

Notice of Decision and Reasons for Decision

Applicant:	'GF1'
Agency:	Department of Transport and Planning
Decision date:	27 October 2025
Exemptions and provision considered:	Sections 28(1)(b), 28(1)(d), 30(1) and 33(1), 25
Citation:	'GF1' and Department of Transport and Planning (Freedom of Information) [2025] VICmr 107 (27 October 2025)

FREEDOM OF INFORMATION – Level Crossing Removal – [locations redacted] – deliberative information – Cabinet submission

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 in relation to Documents 3 and 6 and more information is to be released.

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



The Applicant has **60 days** from the date they receive this decision to apply to Victorian Civil and Administrative Tribunal (**VCAT**).

The Agency has 14 days from the date they receive this decision to apply to VCAT.

Refer to page 8 for information about review rights.

My reasons for decision follow.

Penny Eastman
Public Access Deputy Commissioner

27 October 2025 Reasons for Decision

Background to review

1. The Applicant made a request to the Agency seeking access to documents. Following clarification, the terms of the request are:

A copy of all formal correspondence between agencies, briefings (CMIN, BMIN and BSEC), reports, or PowerPoint presentations provided to either [a senior Agency officer] or [a Minister], relating to potential level crossing removals at [locations between specified dates].
2. The Applicant advised they are not seeking the names and addresses of non-executive staff.
3. The Agency identified 6 documents falling within the terms of the Applicant's request and released them in part, exempting certain information under sections 28(1)(b), 28(1)(c), 28(1)(d), 30(1) and 33(1). The Agency's decision letter sets out the reasons for its decision.

Review application

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. I have examined a copy of the documents subject to review.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered relevant communications and submissions received from the parties.
8. In undertaking my review, I have had regard to the object of the FOI Act, which is to create a general right of access to information in the possession of the Government or other public bodies, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.
9. I note Parliament's intention the FOI Act must be interpreted so as to further the object of the Act and any discretions conferred by the Act must be exercised, as far as possible, so as to facilitate and promote the disclosure of information in a timely manner and at the lowest reasonable cost.
10. 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.

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

Review of exemptions

Section 28(1) – Cabinet documents

11. Section 28 is intended to ensure the Cabinet process remains confidential.
12. Section 28(7)(a) defines ‘Cabinet’ as including a committee or sub-committee of Cabinet.
13. For more information about section 28 see the FOI Guidelines.²

Section 28(1)(b) – Document prepared for purpose of submission for consideration by the Cabinet

14. Section 28(1)(b) provides a document is exempt if it has been prepared by a Minister, or on behalf of a Minister, or by an agency, for the purpose of submitting it to the Cabinet for the Cabinet’s consideration.
15. The document must have been created for the sole, substantial or dominant purpose of submission to the Cabinet for its consideration.³
16. 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.⁴ 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.⁵
17. I am satisfied, based on the contents of the documents, that Documents 1 and 2 are documents prepared for the purpose of submission to Cabinet. Documents 1 and 2 are therefore exempt under section 28(1)(b).
18. I am not satisfied that Document 3 was prepared for submission to Cabinet based on the Agency’s submission to my office. In the submission, the Agency advised that Document 3 ‘forms part of the preparation’ for the relevant business case. It is therefore not exempt under section 28(1)(b).

Section 28(1)(c) – A copy, draft or extract from a Cabinet document

19. 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).
20. Document 3 contains a small amount of similar information to that included in the attachment to Document 1; however, it is not the same. Document 3 contains recommendations described at a high level, rather than the more detailed information in Document 1.
21. I am therefore not satisfied Document 3 is or contains a copy, draft or extract from Document 1.

² <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-28/>.

³ *Mildenhall v Department of Premier and Cabinet* (No 1) (1995) 8 VAR 284, 290 approved by *Ryan v Department of Infrastructure* [2004] VCAT 2346, [34] and *Herald & Weekly Times v Victorian Curriculum & Assessment Authority* [2004] VCAT 924, [72]

⁴ *Department of Treasury and Finance v Dalla-Riva* [2007] VSCA 11, [13].

