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Determination

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

Applicant:	Mr Chris Picton MP
Agency:	Department of the Premier and Cabinet
Ombudsman reference:	2020/05812
Agency reference:	DPC20/0706
Determination:	The determination of the agency is varied.
Date of Ombudsman's determination:	16 June 2021
Issues considered:	Adverse effect on business affairs Conduct of research Agency's decision-making functions Free and frank disclosure Whether disclosure would be misleading Whether matter was obtained in confidence
Exemption clauses relied upon:	7(1)(c) 8(1) 9(1) 13(1)(b)
Legislation considered:	<i>Freedom of Information Act 1991</i>

Terms of the original application:

All agenda papers, minutes of meetings, meeting papers, attachments to papers, presentations and notes from meetings of the 'Transition Committee'. Date Range - 15/4/20 - 15/6/20

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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 agenda papers, minutes of meetings, meeting papers, attachments to papers, presentations and notes from meetings of the 'Transition Committee'. Date Range - 15/4/20 - 15/6/20

Background

2. For ease of reference, procedural steps relating to the application and the external review 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.
4. The applicant lodged his application for external review beyond the 30 day statutory period. Noting the high level of community interest in the subject matter of the documents in issue, I exercise my discretion under section 39(4) to extend the time for making the application.

Provisional determination

5. I provided my tentative view about the agency's determination to the parties, by my provisional determination dated 14 April 2021. 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. By email dated 5 May 2021, the agency provided submissions in response. By email dated 7 June 2021, the interested party provided submissions in response. I have addressed the submissions from the agency and interested party in the body of this determination.

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:

7–Documents affecting business affairs
(c) if it contains matter–

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

- (i) consisting of information (other than trade secrets or information referred to in paragraph (b)) concerning the business, professional, commercial or financial affairs of any agency or any other person; and
- (ii) the disclosure of which–
 - (A) could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of such information to the Government or to an agency; and
 - (B) would, on balance, be contrary to the public interest.

8—Documents affecting the conduct of research

- (1) A document is an exempt document if it contains matter–
 - (a) that relates to the purpose or results of research (other than public opinion polling that does not relate directly to a contract or other commercial transaction that is still being negotiated), including research that is yet to be commenced or yet to be completed; and
 - (b) the disclosure of which–
 - (i) could reasonably be expected to have an adverse effect on the agency or other person by or on whose behalf the research is being, or is intended to be, carried out; and
 - (ii) would, on balance, be contrary to the public interest.

9—Internal working documents

- (1) A document is an exempt document if it contains matter–
 - (a) that relates to–
 - (i) any opinion, advice or recommendation that has been obtained, prepared or recorded; or
 - (ii) any consultation or deliberation that has taken place, in the course of, or for the purpose of, the decision-making functions of the Government, a Minister or an agency; and
 - (b) the disclosure of which would, on balance, be contrary to the public interest.
- (2) A document is not an exempt document by virtue of this clause if it merely consists of–
 - (a) matter that appears in an agency's policy document; or
 - (b) factual or statistical material.

13—Documents containing confidential material

- (1) A document is an exempt document–
 - (a) if it contains matter the disclosure of which would found an action for breach of confidence; or
 - (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.

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

Documents in issue

- 12. The agency identified 69 documents within the scope of the application. The agency determined to disclose 32 documents in full and refused access in full to the remaining 37 documents.
- 13. The applicant seeks external review in relation to 21 of the documents, identified as documents 3, 4, 24, 25, 31, 32, 34, 37, 39-41, 45-47, 50, 53-55 and 66-68.

Issues in this review

14. Having regard to the agency's submissions and the exemption clauses provided in Schedule 1 of the FOI Act, it is for me to determine whether to confirm, vary or reverse the agency's determination in regard to the documents in issue in this external review.

