

Notice of Decision and Reasons for Decision

Applicant:	'GA8'
Agency:	Development Victoria
Decision date:	8 June 2025
Exemptions and provision considered:	Sections 28(1)(b), 28(1)(c), 30(1), 34(1)(b), 34(4)(a)(ii), 25
Citation:	'GA8' and Development Victoria (Freedom of Information) [2025] VICmr 71 (8 June 2025)

FREEDOM OF INFORMATION – 2026 Commonwealth Games – briefings – tender documents – Request for Proposal – Project Implementation Plan

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 and more information is to be released.

I am satisfied that certain information in the documents is exempt under section 34(1)(b) but is not exempt under sections 28(1)(b), 28(1)(c), 30(1) or 34(4)(a)(ii) of the FOI Act. I am also satisfied that certain information falls outside the terms of the Applicant's request and is to remain deleted as irrelevant information in accordance with section 25.

The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document and the Agency has been provided with marked-up copies of some of the documents in accordance with my decision.

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.

Sean Morrison
Information Commissioner

8 June 2025

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to certain documents. Following consultation with the Agency, the Applicant amended the initial request and sought access to the following documents dated between [date range]:
 - (a) All designs, plans, artist impressions and timetables for Commonwealth Games builds at the Bendigo Showgrounds, including but not limited to the temporary velodrome, table tennis venue and associated building works, fencing and public transport. Also, all estimated costings for those works, and any costings put forward by tender applicants, and names of people who applied to take part in the build works.
 - (b) All designs, plans, artist impressions, timetables and costings for the Commonwealth Games venue in Bendigo, put out to tender on 3 April (EOI 1551) excluding documents and addendums publicly released in that period via the tenders.vic.gov.au website, along with plans, timetables and other documents shared with proponents in the Request for Proposal process for that tender process, along with any costings they provided for doing that work, and names of people who applied to take part in the build works.
 - (c) All plans designs, timetables and artist impressions of sporting venue/s at the Bendigo Showgrounds - this is not limited to those related to EOI 1551 or the subsequent Request for Proposal process for the tender process
2. The Applicant specified:
 - (a) where there was more than one draft or revision of a document, they only sought the most recent version;
 - (b) they did not require personal affairs information of Agency officers below executive level; and
 - (c) they do not require names, job titles and signatures of external individuals.
3. The Agency's decision letter states it located 714 pages of documents falling within the terms of the Applicant's request and decided to:
 - (a) grant access in part to 22 pages;
 - (b) grant access in full to 37 pages; and
 - (c) refuse access in full to 655 pages.
4. The Agency relied on exemptions under sections 28(1)(b), 30(1), 34(1)(b) and 34(4)(a)(ii) to refuse access to information in the documents.
5. The Agency's decision letter sets out the reasons for its decision.

Review application

6. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
7. I have examined a copy of the documents 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'.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.

Review of exemptions

Section 28(1)(b) – Documents prepared for the purpose of submitting to Cabinet for consideration

13. Section 28(1)(b) exempts from release a document that was prepared by a Minister, or on behalf of a Minister, or by an agency, for the purpose of submitting it to Cabinet for Cabinet's consideration.
14. The document must have been created for the sole, substantial or dominant purpose of submission to the Cabinet for its consideration.²
15. If there is more than one purpose of a document's creation, it can be useful to ask whether the document would have been created but for the purpose of submission for consideration by the Cabinet.³ If the document would have been created in any event, this may indicate the purpose of the document's creation was not for submission for consideration by the Cabinet.⁴

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

² *Ryan v Department of Infrastructure* [2004] VCAT 2346, [34]; *Herald & Weekly Times v Victorian Curriculum & Assessment Authority* [2004] VCAT 924, [72].

³ *Department of Treasury and Finance v Dalla-Riva* [2007] VSCA 11, [13].

⁴ *Davis v Major Transport Infrastructure Authority* [2020] VCAT 965, [80] and [82].

16. The document does not need to have been, in fact, considered by, or submitted to, the Cabinet.⁵ The purpose of the document's creation is the key consideration. However, where there is no evidence of the purpose of the document's creation, the actual use of the document can assist in determining the purpose of its creation.⁶
17. The documents must be prepared for consideration by the Cabinet, not merely for the purpose of placing them before the Cabinet.⁷
18. In *Department of Health v Lovell* (Review and Regulation) [2024] VCAT 998, VCAT found that a Business Case for the redevelopment of the Goulburn Valley Health Shepparton Hospital was prepared for the purpose of submission for consideration by the Expenditure Review Sub-Committee of Cabinet (ERSC).
19. VCAT accepted evidence provided by a Deputy Secretary of the Department of Health (**the Department**) about the purpose of which the Business Case was prepared. While that officer was not at the Department when the Business Case was prepared, the Department submitted that as the person presently occupying the key role in relation to preparation of business cases of this nature, that officer was well qualified to give all evidence required for it to prove its case.⁸
20. The Department made several submissions, including:

...the Tribunal should not wrongly reason, as the Commissioner did, that because the Department cannot produce all documents specific to the creation of the Business Case (such as terms of reference) some 8 years after the document's creation that there is insufficient evidence to conclude that purpose for which it was created was not for submission to Cabinet. Rather the question is whether the Tribunal is persuaded as a question of fact about that purpose. The evidence of Ms Brady and the document itself provides ample basis for such satisfaction.⁹

21. VCAT's review overturned a decision by OVIC, where OVIC determined to release the document in part on the basis that it was not a Cabinet document. VCAT stated '[that] OVIC did not of course have the benefit of the evidence given by a senior officer of the Department, as [VCAT] has'.¹⁰
22. VCAT decided that from the review of the Business Case, and based on the evidence provided by the agency officer, the Business Case was solely for submission to the ERSC for approval for inclusion in the 2016 Budget.¹¹ VCAT was satisfied the Business Case was:

...authoritative assessment of the issues, suitable for consideration by the Cabinet of the decision whether or not to fund such a major project.

