

27 Febraury 2026

'GI8'

Copy provided to Kingston City Council

By email only

Dear 'GI8'

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

Agency:	Kingston City Council
Agency decision:	Refuse access under sections 30(1), 32(1), 33(1) and 35(1)(b) of the FOI Act
OVIC review decision:	Refuse access under section 35(1)(b) of the FOI Act
Information requested:	Emails from [an Agency officer] to ministers of government
Exemption and provision considered:	Section 35(1)(b), 25
Citation:	'GI8' and Kingston City Council (<i>Freedom of Information</i>) [2026] VICmr 23 (27 February 2026)

FREEDOM OF INFORMATION – local government – minister – Members of Parliament – MP – emails – information communicated in confidence – disclosure contrary to public interest

Thank you for your request for review of a decision made by Kingston City Council (**the Agency**) to refuse you access to information you requested under the FOI Act.

I have conducted a review of the decision made by the Agency and made a fresh decision on 27 Febraury 2026 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 the date you receive my decision to apply to the Victorian Civil and Administrative Tribunal (VCAT) for a further review.

Background

You made a FOI request to the Agency for access to copies of all emails sent by [an Agency officer] from their work email address to Members of Parliament during [a specified timeframe].

On [date], you sought a review of the Agency's decision to refuse access to the 4 documents falling within the terms of your request under sections 30(1), 32(1), 33(1) and 35(1)(b) of the FOI Act.

On [date], OVIC staff provided you with an initial view that it is likely section 35(1)(b) of the FOI Act applied to your request, and therefore, access to the requested documents would likely be refused. You were provided with similar decisions made by OVIC on requests for similar documents, setting out the reasons why such records are exempt from release under the FOI Act. The decisions are available here:

- <https://ovic.vic.gov.au/decision/gd5-and-racing-victoria-limited-freedom-of-information-2025-vicmr-94-23-june-2025/>
- <https://ovic.vic.gov.au/decision/ga3-and-city-of-whitehorse-freedom-of-information-2025-vicmr-66-30-june-2025/>
- <https://ovic.vic.gov.au/decision/ft3-and-hobsons-bay-city-council-freedom-of-information-2025-vicmr-6-27-january-2025/>

You were invited to withdraw your review application given the likelihood the decision in your matter would be the same as the decisions provided to you. Alternatively, you were invited to provide further information to support your review application.

You advised that you would like OVIC to continue with the review and provided further information in support of your view that disclosure is not contrary to the public interest.

Reasons for decision

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

Relevant legislation

Section 35(1)(b) of the FOI Act applies where the following two conditions are satisfied:

- disclosure would divulge information or matter communicated in confidence by or on behalf of a person or government to an agency or Minister and
- disclosure would be contrary to the public interest as it would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.

Are the documents exempt under section 35(1)(b) of the FOI Act?

I have decided the documents are exempt from release under section 35(1)(b) of the FOI Act.

OFFICIAL

With respect to the first condition for section 35(1)(b), I am satisfied the requested documents contain information communicated in confidence by an agency officer to ministers. The sensitive circumstances surrounding the communications imply confidentiality and I note the person at the Agency concerned confirmed that the emails were sent with the expectation that they would remain confidential.

With respect to the second condition for section 35(1)(b), I am satisfied disclosure would be reasonably likely to impair the ability of an agency or a minister to obtain similar information in the future and would therefore be contrary to the public interest. I consider that if individuals who provide confidential information to agencies or ministers thought the information they provided could be disclosed in response to an FOI request, they would be less likely to do so in the future. This would impede the flow of information important to the effective functioning of government.

I note the person concerned confirmed that they would have been dissuaded from corresponding with ministers of government by the prospect of the emails being made public.

Although I acknowledge your genuine interest in obtaining access to the documents, in this case I find the need to protect sensitive information provided in confidence to agencies or ministers outweighs other considerations.

I further appreciate you consider the documents should be able to be at least released in part to you. Having carefully considered the practicality of this as required under section 25 of the FOI Act, I am satisfied the documents cannot be meaningfully edited to remove exempt information. This is because the edits needed to remove the content I have found exempt under section 35(1)(b) would make the requested documents devoid of meaning.

What this means

The requested documents will not be released to you. I have not considered the other exemptions applied by the Agency as I am satisfied the documents are exempt in full under section 35(1)(b).

As I have made my decision, your review is now closed with OVIC.

Your review rights

If you are not satisfied with my decision, you can apply to VCAT for it to be reviewed. 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