

Notice of Decision and Reasons for Decision

Applicant:	'GB6'
Agency:	Department of Transport and Planning
Decision date:	30 July 2025
Exemptions and provision considered:	Sections 30(1), 25
Citation:	'GB6' and Department of Transport and Planning (Freedom of Information) [2025] VICmr 77 (30 July 2025)

FREEDOM OF INFORMATION – Beveridge North West Precinct Structure Plan, Supplementary Levy Infrastructure Contributions Plan and Quarry Planning Permit Application, Ministerial Advisory Committee, Advisory Committee Report – Beveridge North West Advisory Committee

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.

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

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

30 July 2025

Reasons for Decision

Background to review

1. The Applicant made a request for access to:

We refer to the Ministerial Advisory Committee which was constituted to consider the Beveridge North West Precinct Structure Plan, Supplementary Levy Infrastructure Contributions Plan and Quarry Planning Permit (Standard Advisory Committee) and note that any report that was to be prepared by the Standing Advisory Committee was to be completed within 40 business days from the last day of the hearing or consultation. We note that the hearing concluded in 2022 and to date, no report has been made publicly available.

Accordingly, please find enclosed completed form, pursuant to the *Freedom of Information Act 1982* which respectfully requests the following documents:

1. A copy of the Final Report; in the alternative:
 2. Any letters, emails, file notes, text messages, WhatsApp and other messaging services between the Committee to/from:
 - (a) The Planning Minister; and/ or
 - (b) The Victorian Planning Authority; and/or
 - (c) Employees of the Planning [Minister],with regard to the preparation of the Final Report from [date] to the date of this letter; and
3. All draft versions of the Final Report

The time period for this request is from [date] to the date of this letter.

2. The Agency identified one document in response to the request, namely the *Beveridge North West Precinct Structure Plan, Supplementary Levy Infrastructure Contributions Plan and Quarry Planning Permit Application, Ministerial Advisory Committee, Advisory Committee Report* dated 14 October 2022. The Agency refused access to the document in full under section 30(1).
3. 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. The Applicant specified they do not seek access to personal affairs information in the document.

8. I have considered relevant communications and submissions received from the parties.
9. 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.
10. 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.
11. 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.

OVIC's initial view

12. The Agency explained the following in its decision letter concerning the status of the document:

The report has been prepared for release at the discretion of the Minister for Planning (the Minister). Disclosure of information in the report would disclose opinion, advice or recommendation prepared by the Ministerial Advisory Committee appointed by the Minister.

Disclosure of this information would be against the public interest at present because:

- The Report is sensitive and remains confidential
- Premature release of the document would likely lead to confusion and promote pointless debate
- The matters it describes are still under active consideration by the Department
- The final approval by the Minister for the recommendations by the Committee on the proposed Amendments has not been made and announced.

Please note that the full report may be released at the discretion of the Minister, once a final decision has been made.

13. On [date], following receipt of the Agency's submission, OVIC staff provided an initial view to the Agency that section 30(1) is unlikely to be upheld for several reasons.
14. On [date], the Agency provided further information in response, including that the matters subject of the report are subject to ongoing deliberation. Further, the Agency submitted:

Release would be contrary to the public interest for the following reasons. Disclosure of the Committee's report prior to the Minister's decision in these sensitive and contested matters:

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

- (a) Would provide a misleading view of the committee's role and decision-making in relation to these matters
- (b) Could lead to undue speculation concerning a decision yet to be made
- (c) Would undermine the integrity of the process underway. For example, if parties are not agreeable to the recommendations of the Committee, they may agitate against what they consider the likely outcome, to seek reputational damage to the [Minister] and hamper achievement of the best outcome.

Review of exemption

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:
 - the document or information is matter in the nature of:
 - opinion, advice or recommendation prepared by an agency officer or a Minister; or
 - consultation or deliberation that has taken place between agency officers or Ministers; and
 - the matter was created during the deliberative process of an agency, Minister, or the government's functions
 - disclosure of the matter would be contrary to the public interest.
17. There are four circumstances where section 30(1) does not apply:
 - documents required to be made available for inspection and purchase under section 8
 - purely factual information
 - certain documents relating to adjudicative functions and
 - 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

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

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

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

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

20. On 20 December 2021, the Minister for Planning appointed the Beveridge North West Precinct Structure Plan (PSP), Supplementary Levy Infrastructure Contributions Plan (ICP) and Quarry Planning Permit Application Advisory Committee (The Beveridge North West Committee [the Committee]) to advise the Minister on several matters.⁵ Those matters are set out in the Terms of Reference issued by the Minister on 26 October 2021 and include to advise the Minister in relation to:
 - whether the draft planning scheme amendment C158mith is acceptable
 - whether the draft planning scheme amendment C158mith appropriately implements the recommendations of the Amendment C106mith panel and any appropriate consequential changes to the PSP area
 - whether the draft planning scheme amendment C161mith for the ICP is acceptable
 - whether Planning Permit PLP268/19 for a quarry should be granted and if so, the appropriate permit conditions.⁶
21. The report was prepared following a preliminary directions hearing on 4 February 2022, a directions hearing on 17 March 2022, and public hearings between 9 May and 10 June 2022. The report was submitted by the Committee on 14 October 2022.⁷
22. The document subject to review is the Committee's report to the Minister. It sets out the Committee's assessment and recommendations on the matters set out in the Terms of Reference.
23. Although the document includes factual information, I am satisfied that its overall purpose was to advise and make recommendations to the Minister.
24. I am satisfied the Committee members are 'agency officers' for the purposes of section 30(1).
25. Therefore, the first limb of the exemption under section 30(1) is satisfied.

