

## Notice of Decision and Reasons for Decision

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Applicant:	'FX6'
Agency:	Fire Rescue Victoria
Decision date:	20 June 2025
Exemption and provision considered:	Sections 34(1)(b), 25
Citation:	'FX6' and Fire Rescue Victoria (Freedom of Information) [2025] VICmr 42 (20 June 2025)

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FREEDOM OF INFORMATION – income protection insurance – information obtained from a business, commercial or financial undertaking – disclosure would expose an undertaking unreasonably to disadvantage

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 is the same as the Agency's decision and no further information is to be released.

Please refer to the end of my 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**

20 June 2025

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency seeking access to the following documents:

All emails, letters (and attachments), text messages, phone records, meeting records (calendar invitations and meeting notes) sent or received by [named person and position title] in relation to the FRV Operational Members' income protection scheme during the period [date range], between [named person] and the following:

  - (a) [redacted]
  - (b) [redacted]
  - (c) [redacted]
  - (d) [redacted]
  - (e) Department of Justice and Community Safety (DJCS)
  - (f) [A Minister's office]
  - (g) [A senior Agency officer].
2. The Agency's decision letter states that the Applicant agreed to the removal of personal affairs information from the documents.
3. The Agency identified 7 documents falling within the terms of the request and decided to:
  - refuse access to Document 1 in full under section 30(1)
  - release Document 2 in part with information deleted under sections 34(1)(b) and 25
  - release Documents 3, 4 and 7 with irrelevant information deleted
  - release Document 5 in part with information deleted under sections 32(1) and 25
  - release Document 6 in part with information deleted under sections 30(1), 32(1) and 25.
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 specified they only seek review of Document 2.
7. I have examined a copy of the document 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.

### Review of exemption

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

12. 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
  - (b) the information relates to matters of a business, commercial or financial nature
  - (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 the information acquired from a business, commercial or financial undertaking?*

13. The phrase 'business, commercial or financial undertaking' generally refers to an entity, such as a company or organisation, that is engaged in business, trade, or commerce for a financial profit or gain.<sup>1</sup>
14. The phrase 'information acquired' involves some positive handing over of information to an agency in a precise form.<sup>2</sup>
15. The document subject to my review is an email that was received by the Agency from a business, commercial or financial undertaking relating to income protection allowance. The email includes several attachments. The Agency refused access to all but one of the attachments under section 34(1)(b).

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<sup>1</sup> See *Commissioner of State Revenue v Tucker* [2021] VCAT 238, [156], citing *Marple v Department of Agriculture* (1995) 9 VAR 29.

<sup>2</sup> *Thwaites v Department of Human Services* (1999) 15 VAR 1, 14.

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

16. 'Business', 'commercial' and 'financial' should each be given their ordinary meaning.<sup>3</sup>
17. I am satisfied the information relates to business, commercial and financial matters, as it concerns the undertaking's business of providing of income protection insurance.

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

18. In considering whether disclosure will expose an undertaking to unreasonable disadvantage, I may 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 matter 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
  - (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.
19. 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
  - (c) lead to unwarranted conclusions about the undertaking's financial affairs and position that result in commercial and market consequences.<sup>4</sup>
20. The Agency consulted with the undertaking to obtain its views on disclosure, and I have received a copy of the undertaking's consultation response.
21. The Agency's decision states:

Disclosure would invite unwarranted negative conclusions and would enable competitors to engage in destructive competition. The documents were disclosed to [the Agency] with the intention of being kept private and confidential and not disclosed to any other party. Nothing in the documents relate to the expenditure of public money or decision by government, rather relate to how a private corporation carries out its business.

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<sup>3</sup> *Gibson v Latrobe CC* [2008] VCAT 1340, [25].

<sup>4</sup> *Dalla Riva v Department of Treasury and Finance* [2007] VCAT 1301, [33].

22. On careful consideration of all information before me, I have decided that disclosure of information in Document 2 would be likely to expose the undertaking unreasonably to disadvantage for the following reasons:
- (a) the undertaking operates within a highly competitive industry
  - (b) the undertaking objected to disclosure
  - (c) it can be inferred based on the content of the undertaking's email that it was intended to be treated confidentially, and the undertaking has also expressed this view
  - (d) disclosure could invite negative perceptions against the undertaking, which could result in individuals being less willing to purchase income protection insurance from the undertaking
  - (e) I consider it is reasonably likely that the document will be further disclosed, having considered the relationship between the Applicant and the undertaking.
23. I also consider there are no public interest factors that outweigh the considerations of competitive disadvantage to the undertaking.
24. Accordingly, I am satisfied certain information in Document 2 is exempt from release under section 34(1)(b).

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

25. 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.
26. 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>5</sup> and
  - (b) the effectiveness of those deletions – that is, whether the edited document still has meaning.<sup>6</sup>
27. Irrelevant information is information which is clearly outside the scope, or beyond the terms of the applicant's request. In this matter, irrelevant information is personal affairs information as it was not sought by the Applicant.

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<sup>5</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>6</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.

28. The Agency released the email thread to the Applicant in part with exempt and irrelevant information deleted, and all but one of the attachments were refused in full under section 34(1)(b).
29. I confirm that the attachments are exempt in full under section 34(1)(b) and it is not practicable to edit them to delete exempt and irrelevant information, as they would be rendered meaningless.
30. I consider it remains practicable to provide the Applicant with an edited copy of the email thread with exempt and irrelevant information deleted.

### Conclusion

31. On the information before me, I am satisfied certain information Document 2 is exempt from release under section 34(1)(b).
32. My decision is the same as the Agency's decision and no further information is to be released.

### Timeframe to seek a review of my decision

33. If the Applicant is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.<sup>7</sup>
34. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>8</sup>
35. 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.
36. The Agency is required to notify the Information Commissioner in writing as soon as practicable if the Applicant applies to VCAT for a review of my decision.<sup>9</sup>

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<sup>7</sup> Section 50(1)(b).

<sup>8</sup> Section 52(5).

<sup>9</sup> Section 50(3FA).