

Notice of Decision and Reasons for Decision

Applicant:	'GF2'
Agency:	South Gippsland Shire Council
Decision date:	28 March 2025
Exemptions and provision considered:	Sections 34(1)(b), 35(1)(b), 25
Citation:	'GF2' and South Gippsland Shire Council (Freedom of Information) [2025] VICmr 108 (28 March 2025)

FREEDOM OF INFORMATION – Timber Harvest Plan – lodgement of coupe – map – forest stewardship and health and safety management systems – publicly available information – exposure will not unreasonably expose a business undertaking to 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 in relation to the application of section 34(1)(b) to relevant email attachments differs from the Agency's decision. I have decided section 34(1)(b) does not apply to these documents subject to review.

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

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

My reasons for decision follow.

Penny Eastman
Public Access Deputy Commissioner

28 March 2025

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to certain documents. The request was clarified to:

Date: 21 August 2022 to 21 August 2024

A copy of all timber harvesting plans and copies of the submission correspondence, being emails and letters with the attached timber harvest plans, received by Council.

2. In their application, the Applicant advised they are not seeking personal affairs information.
3. The Agency identified 18 documents responsive to the request, being email correspondence and attachments. The Agency decided to release the emails with irrelevant information deleted in accordance with section 25, and to exempt the attachments to the emails in full under section 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. I have examined a copy of the documents subject to review, which I consider to be the attachments to the emails only as further explained below.
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.

Matter before VCAT

10. In making its decision, the Agency consulted with a third party business undertaking.
11. While the business undertaking objected to release of all of the information, the Agency determined to release certain information, being information in the emails, but not their attachments.

12. The Agency advised the third party business undertaking of their right to apply to VCAT for review of its decision. The third party business undertaking subsequently did so.
13. The Agency advised OVIC that VCAT is awaiting the outcome of my review before it takes the matter up again in May 2025.
14. As the contents of the emails are currently before VCAT, I have not considered whether section 34(1)(b) applies to that material.
15. For clarity therefore, only the attachments to the emails are subject to my review.

Review of exemptions

Section 34 – Documents relating to trade secrets etc.

16. For more information about section 34 see the [FOI Guidelines](#).
17. Section 34 contains several exemptions, which protect:
 - (a) trade secrets of a business, commercial or financial undertaking;
 - (b) other business, commercial or financial information of an undertaking, where disclosure would likely expose the undertaking to an unreasonable disadvantage;
 - (c) trade secrets of an agency;
 - (d) other business, commercial or financial information of agencies engaged in trade or commerce;
 - (e) the results of scientific or technical research undertaken by an agency; and
 - (f) examination papers, examiner's reports and similar documents, where the document's use is not yet completed.

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

18. 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).

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

19. The Agency's decision letter, and the contents of the emails, confirm that the information was received from a business undertaking.

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

20. As described in the Agency's decision letter:

The information relates to the harvesting plans of the tree plantations located in various locations throughout South Gippsland Shire, and contains details regarding transportation and haulage, maps, customer information and other information which I am satisfied is business, commercial or financial nature.

21. I am also satisfied the documents contain information that relates to matters of a business nature.

Consultation

22. In deciding whether disclosure would expose an undertaking unreasonably to disadvantage, an agency or Minister, if reasonably practicable, must consult with the business undertaking from which it acquired information.

23. As described above, the business undertaking objected to disclosure. In summary, the business undertaking advised the documents contain confidential information not generally available to the public or competitors.

24. The business undertaking advised that disclosure would cause substantial harm to its competitive position in the industry and that there is no public interest in disclosure.

25. Further, the business undertaking advised that disclosure could lead to unwarranted conclusions about its business, as well as potential disruptions by private individuals to its operations that could cause risks to health and safety of the public or its staff.

26. I note the Agency held similar positions as set out in its decision letter.

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

27. 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.