⁵ *Davis v Major Transport Infrastructure Authority* [2020] VCAT 965, [20]; *Wilson v Department of Premier & Cabinet* [2001] VCAT 663, [16]; *Asher v Department of Infrastructure* [2006] VCAT 1375, [9], [20]; *Ryan v Department of Infrastructure* [2004] VCAT 2346, [34].

⁶ *Ryan v Department of Infrastructure* [2004] VCAT 2346, [34]; *Department of Treasury and Finance v Dalla-Riva* [2007] VSCA 11, [15]; *Davis v Major Transport Infrastructure Authority* [2020] VCAT 965, [19].

⁷ *Ryan v Department of Infrastructure* [2004] VCAT 2346 [34]-[36]; *Davis v Major Transport Infrastructure Authority* [2020] VCAT 965, [22].

⁸ *Department of Health v Lovell* (Review and Regulation) [2024] VCAT 998, [25].

⁹ *Ibid*, [32].

¹⁰ *Ibid*, [6].

¹¹ *Ibid*, [42], [47].

Text in the document itself reflects its purpose of seeking Cabinet approval for the funding of the Project.

...

The effect of Ms Brady's evidence was that the Business Case conformed with the standard template, and that it included the key standard information points relating to fundamental matters such as risks, benefits, costs, comparison with alternatives and deliverability. Having reviewed the Business Case and the template, I find that is correct.¹²

23. With respect to evidence of whether the Business Case actually went to Cabinet, VCAT stated:

... evidence that a disputed document actually did go to Cabinet is not determinative of the issue to be decided in cases such as this. But it is relevant, as it can support the contention that it was prepared for the purpose of being submitted to Cabinet. That is the position here. The evidence indicates that the Business Case went to Cabinet. This is consistent with the narrative of Ms Brady that it was prepared for Cabinet, and that it proceeded through the Cabinet decision making process, and ultimately, was approved, and included in the budget.¹³

24. This case highlights that the evidence of a senior agency officer can be useful and constructive in determining whether a document is exempt under section 28(1)(b).

Enquiries with the Agency

25. During the review, OVIC staff advised the Agency that it is not clear on the information before OVIC that certain documents were prepared or commissioned for the sole or dominant purpose of submission for consideration by the Cabinet and are therefore exempt under section 28(1)(b). OVIC staff asked that a statutory declaration be provided to assist OVIC in its determination of this issue, provided by a senior Agency officer with actual knowledge of the purpose for which the documents were prepared, containing sufficient information to support the assertions made and to enable OVIC to determine the relevant facts.
26. The Agency responded that a statutory declaration would not be appropriate in the circumstances and made further submissions in support of its reliance on sections 28(1)(b), 28(1)(c), 34(1)(b) and 34(4)(a)(ii).
27. OVIC staff advised the Agency that OVIC remained of the view that there was limited information to uphold the Cabinet exemption and provided the Agency with a further opportunity to provide evidence that demonstrates an intention of the documents being submitted to Cabinet.
28. In response, the Agency sought to rely on its previous two submissions.
29. This resulted in OVIC making a final enquiry with the Agency regarding the Agency's submission that appendices F to H in Document 15 may not be exempt under section 28(1)(b).

¹² Ibid, [43]-[44], [46].

¹³ Ibid, [51].

[Document type] (Document 16) and appendices (Document 15)

30. Document 16 is a [document type] for a venue and Document 15 comprises of the appendices referred to in the [document type].

31. The Agency's decision states:

Pages have been denied in full under s28(1)(b)... as they were prepared with an intention they be submitted to Cabinet, including in several cases the documents were attached to submissions provided to the Expenditure and Review Committee of Cabinet. In other instances, the documents were prepared with an expectation they would go to Cabinet but they did not ultimately proceed to Cabinet in light of the cancellation of the Games.

32. There is nothing on the face of Documents 15 or 16 to indicate that they were created for the sole, substantial or dominant purpose of submission to Cabinet for its consideration.

33. OVIC sought additional evidence from the Agency regarding the purpose of which the documents were prepared, as explained above.

34. In making my decision, I do not have the benefit of evidence given by a senior Agency officer. Therefore, my decision is based upon the content of the documents, the Agency's submissions and consultation responses from another agency.

35. I also note that during the review, and as discussed above, the Agency submitted that appendices F to H in Document 15 may not be exempt from release under section 28(1)(b).

36. I am not satisfied, based on the information before me, that the documents were prepared for the sole, substantial or dominant purpose of submission to the Cabinet for its consideration. In this matter, the Agency has not been able to provide OVIC with evidence of the purpose of the documents' creation, following requests from OVIC.

37. Although it is accepted that where there is no evidence of the purpose of the document's creation, the actual use of the document can assist in determining the purpose of its creation,¹⁴ and the Agency's decision states documents were attached to submissions to the Cabinet, without having seen the relevant submission to Cabinet, it is unclear the extent to which each document was in fact intended to be considered by the Cabinet.

