

Notice of Decision and Reasons for Decision

Applicant: Rubicon Forest Protection Group
Agency: Department of Jobs, Precincts and Regions
Agency reference: 19-78582
Our reference: C/20/00882
Decision date: 10 July 2020
Exemptions considered: Sections 30(1), 35(1)(b)

FREEDOM OF INFORMATION – forestry – timber harvesting – Timber Release Plan – inter-agency correspondence

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 satisfied certain parts of the documents are exempt under section 30(1). I am not satisfied Documents 2 and 2(a) are exempt under section 35(1)(b).

As I am satisfied it is practicable to delete exempt and irrelevant information in the documents in accordance with section 25, I have determined to release the documents in part.

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

10 July 2020

Reasons for Decision

Background to review

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

All documents, including emails, memoranda of phone conversations, SMS messages, meeting agendas, meeting minutes, briefing notes, etc, whether internal documents or exchanges between DJPR and DPC, DTF, VicForests or relevant Ministers or their Offices pertaining to the newly gazetted Timber Release Plan created between 1 October 2019 and its gazettal on 23 December.

2. In its decision, the Agency identified six documents falling within the terms of the Applicant's request and decided to grant access to some of the documents in part pursuant to sections 30(1), 33(1) and 35(1)(b).

The Timber Release Plan and its Statutory Framework

3. 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 with respect to Timber Release Plans and Allocation Orders.
4. The statutory responsibility for timber harvesting in Victorian State forests is vested in various governmental entities, including the Agency, VicForests and the Department of Environment, Land Water and Planning (**DELWP**).

Allocation Orders

5. 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 VicForests via an Allocation Order made by the Minister for Agriculture.²
6. The Allocation Order thereby permits VicForests to undertake management activities in relation to the allocated areas, including those associated with the harvesting and/or selling of timber resources.³
7. Once an Allocation Order is published in the Victorian Government Gazette, the VicForests must carry out its functions in compliance with the Allocation Order.⁴
8. The Minister for Agriculture is responsible for the development of the Allocation Order, via support of the Agency.⁵

Timber Release Plan

9. In addition to compliance with the Allocation Order, VicForests must also comply with Timber Release Plans and the Code of Practice for Timber Production.
10. VicForests 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:

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

² *Ibid*, sections 13 -14.

³ *Ibid*, section 13.

⁴ *Ibid*, section 16.

⁵ See *Regulating timber harvesting in State forests under the Allocation Order- Statement of Regulatory Intent*, page 7, available at <<https://www2.delwp.vic.gov.au/our-department/regulator?a=423363>>

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.

11. 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 VicForests to harvest the timber.⁶ The TRP lists the coupes, their location, the type of forest within the coupe, the timing and the method of harvesting required.⁷
12. VicForests, the Department of Environment, Water, Land and Planning (DEWLP) and the Department of Jobs, Precincts and Regions (DJPR) (the **Agency**) and other stakeholders are part of a review and feedback period in relation to the proposed TRP.⁸ The proposed TRP, including maps of the proposed areas for harvest, is also published on VicForests' website for public consultation.⁹
13. 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 VicForests' Board and subsequently gazetted.¹⁰
14. 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.¹¹
15. On 23 December 2019, the amended TRP was approved by the VicForests' Board and gazetted.¹² A copy of the TRP is currently published on the VicForests' website.¹³

⁶ See *Timber Release Plan Fact Sheet* available at <<https://www.vicforests.com.au/static/uploads/files/trp-factsheet-2017-wfivwahqvdud.pdf>> and *VicForests' Planning Process Fact Sheet* available at <<https://www.vicforests.com.au/static/uploads/files/fs-planning-web-wfskyoxhkhny.pdf>>.

⁷ Ibid.

⁸ See *Timber Release Plan Fact Sheet* available at <<https://www.vicforests.com.au/static/uploads/files/trp-factsheet-2017-wfivwahqvdud.pdf>>.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid; *VicForests' Planning Process Fact Sheet* available at <<https://www.vicforests.com.au/static/uploads/files/fs-planning-web-wfskyoxhkhny.pdf>>.