⁵ *Davis v Major Transport Infrastructure Authority* [2020] VCAT 965, [80], [82].

22. Further, there is no other information before me demonstrating that Document 3 contains such information from another document that would be exempt under sections 28(1)(a), 28(1)(b) or 28(1)(ba).
23. Document 3 is therefore not exempt under section 28(1)(c).

Section 28(1)(d) – Disclosure of any deliberation or decision of the Cabinet

24. Section 28(1)(d) exempts a document which, if disclosed, would involve the disclosure of any deliberation or decision of the Cabinet or a sub-committee of the Cabinet, other than a document by which a decision of the Cabinet was officially published.
25. ‘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.⁶
26. A document may reveal deliberations of Cabinet if the document, on its face:⁷
 - (a) 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
 - (b) advances an argument for a particular point of view.
27. In contrast, a document that only 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.⁸
28. As described above, Document 3 was not prepared for submission to Cabinet; however, its recommendations relate to information in the attachment to Document 1.
29. I consider there are arguments for and against whether the information in Document 3 amounts to a deliberation of Cabinet.
30. I have decided that the information in Document 3 does not disclose a deliberation of Cabinet for the following reasons:
 - (a) the information in the document is high level, rather than describing how the matters involved were treated
 - (b) the information in the document is generic in nature, common to many large infrastructure projects
 - (c) the information does not disclose various factors to be weighed and evaluated

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

⁷ *Department of Infrastructure v Asher* [2007] VSCA 272, [8].

⁸ *Ibid.*

(d) I consider the information can be disclosed without disclosing the actual deliberations of Cabinet.

31. Document 3 is therefore not exempt under section 28(1)(d).

32. Document 5 however contains a small amount of information that discloses a decision or deliberation of Cabinet and is therefore exempt under section 28(1)(d).

Section 30(1) – Internal working documents

33. 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.⁹

34. 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.

35. For more information about section 30, see the FOI Guidelines.¹⁰

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

36. I have considered whether section 30(1) applies to Documents 3 and 6.

37. I am satisfied both documents 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?

38. Further, I am satisfied both documents were created during the deliberative processes of the Agency, being planning for level crossing removals.

⁹ *Graze v Commissioner of State Revenue* [2013] VCAT 869, 25.

¹⁰ <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-30/>.

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

39. In deciding whether disclosure of the information would be contrary to the public interest, I have given weight to the following relevant factors:¹¹
- (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
 - (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.
40. I have decided it would not be contrary to the public interest to disclose the information in the documents for the following reasons:
- (a) Document 3 contains high level generic information the disclosure of which would not affect the infrastructure projects concerned, or any other similar projects.

¹¹ See <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-30/#disclosure-would-be-contrary-to-the-public-interest>.

- (b) The documents are dated 2020 and 2021. I consider members of the community will understand that the projects have been substantially further developed since then, and the information is no longer current.
- (c) The documents are not drafts and appear to be finalised. That is, they reflect the decisions government had made at that time.
- (d) Document 6 contains early budget costs and Commonwealth funding amounts. I consider disclosure of the information provides accountability to the agency in the early stages of its project planning.
- (e) The disclosure of both documents provides transparency of government decision making in relation to significant projects that affect members of the community. Disclosure therefore weighs in favour of the public interest.

41. I am therefore satisfied the documents are not exempt under section 30(1).

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

42. 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.

43. For more information about section 33(1), see the FOI Guidelines.¹²

44. The Agency exempted certain personal affairs information from the documents, being telephone numbers and signatures of executive officers. Additionally, there is a signature of an executive officer in Document 3.

45. I am satisfied disclosure of that information is unreasonable, as it does not aid in the understanding of the documents, and disclosure would therefore amount to an unnecessary intrusion into those officers’ lives.