38. Therefore, I consider Documents 15 and 16 are not exempt from release under section 28(1)(b).

[Document type] (Document 17)

39. This document sets out the [type of information] for various delivery options.

40. I have considered the Agency's confidential submissions concerning the circumstances in which this document was commissioned.

¹⁴ *Ryan v Department of Infrastructure* [2004] VCAT 2346, [34]; *Department of Treasury and Finance v Dalla-Riva* [2007] VSCA 11, [15]; *Davis v Major Transport Infrastructure Authority* [2020] VCAT 965, [19].

41. For similar reasons as set out above with respect to the [document type in paragraph 30] and appendices, I am not satisfied that the document was prepared with an intention for consideration by Cabinet.

[Document type] (Document 18) and associated documents

42. Unlike the above categories of documents, the [document type] and associated documents did not proceed to Cabinet. The Agency nevertheless considers the documents were prepared with an expectation that they would be considered by Cabinet.
43. For similar reasons as set out above with respect to the [document type referred to in paragraph 30] and appendices, I am not satisfied the [document type] and associated documents were prepared with an intention for consideration by Cabinet.
44. Therefore, I am satisfied these documents are not exempt from release under section 28(1)(b).

Section 28(1)(c) – Copy, draft, or extracts of a Cabinet document

45. During the review, the Agency submitted that Document 17 is exempt under section 28(1)(c) as it is an extract of a document considered by a Cabinet subcommittee.
46. Section 28(1)(c) exempts a document that is a copy or draft of, or contains extracts from, a document referred to in sections 28(1)(a), 28(1)(b) or 28(1)(ba), as discussed above.
47. I have considered the Agency's confidential submission about the document that Document 17 is said to be an extract of.
48. For the reasons set out above with respect to the application of section 28(1)(b) for Document 17, I am not satisfied that the earlier version of the document which Document 17 is said to be an extract of, is exempt under section 28(1)(b). Therefore, I am satisfied section 28(1)(c) does not apply.

Section 30(1) – internal working documents

49. Section 30(1) exempts documents that contain opinion, advice or recommendation, or consultation or deliberation, where disclosure would be contrary to the public interest. To be exempt under section 30(1), three requirements 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
 - (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.

First requirement – opinion, advice, recommendation, or consultation or deliberation

50. Section 30(1) does not apply to purely factual information.¹⁵
51. The words ‘opinion’, ‘advice’ and ‘recommendation’ should be given their plain English meaning. Their dictionary definitions are:¹⁶
 - Opinion: a personal view, an estimation, judgement, or belief.
 - Advice: an opinion recommended, or offered, as worthy to be followed, or a formal or professional opinion given.
 - Recommendation: a representation in favour of a person or thing, or anything that serves to recommend or induce acceptance or favour.
52. ‘Consultation’ and ‘deliberation’ should be given their plain English meaning. Their dictionary definitions are:¹⁷
 - Consultation: the action or process of formally consulting or discussing.
 - Deliberation: careful consideration before decision.
53. The Agency has exempted site plans under section 30(1) (Documents 1 to 6). I do not consider they disclose any matter that is in the nature of opinion, advice, recommendation, or consultation or deliberation and therefore, they are not exempt under section 30(1).
54. Document 7 is a tender response by a third party. As such, it is not opinion, advice, recommendation, or consultation or deliberation between Agency officers and therefore, is not exempt under section 30(1).
55. Documents 8-10 set out designs for delivery options for the venue. I do not consider they disclose any matter that is in the nature of opinion, advice, recommendation, or consultation or deliberation and therefore, they are not exempt under section 30(1).
56. Documents 11 to 14 are project management plans. I am satisfied they disclose matter in the nature of advice, because they set out what was planned to be undertaken for the project.

Second requirement – deliberative process

57. I am satisfied the documents were made during, or for the purpose of, the deliberative processes involved in the functions of the government, specifically, the delivery of the Commonwealth Games.

¹⁵ Section 30(3).

¹⁶ See the Macquarie Dictionary.

¹⁷ See the Macquarie Dictionary.

Third requirement – would disclosure be contrary to the public interest?

58. For section 30(1) to apply, disclosure of deliberative information must be contrary to the public interest.
59. There are many factors that may be relevant to determining whether it would be contrary to the public interest to disclose a document or information.¹⁸ The trend towards modern, transparent and accountable government, has resulted in courts and tribunals limiting these factors.
60. Public interest factors are not a fixed, determinative set of criteria.¹⁹ Rather, they are a list of matters that may be relevant. Each request balances these factors based on the unique circumstances of the matter.
61. The Agency's decision states the following:

In relation to the timetable documents, this was advice regarding proposed timing and in light of the cancellation of the Commonwealth Games, the release of the information will undermine the legacy-based projects by providing expectations of timing proposed at a point in time, rather than timing that may apply now to those legacy projects. It is considered that this may create unreasonable expectations and unhelpful commentary in relation to timing options proposed for the Commonwealth Games, rather than those now proposed for legacy work.

62. I am satisfied disclosing Documents 11 to 14 would not be contrary to the public interest because:
 - (a) the documents represent proposals for the project at a particular point in time, and Victoria's hosting of the Commonwealth Games has subsequently been cancelled;
 - (b) while disclosure may result in public commentary or debate about what was intended to be delivered as part of the Commonwealth Games, it does not follow that this would be contrary to the public interest; and
 - (c) I do not consider the State of Victoria will be disadvantaged by disclosing these documents and it is unlikely to interfere with the delivery of any potential ongoing legacy projects in Bendigo.
63. In summary, I am satisfied the documents are not exempt from release under section 30(1).

