

Notice of Decision and Reasons for Decision

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| Applicant: | 'GG2' |
| Agency: | Federation University Australia |
| Decision date: | 9 February 2026 |
| Exemptions and provision considered: | Sections 30(1), 33(1), 34(1)(a), 34(1)(b), 34(4)(a)(ii), 25 |
| Citation: | 'GG2' and Federation University Australia (<i>Freedom of Information</i>) [2026] VICmr 2 (9 February 2026) |

FREEDOM OF INFORMATION – remuneration – senior agency officers – key performance indicators – strategic plan – committee minutes

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 decisions 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.

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

Please refer to pages 11-12 for information about review rights through the Victorian Civil and Administrative Tribunal (VCAT).



The Applicant has 60 days from the date they receive this decision to apply to VCAT.

My reasons for decision follow.

Penny Eastman
Public Access Deputy Commissioner

9 February 2026

Reasons for Decision

Background to review

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

Policies, processes, protocols (howsoever described) which govern how appointment decisions are to be made in respect of University Officials.

In this Schedule, University Officials refers to the following positions, along with persons who currently occupy or formerly occupied those positions: [4 position titles]

Policies, processes, protocols (howsoever described) which govern how Remuneration Arrangements are to be set, and reviewed, in respect of University Officials.

In this Schedule, Remuneration Arrangements includes but is not limited to:

- the base salaries or range of base salaries applicable to each category of individual position [4 position titles];
- the benchmarking of salaries for University Official positions;
- the incentive or bonus plans applicable to University Officials and the tangible financial and non-financial measures and performance review metrics which trigger incentives or bonus payments; and
- the actual total reward (or range of actual total reward) paid for the positions themselves and paid to individual University Officials or prospective (eg. under contract) University Officials.

Documents that detail or report Remuneration Arrangements for University Officials (as defined in Category 2). [Specified timeframe provided]

Documents that disclose or report the Remuneration Arrangements (as defined in Category 2) of one or more University Officials to any third party or entity. [Specified timeframe provided]

2. The Agency identified 1 document falling within the terms of the Applicant's request and refused access to it under sections 33(1) and '34'. While not identified by the Agency, from the decision it appears it intended to apply section 34(4)(a)(ii) to the document. The Agency's decision letter (first decision) 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 also complained about the adequacy of the Agency's search. In accordance with section 61B(3), these concerns were dealt with by this review.
5. OVIC staff made further enquiries with the Agency to address the Applicant's concerns. The Agency identified further documents falling with in the terms of the request and made a decision on those documents (second decision).

6. Given both the Agency's decisions refer to the same FOI request, my decision will review all the documents referenced in the Agency's first and second decisions.
7. I have examined a copy of the documents subject to review as detailed in the Schedule of Documents in **Annexure 1**.
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.

Review of exemptions

Section 30(1) – Internal working documents

12. Section 30(1) exempts documents that contain opinion, advice or recommendation, or consultation or deliberation, where disclosure would be contrary to the public interest. A document is not exempt simply because it is an internal working document.¹
13. To be exempt under section 30(1), three conditions 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
 - (b) the matter was created during the deliberative process of an agency, Minister, or the government's functions
 - (c) disclosure of the matter would be contrary to the public interest.
14. There are four circumstances where section 30(1) does not apply:
 - (a) documents required to be made available for inspection and purchase under section 8
 - (b) purely factual information

¹ *Graze v Commissioner of State Revenue* [2013] VCAT 869, 25.

- (c) certain documents relating to adjudicative functions
- (d) documents more than 10 years old.

15. For more information about section 30 see the FOI Guidelines.²

Do the documents contain opinion, advice or recommendation, or consultation or deliberation?

16. The Agency applied section 30(1) to a significant amount of factual information. However, the documents also contain the opinion, advice and recommendations of Agency officers.

Was the matter created during the deliberative process of an agency, Minister, or the government's functions?

17. Further, I am satisfied the information was created during the deliberative processes of the agency, being managing its remuneration arrangements and its key performance indicators.

Would disclosure of the documents be contrary to the public interest?

18. In deciding whether disclosure of the information would be contrary to the public interest, I have given weight to the following relevant factors:³

- (a) the right of every person to gain access to documents under the FOI Act
- (b) the sensitivity of the issues involved and the broader context of how the documents were created
- (c) the stage of a decision or policy development at the time the communications were made
- (d) 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)
- (e) 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
- (f) the impact of disclosing documents in draft form, including disclosure not clearly or accurately representing a final decision by an agency or Minister
- (g) the likelihood that disclosure would inhibit the independence of officers, including their ability to conduct proper research and make detailed submissions

² <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-30/>.

