

Notice of Decision and Reasons for Decision

Applicant:	'GC4'
Agency:	Department of Justice and Community Safety
Decision date:	29 August 2025
Exemptions and provision considered:	Sections 28(1)(ba), 28(1)(c), 28(1)(d), 30(1), 33(1), 25
Citation:	'GC4' and Department of Justice and Community Safety (Freedom of Information) [2025] VICmr 84 (29 August 2025)

FREEDOM OF INFORMATION – Ministerial briefings – integrity agency [financial year] budget submissions – law reform – meeting with the Police Association Victoria – meeting with Victoria Police

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 fresh decision to refuse access to documents requested by the Applicant under the FOI Act.

My decision on the Applicant's request differs slightly from the Agency's fresh decision and a small amount of additional information is to be released in Documents 5 and 7.

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

Annotated copies of Documents 5 and 7 showing exempt information in accordance with my decision have been provided to the Agency.

Please refer to page 10 for information about review rights through the Victorian Civil and Administrative Tribunal (VCAT).

My reasons for decision follow.

Penny Eastman
Public Access Deputy Commissioner

29 August 2025

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to the following documents:

A copy of the following Ministerial briefs, without attachments:

23024634 – [Minister] Meeting – [name]

23032223 – Briefing for [Minister] – [title] – policy proposal

23014153 – Integrity agency [financial year] budget submissions

23012892 – [Minister] Briefing – [title] (reintroduced Bill) [title]

23021523 – [Minister] Meeting – AG and [name] – [date]

22115266 – Brief to [Minister] [title] [financial year]

23016080 – [Minister] Meeting – [Minister] and [name] – [date]

22114286 – Brief – [title]

2. The Agency identified the 8 briefs requested, totaling 15 pages, and granted access to 4 documents in part and refused access to 4 documents in full. The Agency relied on exemptions under sections 28(1)(ba), 30(1), 32(1) and 33(1) to refuse access to information in the documents. The Agency's decision letter sets out the reasons for its decision.

Review application

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. The Applicant specified in their review application that they only sought review of the Agency's decision to refuse access to 4 documents in full, and information exempted under section 30(1) in Document 4.
5. Section 49M(1) permits an agency to make a fresh decision on an FOI request during a review.
6. On [date], the Agency made a fresh decision in relation to Documents 2, 3, 4, 5 and 7. The Agency released additional information to the Applicant in its fresh decision. However, it also relied on additional exemptions, including sections 28(1)(c), 28(1)(d) and 35(1)(b). The Schedule of Documents in **Annexure 1** sets out the Agency's fresh decision.
7. The Applicant agreed with the Agency's fresh decision in relation to Documents 2 and 4 but did not agree with its decision on Documents 3, 5 and 7. Accordingly, I have proceeded with my review of the fresh decision as required by section 49MA(2).
8. Document 3 includes information in relation to OVIC's funding. OVIC staff therefore advised the Applicant that it would not be appropriate for OVIC to review that information. The Applicant was advised that they could either seek review by VCAT or withdraw their request for OVIC to

review information that concerns OVIC. The Applicant decided to withdraw their request to OVIC to review information regarding OVIC.

9. I have examined a copy of the documents subject to review.
10. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
11. I have considered relevant communications and submissions received from the parties.
12. 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.
13. 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.
14. 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)(ba) – Documents prepared for the purpose of briefing a Minister about issues to be considered by the Cabinet

15. Section 28(1)(ba) exempts from release a document that was prepared for a Minister to brief them about an issue to be considered by the Cabinet.
16. The exemption has two limbs that must be satisfied:
 - whether the document was prepared for the purpose of briefing a Minister
 - second, whether the briefing of the Minister was in relation to an issue that was, assessed objectively at the time the briefing occurred, an issue that was to be considered by the Cabinet.²
17. The document must have been created for the sole, substantial or dominant purpose of briefing a Minister.³

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

² *Hennessy v Minister Responsible for the Establishment of an Anti-Corruption Commission* [2013] VCAT 822, [22]; *Department of Premier and Cabinet v Newbury* [2021] VCAT 331, [14].

³ *Ryan v Department of Infrastructure* [2004] VCAT 2346, [34]; *Herald & Weekly Times v Victorian Curriculum & Assessment Authority* [2004] VCAT 924, [72].