¹² Available at <<https://www.vicforests.com.au/static/uploads/files/gg2019s562-wffdyuvltkly.pdf>>.

¹³ Available at <<https://www.vicforests.com.au/static/uploads/files/copy-of-trp-unallocated-area-summary-lw-005-wfmxoskbrjd.pdf>>.

Code of Practice

16. As stated above, the TRP must comply with the *Code of Practice for Timber Production 2014*.¹⁴
17. 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.¹⁵
18. The Code operates to ensure that commercial timber production and harvesting operations are compatible with the conservation of forests.¹⁶

Review

19. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
20. In its application for review, the Applicant indicated they do not seek review of information deleted by the Agency under sections 33(1) and 25. Accordingly, this review relates to the documents to which the Agency granted access in part under sections 30(1) and 35(1)(b).
21. I have examined copies of the documents subject to review.
22. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
23. 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;
 - (c) the Agency's submission dated 4 and 26 June 2020; and
 - (d) publicly available information regarding the TRP.
24. 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

25. The Agency refused access to certain information in the documents under section 30(1).
26. Section 30(1) has three requirements:

¹⁴ 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>.

¹⁵ 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.

¹⁶ See *Code of Practice for Timber Production 2014*.

- (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.

27. The exemption does not apply to purely factual material.¹⁷

Were the documents prepared by an officer of the Agency?

28. 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 for the agency, whether or not that person is one to whom the provisions of the *Public Administration Act 2004* (Vic) apply.
29. 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?

30. 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.
31. 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.¹⁸
32. The documents contain email correspondence between the Agency, VicForests and the DELWP regarding the proposed amendments to the TRP and Timber Utilisation Plan and forest management policy. The correspondence also includes various attachments.
33. The term 'deliberative process' has been interpreted widely. In *Re Waterford and Department of Treasury (No. 2)*,¹⁹ 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.
34. Having viewed the documents, I am satisfied they contain information in the nature of opinion, advice or recommendation, or consultation or deliberation between agency officers.

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?

¹⁷ Section 30(3).

¹⁸ *Mildenhall v Department of Education* (1998) 14 VAR 87.

¹⁹ [1981] 1 AAR 1.

35. I am satisfied the documents were prepared for the deliberative processes of the Agency associated with its statutory responsibility for review and oversight of VicForests development of the Timber Release Plan and forest policy more generally.

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

36. In order to find the documents exempt under section 30(1) I must also be satisfied disclosure of this information would be contrary to the public interest. This requires a 'process of the weighing against each other conflicting merits and demerits'.²⁰

37. 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.

38. 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

39. 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
- (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.

40. In support of their application for review, the Applicant submits it seeks access to the documents to 'understand whether the Government has properly considered all relevant matters in assisting VicForests formulate its Timber Release Plan (TRP) gazetted on 23 December 2019'. The Applicant is of the view the TRP 'contravenes several key regulatory requirements'.

41. Further, the Applicant submits the redactions under sections 30(1) and 35(1)(b) are unreasonable 'especially given the Government's commitment to openness and transparency in forestry matters as

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.

set out on p.121 of its 2018 election platform, namely that it will “ensure that decision-making and data relating to native forests, multiple use forests and the timber industry is open, transparent and accessible”.

42. In its decision, the Agency states:

This exemption has been applied to draft version of documents containing recommendations or options for decision that, if prematurely disclosed, would result in unwarranted inferences being made that the option or recommendation was accepted as a final decision or will be a course of action that may not be taken. Disclosure of this information would be against the public interest in consideration of the degree of sensitivity of the issues involved.

