

Notice of Decision and Reasons for Decision

Applicant:	'GB3'
Agency:	Swan Hill District Health
Decision date:	30 May 2025
Exemptions and provision considered:	Sections 35(1)(a), 25
Citation:	'GB3' and Swan Hill District Health (Freedom of Information) [2025] VICmr 75 (30 May 2025)

FREEDOM OF INFORMATION – hospital funding – model budgets – purely factual information – 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 documents requested by the Applicant under the FOI Act.

My decision on the Applicant's request differs from the Agency's decision as I have decided to release one document in part with irrelevant information deleted, and one document in full.

Please refer to page 8 for information about review rights through the Victorian Civil and Administrative Tribunal (**VCAT**).

My reasons for decision follow.

Sean Morrison
Information Commissioner

30 May 2025

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to the following documents:
 - A copy of all pre-Budget submissions, briefing notes or proposals provided by Swan Hill District Health, to the Department of Health, between [date range].
 - A copy of the latest [specified financial year] model budget sent to Swan Hill District Health by the Department of Health.
2. The Agency identified two documents falling within the terms of the Applicant's request and refused access to them under section 35(1)(a). 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.
4. I have examined a copy of the documents subject to review.
5. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
6. 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.

Preliminary view

9. The Agency was provided with my preliminary view on [date] that I did not consider the documents exempt under section 35(1)(a). My staff asked the Agency whether it would like to make a fresh decision or provide a further submission in support of its decision.
10. The Agency did not respond.

Review of exemptions

Section 35 – Documents containing material obtained in confidence

11. For more information about section 35 see the FOI Guidelines.¹
12. Section 35 contains two exemptions that relate to information communicated in confidence by or on behalf of a person or a government to an agency or Minister.

Consultation

13. An agency or Minister must consult with the relevant third party or parties who communicated the information, before making a decision on the request, unless an exception applies, or if it is not reasonably practicable to.
14. The Agency consulted with the Department of Health who advised the information it provided to the Agency was provided in confidence.

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

15. 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; and
 - (b) the information would be exempt matter if it were generated by an agency or Minister.

Was the information communicated in confidence to the Agency?

16. I am satisfied the information in the documents was provided in confidence.

Would the information be exempt matter if it were generated by an Agency or Minister?

17. The Agency claims the information in the documents would be exempt under section 30(1) if it had generated that information.

Section 30(1) – Internal working documents

18. For more information about section 30 see the FOI Guidelines.²
19. 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.³
20. 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

¹ <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-35/>.

² <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-30/>.

³ *Graze v Commissioner of State Revenue* [2013] VCAT 869, 25.

- (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.
- 21. 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.
- 22. The documents are:
 - (a) an item from a Board of Directors' meeting relating to the model budget;
 - (b) a document setting out more detailed information about the model budget, headed 'for discussion', including itemised budget amounts and some information about how to interpret those amounts and future action required.
- 23. Most of the information in both documents is purely factual. However, considered broadly, I consider some of the information in the documents is the opinion, advice or recommendation of Agency officers.
- 24. I am also satisfied the information was prepared for the deliberative processes of the Agency, that of managing its budget.

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

- 25. In deciding whether disclosure of the information would be contrary to the public interest, I have given weight to the following relevant factors:⁴
 - (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-

⁴ See <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-30/#disclosure-would-be-contrary-to-the-public-interest>.

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, 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.

26. The Agency's decision letter sets out the following factors in relation to disclosure being contrary to the public interest:

Factors in favour of the public interest

Section 3 of the FOI Act provides a right as far as possible to the community to access information in the possession of the Government of Victoria and other bodies. It does this by making as much information available as possible and creating a general right of access. It is the intention of the Victorian Parliament that the Act be interpreted in a way that fosters the greatest release of information at the lowest reasonable cost. Section 13 of the Act also provide applicants with a legally enforceable right to obtain access to information unless it is exempt information. Both are important factors when considering the public interest.

In addition, the budgets of government and other agencies are used with taxpayer funds and as such, comes with an expectation of accountability. The scrutiny and accountability of budgets to the community is one of considerable public interest. This perhaps even more so with a health service that plays a large role in community safety.

