

Notice of Decision and Reasons for Decision

Applicant:	'FY5'
Agency:	La Trobe University
Decision date:	17 June 2025
Exemptions and provisions considered:	Sections 30(1), 33(1), 34(1)(b), 35(1)(a)
Citation:	'FY5' and La Trobe University (Freedom of Information) [2025] VICmr 50 (17 June 2025)

FREEDOM OF INFORMATION – Remuneration – Recruitment – Meeting agendas and minutes

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 more information is to be released.

While I am satisfied certain information is exempt under section 33(1), I am not satisfied information in the documents is exempt under sections 30(1), 34(1)(b) or 35(1)(a).

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

Please refer to pages 11-12 for information about review rights through the Victorian Civil and Administrative Tribunal (**VCAT**).

My reasons for decision follow.

Penny Eastman
Public Access Deputy Commissioner

17 June 2025

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to documents, which was subsequently clarified following notification under section 25A(6) to seek access to:
 1. Policies, processes, protocols (howsoever described) which govern how appointment decisions are to be made in respect to University Officials – as currently in force.
 2. Policies, processes, protocols (howsoever described) which govern how Remuneration Arrangements are to be set, and reviewed, in respect of University Officials – as currently in force.
 3. Meeting minutes and agendas of University Council and the Selection and Remuneration Committee that discuss, detail or report the actual total reward, salaries and discretionary payments paid or approved to be paid to individual University Officials, with exempt or irrelevant information redacted – [date range].
 4. PAYG payment summaries recording amounts paid to all University Officials which identify the individual(s) name and show the actual amount(s) paid or approved to be paid, including any itemisation of those payments, with exempt or irrelevant information redacted – [date range].
 5. Reports prepared by recruitment or remuneration consultants engaged by the University that consider or propose decisions relating to the Remuneration Arrangements of one or more University Officials, and the fee or payment schedule from the consulting arrangement(s) relating to the preparation of those reports – [date range].

[Footnotes redacted]

2. The Agency made the following decision in response to the Applicant's request:
 - (a) referred the Applicant to information outside of the FOI Act in response to items 1 and 2 of their request
 - (b) released extracts from four meeting minutes and agendas in response to item 3, with one of those documents being released in part under section 33(1) and the remainder in full
 - (c) located no documents in response to item 4
 - (d) located one document in response to item 5, which it refused in full under sections 30(1), 33(1), 34(1)(b) and 35(1)(a).

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 documents 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 and submissions 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.

Complaint

11. During the review, the Applicant raised concerns about the adequacy of the Agency's document searches in relation to their FOI request. Specifically, that documents of the Nominations and Remuneration Committee should have been located, including the recommendation from the Selection Committee as mentioned in Item 2 of the minutes of the Special Council Meeting of [date] and any documents relating to the search process mentioned in Item 5 of the minutes of the Special Council Meeting of [date].
12. In accordance with section 61B(3), these concerns were dealt with by this review.
13. OVIC staff made further enquiries with the Agency to address the Applicant's concerns, and the Agency provided a confidential submission in response. I am satisfied the Agency has provided a reasonable explanation why the documents identified by the Applicant do not fall within the terms of their request.
14. Accordingly, I consider the Applicant's complaint has been fully pursued and there is no need to make further enquiries or take further action under the FOI Act in relation to those particular concerns.

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

Review of exemptions

Section 30(1) – Internal working documents

15. 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.²
16. 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.
17. There are four circumstances where section 30(1) does not apply:
 - (a) documents required to be made available for inspection and purchase under section 8
 - (b) purely factual information
 - (c) certain documents relating to adjudicative functions and
 - (d) documents more than 10 years old.
18. 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.³
19. For more information about section 30, see the FOI Guidelines.⁴
20. The Agency has applied section 30(1) to parts of Document 5. Document 5 is an email thread comprising of two emails sent by an Agency officer concerning the salary negotiations for [a senior leadership] position.

