



Determination

External review - section 39 *Freedom of Information Act 1991*

Applicant:	[REDACTED]
Agency:	[REDACTED]
Ombudsman reference:	2025/05650
Agency reference:	FOI2025-00037
Determination:	The determination of the agency is varied , the effect of which is set out in Appendix 2.
Date of Ombudsman's determination:	2 July 2026
Issues considered:	Cabinet documents Personal affairs Secrecy provisions Operations of agencies
Exemption clauses relied upon:	1(1)(a), 1(1)(f), 6(2), 10(1), 12(1), 16(1)(a)(iii)
Legislation considered:	<i>Freedom of Information Act 1991</i>

REASONS

Application for access

1. By application under the *Freedom of Information Act 1991* (the **FOI Act**) the applicant requested access from the agency to:

All documents (including internal working documents) relating to a written complaint

[REDACTED]

Background

2. For ease of reference, the procedural steps relating to the application are set out in Appendix 1.

Jurisdiction

3. This external review is within the jurisdiction of the Ombudsman as a relevant review authority under section 39 of the FOI Act. Pursuant to section 9(1) of the *Ombudsman Act 1972*, the Ombudsman has delegated her powers under the FOI Act to me to conduct this external review.
4. Section 39(11) provides that the Ombudsman may confirm, vary or reverse the agency's determination in an external review, based on the circumstances existing at the time of review.

Provisional determination

5. I provided my tentative view about the agency's determination to the parties, by my provisional determination dated 16 June 2026. I informed the parties that subject to my receipt and consideration of submissions from the parties I proposed to vary the agency's determination.
6. Neither the applicant or agency provided submissions in response. As I have not been persuaded to alter my views, I have adopted the terms of the provisional determination as being my final views in this matter, as set out below.

Relevant law

7. A person has a legally enforceable right to be given access to an agency's documents in accordance with the FOI Act.¹
8. The FOI Act provides that upon receipt of an access application, an agency may make a determination to refuse access where the documents are 'exempt'. Schedule 1 lists various exemption clauses which may be claimed by an agency as a basis for refusing access.
9. The following clauses of Schedule 1 of the FOI Act are relevant to my external review:

1—Cabinet documents

(1) A document is an exempt document—

- (a) if it is a document that has been specifically prepared for submission to Cabinet (whether or not it has been so submitted); or

¹ *Freedom of Information Act 1991*, section 12.

- ...
- (f) if it is a briefing paper specifically prepared for the use of a Minister in relation to a matter submitted, or proposed to be submitted to Cabinet.

6—Documents affecting personal affairs

- (1) A document is an exempt document if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).
- (2) A document is an exempt document if it contains allegations or suggestions of criminal or other improper conduct on the part of a person (living or dead) the truth of which has not been established by judicial process and the disclosure of which would be unreasonable.

10—Documents subject to legal professional privilege

- (1) A document is an exempt document if it contains matter that would be privileged from production in legal proceedings on the ground of legal professional privilege.

12—Documents the subject of secrecy provisions

- (1) A document is an exempt document if it contains matter the disclosure of which would constitute an offence against an Act.

13—Documents containing confidential material

- (1) A document is an exempt document—
- (b) if it contains matter obtained in confidence the disclosure of which—
- (i) might reasonably be expected to prejudice the future supply of such information to the Government or to an agency; and
- (ii) would, on balance, be contrary to the public interest.

16—Documents concerning operations of agencies

- (1) A document is an exempt document if it contains matter the disclosure of which—
- (a) could reasonably be expected—
- ...
- (iii) to have a substantial adverse effect on the management or assessment by an agency of the agency's personnel; or
- ...
- (b) would, on balance, be contrary to the public interest.

10. The following section of the *Independent Commission Against Corruption Act 2012* is also relevant to my review:

54—Confidentiality

- (1) Except as required or authorised by this Act or by the Commissioner or the Director of OPI, a person who is or has been engaged in the administration of this Act must not, directly or indirectly, disclose information in relation to or connected with a matter that forms or is the subject of a complaint, report, assessment, investigation, referral or evaluation under this Act.

Maximum penalty: \$2 500 or imprisonment for 6 months.

11. Under section 48, the onus is on the agency to justify its determination 'in any proceedings'. This includes the external review process.

Documents in issue

12. The agency did not determine the applicant's FOI application or internal review application within the statutory time frames and is deemed to have refused access to all documents.²
13. I have treated the agency's late purported determination on internal review as submissions from the agency.
14. The agency identified 44 documents within the scope of the application, two of which were released in full to the applicant. This external review will therefore be limited to the remaining 42 documents that were refused either in part or in full.
15. In relation to most documents, the agency claimed exemptions under multiple clauses. Where I form the view that a document is exempt in full under one clause, I have not subsequently considered it in relation other possible exemptions.