These factors weigh in favour of release of the information.

Factors contrary to the public interest

While the factors above in favour of release go to the need to be accountable to taxpayer funds, there is in our view, considerable risks in releasing this information in a preliminary or draft format.

When information is released under the FOI Act, it is point in time. If a preliminary draft budget was released 'point in time', the community lose the value of understanding what the final

position might be or what might change from that draft status. This not only could but would readily lead to misinformation and likely cause unnecessary anxiety and concern in the Swan Hill community about the nature of their health service.

There has already been significant media interest in this space and the community is already largely alarmed as a result before final budgets have been determined, despite the Government making a record investment in health for [a specified financial year].

If the draft model budget was released, it is our view that this would create more harm and anxiety for the Swan Hill community about their health service in an industry with the least ability to absorb such sentiment. Confidence in the continuing excellence of our health service is paramount to a safe community and the premature release of changing information would unnecessarily and unreasonably jeopardise that.

In contrast, the final budget when determined will be something health services and government alike will be held accountable for as it is each year. The use and expenditure of taxpayer funds is one of our most accountable and important scrutiny processes that will continue.

On balance, it is our view that more harm would result from the premature release of the draft model budget than good with respect of the public interest.

27. I have decided it would not be contrary to the public interest to disclose the information in the documents for the following reasons:
- (a) The public interest weighs in favour of disclosure of the draft budgets, so that the Agency is transparent about the way it makes decisions regarding public expenditure on health.
 - (b) All agencies are subject to changes in budget, and these changes affect the services provided to the community. While I note some of the changes and budget items would be more sensitive, the Agency has not identified any particular information where its sensitivity rises to a level where the public interest weighs against disclosure.
 - (c) The part of the budget process is evident from the date and contents of the documents. Members of the community are capable of understanding that such budgets are subject to change.
 - (d) [At the time of making my decision], I consider any sensitivity regarding the disclosure of certain line items in the documents would have been reduced.
 - (e) It is unlikely that disclosure would cause unnecessary anxiety or alarm in the community.
 - (f) These are foundational documents which are relied on by hospitals in setting their yearly budgets.
28. I am therefore satisfied the documents are not exempt under section 30(1).
29. As the documents are not exempt under section 30(1), they are not exempt under section 35(1)(a).

Section 25 – Deletion of exempt or irrelevant information

30. 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.
31. 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;⁵ and
 - (b) the effectiveness of those deletions – that is, whether the edited document still has meaning.⁶
32. Irrelevant information is information which is clearly outside the scope, or beyond the terms of the applicant’s request.
33. The Board of Directors meeting notes include one item relevant to the request, being item 5.2. The remainder of the document is irrelevant to the request.
34. I have considered the effect of deleting irrelevant information from the documents. 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 documents would retain meaning.

Conclusion

35. On the information before me, I am not satisfied information in the documents is exempt from release under sections 35(1)(a).
36. As I it is practicable to provide the Applicant with an edited copy of the Board of Directors meeting notes with irrelevant information deleted in accordance with section 25, access is granted in part to that document, with the additional notes headed ‘for discussion’ to be released in full.

Timeframe to seek a review of my decision

37. If a party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.⁷
38. The Applicant or the third party may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁸

⁵ *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].

⁶ *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.

⁷ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁸ Section 52(5).

39. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁹
40. 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.
41. The Agency is required to notify the Information Commissioner in writing as soon as practicable if a party applies to VCAT for a review of my decision.¹⁰

Third party review rights

42. As I have determined to release documents that contain documents claimed exempt under section 35(1)(a), if practicable, I am required to notify those persons of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.¹¹
43. In this case, I am satisfied it is practicable to notify the relevant third party of their review rights and confirm they will be notified of my decision on the date of decision.
44. The Department of Health will therefore be notified of my decision.

When this decision takes effect

45. My decision does not take effect until the third party's 60 day review period expires. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

⁹ Section 52(9).

¹⁰ Sections 50(3F) and 50(3FA).

¹¹ Sections 49P(5), 50(3AB) and 52(3).