

Notice of Decision and Reasons for Decision

Applicant:	Rubicon Forest Protection Group
Agency:	VicForests
Agency reference:	N/A
Our reference:	C/20/01046
Decision date:	26 June 2020
Exemptions considered:	Sections 30(1), 34(4)(a)(ii)

FREEDOM OF INFORMATION – forestry – timber harvesting – Timber Release Plan – meeting agenda – report – report cover letter

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 that I have decided to release additional information in the documents.

I am not satisfied the documents subject to this review are exempt under sections 30(1) or 34(4)(a)(ii)

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

My reasons for decision follow.

Sven Bluemmel
Information Commissioner

26 June 2010

Reasons for Decision

Background to review

1. On 24 December 2019, the Applicant made a request to the Agency for access to the following documents:

I seek access to all documents including emails, SMS records, memoranda, briefing notes, reports, records of phone conversations, meeting agendas (incl Board Meetings), advice of meetings (incl Board Meetings), minutes of meetings (incl Board Meetings), etc., including dates each of these documents were (a) created and (b) circulated, pertaining to the [Timber Release Plan (TRP)] gazetted on 23 December 2019, including (a) its development prior to being released for public consultation, (b) analysis of submissions received, (c) timing of all deliberative and consultative steps, (d) recommendations through internal channels relating to proposed changes (if any) and (e) any other related material relevant to formulation of final TRP for gazettal.

2. Following consultation with the Agency, the Applicant amended the scope of their request further to:

I seek access to all memoranda, briefing notes, reports, meeting agenda papers (incl Board Meetings) and minutes of meetings (incl Board Meetings), created or received between 1 September and 23 December pertaining to the TRP gazetted on 23 December 2019 concerning:

- (a) the assessment of the compliance of the TRP with the long-term planning provisions of the Code in sections 2.1.1.1 , 2.2.2.2, 2.2.2.3, 2.2.2.8 and 2.2.2.9

- (b) the analysis (including recommendations) of all submissions and comments received on the draft TRP, including those from (with names and other personal details redacted)

- (i) Rubicon Forest Protection Group,

- (ii) Wildlife of the Central Highlands (WOTCH),

- (iii) Friends of Noojee Trees (FONT),

- (iv) Goongerah Environment Centre (GECO),

- (v) Flora and Fauna Research Collective (FFRC),

- (vi) Australian Forests and Climate Alliance,

- (vii) DJPR, and

- (viii) DELWP, and

- (c) the timing of the adoption of the TRP by the Board

3. In its decision, the Agency identified 16 documents falling within the terms of the Applicant's request.

4. The Agency did not locate any documents relevant to part (b) of the request. The Agency's decision states:

VicForests does not tend to produce documents that meet this part of the request. Submissions from stakeholders: are sometimes acted upon in the short term to make other changes; are responded to (often outside the time-frame of your FOI Request); and may go into the considerations of planning specific coupes at a much later date. There is rarely documentary analysis and recommendations arising from particular submissions.

5. In its decision, the Agency decided to grant access to eight documents in full and refused access to seven documents in full and one document in part pursuant to sections 30(1), 33(1) and 34(4).

The Timber Release Plan and its Statutory Framework

6. The Agency is responsible, among other things, for the sustainable commercial sale of timber from Victorian State forests.
7. The *Sustainable Forests (Timber) Act 2004 (Vic)* and *Code of Practice for Timber Production 2014* provides the legislative framework for the harvesting of timber from Victorian State forests.

Allocation Orders

8. Timber resources in Victorian State forests are property of the Crown.¹ Under Part 3 of the *Sustainable Forests (Timber) Act 2004 (Vic)*, property in the timber resources within Crown land can be vested in the Agency via an Allocation Order.²
9. The Allocation Order thereby permits the Agency to undertake management activities in relation to the allocated areas, including those associated with the harvesting and/or selling of timber resources.³
10. Once an Allocation Order is published in the Victorian Government Gazette, the Agency must carry out its functions in compliance with the Allocation Order.⁴