Section 34(1)(b) – business, commercial or financial information of a third party undertaking

64. A document or information is exempt under section 34(1)(b) if three requirements are satisfied:
 - (a) the document or information was acquired from a business, commercial, or financial undertaking; and

¹⁸ For example, see *Coulson v Department of Premier and Cabinet* [2018] VCAT 229, [25]; *Hulls v Victorian Casino and Gaming Authority* (1998) 12 VAR 483, 488; *Secretary to Department of Justice v Osland* (2007) 26 VAR 425, [77].

¹⁹ *Landes v Vic Roads* [2009] VCAT 2403, [46].

- (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?

65. The Agency's original decision exempted Documents 7 and 32 to 42 under section 34(1)(b).
66. During the review, the Agency also sought to rely on the exemption under section 34(1)(b) to Appendix C of Document 15 and Document 17. The Agency also considered that Appendix H in Document 15 contained commercial information about a business undertaking and that several exemptions may apply.
67. For completeness, I have considered whether section 34(1)(b) applies to appendices to Document 15 and Document 17 that were prepared by entities other than the Agency.
68. I am satisfied that appendices A, C, F and H in Document 15 and Document 17 were obtained from business undertakings. However, Appendix G is a document prepared by another Government agency. As such, it was not acquired from a business, commercial or financial undertaking. Therefore, Appendix G in Document 15 is not exempt under section 34(1)(b).
69. Documents 7 and 32 to 42 are [document type referred to in paragraph 42]proponent responses from several undertakings. I am satisfied that the information was therefore acquired from business undertakings.

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

70. The second requirement requires the acquired information to have a business, commercial, or financial nature. 'Business', 'commercial' and 'financial' should each be given their ordinary meaning.²⁰
71. Information will 'relate to' matters of a business, financial or commercial nature if there is a sufficient or material connection or relationship between the information that would be disclosed by the disclosure of the documents and matters of a business, financial or commercial nature.²¹
72. I am satisfied the information in Appendices A, C and H in Document 15 relate to matters of a business and commercial nature.
73. As stated above, Documents 17 and 32 to 42 are proponent responses to the [document type]. They contain information such as proposed pricing, resource cashflows, and programmes. I am satisfied the information relates to matters of business, commercial and financial nature.

²⁰ *Gibson v Latrobe CC* [2008] VCAT 1340, [25].

²¹ *Commissioner of State Revenue v Tucker* [2021] VCAT 238, [158], citing *J & G Knowles & Associates Pty Ltd v Commissioner of Taxation* [2000] FCA 196.

74. However, I am satisfied Appendix F in Document 15 does not relate to matters of a business, commercial or financial nature. Therefore, Document 15, Appendix F is not exempt under section 34(1)(b).

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

75. In considering whether disclosure will expose an undertaking to unreasonable disadvantage, an agency or Minister should, along with any other relevant consideration, have regard to the factors set out in section 34(2). These include:

- (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.

76. Other relevant consideration includes 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.²²

77. The exemption in section 34(1)(b) balances government transparency and public accountability against protecting legitimate commercial interests.

Document 15, Appendix A

78. The Agency consulted with the undertaking who consented to disclosure of Document 22 with personal information deleted.²³ It is unclear if they were consulted regarding Document 15, Appendix A. In any case, given the undertaking did not object to disclosure of Document 22, I have decided that disclosing this document is not likely to expose the undertaking unreasonably to disadvantage.

Document 15, Appendix C and Document 17

79. The Agency consulted with the undertaking that prepared Document 17 and Appendix C in Document 15. The undertaking objected to disclosure on the basis that the figures could be

²² *Dalla-Riva v Department of Treasury and Finance* [2007] VCAT 1301, [33].

²³ Document 22 was also prepared by this undertaking, however, it was not claimed exempt under section 34(1)(b).

misinterpreted and taken out of context, particularly as the documents were created early in the scoping and design process.

80. I am not satisfied that the third party business undertaking would be exposed unreasonably to disadvantage by disclosure of these documents for the following reasons:
 - (a) they do not contain the undertaking's proprietary information;
 - (b) they do not disclose any methodology or intellectual property of the undertaking;
 - (c) disclosure would not provide competitors of the undertaking with a competitive financial advantage or lead to unwarranted conclusions about any of the undertaking's financial affairs; and
 - (d) disclosure would not result in commercial and market consequences for the undertaking.

Document 15, Appendix H

81. The Agency did not consult with the undertaking who created this document.
82. I am not satisfied that disclosure of this document would be likely to expose the undertaking unreasonably to disadvantage for the following reasons:
 - (a) in my view, it does not contain commercially sensitive information about the undertaking. Rather, it contains their evaluation and recommendations relating to the project;
 - (b) disclosure would not provide competitors of the undertaking with a competitive financial advantage or lead to unwarranted conclusions about the undertaking's financial affairs;
 - (c) disclosure would not result in commercial and market consequences for the undertaking; and
 - (d) I am not satisfied the undertaking's competitors will be able to utilise the information for other projects.

Documents 7 and 32 to 42 – proponent responses to the RFP

83. The Agency consulted with the undertakings to obtain their views on disclosure, which I have considered.
84. I am satisfied that disclosing the itemised cost information would expose the undertakings unreasonably to disadvantage and is exempt from release under section 34(1)(b) for the following reasons:
 - (a) itemised descriptions of proposed services and associated costs for the project are not information that would typically be made available to other entities;
 - (b) itemised costing information is commercially sensitive information; and
 - (c) the itemised costs for the project could still have relevance to potential legacy projects.