46. The information identified by the Agency is therefore exempt under section 33(1), as well as the signature in Document 3.

47. Consistent with the remainder of the Agency’s decision, I have decided it would not be unreasonable to release the names of the executive officers in Document 3.

Section 25 – Deletion of exempt or irrelevant information

48. 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.

¹² <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-33/>.

49. 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 view¹³ and
 - (b) the effectiveness of those deletions – that is, whether the edited document still has meaning.¹⁴
50. Irrelevant information is information which is clearly outside the scope, or beyond the terms of the applicant's request.
51. I have considered the information the Agency deleted from the documents as irrelevant. I agree it falls outside the scope of the Applicant's request as it either relates to personal affairs information of non-executive officers, or information relating to other infrastructure projects outside the scope of the Applicant's request.
52. Further, I have decided it is practicable to delete that information from Documents 3, 4, 5 and 6 as it would not take unreasonable effort to do so, and the documents would retain their meaning.

Conclusion

53. My decision on Documents 1, 2, 4 and 5 is the same as the Agency's.
54. Additional information is to be released to the Applicant in:
- Document 3 where I am not satisfied it is exempt under sections 28(1)(b), 28(1)(c), 28(1)(d) or 30(1); and
 - Document 6 where I am not satisfied it is exempt under section 30(1).
55. The Schedule of Documents at **Annexure 1** further details my decision for each document.

Timeframe to seek a review of my decision

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

¹³ *Mickelborough v Victoria Police* [2009] VCAT 2786, [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967, [82].

¹⁴ *Honeywood v Department of Human Services* [2006] VCAT 2048, [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267, [140], [155]; *Re Hutchinson and Department of Human Services* (1997) 12 VAR 422.

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

¹⁶ Section 52(5).

¹⁷ Section 52(9).

59. 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.
60. The Agency is required to notify the Information Commissioner in writing as soon as practicable if either party applies to VCAT for a review of my decision.¹⁸

Third party review rights

61. 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.¹⁹
62. 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 or as soon as possible thereafter.

When this decision takes effect

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

¹⁸ Sections 50(3F) and 50(3FA).

¹⁹ Sections 49P(5), 50(3) and 52(3).

Annexure 1 – Schedule of Documents

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision
1.	[Date]	Cabinet document	142	Refused in full Sections 28(1)(b), 28(1)(c), 28(1)(d)	Refuse in full Sections 28(1)(b)
2.	[Date]	Cabinet document	1	Refused in full Sections 28(1)(b), 28(1)(c), 28(1)(d)	Refuse in full Sections 28(1)(b)
3.	[Date]	LXRP document	3	Refused in full Sections 28(1)(b), 28(1)(c), 28(1)(d). 30(1)	Release in part Sections 33(1), 25 Section 33(1): The signature in the document is exempt under section 33(1). Section 25: It is practicable to delete exempt information from the document.
4.	[Date]	[Letter]	3	Released in part Section 25 – information out of scope deleted	Release in part Section 25 Same decision

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision
					Section 25: I agree the information deleted by the Agency is out of scope of the request.
5.	[Date]	[Letter]	3	Released in part Section 28(1)(d), 25	Release in part Sections 28(1)(d), 25 Same decision Section 28(1)(d): the information identified by the Agency under this section is exempt under section 28(1)(d). Section 25: I agree the information deleted by the Agency is out of scope of the request.
6.	[Date]	[Briefing] & two Attachments	47	Released in part Sections 30(1), 33(1), 25	Release in part Sections 33(1), 25 Different decision

Document No.	Date of document	Document Description	No. of pages	Agency Decision	OVIC Decision
					<p>Sections 33(1) and 25: I agree with the Agency's decision in relation to these sections and they are to remain deleted.</p> <p>Section 30(1): I am not satisfied the information exempted under section 30(1) is exempt. It is to be released.</p>