

31 March 2026

'GH6'

Copy provided to City of Stonnington

By email only

Dear 'GH6'

Notice of Decision under section 49P of the *Freedom of Information Act 1982* (Vic)

Agency:	City of Stonnington
Agency decision:	Refuse access under section 34(4)(a)(ii)
Exemption and provision considered:	Sections 25, 34(4)(a)(ii)
OVIC decision:	Same decision
Citation:	'GH6' and City of Stonnington (<i>Freedom of Information</i>) [2026] VICmr 12 (31 March 2026)

FREEDOM OF INFORMATION – councillor briefing – contract terms and options considered – government engaged in trade or commerce – disclosure be likely to expose the Agency unreasonably to disadvantage

Thank you for your request for review of a decision made by City of Stonnington (the **Agency**) to refuse you access to information you requested under the *Freedom of Information Act 1982* (Vic) (the **FOI Act**).

I have conducted a review of the decision made by the Agency and made a fresh decision under section 49P of the FOI Act.

This letter sets out my decision and the reasons for it.



If you disagree with my decision, you have **60 days** from today to apply to the Victorian Civil and Administrative Tribunal (**VCAT**) for a further review. Details about applying to VCAT are at the end of this letter.

Background

Your request sought access to:

Copies of any valuation materials and/or reports (internal and external) prepared by or for Council for the purposes of valuing Council's land and/or property on and/or adjacent to Coonil Crescent that is proposed to be sold to Cabrini Hospital as part of its proposed development.

In your request you also stated you do not seek personal affairs information of third parties.

The Agency located 2 documents relevant to the terms of your request and released 1 document outside of the FOI Act and refused access to 1 document under sections 36(2)(a) and section 38 of the FOI Act in conjunction with sections 66(2)(a) and 125 of the *Local Government Act 2020* (Vic) (**LG Act**).

For section 38, the Agency stated the document contains confidential information recorded during a closed meeting of the council.

On 29 July 2025, you sought a review by OVIC of the Agency's decision to refuse access to 1 document.

During the review, the Agency made a fresh decision on your FOI request. The Agency located 5 documents relevant to the terms of your request and released 3 documents outside of the FOI Act and refused access to 2 documents under sections 34(4)(a)(ii), 36(2)(a) and 38 of the FOI Act in conjunction with sections 66(2)(a) and 125 of the LG Act.

You advised OVIC that you did not agree with the Agency's fresh decision and I proceeded with my review based on the fresh decision.

My decision and reasons for decision

In making my decision, I have considered information provided in your review application, in addition to the Agency's reasons for decision and its submissions.

Relevant legislation

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

A document is exempt under section 34(4)(a)(ii) if three conditions are satisfied:

- (a) the agency is engaged in trade or commerce
- (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 information exempt under section 34(4)(a)(ii)?

Is the Agency engaged in trade and commerce?

Given the functions of the Agency in the context of the documents subject to review, I accept it is engaged in trade or commerce for the purposes of the FOI Act limited only to the activities described in the documents.

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

The documents contain contract terms, options considered and valuation information in relation to the future sale of land. I accept the documents contain information of a business, commercial or financial nature.

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

In deciding whether disclosure is likely to expose the Agency unreasonably to disadvantage, I have given weight to the factors outlined in the FOI Guidelines.¹

I have decided disclosure of the documents is likely to expose the Agency unreasonably to disadvantage for the following reasons:

- (a) I consider the documents remain sensitive at this point in time, given contractual terms are still active and settlement on the sale of land has not occurred.
- (b) I am satisfied that disclosure, at this point in time, may financially harm the Agency and inhibit its ability to complete the sale of the land.
- (c) I also agree with the Agency's view that premature disclosure may prejudice the Agency's position in any future commercial negotiations. This is because disclosure of valuation information would directly inform third parties' negotiating strategy and strengthen their bargaining position. Disclosure would allow third parties to infer the Agency's negotiation limits and structure their offers accordingly.
- (d) While I acknowledge the reason you seek access to the documents, I do not consider disclosure at this point in time is in the public interest and the above factors weigh strongly against disclosure.

Accordingly, I am satisfied the documents are exempt from release under section 34(4)(a)(ii).

I acknowledge the documents include some factual information. I have carefully considered whether exempt information could be deleted from the documents to release the documents to you in part. In my view, if all exempt information was deleted from the documents, they would become meaningless or at least remove the information you specifically seek.

What this means

¹ <https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-34/#section-344a-ii-business-commercial-or-financial-information-of-an-agency-engaged-in-trade-or-commerce>

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My decision is the same as the Agency's fresh decision. I am satisfied the documents you have requested are exempt from release under section 34(4)(a)(ii) of the FOI Act. No further information is to be released under the FOI Act.

Given my decision in relation to section 34(4)(a)(ii), I have not considered the exemptions under sections 36(2)(a) and 38 of the FOI Act.

Your review rights

I appreciate this is not the outcome you hoped for. You have the option now to apply to VCAT for further review if you wish. To do this, you must make a review application to VCAT within 60 days from the date you are given notice of my decision.

Information about how to make an application to VCAT is available at www.vcat.vic.gov.au.

VCAT can also be contacted by email at admin@vcat.vic.gov.au or by telephone on 1300 018 228.

Yours sincerely

Penny Eastman

Public Access Deputy Commissioner