85. However, I consider the total amounts can be disclosed without causing harm to the competitive position of the undertakings, where itemised descriptions and costs are not disclosed.
86. For the remainder of the information in those documents, I am satisfied disclosure would not be likely to expose the undertakings unreasonably to disadvantage for the following reasons:
 - (a) much of the information is outdated, such as programme timelines;
 - (b) the proponents' responses are tailored to the [document type referred to in paragraph 42] documents, which for the most part are no longer relevant given Victoria is no longer hosting the Commonwealth Games;
 - (c) the scope of services for any future potential legacy projects are likely to differ from the scope of services of the [document type referred to in paragraph 42];
 - (d) it is unlikely that competitors could copy the proposals as part of bids for any potential legacy projects;
 - (e) it is likely that each of the proponents would reasonably likely want to reconsider their proposals, including renegotiating its fees, should there be an opportunity to bid for future legacy projects; and
 - (f) I am not satisfied disclosure of information would have a significant impact on the market competitiveness of the undertakings.
87. In summary in relation to section 34(1)(b), I am satisfied that only certain information in the documents is exempt from release under section 34(1)(b).

Section 34(4)(a)(ii) – Business, commercial or financial information of an agency engaged in trade and commerce

88. A document or information is exempt under section 34(4)(a)(ii) if three requirements are satisfied:
 - (a) the agency is engaged in trade or commerce; and
 - (b) the document contains information of a business, commercial or financial nature; and
 - (c) disclosure of the information would be likely to expose the agency unreasonably to disadvantage.

Is the Agency engaged in trade and commerce?

89. I am satisfied the Agency is engaged in trade and commerce with respect to the RFP and related documents.

Do the documents contain information of a business, commercial or financial nature?

90. ‘Business’, ‘commercial’ and ‘financial’ should each be given their ordinary meaning.²⁴
91. I am satisfied the RFP and related documents contain information of a business and commercial nature.

Would disclosure of the documents be likely to expose the Agency unreasonably to disadvantage?

92. An agency must be able to explain how disclosing the information would unreasonably expose the agency to disadvantage. Tribunals and courts describe ‘disadvantage’ in terms of the business, commercial or financial implications of disclosure. In particular, whether disclosure is likely to:
 - (a) reduce an agency’s capacity to compete in a competitive market for buying and selling goods or services;²⁵
 - (b) reduce an agency’s capacity to negotiate future commercial contracts;²⁶
 - (c) strengthen the bargaining position of entities the agency negotiates with, at the expense of the agency competing for marketplace share;²⁷ or
 - (d) expose the rates that an agency is prepared to accept for various services – and if so, the likely impact on the agency’s operations.
93. Disclosure of the information must be likely to cause unreasonable disadvantage. ‘Likely’ should be given its plain English meaning – seeming like truth, fact, or certainty, or reasonably to be believed or expected. The test is one of likelihood rather than certainty. It means ‘probable, such as well might happen or be true’.²⁸
94. Whether disclosure is likely to expose an agency unreasonably to disadvantage depends on the particular facts and circumstances of the matter, considering the consequences that are likely to follow from disclosure of the information.
95. The word ‘unreasonably’ should be seen in the context of the balancing process between competing factors of the perceived need for confidentiality and the need for public accountability and transparency on the part of the government, its departments and agencies.²⁹
96. I am not satisfied the disclosure of the [document type referred to in paragraph 42] and the proponents’ responses to the [document type] would be likely to expose the Agency unreasonably to disadvantage for the following reasons:

²⁴ *Gibson v Latrobe CC* [2008] VCAT 1340, [25].

²⁵ *Binnie v Department of Industry, Technology & Resources* (1986) 1 VAR 345, 348.

²⁶ *Ibid; Davis v Department of Transport* [2022] VCAT 721, [58].

²⁷ *Save Albert Park Inc v Australian Grand Prix Corporation* [2008] VCAT 168, [77].

²⁸ *Asher v Department of Innovation, Industry and Regional Development* [2005] VCAT 2702, [38].

²⁹ *Ibid.*

- (a) the [document type referred to in paragraph 42] was issued to the market, albeit confidentiality;
- (b) the [document type referred to in paragraph 42] was put on hold given Victoria's withdrawal of hosting the Commonwealth Games; and
- (c) I do not consider the documents contain information that could jeopardise the competitiveness and value for money outcomes for any future RFP process, for example, for potential legacy projects that may have similarity to the Bendigo venue to which these [document type referred to in paragraph 42] documents subject to my review relate to.

97. In summary, I am satisfied information in the documents is not exempt from release under section 34(4)(a)(ii).

Section 25 – Deletion of exempt or irrelevant information

98. 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.

99. As stated above, the Applicant specified in their request that they do not seek access to the following information, which is irrelevant information for the purposes of their FOI request and my review:

- (a) personal affairs information of Agency officers below executive level; and
- (b) names, job titles and signatures of external individuals.

100. I am satisfied it is practicable to edit the documents to delete exempt and irrelevant information in accordance with section 25.

Conclusion

101. On the information before me, I am satisfied that certain information in the documents is exempt under section 34(1)(b) and I am not satisfied information is exempt under sections 28(1)(b), 28(1)(c), 30(1) or 34(4)(a)(ii). I am also satisfied that certain information falls outside the terms of the Applicant's request and is to remain deleted as irrelevant information in accordance with section 25.

102. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document and the Agency has been provided with marked-up copies of some of the documents in accordance with my decision.

Timeframe to seek a review of my decision

103. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.³⁰

³⁰ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

104. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.³¹
105. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.³²
106. 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.
107. 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.³³

Third party review rights

108. As I have decided to release information the Agency claimed exempt under section 34(1)(b), if practicable, I am required to notify the affected third parties of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.³⁴
109. In this case, I am satisfied it is practicable to notify the third parties of their review rights and confirm they will be notified as soon as practicable.
110. Several third parties who consented to disclosure of information relating to them will not be notified, nor will the third party in Appendix G in Document 15 which is a publicly available document.³⁵

When this decision takes effect

111. 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.

³¹ Section 52(5).

³² Section 52(9).

³³ Sections 50(3F) and 50(3FA).

³⁴ Sections 49P(5), 50(3A) and 52(3).

³⁵ Section 50(3AC).

Annexure 1 – Schedule of Documents

Doc. No.	Pg. No.	Date	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.	1	[Date]	Designs	1	Refused in full Section 30(1)	Release in full	Section 30(1): I am satisfied this document is not exempt from release under section 30(1).
2.	2	[Date]	Designs	1	Refused in full Section 30(1)	Release in full	Section 30(1): See comments for Document 1.
3.	3	[Date]	Designs	1	Refused in full Section 30(1)	Release in full	Section 30(1): See comments for Document 1.
4.	4	[Date]	Designs	1	Refused in full Section 30(1)	Release in full	Section 30(1): See comments for Document 1.
5.	5	[Date]	Designs	1	Refused in full Section 30(1)	Release in full	Section 30(1): See comments for Document 1.
6.	6	[Date]	Designs	1	Refused in full Section 30(1)	Release in full	Section 30(1): See comments for Document 1.
7.	7-32	Undated	Form D	26	Refused in full Sections 30(1), 34(1)(b), 25	Release in part Section 25 The names of external third parties and their	Section 30(1): See comments for Document 1.

Doc. No.	Pg. No.	Date	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					position titles are to be deleted from this document: see pages 7 and 17.	Section 34(1)(b): I am satisfied this document is not exempt from release under section 34(1)(b). Section 25: I am satisfied it is practicable to edit this document to delete irrelevant personal affairs information in accordance with section 25.	
8.	33	Undated	Base Case	1	Refused in full Section 30(1)	Release in full	Section 30(1): See comments for Document 1.
9.	34	Undated	Base Case Plus	1	Refused in full Section 30(1)	Release in full	Section 30(1): See comments for Document 1.
10.	35	Undated	Project case	1	Refused in full Section 30(1)	Release in full	Section 30(1): See comments for Document 1.
11.	36	[Date]	2026 Venues programme under development	1	Refused in full Section 30(1)	Release in full	Section 30(1): See comments for Document 1.
12.	37-39	[Date]	2026 Venues programme under development (Detail)	3	Refused in full Section 30(1)	Release in full	Section 30(1): See comments for Document 1.
13.	40-42	[Date]	2026 Venues programme under development	3	Refused in full	Release in full	Section 30(1): See comments for Document 1.

Doc. No.	Pg. No.	Date	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					Section 30(1)		
14.	43.	[Date]	2026 Venues programme under development	1	Refused in full Section 30(1)	Release in full	Section 30(1): See comments for Document 1.
15.	44-259	Undated	Project Implementation Plan, Appendices A - H	216	Refused in full Section 28(1)(b)	Release in part Section 25 <ul style="list-style-type: none"> • Appendix A is to be released in full; • Appendix B is to be released in full; • Appendix C is to be released in full; • Appendix D is to be released in full; • Appendix E is to be released in full; 	Section 28(1)(b): I am satisfied the document is not exempt from release under section 28(1)(b) Section 34(1)(b): See comments for Document 7. Section 25: See comments for Document 7. Other: Regarding the Forecast Cashflow on pages 116 to 118, see comments for Document 17 below and Document 7, above.

Doc. No.	Pg. No.	Date	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<ul style="list-style-type: none"> • Appendix F is to be released in full. • Appendix G is to be released in full; • Appendix H is to be released with names deleted in accordance with section 25; and • the Forecast Cashflow dated [date] on pages 116 to 118 is to be released in full. 	
16.	260-274	Undated	Project Implementation Plan	15	Refused in full Section 28(1)(b)	Release in part Section 25 The document is to be released with names of non-executive staff deleted in accordance with section 25. For	Section 28(1)(b): See comments for Document 15. Section 25: See comments for Document 7.

Doc. No.	Pg. No.	Date	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					clarity, the annotations in the document are to be released.		
17.	275-277	[Date]	Forecast Cashflow	3	Refused in full Sections 28(1)(b), 28(1)(c), 34(1)(b)	Release in full	<p>During the review, the Agency submitted the document is also exempt under sections 28(1)(c) and 34(1)(b).</p> <p>Section 28(1)(b): See comments for Document 15.</p> <p>Section 28(1)(c): I am satisfied the document is not exempt from release under section 28(1)(c).</p> <p>Section 34(1)(b): See comments for Document 7.</p>
18.	278-317	[Date]	[document type referred to in paragraph 42]	40	Refused in full Sections 28(1)(b), 34(4)(a)(ii)	<p>Release in part Section 25</p> <p>The document is to be released with the following personal affairs information deleted in accordance with section 25:</p>	<p>Section 28(1)(b): See comments for Document 15.</p> <p>Section 34(4)(1)(ii): I am satisfied this document is not exempt from release under section 34(4)(a)(ii).</p> <p>Section 25: See comments for Document 7.</p>