43. I do not consider disclosure of the information exempted by the Agency under section 30(1) in Documents 1, 2 and 6 (including attachments) will be contrary to the public interest for the following reasons:

- (a) While I accept there is sensitivity around forestry issues, I consider the documents concerns each of the agencies’ statutory responsibilities in relation to timber harvesting in State Forests. There is a significant public interest in the public being informed about the way in which the relevant agencies perform their statutory functions in relation to public assets and 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.
- (b) 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. In such instances, I consider disclosure of certain information is conducive to the public interest in open and accountable actions in the public sector and outweighs any sensitivities in the disclosure of the documents.
- (c) I am not satisfied the disclosure of deliberative material will result in poor quality decision-making by any of the statutory entities responsible for managing State Forests with respect to timber harvesting.

In my view, VicForests is responsible for ensuring the information it provides to other entities is accurate and complete. Failing to do so would inhibit the proper consideration of the issues by those entities. As part of the TRP process, as outlined above, VicForests is required to consult with its stakeholders, including the Agency, in order for stakeholders to evaluate the proposed coupes in the TRP.²³ I am not satisfied disclosure of the documents to the Applicant in response to this FOI request will inhibit VicForests from providing the necessary information to those entities, as that would mean VicForests is failing to conduct a meaningful consultation process as required under its regulatory policy.

I take the view that greater transparency can also improve the quality of decision-making processes in relation to public assets. In the decision of *Graze v Commissioner of State Revenue*,²⁴ the Victorian Civil and Administrative Tribunal (VCAT) considered the possibility that public scrutiny may improve the quality of advice provided to decision-makers, as follows:

As I have in frequently observed Freedom of Information determinations over the years, the possibility of public scrutiny may improve the quality of advice that is given to administrative decision-makers. The provision of advice that is superficial or the result of insufficient analysis or might be thought to be slanted to a particular political view would be deterred by the prospect

²³ See *VicForests Procedures – Regulatory Handbook* at [2.5(b)], page 11 available at <<https://www.vicforests.com.au/static/uploads/files/20180228-vicforests-operating-procedures-regulatory-handbook-v3-1-wffobneovxgi.pdf>>.

²⁴ [2013] VCAT 869.

that such advice might come to light under the Freedom of Information system. The fact that Parliament has left the public interest issues relative to internal working documents at large indicates, to my mind, that it contemplates that the public interest may cut both ways.²⁵

- (d) I also do not consider there to be a strong possibility the documents could be misinterpreted or would lead to any confusion by individuals who do not have a full and detailed understanding of the regulatory framework.

In my view, members of the public, including the Applicant, are capable of understanding the documents subject to this review were prepared for consideration prior to the approval of the amended TRP, and may not necessarily reflect the final decision of the VicForests Board in relation to the TRP.

The amended TRP approved by the VicForests Board was gazetted on 23 December 2019 and an interactive map, with the ability to view the location and extent of the approved coupes in the approved amended TRP, has been published on VicForests' website to provide information to stakeholders.²⁶ I consider members of the public are capable of comparing the proposed amendments, and related documentation, with the approved amended TRP, without drawing ill-informed conclusions.

In any case, it is open for the Agency to provide any further explanation about the documents to assist the Applicant in understanding the information to ensure it is not misinterpreted.

- (e) For the above reasons, and noting certain information exempted by the Agency is already publicly available on VicForests' website, I am not satisfied disclosure of that information would be contrary to the public interest.

44. Accordingly, I am not satisfied Documents 1, 2 and 6 are exempt under section 30(1).

45. Regarding Documents 3 and 5, the Agency submits:

- The information discusses differing interpretations of policy application. It is submitted that release of this information will serve only to cause spurious debate regarding which interpretation is correct and create confusion regarding whether certain logging activities are permissible;
- Release of the information will likely detrimentally impact the relationship between departmental agencies;
- There is a significant amount of publicly available information regarding the issues discussed in the documents and logging more generally. It is submitted that any public interest in the material is best served by accessing this material, which presents a final agreed view rather than opinions posited at a point in time.

46. With respect to Document 4, the Agency submits:

- The documents disclose sensitive consultation occurring between high level public servants regarding a policy that was yet to be finalised. It is well established that this factor weighs heavily against disclosure;
.....²⁷
- The documents are part of a broader decision-making process. It is not in the public interest to disclose only one element of this process. Rather, there is a strong public interest in decision-makers

²⁵ Ibid, [26].