ConsiderationClause 7(1)(c)

15. The agency initially determined documents 24 and 25 to be exempt pursuant to clause 13(1). In my provisional determination, I advised that I was not satisfied that document 24 was received in confidence, or that disclosure of document 24 might reasonably be expected to prejudice the future supply of such information to the agency. I also concluded that, as document 25 appears to be an internal agency document, I was not satisfied that the document could be said to have been 'received' under an understanding that it would be kept confidential. I therefore concluded that neither document is exempt pursuant to clause 13(1).
16. In response to my provisional determination, the agency advised that it had no further submissions to make regarding its reliance upon clause 13(1), but that the agency's revised view is that both documents are exempt pursuant to clause 7(1)(c).
17. Although I accept that documents 24 and 25 relate to the business affairs of the Australian Football League (AFL), in relation to sub-clause 7(1)(c)(ii)(A) the agency has submitted only that:
- If disclosed, the AFL stands to lose commercial advantage.
18. It is unclear to me how disclosure could reasonably be expected to have such a result. It is also unclear why disclosure would be contrary to the public interest.
19. That said, section 39(10) of the FOI Act prevents me from making a determination that access should be given to a document that contains any information concerning the business affairs of any person without first taking reasonably practicable steps to obtain the views of that person. In light of this, on 21 May 2021 I sought the views of the AFL in relation to disclosure of documents 24 and 25. A late response was provided on 7 June 2021.
20. The AFL advised in its submissions that it considers document 24 to be a confidential document, having been disclosed in limited circumstances and on a 'need to know basis'. That said, the AFL did not provide any explanation as to how disclosure could reasonably be expected to have an adverse effect on its business affairs, nor how disclosure would be contrary to the public interest.
21. In light of the above, I am not satisfied that documents 24 and 25 are exempt pursuant to clause 7(1)(c). I have further considered the submissions of the AFL in relation to clause 13(1).

Clause 8(1)

22. The agency initially claimed document 37 to be exempt pursuant to clause 8(1). In my provisional determination I stated:

Document 37 is a survey report dated May 2020 which was commissioned by the agency and undertaken by McGregor Tan. The agency has not made specific submissions about this document. In the absence of specific submissions, I am not satisfied disclosure of

document 37 could be reasonably expected to have an adverse effect on the agency under clause 8(1)(b)(i). I am also not satisfied disclosure of document 37 would be contrary to the public interest for the reasons set out under the public interest heading above.

23. The agency advised in response that although it maintained its views that the document is exempt pursuant to clause 9(1), it accepted my assessment of clause 8(1).

Clause 9(1)

24. The agency claims that documents 3, 4, 25, 31, 32, 34, 37, 39-41, 45-47, 50, 53-55 and 66-68 are exempt under clause 9(1) of Schedule 1 of the FOI Act.
25. The agency submits the documents are papers presented to the Transition Committee (**the Committee**) for the purpose of stimulating discussion and debate. The Committee was formed by the Government to guide the process of both continuing to move out of the COVID-19 pandemic and restore the social and economic health of the State. The Committee has been tasked with developing a blueprint for how South Australia's COVID-19 restrictions can be wound back whilst ensuring the State is not exposed to a second wave of infections.²
26. The agency submits that the documents do not represent the positions arrived at by the Committee or individuals on the Committee, but are documents which provide a starting point to generate deliberation. The agency states the position of the Committee is reflected in the Minutes of the Committee's meetings which have been disclosed in full to the applicant.
27. The scope of clause 9(1)(a) is wide, particularly given the words 'that relates to'. The 'opinion, advice or recommendation' must nevertheless have been obtained, prepared or recorded, or the 'consultation or deliberation' must have taken place 'in the course of, or for the purpose of, the decision making functions of the Government, a Minister or an agency'.
28. I have considered the applicant's submissions that the documents contain material created prior to the thinking process of the Committee and do not contain deliberative material. In my view, the documents contain and relate to active deliberations undertaken by the agency including opinions, options, competing arguments and recommendations in relation to decisions to be made by the Committee. Therefore, I am satisfied the documents meet the requirements of clause 9(1)(a).
29. My consideration now turns to the public interest test under clause 9(1)(b).