Consideration

Clause 10(1)

Documents 7, 7a, 7b, 7c, 15, 16, 16a and 17

16. The agency submits that documents 7, 7a, 7b, 7c, 15, 16, 16a and 17 are exempt in full pursuant to clause 10(1).
17. For a document to be exempt under clause 10(1), it must contain 'matter that would be privileged from production in legal proceedings on the ground of legal professional privilege.'
18. Legal professional privilege exists to protect confidential communications between a client and lawyer. It has been established that it attaches to communications made for the dominant purpose of giving advice or for use in actual or anticipated litigation.³ The privilege can attach to communications received from salaried lawyers employed by government but only if they are made independently, in a professional capacity, are confidential and arise from the relationship between lawyer and client.⁴
19. The agency states these documents are exempt because they contain exchanges with the Crown Solicitor's Office for the purposes of the provision of legal advice to the agency. Based on my assessment of the documents in issue and the understanding that the parties are not currently engaged in court proceedings, the documents appear to concern advice privilege.
20. Generally, a document attracts advice privilege where it contains:
 - a confidential communication between a client and their lawyer that was made for the dominant purpose of obtaining or providing legal advice; or
 - 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

² *Freedom of Information Act 1991*, sections 19(2), 29(5).

³ *Esso v The Commissioner of Taxation* [1999] HCA 67, per Gleeson CJ, Gaudron and Gummow JJ at [35] and [61].

⁴ *Waterford v The Commonwealth* (1987) 163 CLR 54, per Mason and Wilson JJ at 61-62.

- the contents of a confidential document (whether delivered or not) prepared by a client, their lawyer, or another person for the dominant purpose of obtaining or providing legal advice.
21. I must, to the extent possible, avoid disclosing any matter that the agency has determined to be exempt matter in my determination.⁵ It will therefore appear that my assessment of the documents and their substance is vague, but I have carefully considered each document.
22. As expressed by Gummow J in *Commissioner of Australian Federal Police v Propend Finance Pty Ltd*⁶, privilege extends beyond actual communications and can apply to 'any document prepared by a lawyer or client from which there might be inferred the nature of the advice sought or given'⁷.
23. Legal advice is not limited to only telling the client the law but includes 'advice as to what should prudently and sensibly be done in the relevant legal context'⁸ and instructions given by the client to the legal practitioner 'to perform specialist legal services involving the exercise of professional skill'.⁹
24. I accept that these documents are protected by legal professional privilege. While I note that some of the documents do not appear, when considered in isolation, to be legal advice, the information has been provided to the Crown Solicitors Office to form part of the agency's request for legal advice. In that context, they form part of a confidential communication for the purposes of giving legal advice. It is only in that capacity that they come within the scope of the FOI application. A copy of a document which is attached to legal advice, or to a request for advice, may attract privilege if the dominant purpose of creating that copy was to provide or obtain legal advice, even if the original is not privileged.¹⁰
25. I am therefore satisfied that documents 7, 7a, 7b, 7c, 15, 16, 16a and 17 are exempt in full pursuant to clause 10(1).

Clause 1(1)(a) and 1(1)(f)

Documents 1, 1a, 1b, 1c, 1d, 1e, 1f, 1g, 1h, 1i, 3a, 4, 10, 15a, 15b and 18

26. The agency submits that documents 1, 1a, 1b, 1c, 1d, 1e, 1f, 1g, 1h, 1i, 3a, 4, 10, 15, 15a, 15b, 16, 17 and 18 are exempt in full pursuant to clause 1(1)(a).
27. Clause 1(1)(a) is a prescriptive exemption; if the agency can evidence that the documents were specifically prepared for submission to Cabinet (whether or not they were submitted), then the exemption applies. Clause 1 of Schedule 1 is not subject to a public interest balancing exercise.
28. I note that documents 1, 1d, 1e, 1f, 1i, and 18 have been labelled with the information category: "Official: Sensitive//SA Cabinet", which indicates an intention to preserve the sensitivity of the information. Documents 1a, 1b, 1c, 1g, 1h, 3a, 4, 10, 15a, 15b are not so marked, but documents 1a, 1b, 1c, 1g and 1h are annexed to documents which bear the Cabinet sensitivity marker. The markers are not determinative and I have

⁵ *Freedom of Information Act 1991*, section 39(15).

⁶ *Commissioner of Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501.

⁷ *Commissioner of Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501 [569].

⁸ *Balabel v Air India* [1988] 1 Ch 317 at 330 (Taylor LJ).

⁹ *Dalleagles Pty Ltd v Australian Securities Commission* (1991) 4 WAR 325 at 332-333 (Anderson J) followed in *AWB Limited v Honourable Terence Rhoderic Hudson Cole* [2006] FCA 571.

