

Notice of Decision and Reasons for Decision

Applicant:	'FS5'
Agency:	Department of Transport and Planning
Decision date:	27 January 2025
Exemption considered:	Section 30(1)
Citation:	'FS5' and <i>Department of Transport and Planning</i> (Freedom of Information) [2025] VICmr 4 (27 January 2025)

FREEDOM OF INFORMATION – Caulfield to Rowville Link – project plan – high level – anticipated costs – disclosure not contrary to the public interest

All references to legislation in this document are to the *Freedom of Information Act 1982* (Vic) (**FOI Act**) unless otherwise stated.

Notice of Decision

I have conducted a review under section 49F of the Agency's decision to refuse access to a document 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.

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

My reasons for decision follow.

Penny Eastman
Public Access Deputy Commissioner

27 January 2025

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to the following documents:
 1. Caulfield to Rowville link – Preliminary business case; and
 2. Attachment 1 (from [reference]).
2. The Agency identified one document falling within the terms of the Applicant's request and refused access to it in full under section 30(1). The Agency advised there was no document relating to point 1 of the request, rather, work is underway to develop it. The Applicant did not raise any concerns with OVIC over point 1 of the request.
3. 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 document 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 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'.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.

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

Review of exemptions

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.²
13. The document the Agency refused access to in full under section 30(1) is a project plan for the Caulfield to Rowville Link. It is just over one page long. I am satisfied it contains opinion, advice and recommendations prepared by an Agency officer.
14. Further, I am satisfied the information was created during the deliberative processes of the Agency, being the planning stages of a transport project.

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

15. 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:³
- (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,

² Section 30(3).

³ See OVIC FOI Guidelines – Section 30(1)

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.

16. In its decision letter, the Agency advised:

Information considered exempt under this section comprises a project plan that outlines the key activities, timelines, and costs anticipated for the preliminary business case. The plan is a working document and has been developed for internal use only.

Release of this material is considered contrary to the public interest for its potential to compromise development and planning activities and the overall approach taken on the DTP Caulfield to Rowville Link proposal, including the provision of advice to Governments (State and Commonwealth) on transport options in Melbourne's southeast, and to negatively affect decision-making on these matters.

17. Having considered the positions of the parties and the content of the document in dispute, I have decided it would not be contrary to the public interest to disclose the information in the document for the following reasons:

- (a) The document contains information at a high level, and of aspects of the project that would be considered standard for such projects.
- (b) For this reason, I do not consider the document contains sensitive information.
- (c) Nor do I consider the associated anticipated costs with these tasks to be sensitive.
- (d) While I understand the preliminary stage of the project, the document itself appears to be in its final form, as it was an attachment to a brief.
- (e) I do not consider disclosure of the document would have any impact on the Agency or the ability of Agency officers to provide detailed submissions or business cases in the future.
- (f) It is in the public interest to disclose information about government infrastructure projects at an early stage to inform public participation in government decision making.

18. The document is therefore not exempt under section 30(1).

Conclusion

19. On the information before me, I am not satisfied the document is exempt from release under section 30(1). It is therefore to be released to the Applicant.

Timeframe to seek a review of my decision

20. If the Agency is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.⁴
21. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁵
22. 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.
23. The Agency is required to notify the Information Commissioner in writing as soon as practicable if it applied to VCAT for a review of my decision.⁶

When this decision takes effect

24. 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.

⁴ Section 50(3D).

⁵ Section 52(9).

⁶ Section 50(3F).

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