²⁶ Available at

<http://vicforeststrp.maps.arcgis.com/apps/PublicInformation/index.html?appid=f25d9bb792e049bec77ccc5daaf7d03>.

²⁷ The Agency has submitted certain information in its submission is confidential. Accordingly, the second dot-point in relation to the Agency submission regarding Document 4 has not been disclosed in this Notice of Decision.

being able to put views to other entities to be considered without them being public. This type of robust and thorough consultation helps ensure quality decision making.

47. I acknowledge inter-agency evaluative processes in relation to forestry management policy, and proposed amendments to the TRP, is particularly important. The ability to conduct thorough and considered evaluative processes is a vital part of responsible government. In such circumstances, I accept there is a public interest in senior agency officers being able to openly exchange views in relation to the proposed amendments to TRP and related policy, prior to approval of the amendments to the TRP by the VicForests Board.
48. Having carefully reviewed Documents 3, 4, and 5 and the context in which the opinion was provided, in my view, it was not determinative in any final decision made by the VicForests' Board, but was likely to have led to further consideration of policy relevant to timber harvesting in State forests.
49. In the circumstances of this particular case, I am satisfied disclosure of such information would be reasonably likely to inhibit open communication and documentation of such opinions in the future, which would negatively impact on the agencies' deliberative processes. In light of information the Agency has already disclosed to the Applicant and that has been made publicly available, I consider there is a stronger public interest in ensuring the ability of the agencies to undertake and record appropriate deliberation and discussion than in disclosure in this instance.
50. Accordingly, I am satisfied it would be contrary to the public interest to disclose certain information in Documents 3, 4 and 5.
51. My decision in relation to the application of section 30(1) to each of the documents in is outlined in the Schedule of Documents in **Annexure 1**.

Section 35(1)(b)

52. The Agency relied on the exemption under section 35(1)(b) to delete information in Attachment 1 of document 2 (**Document 2(a)**), which the Agency describes as a 'consultative document for multi-agency input'.
53. A document is exempt under section 35(1)(b) if two conditions are satisfied:
 - (a) disclosure would divulge information or matter communicated in confidence by or on behalf of a person or a government to an agency or a Minister; and
 - (a) 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.

Was the information obtained in confidence?

54. Whether information communicated by an individual was communicated in confidence is a question of fact.²⁸
55. When determining whether information was communicated in confidence, it is necessary to consider the position from the perspective of the communicator.²⁹
56. The Agency consulted with VicForests to obtain its view as to whether the information was communicated in confidence.

²⁸ *Ryder v Booth* [1985] VR 869 at 883; *XYZ v Victoria Police* [2010] VCAT 255 at [264].

²⁹ *Ibid.*

57. I have considered VicForests' view, however, the opinion of VicForests is not determinative as to whether the first limb of section 35(1)(b) is satisfied.
58. In my view, I am not satisfied the information was communicated to the Agency in confidence, given the nature of the information and the circumstances in which it was provided.
59. Nevertheless, I will consider whether disclosure of the documents would be contrary to the public interest.

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

60. The exemption also requires I consider whether the Agency would be impaired from obtaining similar information in the future if the information is disclosed under the FOI Act. This involves considering whether others in the position of the communicator would be reasonably likely to be inhibited or deterred from providing similar information to the Agency in the future should the information be disclosed.
61. The public interest test in section 35(1)(b) is narrow. It is directed towards the impact release would have on an agency's ability to obtain the same type of information in the future. The provision does not permit me to have regard to other matters, such as any public interest in favour of release, or the extent to which the Applicant's personal interest in the documents would be served by granting them access to them.
62. In this matter, I am not satisfied disclosure of the document will impair the agency from obtaining similar information in the future for the following reasons:
 - (a) As outlined above, the Agency has a level of statutory responsibility in relation to the management of timber resources in Victorian State forests.