28. 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
29. Where the business, commercial or financial information is so small or incidental to an undertaking's operations, its disclosure is unlikely to meet the threshold of unreasonable disadvantage.²
30. I have carefully considered the Agency's and third party business undertaking's positions. I have decided disclosure of the documents would not be reasonably likely to expose the business undertaking unreasonably to disadvantage, principally because the documents contain very little information about the business. Given this limited detail, I do not agree that disclosure would cause substantial harm or lead to unwarranted conclusions about its business affairs.
31. I also note that a majority of the information about the location, roads and maps of the parcel of land is publicly available. I do not consider disclosure of the intended haulage path will have any impact on the business undertaking given the lack of options in the area and that such routes are visible to the public.
32. I also do not consider, based on the information before me, the disclosure of the planned volume of the harvest will have any impact on the business undertaking, including to its competitors, as that would rely on the particular parcels of land.
33. While I note the business undertaking's concerns regarding public health and safety, I am not satisfied, based on the information before me, that disclosure would have such an impact, particularly where members of the public, by visiting the area, would be able to see the business's operations.
34. Finally, disclosure under the FOI Act does not preclude some disadvantage to a business undertaking. Rather, that disadvantage must be unreasonable. In this matter, I consider the public interest weighs in favour of disclosure to hold the local government accountable for the management of Victorian forestry.
35. The documents are therefore not exempt under section 34(1)(b).

Section 35(1)(b) – Information obtained in confidence

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

² *Holbrook v Department of Natural Resources* (1997) 13 VAR 1, 8.

36. In its consultation response, the business undertaking advised that it also considered section 35(1)(b) applied to the information. For completeness, I have considered whether section 35(1)(b) applies.
37. A document may be exempt under section 35(1)(b) if two conditions are satisfied:
- (a) disclosure would divulge information or matter:
 - (i) communicated in confidence;
 - (ii) by or on behalf of a person or a government to an agency or a Minister; and
 - (b) disclosure would be contrary to the public interest because the disclosure would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.

Was the information obtained in confidence?

38. Whether information was communicated in confidence is a question of fact,³ determined from the perspective of the communicator.⁴
39. I accept the information was obtained in confidence, given the contents of the emails to which the documents were attached, and the business undertaking's response to the Agency setting out its reasons for objecting to disclosure.

Would disclosure impair the ability of the Agency to obtain similar information?

40. The term 'impair' is not defined in the FOI Act. However, case law suggests:
- (a) the degree of impairment must go beyond a trifling or minimal impairment;⁵
 - (b) there must be an actual impairment to the ability of the agency to obtain similar information in the future;⁶
 - (c) it is not enough that individuals would be less candid than they otherwise might be⁷ or would feel resentment at having their confidence betrayed;⁸
 - (d) the necessary level of impairment will be made out if a significant minority of persons in the relevant group would be firmly resistant to providing similar information in the future;⁹

³ *Ryder v Booth* [1985] VR 869, 883.

⁴ *XYZ v Victoria Police* [2010] VCAT 255, [265]; *Barling v Medical Board of Victoria* (1992) 5 VAR 542, 561-562.

⁵ *Ryder v Booth* [1985] VR 869, 880.

⁶ *Birnbauer & Davies v Inner & Eastern Health Care Network* [1999] VCAT 1363, [68] referring to *Ryder v Booth* [1985] VR 869

⁷ *Birnbauer & Davies v Inner & Eastern Health Care Network* [1999] VCAT 1363, [68]; approved in *Smeaton v Victorian WorkCover Authority* [2012] VCAT 1549, [69].

⁸ *Sifredi v Medical Practitioners Board* [1999] VCAT 87 (affirmed on appeal *Medical Practitioners Board of Victoria v Sifredi* [2000] VSC 33);

⁹ *Sifredi v Medical Practitioners Board* [1999] VCAT 87 (affirmed on appeal *Medical Practitioners Board of Victoria v Sifredi* [2000] VSC 33).

- (e) it is the agency that must be impaired from receiving information, not simply a reluctance on the part of a supplier to provide information;¹⁰
 - (f) the existence of a statutory duty to provide information does not necessarily exclude the possibility that disclosure would be reasonably likely to impair an agency's ability to obtain similar information in the future, particularly where disclosure might impact the quality and quantity of any future information provided.¹¹ In comparison, an agency will not be impaired from obtaining a specific type of information in future, if there is legislation which compels a person to provide this type of information to the agency.¹²
41. The business undertaking advises that disclosure would undermine its relationship with the Agency.
42. I have determined that disclosure would not impair the ability of the Agency to obtain similar information in the future. This is because, as set out in the business undertaking's consultation response, the provision of Timber Harvest Plans is required under the Code of Practice for Timber Harvesting. Whether or not documents are disclosed under the FOI Act does not affect this requirement.
43. The documents are therefore not exempt under section 35(1)(b).