Timber Release Plan

11. In addition to compliance with the Allocation Order, the Agency must also comply with Timber Release Plans and the Code of Practice for Timber Production.
12. The Agency is required under section 37 of the *Sustainable Forests (Timber) Act 2004 (Vic)* to develop a Timber Release Plan in relation to an area to which an Allocation Order applies. Section 37 provides:

37 VicForests to prepare plan

- (1) VicForests must prepare a plan in respect of an area to which an allocation order applies for the purposes of—
 - (a) harvesting and selling, or harvesting or selling, timber resources; and
 - (b) undertaking associated management activities in relation to those timber resources.
- (2) In preparing a plan under this section, VicForests must comply with any condition relating to consultation that is specified in the allocation order to which the plan relates.
- (3) VicForests must ensure that a plan prepared under this section is consistent with—
 - (a) the allocation order to which the plan relates, including any condition, limitation, matter or specification in the order; and
 - (b) any relevant Code of Practice relating to timber harvesting.

¹ *Sustainable Forests (Timber) Act 2004 (Vic)*, section 12A.

² *Ibid*, sections 13 - 14.

³ *Ibid*, section 13.

⁴ *Ibid*, section 16.

13. The Timber Release Plan (**TRP**) is a rolling five-year plan, reviewed and amended annually, that identifies areas of the State forests, known as coupes, that are available for the Agency to harvest the timber.⁵ The TRP lists the coupes, their location, the type of forest within the coupe, the timing and the method of harvesting required.⁶
14. The proposed TRP, including maps of the proposed areas for harvest, is published on the Agency's website and is submitted to the Agency's stakeholders and the public for consultation.⁷
15. Once the consultation process on the proposed TRP is complete, the TRP and annual planning process is reviewed to ensure compliance with the relevant legislation, prior to its submission to the Agency's Board and subsequently gazetted.⁸
16. Once the proposed TRP is approved, further planning occurs, including the development of individual 'coupe level plans', which include a detailed map of the coupe area outlining all areas of the required management prescriptions and areas that are to be excluded from harvesting, proposed management actions, and the locations of where access roads and operations areas will be constructed.⁹
17. On 23 December 2019, the Agency's amended TRP was approved by the Agency's Board and gazetted.¹⁰ A copy of the TRP is currently published on the Agency's website.¹¹

Code of Practice

18. As stated above, the TRP must comply with the *Code of Practice for Timber Production 2014*.¹²
19. The Code is made by the Minister for Environment and Climate Change under Part 5 of the *Conservation Forests and Lands Act 1987* (Vic) and is the primary regulatory document that outlines the environmental standards for planning and conducting commercial timber harvesting operations.¹³
20. The Code operates to ensure that commercial timber production and harvesting operations are compatible with the conservation of forests.¹⁴

Review

21. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.

⁵ See *Timber Release Plan Fact Sheet* available at <<https://www.vicforests.com.au/static/uploads/files/trp-factsheet-2017-wfivwahqvud.pdf>> and *VicForests' Planning Process Fact Sheet* available at <<https://www.vicforests.com.au/static/uploads/files/fs-planning-web-wfskyoxhkhny.pdf>>.

⁶ Ibid.

⁷ See *Timber Release Plan Fact Sheet* available at <<https://www.vicforests.com.au/static/uploads/files/trp-factsheet-2017-wfivwahqvud.pdf>>.

⁸ Ibid.

⁹ Ibid; *VicForests' Planning Process Fact Sheet* available at <<https://www.vicforests.com.au/static/uploads/files/fs-planning-web-wfskyoxhkhny.pdf>>.

¹⁰ Available at <<https://www.vicforests.com.au/static/uploads/files/gg2019s562-wffdyuvltkly.pdf>>.

¹¹ Available at <<https://www.vicforests.com.au/static/uploads/files/copy-of-trp-unallocated-area-summary-lw-005-wfmxoskbrjd.pdf>>.

¹² See *Sustainable Forests (Timber) Act 2004* (Vic), section 37(3)(b). A copy of the *Code of Practice for Timber Production 2014* is available at <https://www.forestsandreserves.vic.gov.au/__data/assets/pdf_file/0016/29311/Code-of-Practice-for-Timber-Production-2014.pdf>.