This includes the Agency's role to advise the Minister for Agriculture of the timber industry, forest industry policy, oversight, review and administration of Allocation Orders, as well as oversight of the corporate governance of VicForests.³⁰ It is also responsible for the oversight of VicForests' development of Timber Release Plans.³¹

Similarly, the DWELP has the primary responsibility for regulating timber harvesting operations in State Forests, in addition to its other responsibilities regarding the management of Victorian forests.³² This includes monitoring VicForests' compliance with the Code of Practice for Timber Production 2014.³³

VicForests is a state-owned enterprise responsible for the sustainable harvesting and commercial sale of timber from Victorian State forests. Importantly, it is required to comply with the regulatory framework for timber harvesting.

In such circumstances, I am not persuaded that giving access to the documents pursuant to the Applicant's FOI request would prevent VicForests from providing all available information concerning proposed amendments to the TRP to regulatory bodies in the future. To do so

³⁰ See <http://agriculture.vic.gov.au/agriculture/forestry/roles-and-responsibilities/departments-of-economic-development-jobs-transport-and-resources> and *Independent Review of Timber Harvesting Regulation – Panel Report to the Secretary of the Department of Environment, Land, Water and Planning*, page 13 available at

³¹ See *Overview of Victoria's Forest Management System*, page 13 available at <https://www2.delwp.vic.gov.au/__data/assets/pdf_file/0027/458640/Forest-Management-System-Overview-2019-1.pdf>.

³² *Ibid.* Also see *Regulating timber harvesting in State forests under the Allocation Order – Statement of Regulatory Intent*, page 4 available at <<https://www2.delwp.vic.gov.au/our-department/regulator?a=423363>>.

³³ See *Forest Management Plan – October 2019*, page 8 available at <<https://www.vicforests.com.au/static/uploads/files/vicforests-fmp-v3-2-wflabdmjjioe.pdf>>

otherwise would unnecessarily undermine open and transparent stakeholder engagement and communication between agencies involved in the management of State Forests.

- (b) In comparison with other attachments provided to the Agency in VicForests' invitation to comment on the proposed amendments to the TRP that was not claimed exempt under section 35(1)(b), in my view, the additional information in Document 2(a) is no more sensitive than the other documents and merely provides more detailed information concerning the proposed changes.

63. Accordingly, I am not satisfied the information is exempt under section 35(1)(b).

Other issues

64. During this review, OVIC made inquiries in relation to attachments in Documents 2 and 5 that were not initially provided by the Agency for review.
65. The Agency provided a copy of the attachments, which are two zip folders containing geodatabase files for use by a mapping program.
66. On 26 June 2020, the Agency submitted both attachments are exempt under section 30(1) on the basis they contain similar information as Document 1(a).
67. Having considered the nature of the attachments, I am not satisfied zip files containing geodatabase files is a document that exists in a discrete form for the purpose of section 5(1). Therefore, I have not considered the application of section 30(1) to the zip files.

Deletion of exempt or irrelevant information

68. 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.
69. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'³⁴ and the effectiveness of the deletions. Where deletions would render a document meaningless, they are not 'practicable', and release of the document is not required under section 25.³⁵
70. I have considered the effect of deleting exempt and irrelevant information from the documents. In my view, it is practicable for the Agency to delete the exempt and irrelevant information, because it would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

71. On the information available, I am satisfied certain information the documents subject to this review is exempt under section 30(1).
72. I am not satisfied Document 2(a) is exempt under section 35(1)(b).
73. As I am satisfied it is practicable to edit the documents to delete irrelevant and exempt information in accordance with section 25, I have determined to grant access to the documents in part.
74. The Schedule of Documents in **Annexure 1** sets out my decision in relation to the document.

³⁴ *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].

³⁵ *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].