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

21. The emails disclose the Agency officer's opinion and recommendation on the salary range that could be negotiated for the [senior leadership] position.
22. The email thread also includes an extract of data, which was prepared by a third-party business undertaking. It contains benchmark data concerning remuneration across the sector, which I

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

³ *Mees v University of Melbourne (General)* [2009] VCAT 782, [31].

⁴ See <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-30/>.

understand was based on survey data. I consider the information is purely factual and therefore section 30(1) does not apply to the extract.

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

23. I am satisfied the information was created during the deliberative processes of the Agency, being its recruitment, selection and appointment processes for the [senior leadership] position.

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

24. 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 FOI 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 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 likelihood that disclosure would inhibit the independence of officers, including their ability to conduct proper research and make detailed submissions
 - (g) the public interest in the community being better informed about an agency's deliberative, consultative and decision-making processes
 - (h) 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
 - (i) whether there is controversy or impropriety around the decision or the decision-making process.

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

25. I have decided it would not be contrary to the public interest to disclose the information in the document for the following reasons:
- (a) Disclosure would not impact any current recruitment processes because the [senior leadership] position has been filled, and salary negotiations have been completed.
 - (b) The document itself does not reveal the current [person's] salary.
 - (c) Universities publish remuneration of the [the senior leadership position] in their annual reports, generally expressed a salary range, and the Agency's current [person's] salary was most recently reported in its [year] Annual Report within a ten-thousand salary range.
 - (d) While the recommended salary range discussed in the document may not reflect the agreed salary following the completed negotiation processes, I do not agree with the Agency that disclosure would mislead and cause unnecessary concern and debate. The stage of the recruitment process is clear from the document, as it depicts Agency determining its initial salary-range for subsequent negotiation.
 - (e) It is important for universities to be able to attract and secure quality candidates to the most senior roles in a competitive recruitment market while also managing their budgets. As such, I acknowledge there is some sensitivity associated with information about salary expenditure, negotiations and ranges. However, I see there is a prevailing public interest in transparency around salaries where the expenditure of public funds is involved. While the Annual Report provides transparency, disclosure of this document provides further context.
26. I am therefore satisfied information in Document 5 is not exempt from release under section 30(1).

Section 33(1) – Documents affecting personal privacy of third parties

27. Section 33(1) protects an individual's privacy where their right to privacy outweighs the public interest in disclosing their information.⁶ This will only occur when disclosing the individual's personal affairs information is unreasonable.
28. A document or information is exempt under section 33(1) if two conditions are satisfied:
- (a) the document or information relates to the 'personal affairs' of a natural person (living or deceased)
 - (b) disclosure of that personal affairs information is unreasonable in all the circumstances.
29. For more information about section 33(1) see the FOI Guidelines.⁷

Do the documents contain personal affairs information of other individuals?

30. A document will indirectly disclose personal affairs information if it contains information from

⁶ *Victoria Police v Marke* [2008] VSCA 218.

⁷ <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-33/>.

which any person's identity, address or location can reasonably be determined. This means that a document can be exempt under section 33(1) where the document itself does not contain personal affairs information, but its disclosure would reveal personal affairs information.

31. Personal affairs information can be revealed or indirectly disclosed by connecting or linking the information in the disclosed document with other information available to the applicant.⁸
32. The personal affairs information exempted in Document 2 is the name of a person and the company appointed to lead the search process for recruiting a [person to a senior leadership position]. While the name of a company is generally not personal affairs information, only a small number of individuals are publicly associated with that company for this particular service, and therefore, the third party's identity could be inferred from the release of the company name. As such, the information exempted by the Agency in Document 2 is personal affairs information.
33. The personal affairs information exempted by the Agency in Document 5 relates to the same individual, being their name and email address.
34. Document 5 also includes a remuneration figure based on an analysis of remuneration across universities. While universities report on remuneration of [the senior leadership position] in their annual reports, I am not satisfied that the exempted figure can be tied to a specific individual or the current [person holding that position]. Therefore, it is not personal affairs information.