Public Interest

30. In my provisional determination, I stated:
16. The agency submits the documents contain information, including information in draft form, for discussion at Committee meetings and there is a significant risk the documents, if disclosed, may be 'misinterpreted, misrepresented or presented in isolation'. This could, according to the agency;
- 'compromise the Government's ability to manage the pandemic as it is reasonable to contemplate that the isolated presentation of any of these documents without the context of other risk management considerations and factors at the time the papers were presented could affect community confidence in and compliance with government directives'.

² <https://www.premier.sa.gov.au/news/media-releases/news/sa-establishes-transition-team-to-manage-post-covid-19>

17. The agency acknowledges the disclosure of the documents may go some way to informing the public about the information the Committee was presented with and relied upon in its decision making. However, the agency submits 'the release of the documents would not do that in a way not already served by the release of the minutes'.
18. I have identified the following public interest factors in favour of disclosure:
 - furthering the objects of the FOI Act
 - the community interest in promoting scrutiny of government decision making, particularly in relation to limitations placed on individuals' fundamental rights and liberties during the COVID-19 pandemic
 - enabling the public to understand what options were being actively considered by the Committee
 - the Minutes of the Committee meetings have already been disclosed to the applicant
 - the age of the documents.
19. I have identified the following factors contrary to the public interest:
 - to protect the frank and candid expression of opinions, advice, recommendations, consultations and deliberations that have to take place to ensure good decision making in the unique circumstances of the COVID-19 pandemic
 - the draft form of some of the documentation.
20. The public interest in government decision making in what could be said to be unprecedented circumstances where fundamental individual liberties and livelihoods may be affected, in my view, outweighs any concerns the agency may have that the documents may be 'misinterpreted, misrepresented or presented in isolation'. Further, I am not convinced by the agency's submissions that the disclosure of the documents could compromise the government's ability to manage the COVID-19 pandemic or affect community confidence in, and compliance with, government directives.
21. The documents, either on their own or read in conjunction with other documents, (including those already disclosed to the applicant) are clearly identified as documents for consideration by the Committee. The decisions made by the Committee are set out in the Minutes of the Committee's meetings already disclosed to the applicant and include reference to, and consideration of, information within the documents.
22. The FOI Act presupposes that the public are capable of considering documents and forming views based on all the information available. In particular, I consider it likely that a member of the public or of Parliament interested in the content of the documents would consider the documents in context, noting that the documents are part of an ongoing deliberative process. Draft documents are marked or clearly identified as draft documents. In my view, the fact the Minutes of the Committee's meetings have been disclosed to the applicant supports my position that the public will be able to consider the documents, including those in draft form, in context. That is, as discussion documents that were considered when the Committee made its decisions around the COVID-19 restrictions during 2020.
23. I note also that the documents are dated between April 2020 and June 2020 and decisions based on the documents have been made as set out in the Minutes of the Committee's meetings.
24. In my view, the documents are not exempt under clause 9(1) on the basis I am not satisfied, on the information before me that disclosure of the documents would, on balance, be contrary to the public interest.
31. The agency provided submissions in response, maintaining its initial view that disclosure would be contrary to the public interest. I will address those submissions in turn.

32. The agency first states that, although the Supreme Court of South Australia has decided that it is not mandatory for the “*Howard* factors” to be taken into account when determining where the public interest lies, the Court also expressed the view that those factors provide useful guidance.³
33. I advise the agency that I have given consideration to the *Howard* factors, but am also mindful that:
- ...in each case the whole of the circumstances must be examined including any public benefit perceived in the disclosure of the documents sought⁴
34. To this point, the agency has also submitted that it is necessary for me to consider the extent of the public interest harm that disclosure could give rise to. The agency has identified five separate points in this regard. For ease of reference I have addressed each of those points separately