³ See <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-30/#disclosure-would-be-contrary-to-the-public-interest>.

- (h) the public interest in the community being better informed about an agency's deliberative, consultative and decision-making processes
 - (i) 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
 - (j) whether there is controversy or impropriety around the decision or the decision-making process.
19. In its second decision letter, the Agency advised disclosure of certain information would be contrary to the public interest because it would inhibit 'frank discussion in future committee deliberations'.
20. I have decided it would not be contrary to the public interest to disclose the information in the documents for the following reasons:
- (a) much of the information is high level, and not sensitive
 - (b) the information appears to be in its final form and settled
 - (c) I am not satisfied disclosure would have any impact on the Agency's functions or its committees
 - (d) I am not persuaded that disclosure will have any impact on the open discussion of ideas between Agency officers
 - (e) the public interest weighs in favour of disclosure, to hold senior Agency executives to account for their roles and their remuneration.
21. I am therefore satisfied the documents are not exempt under section 30(1).

Section 33(1) – Documents affecting personal privacy of third parties

22. Section 33(1) protects an individual's privacy where their right to privacy outweighs the public interest in disclosing their information.⁴ This will only occur when disclosing the individual's personal affairs information is unreasonable.
23. A document or information is exempt under section 33(1) if two conditions are satisfied:
- (a) the document or information relates to the 'personal affairs' of a natural person (living or deceased)
 - (b) disclosure of that personal affairs information is unreasonable in all the circumstances.
24. For more information about section 33(1) see the FOI Guidelines.⁵

⁴ *Victoria Police v Marke* [2008] VSCA 218.

⁵ <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-33/>.

Do the documents contain personal affairs information of other individuals?

25. The concept of personal affairs information is broad. Information will relate to the personal affairs of a person if it 'concerns or affects that person as an individual'.⁶ This includes information relating to health, private behaviour, home life, or personal or family relationships of individuals.⁷
26. A document will indirectly disclose personal affairs information if it contains information from which any person's identity, address or location can reasonably be determined. This means that a document can be exempt under section 33(1) where the document itself does not contain personal affairs information, but its disclosure would reveal personal affairs information.
27. Personal affairs information can be revealed or indirectly disclosed by connecting or linking the information in the disclosed document with other information available to the applicant.⁸
28. The documents contain the personal affairs of Agency officers, including their names, addresses, contact numbers, and information about their skills, performance and remuneration.

Consultation

29. The Agency is required to consult with affected third parties, unless it is not reasonably practicable to do so.
30. The Agency's decision letter states 'where required, the University considered third-party interests before reaching this decision'. It is not clear whether any consultation has taken place in this matter.

Would disclosure of the personal affairs information be unreasonable?

31. In determining whether disclosure of the personal affairs information would be unreasonable in the circumstances, I have considered the following factors:⁹
 - (a) the nature of the personal affairs information
 - (b) the circumstances in which the information was obtained
 - (c) the extent to which the information is available to the public
 - (d) the Applicant's interest in the information
 - (e) whether any public or important interest would be promoted by release of the information

⁶ *Hanson v Department of Education & Training* [2007] VCAT 123.

⁷ *Re F and Health Department* (1988) 2 VAR 458, quoted in *RFJ v Victoria Police FOI Division* [2013] VCAT 1267 [103], [109].

⁸ *Harrison v Victoria Police* [2022] VCAT 280, [153].

⁹ See <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-33/#would-disclosure-be-unreasonable>.

- (f) whether the individuals to whom the information relates object, or would be likely to object, to the release of the information
 - (g) whether disclosure of the information would or would be reasonably likely to endanger the life or physical safety of any person.
32. I am not satisfied it would be unreasonable to release most of the personal affairs information in the documents because:
- (a) while I recognise some individuals would object to information about their work and salary being disclosed, many do not
 - (b) there is no information before me to demonstrate that any of the senior officers referenced in the documents object to disclosure of their salary and performance in the interests of being accountable for their roles
 - (c) senior officers should expect a greater level of scrutiny than those in less senior roles
 - (d) the Vice-Chancellor's remuneration is publicly available¹⁰
 - (e) I do not consider disclosure of personal affairs information is unreasonable where it is in the public interest to do so
 - (f) similar to my analysis under section 30(1), I consider the public interest weighs in favour of salary and work performance of senior agency officers.
33. Section 33(1) therefore does not apply to most of the documents.
34. However, I have decided that it would be unreasonable to release a small amount of information in Document 1 from the first decision. This is because it is more personal information, being a home address and direct telephone number. This information is therefore exempt under section 33(1).