Would disclosure of the personal affairs information be unreasonable?

35. In determining whether disclosure of the personal affairs information would be unreasonable in the circumstances, I have considered the following factors:⁹

(a) The nature of the personal affairs information

The personal affairs information is not sensitive, as it identifies an external third party engaged by the Agency to lead a search process to recruit a [person to the senior leadership position]. The third party was acting in their professional capacity, and their name, role and contact details are publicly available in the company's website.

(b) The circumstances in which the information was obtained

The information was generated by the Agency.

Document 2 is a Special Council Meeting Agenda and the exempted information appears in Item 5, which provides a general update on the recruitment process for the [senior leadership] position, including an invitation for the Council to endorse a recommendation to appoint an individual to the role. As noted above, the exempted information appears in the context of noting that the third party was appointed to lead the search process.

⁸ *Harrison v Victoria Police* [2022] VCAT 280, [153].

⁹ See FOI Guidelines.

Document 5 is an email thread containing two emails sent by an Agency officer in relation to salary negotiations. The above referenced third party is copied into the email thread.

(c) The extent to which the information is available to the public

As noted above, the third party's name, contact details and position is publicly available, however, the fact that they led the recruitment process does not appear to be.

(d) The Applicant's interest in the information

The Applicant considers there is a strong public interest in ensuring transparency of remuneration arrangements for University Officials and expenditure on consultants. They referred to several media articles and referred to various reports and bodies in support of their view.

In my view, the identity of the third party would not promote the public interest in transparency around expenditure on remuneration, as the documents do not reveal the Agency's expenditure on the recruitment process.

(e) Whether any public or important interest would be promoted by release of the information

I accept the Applicant's submissions that there is a public interest in transparency regarding remuneration arrangements for senior officials. However, I do not consider this extends to transparency around the name of an individual who assisted with the search process.

(f) Whether the individuals to whom the information relates object, or would be likely to object, to the release of the information

There is no information before me concerning the views of the third party. In my view, I consider it reasonably likely that they may not object to their personal affairs information being released as it only concerns them with respect to their professional role and their information is publicly available. I also see it is unlikely that they would be concerned if it became public knowledge that they were involved in the recruitment process; however, as they were not consulted my views are speculative only.

(g) Whether disclosure of the information would or would be reasonably likely to endanger the life or physical safety of any person

This is a mandatory consideration. There is no information before me to indicate this is relevant in this matter.

36. On balance, I am satisfied it would be unreasonable in the circumstances to release the personal affairs information because it provides little meaningful information in relation to the recruitment, appointment and salary negotiations. Accordingly, certain information in Document 2 and 5 is exempt from release under section 33(1).

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

37. 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).

38. This exemption has been applied to part of Document 5, being, an extract of benchmark data concerning remuneration that was prepared by a third party business undertaking and references to the data.

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

39. I am satisfied the information was acquired from a business undertaking.

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

40. The undertaking conducts surveys and prepares benchmark data for a fee. I am satisfied that the Agency paid for the undertaking's services to obtain the relevant data. The data itself concerns remuneration across the sector. For these reasons, I am satisfied the information relates to matters of a business and commercial nature.

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

41. Section 34(2) provides that in deciding whether disclosure of information would expose an undertaking unreasonably to disadvantage, an agency or Minister may take account of any of the following considerations—

- (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 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—

and of any other consideration or considerations which in the opinion of the agency or Minister is or are relevant.