¹³ See 'Timber Harvesting and threatened species management' available at <<https://www.forestsandreserves.vic.gov.au/forest-management/environmental-regulation-of-timber-harvesting>> and *Code of Practice for Timber Production 2014*, available at <https://www.forestsandreserves.vic.gov.au/__data/assets/pdf_file/0016/29311/Code-of-Practice-for-Timber-Production-2014.pdf> at 22.

¹⁴ See *Code of Practice for Timber Production 2014*.

22. On 28 May and 19 June 2020, the Applicant indicated they do not seek review of Documents 6, 7, 8 and 10 and do not seek access to personal affairs information contained within the documents subject to review. Accordingly, these documents will be removed from the scope of this review, and any personal affairs information in the documents will be removed as irrelevant information in accordance with section 25.
23. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
24. I have considered all communications and submissions received from the parties, including:
 - (a) the Agency's decision on the FOI request;
 - (b) information provided with the Applicant's review application dated 19 May 2020;
 - (c) submissions and correspondence submitted by the Applicant dated 27, 28, 29 May and 19 June 2020;
 - (d) information provided by the Agency during this review dated 26 May and 2 June 2020; and
 - (e) publicly available information regarding the Agency and its functions.
25. 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.

Review of exemptions

Section 30 – Internal working documents

26. The Agency refused access to documents subject to review in full under section 30(1).
27. Section 30(1) has three requirements:
 - (a) a document must disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister; and
 - (b) such matter must be made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government; and
 - (c) disclosure of the matter would be contrary to the public interest.
28. The exemption does not apply to purely factual material.¹⁵
29. In *Sportsbet v Department of Justice*, the Victorian Civil and Administrative Tribunal (**VCAT**) held, '[m]inisterial briefs are not exempt as a class and must be considered case by case'.¹⁶

Were the documents prepared by an officer of the Agency?

30. The term 'officer of an Agency' is defined in section 5(1). The phrase has been interpreted broadly and includes a member of the agency, a member of the agency's staff, and any person engaged by or

¹⁵ Section 30(3).

¹⁶ (*General*) [2010] VCAT 8 at [46] (per Justice Bell, VCAT President).

for the agency, whether or not that person is one to whom the provisions of the *Public Administration Act 2004* (Vic) apply.

31. Having reviewed the documents, I am satisfied each document was prepared by an 'officer' for the purposes of section 30(1).

Do the documents disclose matter in the nature of opinion, advice or recommendation, or consultation or deliberation?

32. For section 30(1) to be met, the documents must also contain matter in the nature of opinion, advice or recommendation prepared by an officer of an agency, or consultation or deliberation between officers.
33. It is not necessary the documents themselves be in the nature of opinion, advice or recommendation. Rather, it is required that release of the documents would disclose matter of that nature.¹⁷
34. The documents subject to review include a Board meeting agenda (Document 15) and a report prepared for the Board's consideration in relation to the draft TRP (Document 4), including its covering letter (Document 3).
35. The term 'deliberative process' has been interpreted widely. In *Re Waterford and Department of Treasury (No. 2)*,¹⁸ the Commonwealth Administrative Appeals Tribunal held:

... "deliberative processes" [is] wide enough to include any of the processes of deliberation or consideration involved in the functions of an agency... In short, ... its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

36. In *Collins v Greyhound Racing Control Board* (1990) 4 VAR 65, the Administrative Appeals Tribunal considered the nature of meeting minutes in the context of section 30(1). The Tribunal found that where the minutes disclose deliberations, they would fall within the ambit of section 30(1)(a), however, where they merely disclose factual matters, or motions passed, they would not meet the requirements of section 30(1)(a):¹⁹

In my view minutes do not of themselves have some special characteristic which brings them under the ambit of s 30(1)(a). The character of the minutes in question determines whether or not they fall within the ambit of the section. Where minutes reveal the thought processes of Board members, they would, in my view, fall within the subsection. However, where they disclose factual matters or motions passed at a meeting which record the final decision of the meeting in relation to a particular matter, as distinct from a preliminary decision, they do not fall within s 30(1)(a)...

