

Notice of Decision and Reasons for Decision

Applicant:	'GC2'
Agency:	Department of Treasury and Finance
Decision date:	25 June 2025
Exemptions considered:	Sections 34(1)(a) and 34(1)(b)
Citation:	'GC2' and <i>Department of Treasury and Finance</i> (Freedom of Information) [2025] VICmr 82 (25 June 2025)

FREEDOM OF INFORMATION – *Victorian Funds Management Corporation Act 1994* (Vic) – investment strategies – investment risks – quarterly investment report – unreasonable 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 documents requested by the Applicant under the FOI Act.

My decision on the Applicant's request differs from the Agency's decision. I am not satisfied all the information refused by the Agency under sections 34(1)(a) and 34(1)(b) is exempt from release, and further information is to be released.

The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document. A marked-up copy of the relevant documents showing exempt information in accordance with my decision has been provided to the Agency.

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

My reasons for decision follow.

Sean Morrison
Information Commissioner

25 June 2025

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to the following documents:
 - The most recent (as per the date of this request) financial statement outlining the composition of the Victorian Future Fund
 - The most recent (as per the date of this request) investment strategy document for the Victorian Future Fund
 - The most recent (as per the date of this request) report outlining the performance of the Victorian Future Fund
 - A copy of all email correspondence, from [date range], between members of the Victorian Funds Management Corporation Executive Leadership Team and any of the following individuals –
 - [position title]
 - [position title]; and
 - [position title]

which contain either of the following key words in the subject line:

 - Victorian Future Fund
 - VFF
2. The Applicant excluded personal affairs information from the scope of their request, except for information related to executive officers.
3. The Agency identified two documents falling within the terms of the Applicant's request and granted access to both documents in part, exempting certain information under sections 34(1)(a) and 34(1)(b). 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. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
6. During the review, the Agency advised that it no longer relies on sections 34(1)(a) or 34(1)(b) to exempt content on pages 4 and 6 in Document 1. Accordingly, I have not considered the application of exemptions to this content in my review and it is to be released to the Applicant.
7. I have examined a copy of the documents subject to review and 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.

Review of exemptions

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

10. Section 34(1)(b) provides a document is an exempt document if its disclosure under the FOI Act would disclose information acquired by an agency (or a Minister) from a business, commercial or financial undertaking and:
 - (a) the information relates to other matters of a business, commercial or financial nature; and
 - (b) the disclosure of the information would be likely to expose the undertaking unreasonably to disadvantage.

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

11. The documents were acquired from the Victorian Funds Management Corporation (VFMC), which was established under the *Victorian Funds Management Corporation Act 1994* (Vic) (the **VFMC Act**) to provide investment and funds management services to Victorian public authorities and the State of Victoria.
12. As a corporation governed by an independent Board of Directors, I am satisfied the VFMC is a business, commercial or financial undertaking for the purposes of section 34(1)(b).

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

13. The documents contain information relating to the Victorian Future Fund, which was established by the then Treasurer of Victoria to manage the fiscal impact of COVID-19.
14. The assets of the Victorian Future Fund are managed by the VFMC.
15. The documents were provided to the Agency by the VFMC as part of its role in managing the assets of the Victorian Future Fund.
16. I am satisfied the information in the documents relates to matters of a business, commercial or financial nature.

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

17. In considering whether disclosure will expose an undertaking to unreasonable disadvantage, an agency or Minister must, along with any other relevant consideration, have regard to the factors set out in section 34(2). These are:
- (a) whether the information is generally available to competitors of the undertaking;
 - (b) whether the information would be exempt 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.
18. 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; or
 - (c) lead to unwarranted conclusions about the undertaking's financial affairs and position that result in commercial and market consequences.¹
19. I accept that certain content in the documents is commercially sensitive and that disclosure may expose the VFMC to unreasonable disadvantage. Specifically, content on page 22 and pages 30 to 32 of Document 1, which contain details of the portfolio characteristics and capital markets assumptions that form the basis of the VFMC's long term projections on expected returns on investment. Also, certain content on page 2 of Document 2, which contains details about the performance of specific investment portfolios.
20. I acknowledge the documents contain other information in relation to the VFMC's investment strategies that is not generally available to its competitors. However, I consider the majority of this other content to be relatively high level in nature, rather than providing specific details about individual investment portfolios, or about particular organisations or industries. I also consider the lapse of time reduces the commercial sensitivity of the information. As such, I am not satisfied that disclosure of certain information would cause substantial harm to the competitive position of the VFMC.
21. In addition to managing the assets of the Victorian Future Fund on behalf of the Treasurer of Victoria, I note the VFMC's Foundation clients are required to invest in the VFMC under the Victorian Government's Centralised Investment Model. Given the VFMC's Foundation clients do not have the option to invest their assets in competitor organisations, I do not consider disclosure of high-level information about the VFMC's investment strategies in relation to them would likely cause unreasonable disadvantage to the financial position of the VFMC.