Doc. No.	Pg. No.	Date	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<ul style="list-style-type: none"> the name and position title on page 283; names and email addresses of third parties on page 289; names and email addresses of third parties on page 291; and the position title on page 293. 	
19.	318-340	[Date]	[document type referred to in paragraph 42]– Part C	23	Refused in full Sections 28(1)(b), 34(4)(a)(ii)	Release in full	<p>This document forms part of the RFP.</p> <p>Section 28(1)(b): See comments for Document 15.</p> <p>Section 34(4)(a)(ii): See comments for Document 18.</p>
20.	341-366	Undated	[document type referred to in paragraph 42]– Part F	27	Refused in full Sections 28(1)(b), 34(4)(a)(ii)	Release in full	<p>This document forms part of the RFP.</p> <p>Section 28(1)(b): See comments for Document 15.</p>

Doc. No.	Pg. No.	Date	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
							Section 34(4)(a)(ii): See comments for Document 18.
21.	367-369	Undated	[Document type]	2	Refused in full Sections 28(1)(b), 34(4)(a)(ii)	Release in full	This is an attachment to Document 20. Section 28(1)(b): See comments for Document 15. Section 34(4)(a)(ii): See comments for Document 18.
22.	370-449	[Date]	Functional Brief	80	Refused in full Sections 28(1)(b), 34(4)(a)(ii)	Release in part Section 25 The initials of third parties on page 405 are to be deleted in accordance with section 25, as it is irrelevant personal affairs information. The remainder of the document is to be released.	This document is an appendix to the RFP. Section 28(1)(b): See comments for Document 15. Section 34(4)(a)(ii): See comments for Document 18. Section 25: See comments for Document 7.
23.	450-476	[Date]	Design team briefing	27	Refused in full Sections 28(1)(b), 34(4)(a)(ii)	Release in part Section 25	This document is an appendix to the RFP. Section 28(1)(b): See comments for Document 15.

Doc. No.	Pg. No.	Date	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						The document is to be released with all names deleted in accordance with section 25.	Section 34(4)(a)(ii): See comments for Document 18. Section 25: See comments for Document 7.
24.	477-512	Undated	Dhelkunya Dja Dja Dja Wurrung Country Plan 2014-2034	36	Released in full	Not subject to review	
25.	513-517	[Date]	Plans	5	Refused in full Sections 28(1)(b), 34(4)(a)(ii)	Release in part Section 25 The document is to be released with all initials of third parties deleted in accordance with section 25.	This document appears to form part of Appendix 4 of the RFP. Section 28(1)(b): See comments for Document 15. Section 34(4)(a)(ii): See comments for Document 18. Section 25: See comments for Document 7.
26.	518-546	[Date]	Heritage Due Diligence Assessment	29	Refused in full Sections 28(1)(b), 34(4)(a)(ii)	Release in part Section 25 The document is to be released with the following information deleted in accordance with section 25:	This document appears to form part of Appendix 4 of the RFP. Section 28(1)(b): See comments for Document 15. Section 34(4)(a)(ii): See comments for Document 18.

Doc. No.	Pg. No.	Date	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<ul style="list-style-type: none"> • all initials and names of third parties; • part 1.5 on page 524; and • the mobile number and email address of a third party on page 546 (in addition to names and initials on that page). 	Section 25: See comments for Document 7.
27.	547-555	[Date]	Technical Brief	9	Refused in full Sections 28(1)(b), 34(4)(a)(ii)	Release in part Section 25 The document is to be released with all initials of third parties deleted in accordance with section 25.	<p>This document appears to form part of Appendix 4 of the RFP.</p> <p>Section 28(1)(b): See comments for Document 15.</p> <p>Section 34(4)(a)(ii): See comments for Document 18.</p> <p>Section 25: See comments for Document 7.</p>

Doc. No.	Pg. No.	Date	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
28.	556-603	[Date]	Flora and Fauna Assessment draft report	48	Refused in full Sections 28(1)(b), 34(4)(a)(ii)	Release in part Section 25 The document is to be released with names and initials of third parties deleted in accordance with section 25.	This document appears to form part of Appendix 4 of the RFP. Section 28(1)(b): See comments for Document 15. Section 34(4)(a)(ii): See comments for Document 18. Section 25: See comments for Document 7.
29.	604-659	[Date]	Preliminary arboricultural assessment and report – draft	56	Refused in full Sections 28(1)(b), 34(4)(a)(ii)	Release in part Section 25 The document is to be released with all names, position titles, qualifications, contact details, signatures and images of third parties on pages 612, 613, 624, 626, and 627 deleted in accordance with section 25.	This document appears to be an attachment to Document 28. Section 28(1)(b): See comments for Document 15. Section 34(4)(a)(ii): See comments for Document 18. Section 25: See comments for Document 7.
30.	660-661	Undated	[Document type referred to in paragraph 42]	2	Refused in full	Release in full	This is an appendix to the RFP.