37. Having examined the meeting agenda (Document 15), I am not satisfied the information meets the first limb of the exemption, as the information does not describe an option, or a series of alternatives provided to be considered, the thinking process or discussion leading to a decision by the Board. In my view, the agenda items list the topics to be discussed at the Board meeting, however, it does not reveal any of the deliberations of the Board. Accordingly, I am not satisfied the document is exempt under section 30(1) as it does not satisfy the first limb of the exemption.
38. Similarly, whilst the covering letter to the report in Document 3 discloses a recommendation to the Board, it is devoid of all context as to how the recommendation was formed. Accordingly, I am not satisfied the nature of this document satisfies the first limb of section 30(1) for similar reasons as

¹⁷ *Mildenhall v Department of Education* (1998) 14 VAR 87.

¹⁸ [1981] 1 AAR 1.

¹⁹ *Collins v Greyhound Racing Control Board* (1990) 4 VAR 65 at 70; *Birnbauer v Inner & Eastern Health Care Network* (1999) 16 VAR 9.

Document 15. Nevertheless, I will consider whether disclosure of these documents would be contrary to the public interest.

39. Having viewed the Report to the Agency's Board regarding the proposed TRP (Document 4), while the document contains factual information, I am satisfied the purpose of the factual information in the document is to provide the Board with contextual information in support of the recommended proposed changes to the TRP, for deliberation by the Board. Accordingly, I am satisfied Document 4 satisfies the first limb of section 30(1).

Was the opinion, advice, recommendation, consultation or deliberation disclosed in the documents provided in the course of, or for the purpose of, the deliberative process of the Agency?

40. I am satisfied the documents were prepared for the deliberative processes of the Agency associated with its timber harvesting functions and requirements.

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

41. I must also be satisfied releasing this information is not contrary to the public interest. This requires a 'process of the weighing against each other conflicting merits and demerits'.²⁰
42. In doing so, I must consider all relevant facts and circumstances remaining mindful the object of the FOI Act is to facilitate and promote the disclosure of information.
43. The onus lies with the Agency to show that disclosure of the information in a document would be contrary to the public interest, in that it would harm the public in some way.²¹
44. In determining whether disclosure would be contrary to the public interest, I have taken the following factors into consideration:²²
- (a) the right of every person to gain access to documents under the FOI Act;
 - (b) the degree of sensitivity of the issues discussed in the documents and the broader context giving rise to the creation of the documents;
 - (c) the stage of a decision or status of policy development or a process being undertaken at the time the communications were made;
 - (d) whether disclosure of the documents would be likely to inhibit communications between Agency officers, essential for the Agency to make an informed and well-considered decision or participate fully and properly in a process in accordance with the Agency's functions and other statutory obligations;
 - (e) whether disclosure of the documents would give merely a part explanation, rather than a complete explanation for the making of a particular decision or the outcome of a process, which 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 position or decision reached by the Agency at the conclusion of a decision or process; and

²⁰ *Sinclair v Maryborough Mining Warden* [1975] HCA 17; (1975) 132 CLR 473 at [485], adopted in *Department of Premier and Cabinet v Hulls* [1999] VSCA 117 at [30].

²¹ *Simons v Department of Justice* [2006] VCAT 2053 at [17].

²² *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

- (g) the public interest in the community being better informed about the way in which the Agency carries out its functions, including its deliberative, consultative and decision-making processes and whether the underlying issues require greater public scrutiny.

45. In response to preliminary inquiries by OVIC staff, the Agency submitted the following in support of its view the documents are exempt under section 30(1):

Board papers (and their covers) are prepared for recommendations, opinion and advice to the board on which they can make well-informed decisions. VicForests is a highly scrutinised business and the subject of regular media interest. If there is a chance that any board documentation may be subject to being provided under FOI it would significantly impact the willingness of the business to provide full and frank advice and information. It is not in the public interest for VicForests' board documents to be made available through FOI.

46. In support of their application for review, the Applicant submits it seeks access to the documents because it believes the Agency 'failed to consider, or properly consider, its long-term (strategic) planning obligations as set out in various clauses' of the *Code of Practice for Timber Production 2014*, cited in part (a) of the Applicant's request.

47. The Applicant states:

Accordingly it is strongly in the public interest to know if VicForests failed to consider, or properly consider, its long-term (strategic) planning obligations, and VicForests refusal to release the five documents withheld pursuant to S.30(1) of the FoI Act is groundless.