The nature and purpose of the Transition Committee

35. The agency provided further explanation as to the composition of the Committee, advising that the Committee consists of several departmental Chief Executives, the Chief Public Health Officer and the State Co-ordinator.
36. The agency has further explained that the Committee considers high-level, confidential matters in order for the State Co-ordinator to be fully apprised of all relevant information required to undertake the role conferred on him by the *Emergency Management Act 2004*. The agency submits that the State Co-ordinator is directly involved in robust discussion and deliberation, involving the frank and honest expression of the views of the Committee members.
37. Although the agency has not detailed any specific harm which could eventuate from disclosure in relation to this point, noting the agency’s earlier reference to the *Howard* factors, it appears that the agency’s submission is that the documents should not be disclosed because of the seniority of the State Co-ordinator and the sensitivity of the issues discussed in the documents.
38. Whilst I accept that these factors can be indicative of a document being exempt, in this case I reject their relevance. For reasons already covered, and further reasons I will provide in this determination, I do not consider the contents of the documents to be highly sensitive. Having regard to the rest of my assessment of the public interest, I do not consider that the seniority of the Committee members should attract exemption to documents which should otherwise be released.

Revealing to the public decisions not taken

39. The agency submits that the outcomes of the Committee are made public, but that disclosure of documents in the deliberative process that reflect or recommend a decision not taken risk undermining the future deliberations of the Committee and its consideration of frank advice, evidence and proposals.
40. It is further submitted that the confidentiality of the documents allows for the airing of dissenting views and a fulsome consideration of the options presented.

³ *Attorney-General (SA) v Seven Network (Operations) Ltd* [2019] SASCFC 36.

⁴ *Daycorp Pty Ltd v Parnell* [2011] SADC 191, at [100].

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41. To this point, I have had regard to the following excerpt from the matter of *Ipex Information Technology Group Pty Ltd v Department of Information Technology Services (SA)*:

... experience has shown that public servants and corporate officers still continue to write copiously and frankly in spite of this risk of disclosure in subsequent litigation. While it cannot be ignored, little weight is to be put on it here in assessing what is in the public interest.⁵

42. I do not consider it likely that the possibility of disclosure would deter public servants from undertaking their roles, particularly roles associated with a matter as substantial as a pandemic.
43. Additionally, I note that the documents are largely discussion papers, presumably drafted with the intention of facilitating the deliberation at the meeting. The documents do not actually detail the contents of any subsequent deliberation, nor do they specify any dissenting views or identify any particular people or their personal views.
44. The agency also submits that:
- The exposure of such deliberative documents to the public ultimately increases the likelihood that the relevant discussions and development of options take place outside of the formal proceedings and representative structure of the Transition Committee.
45. The above statement appears to assume that public servants would intentionally conspire to have discussions and make decisions outside of the appropriate decision-making avenue to avoid scrutiny. I have no reason to believe that public servants would behave in such a manner.

Ongoing nature of decision making

46. The agency submits that, as the COVID-19 pandemic is ongoing and requires constant recalibration of restrictions, the age of the documents should not be considered as a relevant public interest factor in favour of disclosure. The agency further submits that it may, in the future, be necessary to revisit deliberations had by the Committee more than six months ago.
47. I accept that the pandemic is ongoing and that Committee deliberations are far from concluded. However, it is my view that further deliberations of the Committee would be unlikely to utilise the documents in issue in their current form.
48. The pandemic is continuously and, sometimes, quickly evolving. The South Australian government has had to quickly adapt to multiple changes and, presumably, has learnt a significant amount along the way. I consider it likely that future deliberations of the Committee would be based on new documents which incorporate the things that have been learnt about the virus, the efficacy of particular restrictions and the way the public responds to various circumstances.
49. The agency has also submitted that if the options not ultimately chosen became public, there is reason to believe that interested groups would lobby for those options to apply now.
50. In my view, this could happen regardless of the disclosure of the documents. Any person or group unhappy with restrictions could lobby for alternative restrictions to be applied. The fact that this may happen does not make the options chosen wrong or

⁵ (1997) 192 LSJS 54, at [70].

incorrect and, in my view, it is appropriate for government departments to be prepared to justify their decision-making to the public.

Undermining COVID compliance

51. The agency submits that if the public were to lose confidence in the decision making of officials, compliance with COVID-19 requirements would likely lessen.
52. For the reasons already covered, I do not consider that disclosure of the documents would reduce confidence in the agency's decision-making. Conversely, the disclosure of documents relating to decision-making around the pandemic may in fact increase confidence in government decision-making by showing the thoroughness of the deliberations had by the Committee and the breadth of options explored.