42. 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.¹⁰
43. There is no information before me as to whether the Agency consulted with the third party business undertaking. In the circumstances, I consider it is reasonably likely the undertaking would object to the information being disclosed, given access to the information would only be available for a fee.
44. While the information would not be available to its competitors, the analysis and the data collected concerns obvious components of remuneration. Given this, I am not satisfied that the undertaking's competitors could use the information for their advantage, for example, by having knowledge of what data the undertaking collects and how it presents the information.
45. I also consider that disclosure of the information would not provide competitors with any knowledge or insight into how the undertaking conducts its surveys, or how it obtains participants, which I consider is where the business undertaking has an advantage.
46. Furthermore, disclosure would not lead to unwarranted conclusions about the business undertaking's financial affairs and position that result in commercial and market consequences.
47. Accordingly, I am not satisfied that disclosing the information would likely to expose the business undertaking unreasonably to disadvantage, and it is not exempt from release under section 34(1)(b).

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

48. A document is 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
 - (b) the information would be exempt matter if it were generated by an agency or Minister.
49. The exemptions in section 35 do not apply to information acquired by an agency from a business, commercial or financial undertaking, where the information relates to trade secrets or other matters of a business, commercial or financial nature.
50. The Agency has applied this exemption over one of the emails sent by the Agency officer, and to the extract which contains the benchmark data. It appears that the Agency's intention was to apply this exemption over information in the Agency officer's email that discusses the data obtained from the third party business undertaking.

¹⁰ *Dalla Riva v Department of Treasury and Finance* [2007] VCAT 1301, [33].

51. Given the information was acquired by the Agency from a third party business undertaking, and the information related to matters of a business, commercial and financial nature, by virtue of section 35(2), the exemption under section 35(1)(a) does not apply.

Section 25 – Deletion of exempt or irrelevant information

52. 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.
53. 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;¹¹ and
 - (b) the effectiveness of those deletions – that is, whether the edited document still has meaning.¹²
54. Document 5 contains one irrelevant email, which is unrelated to the terms of the FOI request.
55. I am satisfied it is practicable for the Agency to delete exempt and irrelevant information from the documents, as the edited documents will remain meaningful and editing would involve minimal effort from a resources point of view.

Conclusion

56. On the information before me, while I am satisfied certain information is exempt under section 33(1), I am not satisfied information in the documents is exempt under sections 30(1), 34(1)(b) or 35(1)(a).
57. As I am satisfied it is practicable to edit the documents to delete exempt and irrelevant information, access to the documents is granted in part.

Timeframe to seek a review of my decision

58. If either party is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.¹³
59. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁴
60. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁵

¹¹ *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].

¹² *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.

¹³ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁴ Section 52(5).

¹⁵ Section 52(9).

61. 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.
62. 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.¹⁶

Third party review rights

63. As I have decided to release further information to the Applicant in Document 5, if practicable, I am required to notify third parties of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.¹⁷
64. I note that the Agency determined that the personal affairs information of several third parties is not exempt from release in Document 5 under section 33(1), including their names and email addresses. Given the document was exempted in full and is now being released, I have determined that those third parties should be notified that their personal affairs information is being released.
65. I have also determined to notify the third party business undertaking of its review rights.
66. OVIC will notify the third parties as soon as practicable.

When this decision takes effect

67. 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.

¹⁶ Sections 50(3F) and 50(3FA).

¹⁷ Sections 49P(5), 50(3), 50(3A), 50(3AB) and 52(3).

Annexure 1 – Schedule of Documents

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision
1	[Date]	Extract from Council Meeting Agenda and Minutes	1	Released in full	Not subject to review
2	[Date]	Extract from Agenda of a Special Council Meeting	2	Released in part Section 33(1)	Release in part Section 33(1) No further information is to be released.
3	[Date]	Extract from the Agenda and Minutes of the Human Resources Committee	1	Released in full	Not subject to review
4	[Date]	Extract of Council Minutes	1	Released in full	Not subject to review
5	[Date]	Email	3	Refused in full Sections 30(1), 33(1), 34(1)(b), 35(1)(a)	Release in part Sections 33(1), 25 The document is to be released, except for: <ul style="list-style-type: none"> the information that the Agency exempted under section 33(1) the first email in the email thread, which is irrelevant.