Office of the Victorian Information Commissioner

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Notice of Decision and Reasons for Decision

Applicant:	*'GI4'*
Our reference:	C/26/00179
Decision date:	26 February 2026
Exemptions and provision considered:	Sections 30(1), 32(1), 34(4)(a)(ii), 25
Citation:	*'GI4' and Department of Energy, Environment and Climate Action (Freedom of Information)* [2026] VICmr 19 (26 February 2026)

FREEDOM OF INFORMATION – brief titles – section 19 – land acquisition – not detailed or specific enough

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 a document 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 the end of my decision for information about review rights through the Victorian Civil and Administrative Tribunal (**VCAT**).

The Agency has **14 days** from the date it received this decision to apply to VCAT for review.

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

My reasons for decision follow.

Penny Eastman
Public Access Deputy Commissioner

26 February 2026

Reasons for Decision

Background to review

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

> I seek access to a list of briefs for each minister supported by the Department, created from 1 January 2025 through 31 March 2025. This includes briefs treated as 'no further action required'.
>
> I request that the list for each minister include the following details: the minister for which the briefs have been prepared, the brief reference number, the title of the brief and the date the brief was completed.
>
> …
>
> Please note that personal information of non-executive staff, such as names and addresses, is not required. Accordingly, documents can be edited to redact such information.

2. Following consultation with the Agency, the Applicant amended the initial request by removing company names from the scope of the request.

3. The Agency produced 1 document falling within the terms of the Applicant's request under section 19. The Agency granted access to this document in part, refusing access to certain information under sections 28(1)(c), 30(1), 32(1) and 34(4)(a)(ii). The Agency also deleted irrelevant information in accordance with section 25.

4. The Agency stated in its decision that the Agency's briefing system does not have a field that captures the date a briefing was marked as 'No Further Action'. The Agency stated it used the most suitable search parameters, and no documents were identified for this part of the Applicant's request.

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. During the review, the Appicant advised they do not seek personal affairs information.

7. I have examined a copy of the document 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. During the review, the Agency agreed to release the following briefing titles:

   (a) the title refused by the Agency under section 28(1)(c) on page 15

   (b) the title refused by the Agency under section 30(1) on page 16.

10. This information is therefore to be released to the Applicant.

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 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

14. The following sets out the relevant sections of the FOI Act. The reasons for my decision are described in the Schedule of Documents at Annexure 1.

Section 30(1) – Internal working documents

15. 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]

16. 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.

17. 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

    (c) certain documents relating to adjudicative functions

    (d) documents more than 10 years old.

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

18. For more information about section 30 see the FOI Guidelines.[2]

19. 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 document was created

    (c) the stage of a decision or policy development at the time the communications were made

    (d) whether disclosure of the document 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 document 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 document

    (f) the likelihood that disclosure would inhibit the independence of officers, including their ability to conduct proper research and make detailed submissions

    (g) the public interest in the community being better informed about an agency's deliberative, consultative and decision-making processes

    (h) 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

    (i) whether there is controversy or impropriety around the decision or the decision-making process.

Section 32(1) – Documents affecting legal proceedings

20. Section 32(1) exempts documents subject to legal professional privilege or client legal privilege. The principles of legal professional privilege are found in common law (case law). Client legal privilege is codified in sections 118 and 119 of the *Evidence Act 2008* (Vic).

21. To apply section 32(1), it is generally not necessary to distinguish between legal professional privilege and client legal privilege.

22. Both legal professional privilege and client legal privilege protect confidential communications

[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.

and documents between a lawyer and a client:

(a) made or prepared for the dominant purpose of obtaining or providing legal advice (**advice privilege**)

(b) prepared for the dominant purpose of use in current or anticipated litigation (**litigation privilege**).[4]

23. The purpose of legal privilege is to promote the public interest in the proper administration of justice. It does this by protecting confidential communications between a lawyer and their client, to allow them to speak freely.[5]

24. For more information about section 32(1) see the FOI Guidelines.[6]

25. A document or information attracts advice privilege, and is exempt under section 32(1), if it would disclose:

(a) a confidential communication between a client (or their agent) and their lawyer that was made for the dominant purpose of obtaining or providing legal advice

(b) a confidential communication between two or more lawyers acting for their client that was made for the dominant purpose of obtaining or providing legal advice or

(c) the contents of a confidential document (whether delivered or not) prepared by a client, their lawyer, or another person (such as an expert) for the dominant purpose of obtaining or providing legal advice.

26. A document will not be exempt under section 32(1) if legal privilege has been lost or waived.

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

27. 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.