¹⁰ *Commissioner of Australian Federal Police v Propend Finance Pty Ltd* [1997] HCA 3; 188 CLR 501.

considered the nature and contents of the document to determine the application of the exemptions.

29. Documents 1d and 1i are both draft Cabinet notes which were annexed to a briefing to the Minister. I am mindful of my obligation to avoid disclosing information that the agency has determined to be exempt, but it is clear to me from the contents of documents 1d and 1i that they were specifically prepared for submission to Cabinet.
30. I therefore consider that documents 1d and 1i are exempt in full pursuant to clause 1(1)(a).
31. Document 1 contains a Minute to a Minister. Document 1e is an attachment to document 1 and contains a speaking note.
32. Clause 1(1)(f) will only be made out where the material can be categorised as both a 'briefing paper' and is 'specifically prepared' for the use of a Minister in relation to a matter submitted, or proposed to be submitted, to Cabinet.
33. President Hughes in *South Australia Police v Patrick* addressed the application of clause 1(1)(f) by way of each element:

The first is that the document must be a briefing for a Minister. The second is the clause is directed towards the purpose of the briefing note author. The third is the identification of what constitutes the "matter" referred to. The fourth is what is intended by the term "use".¹¹
34. Again, I am mindful of my obligation not to reveal exempt material through my reasoning but I have considered each element set out above in relation to documents 1 and 1e and am satisfied that they are met.
35. I therefore consider that documents 1 and 1e are exempt in full pursuant to clause 1(1)(f).
36. Document 1f is an extract of legislation. Ordinarily, legislation would not attract exemptions under the FOI Act. However, it is apparent from the context in which it appears that this extract was prepared specifically for inclusion in the briefing paper which is document 1 and forms part of that document. It is only in this context that it comes within the scope of the applicant's FOI request. On that basis, I consider that document 1f is also exempt pursuant to clause 1(1)(f).
37. I am not satisfied that documents 1a, 1b, 1c, 1g, 1h, 3a, 4, 10, 15a, 15b and 18 are exempt under clauses 1(1)(a) or 1(1)(f). The agency's submissions provide no specific information or evidence enabling me to be satisfied with the application of clause 1(1)(a) or 1(1)(f). Other than the marker on document 18, there is nothing on the face of the documents which demonstrates that they were specifically prepared for submission to Cabinet or otherwise as a briefing prepared for use of a Minister in relation to a matter proposed to be submitted to Cabinet. Indeed, the nature of the documents indicates they most of them were prepared for the purposes of one or more internal investigations, and that a decision was subsequently made to include them with material to be put the Minister and Cabinet. Document 18 contains emails which discuss a Cabinet note and briefing but are otherwise of an administrative nature and do not appear to meet the requirements of clause 1(1)(a) or 1(1)(f), notwithstanding the Cabinet marker.
38. I have considered whether some of the information could be exempt pursuant to clause 1(1)(e). This is a broad exemption which applies to a document which "contains matter

¹¹ *South Australia Police v Patrick* [2023] SACAT 82 (8 December 2023) [34].

the disclosure of which would disclose information concerning any deliberation or decision of cabinet". It may protect from disclosure documents which were not prepared specifically for submission to Cabinet but which informed, and would disclose, Cabinet deliberation on a particular subject.¹²

39. I invited the agency to provide further evidence or submissions to demonstrate that the material was specifically prepared for either submission to Cabinet or briefing the Minister in relation to a submission to Cabinet, or was otherwise noted by Cabinet, but did not receive a response. Accordingly, I cannot be satisfied of clause 1(1)(e)'s application.
40. I am satisfied that documents 1, 1d, 1e, 1f and 1i are exempt but I am not satisfied that documents 1a, 1b, 1c, 1g, 1h, 3a, 4, 10, 15a, 15b and 18 are exempt under clause 1(1)(a) or 1(1)(f). However, I consider that it is likely that these documents are exempt under other clauses and have addressed these below.

Clause 12

Documents 2 and 4a

41. Information is exempt under clause 12(1) if disclosure would constitute an offence under an Act.
42. Section 29A of the *Ombudsman Act 1972* makes it an offence to disclose, without authorisation, information that a person receives knowing it is connected with a matter or is the subject of a complaint, report or assessment under that Act. Section 54 of the *Independent Commission Against Corruption Act 2012* contains a similar offence provision in relation to the disclosure of information connected with a complaint or assessment by the Office for Public Integrity.
43. Having reviewed them, I consider that each of documents 2 and 4a are exempt in full under clause 12(1).
44. I note that there appears to be material within other documents which may attract clause 12(1), however as I have elsewhere formed the view that those documents are wholly exempt under other clauses, I have not considered whether of the document may also be exempt in part under clause 12(1).