Undermining consumer and business confidence

53. The agency submits that economic confidence is achieved through clear messaging and certainty in decision making, and that disclosure of the considered options would confuse businesses, raise uncertainty about direction and undermine the confidence that has been achieved.
54. As outlined in my provisional determination, and repeated earlier in this determination, I do not accept that disclosure would be misleading or confusing.
55. Although the agency has repeatedly expressed concern about particular documents being viewed in isolation, my view is that this is in fact an argument for the agency to release all relevant documents. Additionally, I consider that if a person were to be confused by viewing only one document in isolation, that confusion would be the result of intentionally ignoring particular information. Such confusion does not mean that the document itself is confusing.
56. By refusing access to some documents in issue, the agency is ensuring that some documents will be viewed without their full context and all surrounding information.

Further comments

57. The agency has provided further submissions specific to document 37. Although I have addressed these submissions in my collective assessment of the public interest test, I consider it appropriate to draw the agency's attention to clause 9(2)(b) which states:
 - (2) A document is not an exempt document by virtue of this clause if it merely consists of—
 - (b) factual or statistical material.
58. The agency describes the documents as a report on research undertaken to capture perceptions around the management of COVID-19 and I note that the report largely consists of figures.
59. In my view, document 37 can arguably be characterised as merely consisting of factual and statistical material, and therefore cannot be exempt pursuant to clause 9(1). At the very least, a large portion of the document falls within this category and I consider that the clear parliamentary intention of clause 9(2)(b) is that disclosure of such information would not be contrary to the public interest.
60. I also note that significant portions of many of the documents consist of information which is either available to the public or so common that it is unclear why the information should not be released. For example, the general risk factors of COVID-19

have been highly publicised and many of the suggestions for mitigating those risks are based in common sense.

61. Another clear example is document 55, which appears to be a draft version of a direction which remains available online, the only variances being minimal.
62. Noting the amount of information publicly available, as well as the amount of information which is little more than common sense, I query whether the agency gave proper consideration to partial release of the documents in accordance with section 20(4) of the FOI Act.
63. Regardless, for the reasons already outlined, and again noting the significant community interest in the subject matter of the documents, I am not satisfied that disclosure of the documents would be contrary to the public interest.

Clause 13(1)

64. As outlined above, the agency determined documents 24 and 25 to be exempt pursuant to clause 13(1). In response to my provisional determination, the agency advised it had no further submissions to make in relation to clause 13(1). That said, as the agency did not explicitly abandon its reliance upon clause 13(1), and the AFL have provided its views about documents 24 and 25, I have included my consideration of clause 13(1) in this determination.
65. To succeed in claiming clause 13(1)(b) as a basis for refusing access to a document, each of the following criteria must be satisfied:
 - that matter in the document was ‘received under an express or inferred understanding that [it] would be kept confidential’⁶
 - that disclosure of the matter might reasonably be expected to prejudice the future supply of such information to the Government or an agency
 - that disclosure of the matter would, on balance, be contrary to the public interest.
66. The Supreme Court of Victoria has observed that the phrase ‘communicated in confidence’ should be given its ordinary meaning.⁷ I consider this to also be the appropriate approach to the construction of the phrase ‘obtained in confidence’ where it appears within clause 13(1)(b) of the FOI Act.

Received under an express or inferred understanding that the information would be kept confidential

67. Document 24 is Version 1 of an AFL ‘Return to Play’ protocol dated May 2020 provided to the agency for comment. There are no markings on the document supporting a claim that the document was provided in confidence. Further, the agency has not made specific submissions in relation to this document supporting its position that the document is confidential except to say that it is confidential.
68. That said, in response to my provisional determination, the AFL advised that it considers document 24 to be a confidential document, having been disclosed in limited circumstances and on a ‘need to know’ basis.
69. Out of an abundance of caution, I have therefore proceeded on the assumption that the document was received under an understanding of confidentiality.

⁶ See *Re Maher and Attorney General's Department* (1985) 7 ALD 731 at 737.

⁷ *Ryder v Booth* [1985] VicRp 86 at [35].

