

## Notice of Decision and Reasons for Decision

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Applicant:	'GB8'
Agency:	Department of Transport and Planning
Decision date:	6 August 2025
Exemption and provision considered:	Sections 30(1), 25
Citation:	'GB8' and Department of Transport and Planning (Freedom of Information) [2025] VICmr 79 (6 August 2025)

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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**

6 August 2025

## Reasons for Decision

### Background to review

1. The Applicant made the following request to the Agency for access to [various documents relating to Precinct Structure Plan areas].
2. The Agency identified 10 documents falling within the terms of the Applicant's request. It released 9 documents in full and refused access to 1 document in full under section 30(1). The document refused in full is the Beveridge North West Advisory Committee Report.
3. The Agency's decision also states that several documents were publicly available and were excluded from its decision.
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 in their review application that personal affairs information of other people can be redacted from the document subject to my review.
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.
12. 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'.<sup>1</sup> 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.

### Review of exemption

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

*Section 30(1) – Internal working documents*

13. 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.<sup>2</sup>
14. 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.
15. 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.
16. 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.<sup>3</sup>
17. For more information about section 30 see the FOI Guidelines.<sup>4</sup>

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

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

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

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

18. 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.<sup>5</sup> 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.<sup>6</sup>
19. The report was prepared following a preliminary directions hearing on 4 February 2022, a directions hearing on 17 March 2022, public hearings between 9 May and 10 June 2022. The report was submitted by the Committee on 14 October 2022.<sup>7</sup>
20. 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.
21. Although the document includes factual information, I am satisfied that its overall purpose was to advise and make recommendations to the Minister.
22. I am satisfied the Committee members are 'agency officers' for the purposes of section 30(1).
23. 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?*

24. 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.<sup>8</sup>

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

<sup>6</sup> [https://www.planningpanels.vic.gov.au/\\_\\_data/assets/pdf\\_file/0034/593737/beveridge-north-west-advisory-committee-terms-of-reference.pdf](https://www.planningpanels.vic.gov.au/__data/assets/pdf_file/0034/593737/beveridge-north-west-advisory-committee-terms-of-reference.pdf)

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

<sup>8</sup> *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.

25. I am satisfied the document was created in a deliberative 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.
26. 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?*

27. In deciding whether disclosure of the information would be contrary to the public interest, I have given weight to the following relevant factors:<sup>9</sup>
- 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.
28. In making my decision, I have carefully considered the exempted document, along with the submissions made by both parties.

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

29. 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<sup>10</sup>, 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.

30. 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***

31. 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.

32. 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>11</sup> and

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

<sup>11</sup> *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].

- (b) the effectiveness of those deletions – that is, whether the edited document still has meaning.<sup>12</sup>

33. 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.
34. 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

35. 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.
36. A marked-up copy of the document showing irrelevant information in accordance with my decision has been provided to the Agency.

### Timeframe to seek a review of my decision

37. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.<sup>13</sup>
38. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>14</sup>
39. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>15</sup>
40. 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.
41. 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.<sup>16</sup>

### Third party review rights

42. 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

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<sup>12</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.

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

<sup>14</sup> Section 52(5).

<sup>15</sup> Section 52(9).

<sup>16</sup> Sections 50(3F) and 50(3FA).

have decided to disclose information that reveals the submissions or evidence third parties provided.

43. 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.
44. I have decided that it would be practicable to notify certain third parties. Where possible, OVIC will undertake this process. However, where I do not have relevant contact details and consider it likely the Agency would, I will ask the Agency for its assistance in distributing my notification letters addressed to the affected third parties.

**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.