Clause 6(2)

Documents 1a, 1b, 1c, 3a, 11a, 15a.i and 15b

45. The agency submits that the documents 2, 3, 3a, 4, 4a, 4b, 6, 7a, 10, 11, 11a, 12, 13, 15, 15a, 15a.i, 15b, 16, 16a and 17 are exempt in full and document 9 exempt in part under clause 6(2). I have already set out my view that documents 2, 4a, 7a, 15, 16 and 17 are exempt under other clauses. In light of my views about the Cabinet exemptions, I will also consider whether documents 1a, 1b, and 1c are exempt under clause 6(2).
46. I consider that documents 3, 4, 4b, 6, 9, 10, 11, 12, 13, 14 and 15a are more likely to be exempt under clause 16 and have considered this below.
47. I will therefore only consider whether the following documents are exempt pursuant to clause 6(2):

¹² *Patrick v The State of South Australia* [2025] SASCA 108 [76].

- Documents 1a and 1b contain workplace investigation reports into a complaint regarding allegations of misconduct by certain persons, including a third party to this application.
- Document 1c contains a draft letter to a third party regarding a complaint.
- Document 3a is a Minute to a Minister which details the complaint.
- Document 11a is a Minute to another agency about the complaint.
- Document 15a.i details a complaint received by a Minister.
- Document 15b is an internal memorandum regarding the workplace investigation reports.

48. For a document to be exempt under clause 6(2) of the FOI Act:
- it must contain allegations or suggestions of criminal or other improper conduct on the part of a person (living or dead) other than the applicant;
 - the truth of such allegations or suggestions has not been established by judicial process; and
 - the disclosure of that information would be unreasonable.
49. In *Bradshaw v South Australia Police; South Australia Police v Muscat*,¹³ Judge Muscat made the following observations about clause 6(2):

An 'allegation' is simply an assertion. A 'suggestion' involves a lower threshold and includes to inform or insinuate. A suggestion, in this context, simply requires that a document, by its content, be capable of conveying an idea of information to the reader.

...

Whether or not a document falls within clause 6(2) is a question of fact and degree to be determined upon a consideration of the document and any other document(s) the release of which is sought. Allegations or suggestions may be made directly or indirectly.

Whether or not an allegation or suggestion is contained within a document may also depend on the context to be drawn from the document itself, or when read in combination with another document, or from information which is otherwise known to the applicant.

At times, whether something amounts to an allegation or a suggestion is only apparent when documents are read together.

50. On my viewing of the documents, I am satisfied that they contain suggestions of improper conduct on the part of a person other than the applicant. That information concerns matters which I consider to be personal and private to a party other than the applicant. The information has not, to the best of my knowledge, been tested by any judicial process.
51. I now turn to consider whether the disclosure of such information is unreasonable in the circumstances.
52. In considering whether disclosure of information would be unreasonable within the meaning of clause 6(2), I have given regard to the following dicta from *Page v Metropolitan Transit Authority*¹⁴ that was referred to by the District Court with approval:¹⁵

... a balancing of interests: the right to personal privacy of an individual whose personal affairs may be unreasonably disclosed by granting access to the information and the object of the Act to extend as far as possible the right of the community to have access to information in the possession of the Government or Agencies. More particularly, this balancing exercise requires a consideration of all the circumstances, including the interest

¹³ [2012] SADC 184 [41]-[48].

¹⁴ *Page v Metropolitan Transit Authority* (1988) 2 VAR 243.

¹⁵ *Page v Metropolitan Transit Authority* (1988) 2 VAR 243 [246] quoted in *Hall v SA Police* [2019] SADC 5 [167].

that the applicant has in the information in question, the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance.

53. I acknowledge that in addition to allegations of impropriety by other persons, the documents also pertain to the Applicant and to that extent the Applicant has a close interest in the information. However, it is my view that the information predominantly concerns the third party and that the information is so intertwined that it would be impracticable to release a version from which any information pertaining to the third party had been redacted. Such a version would be largely unintelligible.
54. I have had regard to the following factors in considering whether disclosure of the information would be unreasonable:
- the highly sensitive nature of the information
 - the fact that the complaints in question were received and investigated in confidence
 - while the applicant is likely aware to some degree of the information as she participated in the investigation process, the full details of the information is likely not known to the applicant
 - to the best of my knowledge the information is not known publicly
 - as the allegations have not resulted in any judicial processes, I am of the view that in the circumstances of this particular matter, probable and unfair damage to the person named in the document outweighs the public interest in disclosure of same.
55. Therefore, I am satisfied that disclosure of documents 1a, 1b, 1c, 3a, 11a, 15a.i and 15b would be unreasonable and should remain exempt under clause 6(2).