Section 34 – Documents relating to trade secrets etc.

35. 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

¹⁰ <https://www.theguardian.com/australia-news/2025/may/13/five-vice-chancellors-in-victoria-paid-more-than-1m-in-2024-prompting-claims-of-largesse>

- (e) the results of scientific or technical research undertaken by an agency
- (f) examination papers, examiner's reports and similar documents, where the document's use is not yet completed.

36. For more information about section 34 see the FOI Guidelines.¹¹
37. Given conflicting information in the Agency's decision letters and marked up documents, for completeness, I have considered whether the documents are exempt under each of the exemptions under section 34.

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

38. Section 34(1)(a) provides a document is an exempt document if its disclosure under the FOI Act:
- (a) would disclose information acquired by an agency (or a Minister) from a business, commercial or financial undertaking
 - (b) the information relates to trade secrets.
39. I do not consider the documents contain information acquired from a business. They are therefore not exempt under section 34(1)(a).

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

40. 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
 - (b) the information relates to matters of a business, commercial or financial nature
 - (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).
41. The Agency did not nominate what parts of the documents contain information from a business.
42. I do not consider the documents contain information acquired from a business. They are therefore not exempt under section 34(1)(b).

Section 34(4)(a)(ii) – Information that would expose the Agency unreasonably to disadvantage

43. A document is exempt under section 34(4)(a)(ii) if three conditions are satisfied:
- (a) the agency is engaged in trade or commerce

¹¹ <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-34/>.

- (b) the document contains information of a business, commercial or financial nature
- (c) disclosure of the document would be likely to expose the agency unreasonably to disadvantage.

Is the Agency engaged in trade and commerce?

- 44. Trade or commerce activities must ‘of their nature, bear a trading or commercial character’.¹²
- 45. Whether an agency is engaged in trade or commerce depends on the facts and circumstances of each case.¹³ It requires clear evidence that the agency is doing more than delivering government services or functions.
- 46. I acknowledge that the Agency engages in commercial activity. However, I must be satisfied that the documents specifically subject to the review relate to such activity.
- 47. I am not satisfied the Agency is engaged in trade or commerce. Rather, the documents relate to the management of remuneration and its strategic plan which are activities conducted by all government agencies and not distinct from normal government operations.
- 48. However, as the Agency states in its decision letter that as a smaller university it needs to ‘find sensitive ways to measure and attract talent’, I have also considered the remaining limbs of the exemption as if the first limb had been met.

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

- 49. I am satisfied the documents contain information of a financial nature.

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

- 50. 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 services¹⁴
 - (b) reduce an agency’s capacity to negotiate future commercial contracts¹⁵
 - (c) strengthen the bargaining position of entities the agency negotiates with, at the expense of the agency competing for marketplace share¹⁶
 - (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.

¹² *Gibson v Latrobe City Council* [2008] VCAT 1340; *Concrete Constructions (NSW) Pty Ltd v Nelson* [1990] HCA 17; (1990) 169 CLR 594, 604.

¹³ *Stewart v Department of Tourism, Sport and the Commonwealth Games* [2003] VCAT 45, [41].

¹⁴ *Binnie v Department of Industry, Technology & Resources* (1986) 1 VAR 345, 348.

¹⁵ *Ibid*; *Davis v Department of Transport* [2022] VCAT 721, [58].

¹⁶ *Save Albert Park Inc v Australian Grand Prix Corporation* [2008] VCAT 168, [77].

51. Whether disadvantage would be unreasonable involves the consideration of all circumstances, including factors both in favour of, and against disclosure, such as:¹⁷
- (a) the nature of the information
 - (b) whether there is any public interest in disclosure or nondisclosure
 - (c) the circumstances in which the information was obtained or created
 - (d) whether the information has any current relevance
 - (e) the identity of the applicant and the likely motives of the applicant.
52. The word ‘unreasonably’ should be seen in the context of the balancing process between competing factors of the interest in maintaining confidentiality and the interest in public accountability and transparency on the part of the government, its departments and agencies, and entities that provide government services.¹⁸
53. I acknowledge that the agency needs to attract senior leadership talent. I also acknowledge that the documents contain information about the skill sets of certain individuals and their salaries. However, there is no information before me to conclude that releasing the information would:
- (a) reduce the Agency’s ability to recruit suitably qualified officers
 - (b) reduce the Agency’s ability to negotiate salary and performance goals at this point in time or
 - (c) expose it to unreasonable disadvantage in other ways.
54. The documents are therefore not exempt under section 34(4)(a)(ii).