Section 25 – Deletion of exempt or irrelevant information

44. 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.
45. 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;¹³ and
 - (b) the effectiveness of those deletions – that is, whether the edited document still has meaning.¹⁴
46. Irrelevant information is information which is clearly outside the scope, or beyond the terms of the applicant's request.
47. The Agency deleted information from the emails that are not subject to my review. I have therefore not further considered that information.

¹⁰ *Kosky v Department of Human Services* [1998] VCAT 290, [22].

¹¹ See *Thwaites v Department of Health and Community Services* (1995) 8 VAR 361, 370; *Woodford v Ombudsman* [2001] VCAT 721, [99]-[101].

¹² See *Thwaites v Department of Health and Community Services* (1995) 8 VAR 361, 370; *Woodford v Ombudsman* [2001] VCAT 721, [99]-[101].

¹³ *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].

¹⁴ *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.

48. I agree certain documents fall outside the date range of the Applicant's request and are therefore irrelevant to the request.
49. 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

50. On the information before me, I am not satisfied the information identified by the Agency in the documents subject to my review, being the attachments to emails, is exempt from release under section 34(1)(b). As such, I am satisfied the attachments that fall within the scope of the request can be released in full to the Applicant.
51. The Schedule of Documents at **Annexure 1** further details the Agency's decision and my review decision in relation to the attachments to emails only.

Timeframe to seek a review of my decision

52. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.¹⁵
53. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁶
54. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁷
55. 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.
56. 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.¹⁸

Third party review rights

57. As I have determined to release documents that contain information of a business, financial, commercial nature relating to a business undertaking I am required, if practicable, 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.¹⁹

¹⁵ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁶ Section 52(5).

¹⁷ Section 52(9).

¹⁸ Sections 50(3F) and 50(3FA).

¹⁹ Sections 49P(5), 50(3A) and 52(3).

58. 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 or as soon as possible thereafter.

When this decision takes effect

59. 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.

Annexure 1 – Schedule of Documents subject to Review

No.	Date of document	Title or description of document	Agency's decision on email attachments only ²⁰	OVIC decision on the email attachments only	OVIC comments
1	21 June 2024	[EXTERNAL] Lodgement of Coupe P22675 Macintoshs Road FT1 with 5 pages of attachments	Refuse in full Section 34(1)(b)	Release in full The attachments are to be released to the Applicant in full.	Section 34(1)(b): The information identified by the Agency in the attachments is not exempt under section 34(1)(b) for the reasons described above. Section 35(1)(b): I have further considered the application of section 35(1)(b) to the attachments. I am satisfied the attachments are not exempt for release under section 35(1)(b) for the reasons described above.
2	18 April 2024	Lodgement of Coupe P22676 B3 Road FT1 with 5 pages of attachments	Refuse in full Section 34(1)(b)	Release in full The attachments are to be released to the Applicant in full.	See comments for Document 1.

²⁰ The Agency's decision on the release of content in the covering emails is excluded from my review as it is subject to current VCAT review following an application from a third party.

No.	Date of document	Title or description of document	Agency's decision on email attachments only ²⁰	OVIC decision on the email attachments only	OVIC comments
3	18 January 2024	FW_ [EXTERNAL] Lodgement of Coupe P27300 Livingston Creek Road VCF with 7 pages of attachments	Refuse in full Section 34(1)(b)	Release in full The attachments are to be released to the Applicant in full.	See comments for Document 1.
4	20 December 2023	[EXTERNAL] Lodgement of Coupe E27289 Fellas VCF with 7 pages of attachments	Refuse in full Section 34(1)(b)	Release in full The attachments are to be released to the Applicant in full.	See comments for Document 1.
5	20 June 2023	Lodgement of Coupe P22263 School Road FFT1 with 5 pages of attachments	Refuse in full Section 34(1)(b)	Release in full The attachments are to be released to the Applicant in full.	See comments for Document 1.
6	9 June 2023	Lodgement of Coupe P22262 B Road FFT1 with 6 pages of attachments	Refuse in full Sections 34(1)(b)	Release in full The attachments are to be released to the Applicant in full.	See comments for Document 1.