28. For more information about section 34 see the FOI Guidelines.[7]

29. Trade or commerce activities must 'of their nature, bear a trading or commercial character'.[8]

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[4] See *Esso Australia Resources Ltd v Federal Commissioner of Taxation* [1999] HCA 67 and *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* [2002] HCA 49.
[5] *Grant v Downs* [1976] HCA 63, [19].
[6] https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-32/.
[7] https://ovic.vic.gov.au/freedom-of-information/foi-guidelines/section-34/.
[8] *Gibson v Latrobe City Council* [2008] VCAT 1340; *Concrete Constructions (NSW) Pty Ltd v Nelson* [1990] HCA 17; (1990) 169 CLR 594, 604.

30. Whether an agency is engaged in trade or commerce depends on the facts and circumstances of each case.[9] It requires clear evidence that the agency is doing more than delivering government services or functions.

31. 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[10]

   (b) reduce an agency's capacity to negotiate future commercial contracts[11]

   (c) strengthen the bargaining position of entities the agency negotiates with, at the expense of the agency competing for marketplace share[12]

   (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.

32. Whether disadvantage would be unreasonable involves the consideration of all circumstances, including factors both in favour of, and against disclosure, such as:[13]

   (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.

33. 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.[14]

Section 25 – Deletion of exempt or irrelevant information

34. 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.

35. Deciding whether it is 'practicable' to delete exempt or irrelevant information requires an agency or Minister to consider:

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[9] *Stewart v Department of Tourism, Sport and the Commonwealth Games* [2003] VCAT 45, [41].
[10] *Binnie v Department of Industry, Technology & Resources* (1986) 1 VAR 345, 348.
[11] Ibid; *Davis v Department of Transport* [2022] VCAT 721, [58].
[12] *Save Albert Park Inc v Australian Grand Prix Corporation* [2008] VCAT 168, [77].
[13] *Fitzherbert v Department of Health and Human Services* [2019] VCAT 201, [61].
[14] *Asher v Department of innovation, Industry and Regional Development* [2005] VCAT 2702, [38].

(a) the effort involved in making the deletions from a resources point of view[15] and

(b) the effectiveness of those deletions – that is, whether the edited document still has meaning.[16]

36. Irrelevant information is information which is clearly outside the scope, or beyond the terms of the applicant's request.

37. I note the application of section 25 was a particular concern of the Applicant.

38. I have considered the information the Agency deleted from the documents as irrelevant. I agree it is irrelevant as it is either company names, or personal affairs information not sought by the Applicant.

39. I have considered the effect of deleting irrelevant and exempt information from the documents. In my view, it is practicable for the Agency to delete the irrelevant and exempt information, because it would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

40. On the information before me, I am satisfied certain information in the documents is exempt from release under sections 32(1) and 34(4)(a)(ii). However, I am not satisfied other information is exempt under section 30(1).

41. My decision in relation to each document is described in the Schedule of Documents below.

Timeframe to seek a review of my decision

42. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.[17]

43. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.[18]

44. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.[19]

45. 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.

[15] *Mickelburough 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].
[16] *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.
[17] The Applicant in section 50(1)(b) and the Agency in section 50(3D).
[18] Section 52(5).
[19] Section 52(9).

46. 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.[20]

When this decision takes effect

47. This decision takes effect 14 days after the Agency receives this decision.

48. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

[20] Sections 50(3F) and 50(3FA).

Annexure 1 – Schedule of Documents

	Document No.	Date of document	Minister	Agency Decision	OVIC Decision
This schedule excludes document titles where information has been determined irrelevant.					
1.	MBR-241102259	[Date]	Environment	Refused in part Section 34(4)(a)(ii)	Same decision as Agency The information redacted is the location of land intended to be acquired. I am satisfied the Agency is engaged in trade or commerce and that disclosure would place it at a competitive disadvantage.
2.	MBR-214400806	[Date]	Environment	Refused in part Section 34(4)(a)(ii)	Same decision as Agency See Document 1.
3.	MBR-240901708	[Date]	Environment	Refused in part Section 34(4)(a)(ii)	Same decision as Agency See Document 1.
4.	MBR-241002724	[Date]	Energy and Resources	Refused in part Section 30(1)	Release I am not satisfied the information is sufficient to amount to advice or opinion. Further, disclosure is not contrary to the public interest where information is now publicly known. I acknowledge public announcements

	Document No.	Date of document	Minister	Agency Decision	OVIC Decision
					have been made since the Agency's decision.
5.	MBR-240301895	[Date]	Energy and Resources	Refused in part Section 32(1)	Same decision as Agency I am satisfied the information discloses a request for specific legal advice.
6.	MBR-250201148	[Date]	Energy and Resources	Refused in part Section 34(4)(a)(ii)	Release While I am satisfied the Agency is engaged in trade or commerce, I am not satisfied the information is detailed enough such that disclosure would expose it unreasonably to disadvantage.