

## Notice of Decision and Reasons for Decision

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Applicant:	'FX1'
Agency:	Department of Treasury and Finance
Decision date:	27 March 2025
Exemption and provision considered:	Sections 30(1), 25
Citation:	'FX1' and Department of Treasury and Finance (Freedom of Information) [2025] VICmr 37 (27 March 2025)

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FREEDOM OF INFORMATION – energy affordability – cost of living – policy options for households and businesses – Agency officer advice or opinion – not contrary to the public interest to disclose

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 parts of a document requested by the Applicant under the FOI Act.

My decision on the Applicant's request differs from the Agency's decision in that I have decided section 30(1) does not apply to Document 6.

Please refer to pages 5 and 6 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 March 2025

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency seeking access to various briefs:

I seek the following specified briefs to the Treasurer identified in FOI 2023/56

  1. B22/1024
  2. B22/849
  3. B22/927
  4. B22/786
  5. B22/925
  6. B22/893
  7. B22/1001
  8. B22/1014
  9. B22/1030.
2. The Agency identified eight documents falling within the terms of the Applicant's request and granted access to six documents in part, and two documents in full. The Agency relied on sections 28(1)(b), 28(1)(d) and 30(1) to refuse access to certain information. 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 to the parts of Document 6 exempted under section 30(1). This relates to information identified by the Agency in paragraphs 17 and 20 to 23. Document 6 is titled "Energy affordability and cost of living – [month year]" with document reference B22/849.
4. I have examined a copy of the content subject to review in Document 6.
5. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
6. I confirm I have considered relevant communications and submissions received from the parties.
7. 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.

8. 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.

## Review of exemptions

### *Section 30(1) – Internal working documents*

9. For more information about section 30 see the FOI Guidelines.<sup>1</sup>
10. 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.<sup>2</sup>
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.

*Does the document contain opinion, advice or recommendation, or consultation or deliberation?*

12. I am satisfied the information exempted by the Agency is the opinion and advice of an Agency officer or officers.

*Was the matter was created during the deliberative process of an agency, Minister, or the government's functions?*

13. Further, I am satisfied the information was created during the deliberative processes of the agency, being policy options to address energy affordability.

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

14. In deciding whether disclosure of the information 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;

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<sup>1</sup> <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-30/#guidelines>.

<sup>2</sup> *Graze v Commissioner of State Revenue* [2013] VCAT 869, 25.

<sup>3</sup> See <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-30/#disclosure-would-be-contrary-to-the-public-interest>.

- (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 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 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.
15. In its decision letter, the Agency advised disclosure would be contrary to the public interest for the following reasons:
- the material discloses sensitive information that relates to a current and significant project where relevant matters are still to be decided, and disclosure could undermine or impair appropriate consideration; and
- it is likely that disclosure of the information may only provide a partial explanation rather than a complete explanation of the relevant matters, which may mislead the public about certain matters.
16. I have decided it would not be contrary to the public interest to disclose the information exempted by the Agency under section 30(1) in the document for the following reasons:
- (a) I accept from the nature of the information, that the advice took place at an early stage of the policy development process;
  - (b) I also accept that since [year] that the advice is likely to have changed;

- (c) however, I consider members of the public are capable of understanding the above two factors;
  - (d) while I acknowledge that the matters under consideration continue to be sensitive, that sensitivity does not necessarily mean disclosure would be contrary to the public interest, rather, such sensitivity can weigh in favour of disclosure so that members of the community can participate in the policy formulation process;
  - (e) I do not consider disclosure of the information would impair the agency from further policy consideration on similar matters;
  - (f) I also do not consider disclosure would provide a partial explanation of the matters under consideration as it is clear from that information that the policy was still under broad discussion at that time.
17. I am therefore satisfied the information exempted by the Agency is not exempt under section 30(1).

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

18. 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.
19. 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;<sup>4</sup> and
  - (b) the effectiveness of those deletions – that is, whether the edited document still has meaning.<sup>5</sup>
20. Irrelevant information is information which is clearly outside the scope, or beyond the terms of the applicant’s request.
21. I have considered the information the Agency deleted from the documents as irrelevant. I agree it falls outside the scope of the Applicant’s request as it relates to personal affairs information not sought by the Applicant. Information exempted under any other provision than section 30(1) in Document 6 is also irrelevant to the request as it is also not sought by the Applicant.
22. I have considered the effect of deleting irrelevant information from the document. In my view, it is practicable for the Agency to delete the irrelevant information, because it would not require substantial time and effort, and the edited document would retain meaning.

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<sup>4</sup> *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].

<sup>5</sup> *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.

## Conclusion

23. On the information before me, I am not satisfied certain information in Document 6 is exempt from release under section 30(1).
24. As I am satisfied it is practicable to provide the Applicant with an edited copy of the document with irrelevant information deleted in accordance with section 25, access is granted in part.

## Timeframe to seek a review of my decision

25. 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>6</sup>
26. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>7</sup>
27. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>8</sup>
28. 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.
29. 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>9</sup>

## When this decision takes effect

30. 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.

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<sup>6</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>7</sup> Section 52(5).

<sup>8</sup> Section 52(9).

<sup>9</sup> Sections 50(3F) and 50(3FA).