18. The document does not need to have been, in fact, provided to the Minister, so long as it was prepared to brief the Minister.⁴ Where there is no evidence of the purpose of the document's creation, the actual use of the document can assist to determine the purpose of its creation, but is not decisive.⁵
19. The exemption is limited to documents that have the character of briefing material.⁶
20. It must be more than just 'likely' that the Cabinet will consider the issues outlined in the briefing. There must be an intention or expectation that the issue will be considered by the Cabinet (even if not ultimately considered).⁷
21. The purpose of briefing a Minister in relation to an issue to be considered by the Cabinet must be 'immediately contemplated' when the document is created. The exemption cannot apply:
 - merely because Cabinet ultimately considers the issue⁸ or
 - it is expected Cabinet is likely to consider the relevant issues in the future or from time to time.⁹
22. Documents 3, 5 and 7 were prepared for the purpose of briefing a Minister.
23. Regarding Document 3, I am satisfied based on its content that it was prepared for briefing a Minister on matters to be considered by Cabinet. It is therefore exempt under section 28(1)(ba).
24. Regarding Document 5 and 7, during the review, OVIC staff advised the Agency that I required further information to be satisfied that the specific matters discussed in Documents 5 and 7 were intended to be considered by Cabinet (in relation to section 28(1)(ba) or are extracts of Cabinet submissions (in relation to section 28(1)(c)).
25. This resulted in the Agency making a further submission and providing 6 additional extrinsic documents in support of its submission and assist me in making my decision.
26. I have carefully considered the Agency's additional submission and the extrinsic documents.
27. I am satisfied that in most instances; the Agency has provided sufficient information in its submissions and the extrinsic documents to be satisfied that the issues to which the Minister was being briefed relate to issues that were to be considered by Cabinet. For certain information in the documents, this is evident from the content in the document without having to rely on supporting submission or extrinsic documents.
28. However, in some instances, I am not satisfied that all information that the Agency exempted under section 28(1)(ba) is in relation to an issue that was, assessed objectively at the time the

⁴ *Department of Premier and Cabinet v Newbury* [2021] VCAT 331, [32]; *Ryan v Department of Infrastructure* [2004] VCAT 2346, [34].

⁵ *Ryan v Department of Infrastructure* [2004] VCAT 2346, [34]; *Department of Treasury and Finance v Dalla-Riva* [2007] VSCA 11, [15].

⁶ *Ryan v Department of Infrastructure* [2004] VCAT 2346, [41].

⁷ *Mildenhall v Department of Treasury and Finance* (unreported, AAT, Macnamara DP, 18 March 1996), 14.

⁸ *Thwaites v Department of Health and Community Services* (unreported, AAT of Vic, Macnamara DP, 4 April 1996), 17.

⁹ *Environment Victoria Inc v Department of Primary Industries* [2013] VCAT 39, [38]-[41].

briefing occurred, an issue that was to be considered by the Cabinet. For certain information in the documents, I am not satisfied that the supporting evidence provided by the Agency indicates that the matters were intended to be considered by Cabinet. For other information, the information exempted by the Agency is high-level and relates to a general topic that Cabinet would likely consider at a later stage. However, the information in the ministerial briefing itself would unlikely be considered by Cabinet.

29. Accordingly, while I am satisfied certain information in the documents is exempt from release under section 28(1)(ba), I am not satisfied it applies in all instances claimed by the Agency. However, in multiple cases, I find section 30(1) applies to that content as further detailed below.

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

30. 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).
31. The Agency relied on this exemption over information in each document subject to my review. However, I will only consider its application to Documents 5 and 7.
32. The Agency decided that these documents contain extracts from other documents that would be exempt from release under section 28.
33. An extract usually contains a reproduction of part of the text or material such as a quote, paraphrase, or summary.¹⁰ Simply referring to a Cabinet document or incorporating figures that appeared in a table in a Cabinet submission, is not sufficient.¹¹ The document containing extracts must have been created after the official record, Cabinet submission or Ministerial brief was prepared.¹²
34. As stated above with respect to section 28(1)(ba), the Agency provided an additional submission with supporting extrinsic documents following OVIC's view that further information was required for OVIC to be satisfied that the exemptions under section 28 applied.
35. After careful consideration of the additional information provided by the Agency, I am not satisfied that section 28(1)(c) applies. In my view, the information that was exempted under section 28(1)(c) are not extracts of the supporting documents.
36. In two instances where section 28(1)(c) was claimed, I have decided that section 28(1)(ba) applies. Therefore, it is unnecessary to consider section 28(1)(c) over the same information. This applies to information in Document 5, part 2.2, paragraph 3, sentence 2, and Document 7, part 2.2, paragraph 2, sentence 2.