No.	Date of document	Title or description of document	Agency's decision on email attachments only ²⁰	OVIC decision on the email attachments only	OVIC comments
7	18 April 2023	RE_ SGSC Rendells Rd – Query with 4 pages of attachments	Refuse in full Section 34(1)(b)	Release in full The attachments are to be released to the Applicant in full.	See comments for Document 1. Note: I consider this document in scope of the request, as the attachments were provided a second time on 18 April 2023, within the scope of the request of 21 August 2022 to 21 August 2022.
8	8 December 2022	Lodgement of Coupe E27505 Humphreys Road SFCF with 8 pages of attachments	Refuse in full Section 34(1)(b)	Release in full The attachments are to be released to the Applicant in full.	See comments for Document 1.
9	14 April 2022	Lodgement of Coupe P22232 D2 Track with 6 pages of attachments	Refuse in full Sections 34(1)(b)	Irrelevant to the request. Out of scope of the request, as it is outside of the date range of 21 August 2022 to 21 August 2024.	

No.	Date of document	Title or description of document	Agency's decision on email attachments only ²⁰	OVIC decision on the email attachments only	OVIC comments
10	18 February 2022	Lodgement of Coupe P22242 Centre Road with 6 pages of attachments	Refuse in full Sections 34(1)(b)	Irrelevant to the request. Out of scope of the request, as it is outside of the date range of 21 August 2022 to 21 August 2024.	
11	11 January 2022	Geo Referenced 1991 Map for THP P33291 Laws Sharefarm with 1 attachment	Refuse in full Sections 34(1)(b)	Irrelevant to the request. Out of scope of the request, as it is outside of the date range of 21 August 2022 to 21 August 2024.	
12	11 January 2022	Geo Referenced 2017 Map for THP 33291 Laws Sharefarm with 1 attachment	Refuse in full Sections 34(1)(b)	Irrelevant to the request.	

No.	Date of document	Title or description of document	Agency's decision on email attachments only ²⁰	OVIC decision on the email attachments only	OVIC comments
				Out of scope of the request, as it is outside of the date range of 21 August 2022 to 21 August 2024.	
13	11 January 2022	Lodgement of THP P33291 Laws Sharefarm RDLN & VSCF with 7 pages of attachments	Refuse in full Section 34(1)(b)	Irrelevant to the request. Out of scope of the request, as it is outside of the date range of 21 August 2022 to 21 August 2024.	
14	23 December 2021	Lodgement of Coupe E27504 Thomas Track with 7 pages of attachments	Refuse in full Section 34(1)(b)	Irrelevant to the request. Out of scope of the request, as it is outside of the date range of 21 August	

No.	Date of document	Title or description of document	Agency's decision on email attachments only ²⁰	OVIC decision on the email attachments only	OVIC comments
				2022 to 21 August 2024.	
15	15 September 2021	THP P27396 Cork Tree Track Windthrow Skysat 2021 Map Email 4 of 4 with a 1 page attachment	Refuse in full Section 34(1)(b)	Irrelevant to the request. Out of scope of the request, as it is outside of the date range of 21 August 2022 to 21 August 2024.	
16	15 September 2021	THP P27396 Cork Tree Track Windthrow 2017 Map Email 3 of 4 with a 1 page attachment	Refuse in full Section 34(1)(b)	Irrelevant to the request. Out of scope of the request, as it is outside of the date range of 21 August 2022 to 21 August 2024.	

No.	Date of document	Title or description of document	Agency's decision on email attachments only ²⁰	OVIC decision on the email attachments only	OVIC comments
17	15 September 2021	THP P27396 Cork Tree Track Windthrow 1999 Map Email 2 of 4 with a 1 page attachment	Refuse in full Section 34(1)(b)	Irrelevant to the request. Out of scope of the request, as it is outside of the date range of 21 August 2022 to 21 August 2024.	
18	15 September 2021	Lodgement of THP P27396 Cork Tree Track Windthrow VSSL & VSCF with 7 pages of attachments	Refuse in full Section 34(1)(b)	Irrelevant to the request. Out of scope of the request, as it is outside of the date range of 21 August 2022 to 21 August 2024.	