The likelihood that it did fail to consider, or properly consider, its statutory obligations is heightened by there being no documented analysis of public submissions, as stated in VicForests' letter of 5 May. Public consultation is a statutory requirement under Clause 16 of the *Allocation Order 2013* (as amended) and for the views of consultees to not even warrant documentation such that they can be drawn to the attention of the VicForests Board would likely breach the Allocation Order.

48. The Applicant also relies on paragraphs 6(b) and (d) of the Federal Court of Australia's decision in *Friends of Leadbeater's Possum Inc v VicForests (No 4)* [2020] FCA 704. This decision concerns forestry operations in coupes located in the Central Highlands region of Victoria and the effect of the forestry operations on threatened native fauna species. The paragraphs cited by the Applicant relate to the principal findings of the Court in relation to compliance with the Code, as follows:

(b) In undertaking forestry operations in the Logged Glider Coupes, VicForests did not apply the precautionary principle to the conservation of biodiversity values in those coupes, as it was required to do by cl 2.2.2.2 of the *Code of Practice for Timber Production 2014*. Specifically, on the applicant's case, VicForests did not apply the precautionary principle to the conservation of the Greater Glider as a threatened species present in, and using, the forest in those coupes. Accordingly, in relation to the forestry operations undertaken by VicForests in the Logged Glider Coupes, its conduct was not covered by the exemption in s 38(1) of the EPBC Act.

...

(d) In undertaking forestry operations in the Scheduled Coupes, VicForests is not likely to apply the precautionary principle to the conservation of biodiversity values in those coupes, as it is required to do by cl 2.2.2.2 of the Code. Specifically, on the applicant's case, VicForests is not likely to apply the precautionary principle to the conservation of the Greater Glider as a threatened species present in, and using, the forest in those coupes. Accordingly, in relation to any forestry operations proposed to be undertaken by VicForests in the Scheduled Coupes, its conduct will not be covered by the exemption in s 38(1) of the EPBC Act.

49. The Applicant submits it provided a submission to the Agency in response to the draft TRP, raising concerns the Agency failed to consider, or properly consider, certain provisions of the Code. The Applicant was provided with a response from the Agency in February 2018 after the TRP was

adopted, however, they Applicant is of the view the Agency's response 'failed to allude specifically to [its] allegations relating to the specific mandatory Code clauses set out in [its] submission'.

50. Lastly, the Applicant submits there is an expectation that information relating to environmental protection and environmental justice should be readily available, in accordance with the following statements within the *Victorian Branch Australian Labor Party Platform 2018*:²³

7.6.3 FOREST MANAGEMENT AND COMMUNITY VALUES

Labor understands that forest management practices need to reflect the values of the community.

Labor will:

...

- ensure that decision-making and data relating to native forests, multiple use forests and the timber industry is open, transparent and accessible;

...

7.12.3 ENVIRONMENTAL JUSTICE

Labor recognises that communities needs appropriate access to the legal system to pursue environmental justice.

Labor will:

...

- review relevant legislation and dispute, court and other processes with a view to strengthening environmental justice and outcomes.

51. Having reviewed the documents and based on the information before me, I have decided it would not be contrary to the public interest to release the documents.
52. While I accept there is sensitivity around forestry issues, I consider the documents relate to the Agency's regulatory functions and compliance with the relevant legislation in relation to harvesting operations in State Forests. There is a significant public interest in the public being informed about compliance with laws regulating and protecting Victorian public forests. In my view, disclosure of such information will aid informed public debate about a public asset.
53. I also consider there to be an expectation of accountability and transparency of public actions concerning timber harvested from Victorian forests, which is a public resource. As the responsible body for the management of Victorian Forests, I consider releasing information to the Applicant is conducive to the public interest in open and accountable actions in the public sector.
54. I also note the Agency's submission regarding the importance of the provision of full and frank advice to the Board. However, I consider greater transparency can improve the provision of such advice.²⁴ In any case, it is arguable Agency officers are responsible for ensuring advice provided is accurate, complete and properly considered on matters central to its governmental functions. It is the role of government, supported and informed by analysis and advice undertaken by agency officers, to make decisions and act in the best interests of the public – a role that is necessarily and appropriately the subject of public scrutiny.
55. Accordingly, I am not satisfied the documents subject to review are exempt under section 30(1).