¹⁰ *Mildenhall v Department of Education* (unreported, VCAT, Glover M, 16 April 1999); *Honeywood v Department of Human Services* [2006] VCAT 2048 [19].

¹¹ *Mildenhall v Department of Education* (unreported, VCAT, Glover M, 16 April 1999); *Batchelor v Department of Premier and Cabinet* (unreported, AAT of Vic, Fagan P and Coghlan M, 29 January 1998) 23.

¹² *Honeywood v Department of Human Services* [2006] VCAT 2048 [19]; *Smith v Department of Sustainability and Environment (General)* [2006] VCAT 1228 [28].

37. I have also decided that some of the information exempted under section 28(1)(c) is instead exempted under section 30(1). Section 30(1) will be discussed below.

38. Accordingly, I am not satisfied information is exempt under section 28(1)(c).

Section 28(1)(d) – Documents that disclose any deliberation or decision of the Cabinet

39. Section 28(1)(d) exempts a document that would disclose any deliberation or decision of the Cabinet. It does not include a document by which a decision of the Cabinet was officially published.

40. Where the decision or recommendation of the Cabinet has been made public already, releasing information is unlikely to ‘disclose’ the Cabinet decision or deliberation.¹³

41. ‘Deliberation’ means the actual debate that took place, not just the subject matter of the debate (what the debate was about). In other words, how the subject matter was treated (how arguments were weighed up and evaluated) by the Cabinet with a view to making a decision, not just the subject matter itself.¹⁴

42. A document may reveal deliberations of Cabinet if the document, on its face:¹⁵

- discloses that the Cabinet required information of a particular type for the purpose of enabling the Cabinet to determine whether a course of action was practicable or feasible or
- advances an argument for a particular point of view.

43. In contrast, a document that just reveals that certain information, such as a statistic or description of an event, was placed before Cabinet does not reveal a deliberation or decision of the Cabinet.¹⁶

44. Decision means any conclusions as to a course of action the Cabinet adopts, whether they are conclusions as to final strategy on a matter or conclusions about how a matter should proceed.¹⁷

45. The Agency has relied on this exemption to redact parts of Documents 5 and 7.

46. In relation to part 1.1 of Document 5, I consider the information exempted under section 28(1)(d) is instead exempt under section 28(1)(ba). Further, I consider the Agency has not provided sufficient information for me to be satisfied that the last 7 words in part 1.1 would reveal a decision or deliberation by the Cabinet. The information is high-level and no relevant supporting information was provided.

¹³ *Honeywood v Department of Innovation, Industry and Regional Development* [2004] VCAT 1657, [26].

¹⁴ *Department of Infrastructure v Asher* [2007] VSCA 272, [6] and [58].

¹⁵ *Department of Infrastructure v Asher* [2007] VSCA 272, [8].

¹⁶ *Ibid.*

¹⁷ *Dalla-Riva v Department of Treasury and Finance* [2005] VCAT 2083, [30] citing *Toomer and Department of Agriculture, Fishers and Forestry and Ors* [2003] AATA 1301 [88].

47. In relation to part 3.1 of Document 5, while I am satisfied part of the sentence exempted by the Agency reveals a decision by a Cabinet committee, it also discloses information about a matter that would not have been deliberated or decided on by Cabinet. As such, only part of the redacted information is exempt under section 28(1)(d). The first five words after the comma and the last two words of the first sentence are to be released. The same information is in Document 7, paragraph 1.1.
48. Accordingly, I am satisfied that certain information in Documents 5 and 7 is exempt under section 28(1)(d), however, I have decided to release additional information.

Section 30(1) – Internal working documents

49. 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.
50. Public interest factors that are given weight in the context of a modern, transparent and accountable government include:
 - 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 documents were created
 - the stage of a decision or policy development at the time the communications were made
 - whether disclosure of the documents would be likely to inhibit communications between agency officers that are essential for the agency to make an informed and well-considered decision or for those officers to properly participate in a process of the agency's functions (such as an audit or investigation, regulatory or law enforcement function)
 - whether disclosure of the documents would give merely a part explanation, rather than a complete explanation, for the taking of a particular decision or the outcome of a process, but only where the agency would not otherwise be able to explain upon disclosure of the documents
 - the impact of disclosing documents in draft form, including disclosure 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 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.