Doc. No.	Pg. No.	Date	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					Sections 28(1)(b), 34(4)(a)(ii)		Section 28(1)(b): See comments for Document 15. Section 34(4)(a)(ii): See comments for Document 18.
31.	662	[Date]	List	1	Refused in full Sections 28(1)(b), 34(4)(a)(ii)	Release in part Section 25 The document is to be released with names, position titles and contact details deleted in accordance with section 25.	This is an appendix to the RFP. Section 28(1)(b): See comments for Document 15. Section 34(4)(a)(ii): See comments for Document 18. Section 25: See comments for Document 7.
32.	663-681	[Date]	Tender Proposal	19	Released in part Sections 34(1)(b), 34(4)(a)(ii)	Release in part Sections 34(1)(b), 25 The document is to be released in accordance with the marked-up version provided to the Agency with my decision.	Section 34(1)(b): I am satisfied certain information in this document is exempt from release under section 34(1)(b). Section 34(4)(a)(ii): See comments for Document 18. Section 25: It is practicable to edit this document to delete exempt and irrelevant information.
33.	682-683	Undated	Resource Cashflow Proforma	2	Released in part	Release in part	Section 34(1)(b): See comments for Document 32.

Doc. No.	Pg. No.	Date	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					Sections 34(1)(b), 34(4)(a)(ii) The document is to be released in accordance with the marked-up version provided to the Agency with my decision.	Sections 34(1)(b), 25 The document is to be released in accordance with the marked-up version provided to the Agency with my decision.	Section 34(4)(a)(ii): See comments for Document 18. Section 25: See comments for Document 32.
34.	684-686	Undated	Resource Cashflow Proforma	3	Released in part Sections 34(1)(b), 34(4)(a)(ii)	Release in part Sections 34(1)(b), 25 The document is to be released in accordance with the marked-up version provided to the Agency with my decision.	Section 34(1)(b): See comments for Document 32. Section 34(4)(a)(ii): See comments for Document 18. Section 25: See comments for Document 32.
35.	687-690	[Date]	Pricing of the Services	4	Released in part Sections 34(1)(b), 34(4)(a)(ii)	Release in part Sections 34(1)(b), 25 The document is to be released in accordance with the marked-up version provided to the Agency with my decision.	Section 34(1)(b): See comments for Document 32. Section 34(4)(a)(ii): See comments for Document 18. Section 25: See comments for Document 32.
36.	691-698	Undated	Form F Pricing of Services	8	Released in part	Release in part	Section 34(1)(b): See comments for Document 32.

Doc. No.	Pg. No.	Date	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					Sections 34(1)(b), 34(4)(a)(ii) The document is to be released in accordance with the marked-up version provided to the Agency with my decision.	Sections 34(1)(b), 25 The following information is exempt from release under section 34(1)(b) or irrelevant personal affairs information: <ul style="list-style-type: none">the monetary figures in the first table on page 699, except for the total amount;the table at the bottom of page 699, including the text to the	Section 34(4)(a)(ii): See comments for Document 18. Section 25: See comments for Document 32.
37.	699-703	[Date]	Pricing of Services	5	Released in part Sections 34(1)(b), 34(4)(a)(ii)	Release in part Sections 34(1)(b), 25 The following information is exempt from release under section 34(1)(b) or irrelevant personal affairs information: <ul style="list-style-type: none">the monetary figures in the first table on page 699, except for the total amount;the table at the bottom of page 699, including the text to the	Section 34(1)(b): See comments for Document 32. Section 34(4)(a)(ii): See comments for Document 18. Section 25: See comments for Document 32.

Doc. No.	Pg. No.	Date	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>right of the table, except for the total amount;</p> <ul style="list-style-type: none"> the tables on pages 700, 701 and 702 under schedule of rates; and the table on page 703, excluding the heading (the text under the table is to be released). 	
38.	704-706	[Date]	Pricing of the Services	3	Released in part Sections 34(1)(b), 34(4)(a)(ii)	Release in part Sections 34(1)(b), 25 The document is to be released in accordance with the marked-up version provided to the Agency with my decision.	<p>Section 34(1)(b): See comments for Document 32.</p> <p>Section 34(4)(a)(ii): See comments for Document 18.</p> <p>Section 25: See comments for Document 32.</p>

Doc. No.	Pg. No.	Date	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
39.	707-708	Undated	Resource Cashflow Proforma	2	Released in part Sections 34(1)(b), 34(4)(a)(ii)	Release in part Sections 34(1)(b), 25 The document is to be released in accordance with the marked-up version provided to the Agency with my decision.	Section 34(1)(b): See comments for Document 32. Section 34(4)(a)(ii): See comments for Document 18. Section 25: See comments for Document 32.
40.	709-710	Undated	Resource Cashflow Proforma	2	Released in part Sections 34(1)(b), 34(4)(a)(ii)	Release in part Sections 34(1)(b), 25 The document is to be released in accordance with the marked-up version provided to the Agency with my decision.	Section 34(1)(b): See comments for Document 32. Section 34(4)(a)(ii): See comments for Document 18. Section 25: See comments for Document 32.
41.	711-712	[Date]	Tender Clarifications Register	2	Refused in full Sections 34(1)(b), 34(4)(a)(ii)	Release in part Section 34(1)(b) The document is to be released in accordance with the marked-up version provided to the Agency with my decision.	Section 34(1)(b): See comments for Document 32. Section 34(4)(a)(ii): See comments for Document 18. Section 25: It is practicable to edit this document to delete exempt information.

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Doc. No.	Pg. No.	Date	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
42.	713-714	[Date]	Tender Clarifications Register	2	Refused in full Sections 34(1)(b), 34(4)(a)(ii)	Release in part Section 34(1)(b) The document is to be released in accordance with the marked-up version provided to the Agency with my decision.	Section 34(1)(b): See comments for Document 32. Section 34(4)(a)(ii): See comments for Document 18. Section 25: It is practicable to edit this document to delete exempt information.