Clause 6(1)

Documents 8 and 9

56. The agency submits that documents 8 and 9 are exempt in part and documents 1d, 1i, 2, 3, 3a, 3b, 4, 4a, 6, 7a, 10, 11, 11a, 12, 13, 14, 15, 15a, 15a.i, 15b, 16, 16a, 17 and 21 are exempt in full pursuant to clause 6(1).
57. Given my views elsewhere in this document, I have limited my consideration of clause 6(1) to documents 8 and 9.
58. For a document to be exempt pursuant to clause 6(1):
- it must contain information concerning the personal affairs of any person (not including the applicant); and
 - the disclosure of that information would be unreasonable.
59. The term 'personal affairs' is defined inclusively in section 4(1) of the FOI Act. Among other things, it provides that 'personal qualities or attributes' are a person's personal affairs. The term has also been held to involve 'matters of private concern to an individual' and the 'composite collection of activities personal to the individual concerned'.¹⁶

¹⁶ *Commissioner of Police v District Court of New South Wales* (1993) 31 NSWLR 606, 625 citing *Re Williams and Registrar of Federal Court of Australia* (1985) 8 ALD 219 and *Young v Wicks* (1986) 13 FCR 85 at 88-89.

60. The agency has redacted the mobile number of a staff member in documents 8 and 9. However, I note that this information was already released to the applicant in document 20.
61. My role is to confirm, vary or reverse the determination the subject of the review 'based on the circumstances existing at the time of the review'.¹⁷ Where the agency has chosen to provide access to information it had previously claimed was exempt, I am unable to conclude that further disclosure of the same information would be unreasonable.
62. I therefore propose to reverse the agency's determination in relation to the information redacted pursuant to clause 6(1) in documents 8 and 9 which has already been released.

Clause 16(1)(a)(iii)

Documents 1g, 1h, 3, 3b, 4, 4b, 5, 5a, 6, 9, 10, 11, 12, 13, 14, 15a, 18, 19 and 21

63. The agency determined that documents 9 and 19 are exempt in part and documents 2, 3, 3a, 3b, 4, 4a, 4b, 5, 5a, 6, 7, 7a, 7b, 7c, 10, 11, 11a, 12, 13, 14, 15, 15a, 15a.i, 15b, 16, 17 and 21 are exempt in full pursuant to clause 16(1)(a)(iii).
64. Given my views expressed elsewhere in this document, I have limited my consideration of clause 16(1)(a)(iii) to the following documents:
- Documents 1g and 1h contain interview transcripts, witness statements, various certificates and awards belonging to the applicant, as well as email chains.
 - Documents 3, 3b and 4 contain emails regarding action taken or to be taken in relation to the complaint and investigation report.
 - Documents 4b and 5a are requests for the services of the third party investigator. Document 5 contains emails in relation to this service.
 - Documents 6, 9, 10, 12 and 14 contain emails regarding communications with personnel in the context of the workplace investigation.
 - Documents 11 and 13 contain emails regarding communications with personnel in the context of the workplace investigation.
 - Document 15a is a cover email to a briefing for a Minister.
 - Document 18 is a cover email to a Ministerial briefing and Cabinet note.
 - Document 19 contains emails regarding action to be taken in relation to the complaint and investigation report.
 - Document 21 contains a draft letter to an employee about the investigation.
65. A document is captured by clause 16(1)(a)(iii) if its disclosure:
- could reasonably be expected to have a substantial adverse effect on the management or assessment by an agency of its personnel, and
 - would, on balance, be contrary to the public interest.
66. The phrases 'management of personnel' and 'assessment of personnel' are not defined in the FOI Act. The accepted interpretation of the equivalent provision of clause 16(1)(a)(iii) in the Commonwealth FOI Act provides that:
- management of personnel - includes the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health safety
 - assessment of personnel - includes the broader performance management policies and activities concerning competency

- in-house training requirements, appraisals and underperformance, counselling, feedback, assessment for bonus or eligibility for progression.¹⁸
67. The agency explained that its obligation to investigate complaints from employees regarding workplace issues within [REDACTED], including [REDACTED], would be impacted. It is clear to me that the documents all contain information relating to an investigation into complaints raised by staff about [REDACTED] which meets the first criterion of clause 16(1)(a)(iii).
68. The consideration of whether disclosure could reasonably be expected to have a substantial adverse effect requires an objective judgement from a reasonable decision-maker.¹⁹ It must also arise from the disclosure of the documents that are being assessed.²⁰
69. The 'substantial adverse effect' must encompass an adverse effect which is sufficiently serious or significant to cause concern to a properly informed reasonable person.²¹ It must also arise from the disclosure of the documents that are being assessed.²²
70. I consider that disclosure of the information relating to how the agency handles the process of investigating a complaint by or about its employees could reasonably be expected to have a substantial adverse effect on the agency's management of its personnel. Candour is essential when an agency seeks to investigate and manage complaints, as to do otherwise could create reluctance on part of management to openly and prudently discuss investigations in detail.²³ I consider that the disclosure of the confidential discussions by management or the responses of staff members during the investigation could result in the outcome envisaged by clause 16(1)(a)(iii).
71. I note that some of the documents in question are largely administrative in nature but still contain sensitive detail pertaining to the investigation, including:
- a. information regarding how the complaint has been investigated
 - b. information about which level(s) of government have been involved in considering the investigation
 - c. information revealing how third parties have participated in the investigation
 - d. In the context of this specific complaint, disclosure of this information could result in a substantial adverse effect because it may inhibit how the agency communicates in respect of investigations, reveal processes for managing specific types of highly sensitive matters and inhibit the willingness of future personnel to engage in an investigation if they consider the details of their involvement may become public.
72. I now turn to the public interest consideration.
73. The agency submitted:

¹⁸ FOI Guidelines, Office of the Australian Information Commissioner (<https://www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines/part-6-conditional-exemptions#substantial-adverse-effect-on-management-or-assessment-of-personnel>).

¹⁹ *Leech v Sydney Water Corporation* [2010] NSWADCT 298 [25], citing *Neary v State Rail Authority* [1999] NSWADT 107.

²⁰ *Konieczka v South Australia Police* [2006] SADC 134 [14].

²¹ *Re Thies and Department of Aviation* [1986] AATA 141 [24].

²² *Re Dyrenfurth and Department of Social Security* [1987] AATA 140.

²³ *De Tarle and Australian Securities and Investments Commission (Freedom of Information)* [2016] AATA 230.

I consider that the factors in favour of disclosure in the public interest include meeting the objects of the FOI Act, releasing information of interest or already known to the applicant and to enable scrutiny of whether procedural fairness has been afforded to all parties.

Conversely, I have identified several public interest factors that favour non-disclosure. The [REDACTED] needs to protect the efficiency and effectiveness of relevant methods and procedures utilised to conduct its human resource activities. Furthermore, it needs to be able to gather information and provide for internal communications to occur in a reasonably uninhibited manner where such communications take place for the investigative purposes.

On balance, I am satisfied that the effect of disclosure of documents would be contrary to the public interest as it would substantially affect the investigative process to safeguard the work health and safety of public sector employees [REDACTED] and is therefore exempt pursuant to clause 16(1)(a)(iii).

74. I have also identified the following public interest factors:

In favour of disclosure:

- promoting the objects of the FOI Act
- enabling transparency into the agency's operations and decision-making process
- providing the applicant with information of special interest to them.

Contrary to disclosure:

- ensuring that the disclosure of information does not interfere with the agency's ability to manage and assess its personnel
- the statements and responses from personnel were provided and discussed in confidence as part of the investigation
- protecting the efficiency and effectiveness of relevant methods and procedures utilised by the agency to conduct its human resource activities and gather information
- allowing internal communications to occur in a reasonably uninhibited manner where such communications take place for investigative purposes
- safeguarding the integrity of the agency's incident management and investigation processes.

75. I consider that the public interest factors against disclosure outweigh those in favour of disclosure. Whilst I appreciate that the investigation which formed the subject of the documents may have concluded, there is still a strong public interest in ensuring that the agency's ability to perform management or assessment functions of its personnel is not compromised. If correspondence and other information relating to the investigation is released through FOI, I find it likely that the agency will not be able to effectively manage complaints and investigations into personnel, and staff members may not be willing to assist in future enquiries.

76. Accordingly, my view is that documents 1g, 1h, 3, 3b, 4, 4b, 5, 5a, 6, 10, 11, 12, 13, 14, 15a, 18 and 21 are fully exempt and documents 9 and 19 are partially exempt pursuant to clause 16(1)(a)(iii).

Clause 13(1)(b)

Documents 14, 15a, 15a.i, 15b, 16, 17 and 21

77. The agency determined that documents 14, 15a, 15a.i, 15b, 16, 17 and 21 are exempt in full pursuant to clause 13(1)(b).
78. However, as I have already determined that all of the information is exempt in full above, I do not propose to address whether the same information is also exempt under clause 13(1)(b).

Determination

79. In light of my views above and in my provisional determination, I vary the agency's determination in the manner set out in Appendix 2.