Section 34(4)(a)(ii)

56. A document is exempt under section 34(4)(a)(ii) if:
- (a) the agency is engaged in trade or commerce;

²³ See <https://www.viclabor.com.au/wp-content/uploads/2018/11/Platform-2018-Final-Web.pdf> at 120 and 127.

²⁴ *Graze v Commissioner of State Revenue* [2013] VCAT 869.

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

Is the agency engaged in trade and commerce?

57. The first limb of the exemption under section 34(4)(a)(ii) requires me to be satisfied the Agency is engaged in trade or commerce.
58. Whether an agency is engaged in trade or commerce depends on the facts and circumstances of each case.²⁵
59. In *Re Ku-ring-gai Co-operative Building Society (No 12) Ltd*, the Federal Court of Australia held, '[t]he terms "trade" and "commerce" are not terms of art. They are expressions of fact and terms of common knowledge'²⁶ and are terms 'of the widest import'.²⁷
60. An agency may be regarded as being engaged in trade or commerce, even if the amount of trade or commerce engaged in is insignificant and incidental to the agency's other functions.²⁸
61. Further, an agency may be engaged in trade or commerce, even if profit is not one of its express statutory objectives.²⁹
62. The fact an agency's predominant activities may be described as 'governmental' does not preclude it from relying on the exemption under section 34(4)(a)(ii).³⁰
63. While the phrase 'trade and commerce' may be interpreted broadly,³¹ it has been held trade and commerce must 'of their nature, bear a trading or commercial character'.³²
64. On the information before me, I am not satisfied the Agency is engaged in trade and commerce. Rather, the Agency is undertaking its regulatory functions required under the *Sustainable Forests (Timber) Act 2004*, as outlined above.
65. Accordingly, I am not satisfied the documents subject to this review are exempt under section 34(4)(a)(ii).

Deletion of exempt or irrelevant information

66. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
67. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'³³ and the effectiveness of the deletions. Where

²⁵ *Stewart v Department of Tourism, Sport and the Commonwealth Games* [2003] VCAT 45 at [41].

²⁶ [1978] FCA 50; (1978) 22 ALR 621 at 648.

²⁷ *Ibid* at 649.

²⁸ *Marple v Department of Agriculture* (1995) 9 VAR 29 at [47].

²⁹ *Thwaites v Metropolitan Ambulance Services* (1996) 9 VAR at [473].

³⁰ *Stewart v Department of Tourism, Sport and the Commonwealth Games* (2003) 19 VAR 363; [2003] VCAT 45 at [41]; *Fyfe v Department of Primary Industries* [2010] VCAT 240 at [23].

³¹ *Re Ku-Ring-Gai Co-operative Building Society (No 12) Ltd* [1978] FCA 50; (1978) 36 FLR 134.

³² *Concrete Constructions (NSW) Pty Ltd v Nelson* [1990] HCA 17; (1990) 169 CLR 594 at 690 and *Gibson v Latrobe City Council* [2008] VCAT 1340 at [35] (per Acting President Justice I J K Ross).

³³ *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 at [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

deletions would render a document meaningless, they are not 'practicable', and release of the document is not required under section 25.³⁴

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

Conclusion

69. On the information available, I am not satisfied the documents subject to this review are exempt under sections 30(1) or 34(4)(a)(ii).
70. As I am satisfied it is practicable to edit the documents to delete irrelevant information in accordance with section 25, I have determined to grant access to the documents in part.
71. The Schedule of Documents in **Annexure 1** sets out my decision in relation to the document.

Review rights

72. If either party to this review is not satisfied with my decision, they are entitled to apply to the VCAT for it to be reviewed.³⁵
73. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.³⁶
74. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.³⁷
75. 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.
76. 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.³⁸

When this decision takes effect

77. My decision does not take effect until the Agency's 14 day review period expires.
78. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

³⁴ *Honeywood v Department of Human Services* [2006] VCAT 2048 at [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140] and [155].