Review rights

75. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.³⁶
76. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.³⁷
77. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.³⁸
78. 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.
79. 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.³⁹

Notification of third party review rights

80. Section 49P(5) provides if I make a decision to disclose a document claimed to be exempt under section 35(1)(b), if practicable, I must notify any person who has a right to make an application for review of the decision under section 50(3AB) of the existence of that right.
81. I have decided to release documents that contain information claimed exempt under section 35(1)(b)
82. In the circumstances, I consider it practicable to notify the the third party of their right to review.
83. Therefore, the third party will be notified of my decision of their right to apply to VCAT for a review within 60 days from the date they are given notice of my decision.

When this decision takes effect

84. My decision does not take effect until the 60-day review period expires.
85. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

³⁶ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

³⁷ Section 52(5).

³⁸ Section 52(9).

³⁹ Sections 50(3F) and (3FA).

Annexure 1 – Schedule of Documents C/20/00882

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1.	21/10/2019	Email	1	Released in part Sections 30(1), 33(1)	Release in part Section 25 This document is to be released, except for the personal affairs information deleted by the Agency which is irrelevant to this review and is to be deleted in accordance with section 25.	<p>Section 30(1): The Agency deleted the titles of two documents attached to the email chain. I am not satisfied the titles disclose the contents of any deliberation between Agency officers. Accordingly, it is not exempt under section 30(1).</p> <p>Section 25: In their application for review, the Applicant states they do not seek access to the personal affairs information exempted by the Agency.</p> <p>Accordingly, this information is to remain deleted under section 25 as it is not relevant to the review.</p> <p>I am satisfied it is practicable to edit the document under section 25 to delete irrelevant information.</p>
1(a)		Attachment 1.	18	Refused in full Section 30(1)	Release in full	<p>Section 30(1): I am not satisfied disclosure of the document would be contrary to the public interest, for reasons outlined above in the Notice of Decision in paragraph 43.</p>
1(b)		Attachment 2	Multiple files	Refused in full Section 30(1)	Not subject to review	<p>This attachment is a zip files containing geodatabase files, which are a collection of computer files for use by a mapping program.</p>

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						Considering the nature of the attachment, I am not satisfied this is a discrete document for the purpose of section 5(1).
2.	22/11/2019	Email	2	Released in part Sections 30(1), 33(1), 35(1)(b)	Release in part Section 25 This document is to be released, except for the personal affairs information deleted by the Agency which is irrelevant to this review and is to be deleted in accordance with section 25.	Section 30(1): See comment for Document 1. Section 35(1)(b): The Agency deleted the title of an attachment to the email chain under section 35(1)(b). I am not satisfied disclosure of the title would prevent the Agency from obtaining similar information in the future. Accordingly, it is not exempt under section 35(1)(b). Section 25: See comments for Document 1.
2(a)		Attachment 1	7	Refused in full Sections 30(1), 35(1)(b)	Release in full	Section 30(1): See comments for Document 1(a). Accordingly, this document is not exempt under section 30(1). Section 35(1)(b): I am not satisfied disclosure of the document will impair the Agency from obtaining similar information in the future, as outlined above in the Notice of decision.

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						Accordingly, this document is not exempt under section 35(1)(b).
2(b)		Attachment 2	13	Refused in full Section 30(1)	Release in full	Section 30(1): See comments for Document 1(a). Accordingly, this document is not exempt under section 30(1).
2(c)		Attachment 3	13	Released in part Section 30(1)	Release in full	Section 30(1): This document was published by VicForests during the consultation period in relation to the proposed changes to the TRP and is currently available on its website. Accordingly, I am not satisfied it would be contrary to the public interest to release the document in full.
2(d)		Attachment 4	2	Released in part Section 33(1)	Release in part Section 25 This document is to be released, except for the personal affairs information deleted by the Agency which is irrelevant to this review and is to be deleted in accordance with section 25.	Section 25: See comments for Document 1.