¹ *Dalla-Riva v Department of Treasury and Finance* [2007] VCAT 1301, [33].

22. The VFMC’s website states that it is an open and transparent public authority responsible for investing for the benefit of Victorians, managing funds of more than \$92 billion for Victoria and 32 Victorian public authorities and related organisations. Given the VFMC manages a significant proportion of funds on behalf of public authorities, I consider it to be in the public interest to disclose certain information about how it manages such investments, where disclosure would not likely cause unreasonable disadvantage to the VFMC or its investors.
23. Accordingly, I am not satisfied that high level information relating to the VFMC’s investment strategies is exempt from release under section 34(1)(b), and further information is to be released.
24. My decision in relation to the application of section 34(1)(b) is set out in a marked up copy of the documents provided to the Agency with this decision.

Section 34(1)(a) – Trade secrets of an undertaking

25. Section 34(1)(a) provides a document is an exempt document if its disclosure under the FOI Act:
 - (a) would disclose information acquired by an agency (or a Minister) from a business, commercial or financial undertaking; and
 - (b) the information relates to trade secrets.
26. There are several factors indicating that information may constitute a trade secret.² These include:
 - (a) the extent to which the information is known outside of the undertaking’s business;
 - (b) measures taken by the undertaking to guard the secrecy of the information;
 - (c) the value of the information to the undertaking and competitors;
 - (d) the effort and money spent by the undertaking in developing the information; and
 - (e) the ease or difficulty with which others might acquire or duplicate the secret.
27. Information may be a trade secret even if it is not of a technical character.³
28. Information is generally not considered to be a trade secret where the processes, procedures, or methods are well known or widespread (including in that industry), could be assumed, or are publicly available.

² *Re Bankers Trust Australia Ltd v Ministry of Transport* (1989) 2 VAR 33, 38-9 in relation to the equivalent provision in the Commonwealth FOI Act; *Re Organon (Aust) Pty Ltd v Department of Community Services and Health* (1987) 13 ALD 588, [24] in relation to the equivalent provision in the Commonwealth FOI Act. These factors are “merely guides”: *Searle Australia Pty Ltd v Public Interest Advocacy Centre* [1992] FCA 241, [37].

³ *Searle Australia Pty Ltd v Public Interest Advocacy Centre* [1992] FCA 241, 33; *Stewart v Department of Tourism, Sport and the Commonwealth Games* [2003] VCAT 45, [26].

29. The Agency applied section 34(1)(a) to content on pages 12 and 19 in Document 1, and page 2 in Document 2.
30. I have decided certain information the agency claimed exempt under section 34(1)(a) is exempt under section 34(1)(b). I have not further considered whether section 34(1)(a) applies to that information.
31. In relation to the remainder of the information claimed exempt under section 34(1)(a), I am not satisfied it contains information in the nature of that described in paragraph 26 above. It is therefore not exempt under section 34(1)(a).

Section 25 – Deletion of exempt or irrelevant information

32. 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.
33. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’⁴ and the effectiveness of the deletions. Where deletions would render a document meaningless, they are not ‘practicable’ and release of the document is not required under section 25.⁵
34. I have considered the effect of deleting exempt information from the documents. In my view, it is practicable for the Agency to delete the exempt 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 satisfied certain information in the documents is exempt from release under section 34(1)(b). However, I am not satisfied the documents contain trade secrets under section 34(1)(a), nor that high level information is exempt from release under section 34(1)(b) where it does not contain details about specific investment portfolios. Therefore, I have determined to release further information in the documents to the Applicant where I am satisfied it is not exempt from release.
36. As I am satisfied it is practicable to provide the Applicant with an edited copy of the documents with exempt information deleted in accordance with section 25, access is granted in part.
37. A marked-up copy of the documents indicating exempt or irrelevant information in accordance with my decision has been provided to the Agency.

⁴ *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 at [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

⁵ *Honeywood v Department of Human Services* [2006] VCAT 2048 at [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140], [155].

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.⁶
- 39. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁷
- 40. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁸
- 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.⁹

Third party review rights

- 43. As I have determined to release documents that contain information of a business, financial, commercial nature relating to a business undertaking, 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.¹⁰
- 44. 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.

When this decision takes effect

- 45. 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.

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

⁷ Section 52(5).

⁸ Section 52(9).

⁹ Sections 50(3F) and 50(3FA).

¹⁰ Sections 50(3A) and 52(3).

Annexure 1 – Schedule of Documents

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision
1	[Date]	Victorian Future Fund: Investment Risk Management Plan	32	Released in part Sections 34(1)(a) and 34(1)(b)	Release in part Sections 34(1)(b), 25 The document is to be released in accordance with the marked-up copy provided to the Agency.
2	[Date]	Victorian Future Fund Quarterly Investment Report	13	Released in part Sections 34(1)(a) and 34(1)(b)	Release in part Sections 34(1)(b), 25 The document is to be released in accordance with the marked-up copy provided to the Agency.