Section 25 – Deletion of exempt or irrelevant information

55. 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.
56. 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 view¹⁹ and

¹⁷ *Fitzherbert v Department of Health and Human Services* [2019] VCAT 201, [61].

¹⁸ *Asher v Department of innovation, Industry and Regional Development* [2005] VCAT 2702, [38].

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

- (b) the effectiveness of those deletions – that is, whether the edited document still has meaning.²⁰

Conclusion

57. On the information before me, I am not satisfied the documents are exempt from release under sections 30(1), 33(1) or 34(1)(a), 34(1)(b) or 34(4)(a)(ii).

Timeframe to seek a review of my decision

58. If the Agency is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.²¹
59. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.²²
60. 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.
61. The Agency is required to notify the Information Commissioner in writing as soon as practicable if the Agency applies to VCAT for a review of my decision.²³

Third party review rights

62. As I have determined to release documents that contain the personal affairs information of persons other than the Applicant, if practicable, I am required to notify those persons of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.²⁴
63. In this case, I am satisfied it is practicable to notify the relevant third parties of their review rights and confirm they will be notified of my decision on the date of decision.

When this decision takes effect

64. This decision takes effect 60 days after the third parties are notified of their review rights.
65. If a review application is made to VCAT, my decision will be subject to any VCAT determination.
66. If an application is not made to VCAT, the Agency is required to release the documents in accordance with my decision.

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]; *Re Hutchinson and Department of Human Services* (1997) 12 VAR 422.

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

²² Section 52(9).

²³ Sections 50(3F).

²⁴ Sections 49P(5) and 52(3).

Annexure 1 – Schedule of Documents

| Document No. | Date of document | Document Description | No. of pages | Agency Decision | OVIC Decision |
|-----------------|------------------|--|--------------|---|--|
| First decision | | | | | |
| 1. | [Date] | [Position title] employment contract | 15 | Refused in full Sections 33(1), 34(4)(a)(ii) | Release in part Sections 33(1), 25 I am satisfied it is practicable to delete a small amount of personal affairs information it would be unreasonable to release as follows: <ul style="list-style-type: none"> • the home address • the telephone number. |
| Second decision | | | | | |
| 1. | [Date] | Meeting minutes – senior appointments and remuneration committee | 2 | Refused in part Section 34(1)(b) | Release in full |
| 2. | [Date] | Council skills matrix | 1 | Refused in part Section 33(1) | Release in full |

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| Document No. | Date of document | Document Description | No. of pages | Agency Decision | OVIC Decision |
|--------------|------------------|--|--------------|---|-----------------|
| 3. | [Date] | Council skills matrix | 1 | Refused in part Section 33(1) | Release in full |
| 4. | [Date] | Council skills matrix | 1 | Refused in part Section 33(1) | Release in full |
| 5. | [Date] | Council skills matrix | 1 | Refused in part Section 33(1) | Release in full |
| 6. | [Date] | Council skills matrix | 2 | Refused in part Section 33(1) | Release in full |
| 7. | [Date] | Minutes – senior appointments and remuneration committee | 2 | Refused in part Section 34(1)(a), 34(1)(b), 34(4)(a)(ii) | Release in full |
| 8. | [Date] | Minutes – senior appointments and | 2 | Refused in part Sections 30(1), 33(1), 34(4)(a)(ii) | Release in full |

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| Document No. | Date of document | Document Description | No. of pages | Agency Decision | OVIC Decision |
|--------------|------------------|--|--------------|--|-----------------|
| | | remuneration committee | | | |
| 9. | [Date] | Minutes – senior appointments and remuneration committee | 2 | Refused in part Sections 30(1), 33(1), 34(1)(b) | Release in full |
| 10. | [Date] | Minutes – senior appointments and remuneration committee | 1 | Refused in part Section 30(1) | Release in full |
| 11. | [Date] | Agenda – senior appointments and remuneration committee | 24 | Refused in part Sections 30(1), 33(1), 34(1)(b) | Release in full |
| 12. | [Date] | Current [position title] total employment package | 1 | Refused in part Sections 30(1), 33(1), 34(1)(b) | Release in full |
| 13. | [Date] | Minutes – senior appointments and | 2 | Refused in part | Release in full |

| Document No. | Date of document | Document Description | No. of pages | Agency Decision | OVIC Decision |
|--------------|------------------|--|--------------|--|-----------------|
| | | remuneration committee | | Sections 30(1), 33(1), 34(1)(b) | |
| 14. | [Date] | Senior appointments and remuneration committee | 11 | Refused in part Sections 30(1), 33(1), 34(1)(b) | Release in full |