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2(e)		Attachment 5	Multiple files	Refused in full Section 30(1)	Not subject to review	Section 30: See comments for Document 1(b)
3.	21/11/2019 - 19/12/2019	Email chain	3	Released in part Sections 30(1), 33(1)	Released in part Sections 30(1), 25 This document is to be released, except for the following information, which is to be deleted in accordance with section 25: (a) the personal affairs information deleted by the Agency in its decision, which is irrelevant to this review; and (b) the body of the email dated 18 December 2019 at 5:55pm, which is exempt under section 30(1).	Section 30(1): I am satisfied it would be contrary to the public interest to disclose certain information in this document, for reasons outlined above in paragraphs 47 to 50 of the Notice of Decision. Section 25: I am satisfied it would be practicable to delete the irrelevant and exempt information in accordance with section 25.
4.	19/12/2019	Email chain	2	Released in part Sections 30(1), 33(1)	Released in part Sections 30(1), 25	Section 30(1): See comments for Document 3.

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					<p>This document is to be released, except for the following information, which is to be deleted in accordance with section 25:</p> <p>(a) the personal affairs information deleted by the Agency in its decision, which is irrelevant to this review; and</p> <p>(b) the body of the email dated 19 December 2019 at 9:41am, which is exempt under section 30(1).</p>	<p>Section 25: See comments for Document 3.</p>
4(a)		Letter plus attachments	8	<p>Released in part</p> <p>Sections 30(1), 33(1)</p>	<p>Release in part</p> <p>Sections 30(1), 25</p> <p>This document is to be released, except for the following information, which is to be deleted in accordance with section 25:</p>	<p>Section 30(1): See comments for Document 3.</p> <p>Section 25: See comments for Document 3.</p>

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					<p>(a) the personal affairs information deleted by the Agency in its decision, which is irrelevant to this review;</p> <p>(b) the information deleted by the Agency under section 30(1) is to remain deleted as it is exempt under section 30(1), except for the title of 'Attachment 1' at the bottom of the letter; and</p> <p>(c) 'Attachment 2' (pages 5, 6 and 7 of 10 in Document 4) which is exempt under section 30(1).</p>	
5.	19/12/2019	Email chain	4	<p>Released in part</p> <p>Sections 30(1), 33(1)</p>	<p>Released in part</p> <p>Sections 30(1), 25</p> <p>This document is to be released, except for the following information, which is to be deleted in accordance with section 25:</p>	<p>Section 30: See comments for Document 3.</p> <p>Section 25: See comments for Document 3.</p>

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					<p>(a) the personal affairs information deleted by the Agency in its decision, which is irrelevant to this review; and</p> <p>(b) the body of the email dated 18 December 2019 at 5:55pm, which is exempt under section 30(1).</p>	
5(a)		Attachment	3	<p>Released in part</p> <p>Sections 30(1), 33(1)</p>	<p>Released in part</p> <p>Sections 30(1), 25</p> <p>This document is to be released, except for the following information, which is to be deleted in accordance with section 25:</p> <p>(a) the personal affairs information deleted by the Agency in its decision, which is irrelevant to this review; and</p> <p>(b) the information deleted</p>	<p>Section 30(1): See comments for Document 3.</p> <p>Section 25: See comments for Document 3.</p>

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					by the Agency under section 30(1) is to remain deleted, as I am satisfied it is exempt under section 30(1).	
6.	20/12/2019	Email	4	Released in part Sections 30(1), 33(1)	Release in part Section 25 This document is to be released, except for the personal affairs information deleted by the Agency which is irrelevant to this review and is to be deleted in accordance with section 25.	Section 30(1): This is an internal email chain between senior agency officers and a policy analyst in relation to an article published by the media in relation to timber harvesting in Victorian State forests. See comments for Document 1(a). Accordingly, I am not satisfied the document is exempt under section 30(1). Section 25: See comments for Document 1.
6(a)		Attachment	4	Released in part Sections 30(1), 33(1)	Release in full	Section 30(1): This contains an attachment concerning the article regarding timber harvesting in Victorian State forests. It includes factual information in relation to the coupes discussed in the article. I am satisfied that most of the information deleted by the Agency is purely factual in nature and is not exempt under section 30(1).

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						<p>With respect to a small amount of information that is in the nature of opinion, see comments for Document 1(a).</p> <p>Section 25: See comments for Document 1.</p>