied section 35(1)(a) to information that an agency officer communicated to other agency officers, referring to information that was communicated to them by a business undertaking.

76. For the reasons set out above, I do not consider that the information would be contrary to the public interest to disclose under section 30(1).
77. Accordingly, I am not satisfied information in the documents is exempt from release under section 35(1)(a).

Section 25 – Deletion of exempt or irrelevant information

78. Under section 25, partial access to an edited copy of a document may be provided when:
 - (a) a document contains exempt or irrelevant information;
 - (b) it is practicable to provide access to an edited copy with exempt or irrelevant information removed; and
 - (c) the applicant wishes to receive an edited copy.
79. Irrelevant information is that which is clearly outside the scope, or beyond the terms of an applicant's request. The documents subject to review contain the following irrelevant information:
 - (a) information that does not relate to VG70 ventilators;
 - (b) correspondence falling outside of the timeframe specified in the Applicant's request;
 - (c) contact details of third parties; and
 - (d) BSB and account information.
80. Deciding whether it is 'practicable' to delete exempt or irrelevant information requires an agency or Minister to consider:
 - (a) the effort involved in making the deletions from a resources point of view;²⁸ and
 - (b) the effectiveness of those deletions – that is, whether the edited document still has meaning.²⁹
81. I am satisfied that it would be practicable to edit the documents to delete exempt and irrelevant information in accordance with section 25.

Conclusion

82. On the information before me, I am not satisfied the information in the documents is exempt from release under sections 30(1), 34(1)(b) and 34(4)(a)(ii). However, certain information is exempt from release under section 33(1).

²⁸ *Mickelburgh v Victoria Police* [2009] VCAT 2786, [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967, [82].

²⁹ *Honeywood v Department of Human Services* [2006] VCAT 2048, [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267, [140], [155]; *Re Hutchinson and Department of Human Services* (1997) 12 VAR 422.

83. As I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with exempt and irrelevant information deleted in accordance with section 25, access is granted in part.
84. A marked-up copy of the documents indicating exempt or irrelevant information in accordance with my decision has been provided to the Agency.

Timeframe to seek a review of my decision

85. If either party to this review are not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.³⁰
86. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.³¹
87. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.³²
88. 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.
89. 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.³³

Third party review rights

90. As I have determined to release documents that contain the personal affairs information of third parties and information of a business, financial or commercial nature relating to a business undertaking, if practicable, 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.³⁴
91. In this case, I am satisfied it is practicable to notify the relevant third parties of their review rights and confirm they will be notified of my decision as soon as practicable.

When this decision takes effect

92. 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.

³⁰ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

³¹ Section 52(5).

³² Section 52(9).

³³ Sections 50(3F) and 50(3FA).

³⁴ Sections 49P(5), 50(3), 50(3A) 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 thread	9	Released in part Sections 30(1), 33(1), 34(1)(b), 34(4)(a)(ii) and 25	Release in part Sections 33(1), 25 The document is to be released in accordance with the marked-up copy provided to the Agency.
2.	N/A	Attachment to Document 1	5	Released in part Sections 33(1), 34(1)(b), 34(4)(a)(ii)	Release in part Section 25 The document is to be released in accordance with the marked-up copy provided to the Agency.
3.	[Date]	Email thread	4	Released in part Sections 30(1), 33(1), 34(1)(b), 34(4)(a)(ii)	Release in part Sections 33(1), 25 The document is to be released in accordance with the marked-up copy provided to the Agency.
4.	[Date]	Email thread	5	Released in part Sections 30(1), 33(1), 34(1)(b), 34(4)(a)(ii), 25	Release in part Sections 33(1), 25

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision
					The document is to be released in accordance with the marked-up copy provided to the Agency.
5.	Undated	VG70 Ventilator Technical specification	2	Released in full	Not subject to review
6.	[Date]	EC Certificate	2	Released in part Section 33(1)	Release in part Section 33(1) No further information is to be released.
7.	[Date]	Quote	1	Refused in full Sections 33(1), 34(1)(b), 34(4)(a)(ii)	Release in part Sections 33(1), 25 The document is to be released in accordance with the marked-up copy provided to the Agency.
8.	[Date]	Email thread	4	Released in part Sections 30(1), 33(1), 34(1)(b), 34(4)(a)(ii) and 25	Release in part Sections 33(1), 25 The document is to be released in accordance with the marked-up copy provided to the Agency.

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision
9.	[Date]	Purchase Order	2	<p>This document was located by the Agency during the review and did not form part of its original decision.</p> <p>It is an attachment to the email dated [date].</p>	<p>Release in part</p> <p>Section 25</p> <p>The document is to be released in accordance with the marked-up copy provided to the Agency.</p>
10.	[Date]	Email thread	3	<p>This document was located by the Agency during the review and did not form part of its original decision.</p> <p>It is an attachment to the email dated [date].</p>	<p>Release in part</p> <p>Section 25</p> <p>The document is to be released in accordance with the marked-up copy provided to the Agency.</p>