Megan Carter
DEPUTY OMBUDSMAN

2 July 2026

APPENDIX 1

Procedural steps

Date	Event
5 May 2025	The agency received the FOI application.
4 June 2025	The agency failed to determine the application within the 30 day period required by the FOI Act, ¹ and is deemed to have refused access to the documents. ²
10 September 2025	The agency received the internal review application.
24 September 2025	The agency failed to determine the application within the statutory time frame, and is taken to have confirmed the original determination. ³
26 September 2025	The Ombudsman received the applicant's request for external review.
30 September 2025	The Ombudsman advised the agency of the external review and requested submissions and documentation.
5 November 2025	The agency provided the Ombudsman with its submissions and documentation.
16 June 2026	The Ombudsman issued her provisional determination and invited submissions from the parties.
1 July 2026	The applicant advise that they had no submissions.

¹ *Freedom of Information Act 1991*, section 14(2).

² *Freedom of Information Act 1991*, section 19(2).

³ *Freedom of Information Act 1991*, section 29(5).

APPENDIX 2

Document in issue	Description	Agency's determination	Ombudsman's determination	Information to be released
1	Briefing to Minister	Exempt in full pursuant to clauses 1(1)(a) and 1(1)(f)	Confirm - Exempt in full pursuant to clause 1(1)(f)	N/A
1a	Attachment 1	Exempt in full pursuant to clauses 1(1)(a) and 1(1)(f)	Vary - Exempt in full pursuant to clause 6(2)	N/A
1b	Attachment 2	Exempt in full pursuant to clauses 1(1)(a) and 1(1)(f)	Vary - Exempt in full pursuant to clause 6(2)	N/A
1c	Attachment 3	Exempt in full pursuant to clauses 1(1)(a) and 1(1)(f)	Vary - Exempt in full pursuant to clause 6(2)	N/A
1d	Attachment 4	Exempt in full pursuant to clauses 1(1)(a), 1(1)(f), 6(1)	Confirm - Exempt in full pursuant to clause 1(1)(a)	N/A
1e	Attachment 5	Exempt in full pursuant to clauses 1(1)(a) and 1(1)(f)	Confirm - Exempt in full pursuant to clause 1(1)(f)	N/A
1f	Attachment 6	Exempt in full pursuant to clauses 1(1)(a) and 1(1)(f)	Confirm - Exempt in full pursuant to clause 1(1)(f)	N/A
1g	Enclosures	Exempt in full pursuant to clauses 1(1)(a) and 1(1)(f)	Vary - Exempt in full pursuant to clause 16(1)(a)(iii)	N/A
1h	Enclosures	Exempt in full pursuant to clauses 1(1)(a) and 1(1)(f)	Vary - Exempt in full pursuant to clause 16(1)(a)(iii)	N/A
1i	Form	Exempt in full pursuant to clauses 1(1)(a), 1(1)(f), 6(1)	Confirm - Exempt in full pursuant to clause 1(1)(a)	N/A
2	Email dated [REDACTED]	Exempt in full pursuant to clauses 6(1), 6(2), 16(1)(a)(iii)	Vary - Exempt in full pursuant to clause 12(1)	N/A
3	Email dated [REDACTED]	Exempt in full pursuant to clauses 6(1), 6(2), 16(1)(a)(iii)	Confirm - Exempt in full pursuant to clause 16(1)(a)(iii)	N/A
3a	Attachment 1	Exempt in full pursuant to clauses 1(1)(a), 1(1)(f), 6(1), 6(2), 16(1)(a)(iii)	Confirm - Exempt in full pursuant to clause 6(2)	N/A
3b	Attachment 2	Exempt in full pursuant to clauses 6(1), 16(1)(a)(iii)	Vary - Exempt in full pursuant to clause 16(1)(a)(iii)	N/A
4	Email dated [REDACTED]	Exempt in full pursuant to clauses 1(1)(a), 1(1)(f), 6(1), 6(2), 16(1)(a)(iii)	Confirm - Exempt in full pursuant to clause 16(1)(a)(iii)	N/A
4a	Attachment 1	Exempt in full pursuant to clauses 6(1), 6(2), 16(1)(a)(iii)	Vary - Exempt in full pursuant to clause 12(1)	N/A
4b	Attachment 2	Exempt in full	Confirm - Exempt	N/A