Might disclosure reasonably be expected to prejudice the future supply of such information to the agency?

70. The meaning of 'reasonably be expected to' within the FOI Act has been described as an expectation that is 'distinct from something that is irrational, absurd or ridiculous'.⁸
71. I draw attention to the wording of clause 13(1)(b)(i) which uses the wording 'might reasonably be expected to, which is distinct from other clauses which use the phrase 'could' reasonably be expected to. The District Court made the following observation in the matter of *Sheppard v the SA Minister for Health*:⁹
- the use of the word 'might' in contrast with the use of the word 'could' in every other ground relied upon, would seem to exact a less stringent test; 'might reasonably be expected' seeming to impart a greater sense of speculation than 'could reasonably be expected'. However, the opinion must be reasoned; the difference between each kind of reasonably held belief or opinion being that the consequences 'might be expected', as opposed to 'could be expected'.
72. In general the meaning of 'prejudice' in the FOI Act has been held to bear its ordinary meaning, 'to cause detriment or disadvantage'¹⁰ or 'to impede or derogate from'.¹¹
73. The agency submits that the disclosure of document 24 would go some way toward enhancing the public's understanding on how the AFL sought to meet its public health obligations in managing its 'Return to Play'. However, the agency is of the view that if the information is disclosed, 'there is a significant risk that the AFL or organisations of its ilk would not share its plans in the future at the level of detail therein'. The agency submits the Minutes of the relevant Committee meetings already disclosed to the applicant reflect decisions that contribute toward the public understanding of the issues presented which mitigate against disclosure.
74. I am not satisfied that organisations engaging with government involving issues of this nature would be deterred by potential disclosure under the FOI Act to such an extent that it would deter the provision of this type of information. It is in the interests of sporting organisations including the AFL, given the unique circumstances of the COVID-19 pandemic and the desire to resume sporting activities, to provide a detailed 'Return to Play' plan to the agency for consideration.
75. In its submissions, the AFL did not dispute the above reasoning, nor did it provide any other reason why disclosure might reasonably be expected to prejudice the future supply of information to the agency.
76. For these reasons, I am not satisfied the disclosure of document 24 might reasonably be expected to prejudice the future supply of such information to the agency.
77. While not necessary for me to consider the public interest under clause 13(1)(b)(ii), for completeness I have done so in relation to document 24. In my view, the factors in favour of disclosure set out above under the public interest heading outweigh the factors against disclosure.
78. Document 25 is a Committee meeting discussion paper dated 13 May 2020 in relation to document 24. The document appears to be an internal agency document and not a document 'received' under an express or inferred understanding that it would be kept confidential. For that reason, document 25 is not exempt under clause 13(1).

⁸ *Attorney General's Department v Cockcroft* (1986) 10 FCR 180 at 190.

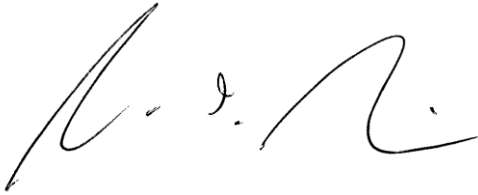
⁹ *Sheppard v The SA Minister for Health* (1997) SADC at 8.

¹⁰ *Re Maher and the Attorney General's Department (No 2)* (1986) 4 AAR 266.

¹¹ *Sobh v Victoria Police* (1994) 1 VR 41.

Determination

79. In light of my views above, I vary the agency's determination such that all documents in issue are released to the applicant in full.



Wayne Lines
SA OMBUDSMAN

16 June 2021

APPENDIX 1

Procedural steps

Date	Event
15 June 2020	The agency received the FOI application dated 15 June 2020.
15 July 2020	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
1 October 2020	The agency received the internal review application dated 1 October 2020.
8 October 2020	The agency varied the determination.
22 November 2020	The Ombudsman received the applicant's request for external review dated 22 November 2020.
23 November 2020	The Ombudsman advised the agency of the external review and requested submissions and documentation.
7 December 2020	The agency provided the Ombudsman with its submissions and documentation.
14 April 2021	The Ombudsman issued his provisional determination and invited submissions from the parties.

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

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