51. The Agency has relied on this exemption over parts of Documents 5 and 7. However, in some instances, I have considered its application to other exempted information in these documents where I was satisfied sections 28(1)(ba) or 28(1)(c) do not apply.

52. The documents contain opinion and advice prepared by Agency officers, created during the deliberative processes of the Agency, specifically, consideration of law reform.

53. After careful consideration, I am satisfied that it would be contrary to the public interest to disclose certain information in Documents 5 and 7 for the following reasons:

- the information concerns law reform matters at a preliminary stage when stakeholder consultation was occurring
- certain information discloses speculative information relating to what consultation responses were expected to be received, and therefore, does not necessarily reflect the actual views of the stakeholders
- the consultation would have been undertaken with an expectation of confidentiality
- the law reform under consideration concern somewhat sensitive topics
- disclosing the information at this stage would not promote a public interest.

54. As such, I am satisfied certain information in the documents is exempt under section 30(1).

Section 33(1) – Document affecting personal privacy

55. A document or information is exempt under section 33(1) if two conditions are satisfied:

- the document or information relates to the 'personal affairs' of a natural person (living or deceased)
- disclosure of that personal affairs information is unreasonable in all the circumstances.

56. The Agency has exempted telephone numbers of senior Agency officers under section 33(1).

57. Telephone numbers are the personal affairs information of those Agency officers.

58. When deciding whether disclosure would be unreasonable, I must consider whether disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person.¹⁸ This mandatory consideration. However, I consider it is not relevant to this case.
59. I have decided that it would be unreasonable to disclose the telephone numbers because:
 - direct telephone numbers are generally not made available to the public
 - there is no public interest in disclosing them to the Applicant
 - the Agency officers' names and position titles have already been released
 - disclosing the numbers will not meaningfully add to the Applicant's understanding of the documents.

60. Accordingly, the telephone numbers are to remain exempt from release under section 33(1).

Section 25 – Deletion of exempt or irrelevant information

61. 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.
62. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹⁹ and the effectiveness of the deletions. Where deletions would render a document meaningless, they are not 'practicable' and release of the document is not required under section 25.²⁰
63. Document 3 contains irrelevant information about OVIC, that is not subject to my review.
64. I am satisfied it is not practicable to edit Document 3 to delete exempt and irrelevant information as it would render the document meaningless. Therefore, access is refused in full.
65. The Agency released edited copies of Documents 5 and 7, and it remains practicable to edit those documents to delete exempt information.

Conclusion

66. On the information before me, I am satisfied certain information in the documents is exempt from release under sections 28(1)(ba), 28(1)(d), 30(1) and 33(1). However, I have decided to release additional information to the Applicant.

¹⁸ Section 33(2A).

¹⁹ *Mickelburgh v Victoria Police (General)* [2009] VCAT 2786, [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967, [82].

²⁰ *Honeywood v Department of Human Services* [2006] VCAT 2048, [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267, [140], [155].

67. I am satisfied that it is not practicable to edit Document 3 to delete exempt and irrelevant information, and that it is practicable to edit Documents 5 and 7 to delete exempt information.
68. As OVIC cannot copy documents exempted under section 28, the Agency has instead been provided with an annotated copy of the version of the documents it released to the Applicant with its fresh decision. This version shows the information I have found exempt and under what exemption for Documents 5 and 7.

Timeframe to seek a review of my decision

69. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.²¹
70. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.²²
71. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.²³
72. 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.
73. 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.²⁴

When this decision takes effect

74. My decision does not take effect until the Agency's 14 day review period expires. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

²¹ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

²² Section 52(5).

²³ Section 52(9).

²⁴ Sections 50(3F) and 50(3FA).

Annexure 1 – Schedule of Documents

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision
3.	[Date]	23014153 - [title] [financial year] budget submissions	2	Refused in full Sections 28(1)(ba), 28(1)(c)	Refused in full Section 28(1)(ba), 25
5.	[Date]	23021523 - [Minister] Meeting - [Minister] and [named person] - [date]	2	Released in part Sections 28(1)(ba), 28(1)(c), 28(1)(d), 30(1), 35(1)(b)	Release in part Sections 28(1)(ba), 28(1)(d), 30(1), 33(1)
7.	[Date]	3016080 - [Minister] Meeting - [Minister] and [named person] - [date]	2	Released in part Sections 28(1)(ba), 28(1)(c), 30(1), 33(1)	Release in part Sections 28(1)(ba), 28(1)(d), 30(1), 33(1)