		pursuant to clauses 6(2), 16(1)(a)(iii)	in full pursuant to clause 16(1)(a)(iii)	
5	Email dated 5 [REDACTED]	Exempt in full pursuant to clause 16(1)(a)(iii)	Confirm - Exempt in full pursuant to clause 16(1)(a)(iii)	N/A
5a	Attachment 1	Exempt in full pursuant to clause 16(1)(a)(iii)	Confirm - Exempt in full pursuant to clause 16(1)(a)(iii)	N/A
6	Email dated [REDACTED] (omitted attachments already included)	Exempt in full pursuant to clauses 6(1), 6(2), 16(1)(a)(iii)	Confirm - Exempt in full pursuant to clause 16(1)(a)(iii)	N/A
7	Email dated [REDACTED]	Exempt in full pursuant to clauses 10(1), 16(1)(a)(iii)	Confirm - Exempt in full pursuant to clause 10(1)	N/A
7a	Attachment 1	Exempt in full pursuant to clauses 6(1), 6(2), 10(1), 16(1)(a)(iii)	Confirm - Exempt in full pursuant to clause 10(1)	N/A
7b	Attachment 2	Exempt in full pursuant to clauses 10(1), 16(1)(a)(iii)	Confirm - Exempt in full pursuant to clause 10(1)	N/A
7c	Attachment 3	Exempt in full pursuant to clauses 10(1), 16(1)(a)(iii)	Confirm - Exempt in full pursuant to clause 10(1)	N/A
8	Email dated [REDACTED] (omitted attachments already included)	Exempt in part pursuant to clause 6(1)	Reverse - Information already released	All
8a	Attachment	Release in full	N/A	All
9	Email dated [REDACTED]	Exempt in part pursuant to clauses 6(1), 6(2), 16(1)(a)(iii)	Vary - Exempt in part pursuant to clause 16(1)(a)(iii)	Staff phone number released in document 20
10	Email dated [REDACTED]	Exempt in full pursuant to clauses 1(1)(a), 1(1)(f), 6(1), 6(2), 16(1)(a)(iii)	Confirm - Exempt in full pursuant to clause 16(1)(a)(iii)	N/A
11	Email dated [REDACTED]	Exempt in full pursuant to clauses 6(1), 6(2), 16(1)(a)(iii)	Confirm - Exempt in full pursuant to clause 16(1)(a)(iii)	N/A
11a	Attachment	Exempt in full pursuant to clauses 6(1), 6(2), 16(1)(a)(iii)	Confirm - Exempt in full pursuant to clause 6(2)	N/A
12	Email dated [REDACTED]	Exempt in full pursuant to clauses 6(1), 6(2), 16(1)(a)(iii)	Confirm - Exempt in full pursuant to clause 16(1)(a)(iii)	N/A
13	Email dated [REDACTED]	Exempt in full pursuant to clauses 6(1), 6(2), 16(1)(a)(iii)	Confirm - Exempt in full pursuant to clause 16(1)(a)(iii)	N/A
14	Email dated [REDACTED]	Exempt in full pursuant to clauses 6(1), 13(1)(b),	Confirm - Exempt in full pursuant to clause 16(1)(a)(iii)	N/A

		16(1)(a)(iii)		
15	Email dated [REDACTED] (omitted attachments already included)	Exempt in full pursuant to clauses 1(1)(a), 1(1)(f), 6(1), 6(2), 10(1), 16(1)(a)(iii)	Confirm - Exempt in full pursuant to clause 10(1)	N/A
15a	Email dated [REDACTED]	Exempt in full pursuant to clauses 1(1)(a), 1(1)(f), 6(1), 6(2), 13(1)(b), 16(1)(a)(iii)	Confirm - Exempt in full pursuant to clause 16(1)(a)(iii)	N/A
15a.i	Attachment	Exempt in full pursuant to clauses 6(1), 6(2), 13(1)(b), 16(1)(a)(iii)	Confirm - Exempt in full pursuant to clause 6(2)	N/A
15b	Attachment	Exempt in full pursuant to clauses 1(1)(a), 1(1)(f), 6(1), 6(2), 10(1), 13(1)(b), 16(1)(a)(iii)	Confirm - Exempt in full pursuant to clause 6(2)	N/A
16	Email dated [REDACTED]	Exempt in full pursuant to clauses 1(1)(a), 1(1)(f), 6(1), 6(2), 10(1), 13(1)(b), 16(1)(a)(iii)	Confirm - Exempt in full pursuant to clause 10(1)	N/A
16a	Attachment	Exempt in full pursuant to clauses 6(1), 6(2), 10(1)	Confirm - Exempt in full pursuant to clause 10(1)	N/A
17	Email dated [REDACTED] (omitted attachments already included)	Exempt in full pursuant to clauses 1(1)(a), 1(1)(f), 6(1), 6(2), 10(1), 13(1)(b), 16(1)(a)(iii)	Confirm - Exempt in full pursuant to clause 10(1)	N/A
18	Email dated [REDACTED]	Exempt in full pursuant to clauses 1(1)(a), 1(1)(f)	Vary - Exempt in full pursuant to clause 16(1)(a)(iii)	N/A
19	Email dated [REDACTED]	Exempt in part pursuant to clause 16(1)(a)(iii)	Confirm - Exempt in part pursuant to clause 16(1)(a)(iii)	N/A
20	Email dated [REDACTED]	Release in full	N/A	All
21	Draft letter	Exempt in full pursuant to clauses 6(1), 13(1)(b), 16(1)(a)(iii)	Confirm - Exempt in full pursuant to clause 16(1)(a)(iii)	N/A