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

26. I must also determine whether the deliberative information was created in a 'deliberative process' related to the functions of an agency, Minister, or the government. 'Deliberative process' is widely interpreted to include most processes undertaken by an agency or Minister in relation to their functions.⁸

⁵ <https://www.planningpanels.vic.gov.au/panels-and-committees/projects/beveridge-north-west-advisory-committee>.

⁶ https://www.planningpanels.vic.gov.au/__data/assets/pdf_file/0034/593737/beveridge-north-west-advisory-committee-terms-of-reference.pdf

⁷ <https://www.planningpanels.vic.gov.au/panels-and-committees/projects/beveridge-north-west-advisory-committee>

⁸ *Re Waterford and Department of Treasury (No.2)* (1981) 1 AAR 1 referred to in *Brog v Department of Premier and Cabinet* (1989) 3 VAR 201, 208.

27. I am satisfied the document was created in a deliberate process related to the functions of the Minister, as the Committee was appointed by the Minister to advise them on several matters as set out in the Terms of Reference, referred to above.
28. I am satisfied the second limb of the exemption is met, as the document was created during the deliberative process of the Minister.

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

29. In deciding whether disclosure of the information would be contrary to the public interest, I have given weight to the following relevant factors:⁹
- the right of every person to gain access to documents under the FOI Act
 - the sensitivity of the issues involved and the broader context of how the document was created
 - the stage of a decision or policy development at the time the document was made
 - 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
 - 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
 - the impact of disclosing a document where disclosure does not clearly or accurately representing a final decision by an agency or Minister
 - the likelihood that disclosure would inhibit the independence of officers, including their ability to conduct proper research and make detailed submissions
 - the public interest in the community being better informed about an agency's or Minister's deliberative, consultative and decision-making processes
 - 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
 - whether there is controversy or impropriety around the decision or the decision-making process.
30. In making my decision, I have carefully considered the exempted document, along with the Agency's submission and its response to OVIC's initial review, and the Applicant's submissions.

⁹ See <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-30/#disclosure-would-be-contrary-to-the-public-interest>.

31. I have considered the following factors in considering whether disclosure of the document would be contrary to the public interest:
- The document was submitted to the Minister by the Committee on 14 October 2022,¹⁰ over 2.5 years ago.
 - While the release of the document is at the Minister's discretion outside of the FOI Act, this does not preclude the document being released in response to an FOI request.
 - The document provides the Committee's final recommendations, which were formulated after extensive consultations and submissions.
 - The Committee's recommendations are separate and independent from the Minister's final decision and the Minister has discretion whether to accept the Committee's recommendations. There is no obligation on the Minister to agree and accept the Committee's recommendations.
 - I consider there is strong interest in the document and the matter to which it relates, noting the number of individuals who made submissions to the Committee.
 - I am not satisfied that disclosure of the document will cause reputational damage to the Minister, noting that the Minister has not made a final decision on the matter. Again, it is up to the Minister whether they accept the Committee's recommendation and there is no obligation on the Minister to accept the recommendations. If the Minister were to make a decision that departs from the recommendations, it does not necessarily follow that their reputation will be impacted.
 - There is no information before me to be satisfied that disclosure would misinform the community.
32. On careful consideration of the above factors, I have decided that it would not be contrary to the public interest to release the document. Accordingly, it is not exempt from release under section 30(1).

Section 25 – Deletion of exempt or irrelevant information

33. 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.
34. Deciding whether it is 'practicable' to delete exempt or irrelevant information requires an agency or Minister to consider:
- the effort involved in making the deletions from a resources point of view;¹¹ and

¹⁰ See <https://www.planningpanels.vic.gov.au/panels-and-committees/projects/beveridge-north-west-advisory-committee>.

¹¹ *Mickelborough 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].

- the effectiveness of those deletions – that is, whether the edited document still has meaning.¹²

35. Irrelevant information is information which is clearly outside the scope, or beyond the terms of the applicant's request. The Applicant advised they do not require access to personal affairs information in the document. As such, personal affairs information is irrelevant information for the purposes of my review.
36. On careful consideration, I am satisfied that it is practicable to provide the Applicant with an edited copy of the document with irrelevant information deleted, as it would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

37. On the information before me, I am satisfied the document is not exempt from release under section 30(1) and it is to be released to the Applicant in part with irrelevant personal affairs information deleted.

Timeframe to seek a review of my decision

38. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.¹³
39. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁴
40. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁵
41. 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.
42. 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

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).

¹⁶ Sections 50(3F) and 50(3FA).

Third party review rights

43. The document contains extensive information about submissions and evidence obtained from third parties. Although the Applicant does not seek access to personal affairs information, I have decided to disclose information that reveals the submissions or evidence third parties provided.
44. In my view, it would be appropriate to notify those third parties, if practicable, as their identity could reasonably likely be inferred by individuals with knowledge of the evidence provided or who attended the public hearings.
45. I have decided that it would be practicable to notify the third parties. As the document does not disclose their contact details, OVIC has provided the Agency with notices addressed to the affected third parties and is to distribute them as soon as practicable.

When this decision takes effect

46. 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.