³⁵ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

³⁶ Section 52(5).

³⁷ Section 52(9).

³⁸ Sections 50(3F) and (3FA).

Annexure 1 – Schedule of Documents C/20/01046

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1.	Undated	Unallocated Area Summary	3	Released in full	Not subject to review	
2.	18/12/2019	Consistency Check Memo	8	Released in part Sections 33(1), 25	Release in part Section 25 The personal affairs information is to remain deleted as irrelevant information in accordance with section 25. The remainder of the document is to be released.	Section 25: On 28 May 2020, the Applicant advised they do not seek access to personal affairs information. Accordingly, personal affairs information is irrelevant to the review and is to be deleted.
3.	19/12/2019	Board Report – Cover sheet	1	Refused in full Sections 30(1), 34(4)(a)	Release in part Section 25 The document is to be released, except for the name of the third party which is to be deleted in accordance with section 25 as it is irrelevant.	Section 30(1): I am not satisfied disclosure of the recommendation would be contrary to the public interest for reasons outlined above in the Notice of Decision. Section 34(4)(a)(ii): I am not satisfied the document is exempt under section 34(4)(a)(ii) for reasons outlined above in the Notice of Decision. Section 25: See comments for Document 2.
4.	19/12/2019	Board Report – TRP	40	Refused in full	Release in part	Section 30(1): I am not satisfied disclosure of this document would be exempt under section 30(1) for reasons

Annexure 1 – Schedule of Documents C/20/01046

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
				Sections 30(1), 34(4)(a)(ii)	<p>Section 25</p> <p>This document is to be released, except for the following personal affairs information of third parties, which is irrelevant to this review and is to be deleted in accordance with section 25:</p> <ul style="list-style-type: none"> (a) names; (b) initials of third parties; (c) position titles; (d) email addresses; and (e) telephone numbers. 	<p>outlined above in the Notice of Decision.</p> <p>Section 34(4)(a)(ii): See comments for Document 3. Accordingly, this document is not exempt under section 34(4)(a)(ii).</p>
5.	Undated	TRP Amendment Dec 2019	2	Released in full	Not subject to review	
6.	Undated	TRP Amendment Jan 2020	2	Refused in full Sections 30(1)	Not subject to review	Document 6 is a draft of Document 5. On 19 June 2020, the Applicant indicated they do not seek review of Document 6.
7.	Undated	TRP Amendment Dec 2019	2	Refused in full	Not subject to review	See comments for Document 6.

Annexure 1 – Schedule of Documents C/20/01046

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
				Sections 30(1)		
8.	19/12/2019	Board Paper – mark up	11	Refused in full Sections 30(1), 34(4)(a)	Not subject to review	Document 8 is a draft of Document 3. On 19 June 2020, the Applicant indicated they do not seek review of Document 8.
9.	Undated	TRP Schedule – Modifications Proposals DELWP	2	Released in full	Not subject to review	
10.	19/12/2019	Board Paper – mark up 2	9	Refused in full Sections 30(1), 34(4)(a)	Not subject to review	See comments for Document 8.
11.	Undated	Timber Release Plan	2	Released in full	Not subject to review	
12.	Undated	TRP Schedule – Modifications Proposals PV	10	Released in full	Not subject to review	
13.	Undated	TRP Schedule – Modifications Proposals PV2	10	Released in full	Not subject to review	
14.	Undated	TRP Schedule – Modifications Proposals TEMPLATE	13	Released in full	Not subject to review	
15.	19/12/2019	Board Meeting Agenda	2	Refused in full Sections 30(1), 33(1)	Release in part Section 25	Section 30(1): See comments for Document 3. Accordingly, this document is not exempt under section

Annexure 1 – Schedule of Documents C/20/01046

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				34(4)(a)(ii)	This document is to be released, except for the names and position titles of agency officers, which is irrelevant to this review and is to be deleted in accordance with section 25.	30(1). Section 34(4)(a)(ii): See comments for Document 3. Accordingly, this document is not exempt under section 34(4)(a)(ii), Section 25: See comments for Document 3.
16.	December 2019	VicForests TRP	66	Released in full	Not subject to review	