

OMBUDSMAN TASMANIA
DECISION



Right to Information Act Review

Case Reference: R2505-019
R2506-011

Names of Parties: O & P and the Department of Police, Fire and Emergency Management

Reasons for decision: s48(3)

Provisions considered: s30, s35, s36, s39

Background

- 1 O and P are adult siblings who had made a report to Tasmania Police regarding the alleged theft of property belonging to their mother.
- 2 On 29 January 2025, P made an application for assessed disclosure under s13 of the *Right to Information Act 2009* (Tas) (the Act) to the Department of Police, Fire and Emergency Management (the Department).
- 3 On 18 February 2025, O also made an application for assessed disclosure under s13 of the Act to the Department.
- 4 Both applicants sought information relating to the police investigation of their allegations, including statements made and details of meetings with police officers.
- 5 On 27 March 2025, Sergeant Lee Taylor, a delegate of the Department under the Act, issued a decision to both applicants. He located eight pages of relevant information contained in an Offence Report. He released the information in part but refused access to other information on the basis of exemptions under:
 - section 30(1)(d) – information relating to the enforcement of the law;
 - section 35 – internal deliberative information;
 - section 36 – personal information; and
 - section 39 – information provided in confidence.
- 6 On 9 April 2025, O sought an internal review of that decision.

- 7 On 17 April 2025, P sought an internal review of that decision through their lawyers.
- 8 On 30 April 2025, Detective Inspector Burke, another delegate for the Department under the Act, affirmed the original decision given to O. On 14 May 2025, Detective Inspector Burke also affirmed the original decision given to P. In both internal reviews, Detective Inspector Burke found that the exemptions had been appropriately applied to the eight pages released to both applicants.
- 9 Both applicants have applied to my office for external review of their internal review decisions and agreed for the matters to be dealt with jointly. I accepted the applications under s44 of the Act.

Issues for Determination

- 10 I must determine whether the information withheld by the Department is exempt under ss30(1)(d), 35, 36 or 39 of the Act.
- 11 As ss35, 36 and 39 are contained in Division 2 of Part 3 of the Act, my assessment is subject to the public interest test in s33. If I determine the information is prima facie exempt, I must then determine whether it would be contrary to the public interest to release it. In making this assessment I must have regard to all relevant matters, and at least those containing in Schedule 1 of the Act.

Relevant legislation

- 12 I include copies of ss30, 33, 35, 36, 39 and Schedule 1 of the Act at Attachment A.

Submissions

Applicants

- 13 O made submissions within their application for assessed disclosure, including setting out the background to their request and the steps taken to obtain the information prior to lodging the application.
- 14 P, through their legal representative, made submissions in support of the application for review of the decision relating to their application.
- 15 P also submitted that broader disclosure was required to allow a proper understanding of the investigation and the basis for the decision made by Tasmania Police:

Further, noting that previous partial disclosure, all other records/documents relating to the police complaint in question ought also be released, so that the Applicants can have a full and complete picture of the investigative process and the reasons for decisions made by Tasmania Police.

Department

16 The Department relied on the reasoning set out in its decisions in this external review. This was primarily contained in the original decision dated 27 March 2025, as this was affirmed on internal review.

17 In that decision, the Department addressed each exemption relied upon.

18 In relation to s30(1)(d), the Department stated:

The information assessed includes information provided in confidence to Tasmania Police by a third party, who reasonably expected that it would not be disclosed due to the risk of reprisal, and harassment.

If this information were to be disclosed to your client, or others, it may be reasonably likely to affect the physical, emotional and or psychological safety and wellbeing of that third party once the disclosure is known to them.

Therefore, an exemption pursuant to Section 30(1)(d) of the Act has been applied to this information.

Exemptions applied pursuant to Section 30 of the Act are not subject to the public interest test at Schedule 1.

19 In relation to s35(1), the Department stated:

The information contained within the OR [Offence Report] includes personal opinions and internal deliberations of Tasmania Police Officers who were at the time, collating and discussing information in a planning and assessment phase of the investigation.

The aforementioned information would disclose the internal thinking processes of a public authority and contains non-factual opinions and deliberations when all facts were unknown and investigation incomplete. The absolute accuracy of this information cannot be substantiated and would reasonably be likely to compromise future internal avenues of enquiry.

I am satisfied that this information is prima facie exempt pursuant to section 35(1)(a) of the Act, subject to the public interest test at Schedule 1, discussed later in this letter.

20 In relation to s36(1), the Department stated:

The information assessed includes the personal information of persons other than your client, such as;

- Information that identifies third parties' interactions with Tasmania Police;*

- Information that identifies third parties involved or named in the incident; and
- Information provided by third parties in confidence in relation to the reported crime.

The personal information provided by or about a person is a vital tool in assisting Tasmania Police with the prevention, detection, and investigation of daily life incidents. The supply and source of information must be protected so that similar information is forthcoming and 'free flowing' in the future without any reasonable concern from the person providing it.

Information provided by a third party must be protected given the sensitivity and privacy surrounding the subject and may cause considerable concern if released without consent.

Section 36(2) of the Act directs that I consult with third parties' whose information is held by Tasmania Police and where it is my belief that the party may be reasonably concerned about the release of that information.

I can advise that I consulted with three (3) third parties. One (1) third party responded in writing and consented to their personal information being released. The remaining third parties' either did not respond to this office, or responded and did not consent to the release of their information.

I am aware that you and your client may know the details of the third parties involved, however, I have chosen to exempt these details pursuant to this section of the Act due the nature of the allegations and sensitivity of the information. This is not to hide that information from you, but to ensure that third party identities are not inadvertently disclosed to the 'world at large'.

I have also considered the Tasmanian decision of M and Tasmania Police (2014), the Ombudsman stated:

"Strong privacy considerations apply to information which has been provided to police to carry out their function including investigating issues raised by community members who have approached police and made their concerns known to police ... I am satisfied that it would be contrary to the public interest to disclose the information."

I am satisfied that it would be contrary to the public interest to disclose the aforementioned information as it is personal information, of someone other than your client, and is information that is private and would not reasonably be expected to be disclosed without consent.

Section 36 exemptions require consideration of the public interest test.

21 In relation to s39(1), the Department stated:

The assessed information includes information provided by third parties to Tasmania Police, in confidence. This is highly sensitive and personal information that naturally attracts a degree of confidentiality and concern for the party providing it.

Tasmania Police relies on information provided from members of the public in its business of law enforcement. When members of the public report information to Tasmania Police, often the information is provided in confidence, in the belief that the source will not be released to a third party without consent.

In the Tasmanian decision of SNF and Tasmania Police (2015), the Ombudsman stated:

"... On the material presented, I am satisfied that if confidential information provided to Tasmania Police was routinely disclosed under the RTIA Act it would be reasonably likely to impair the ability to obtain similar information in the future ... My end conclusion is that it would be contrary to the public interest for such release to occur. The information at issue is exempt information under s.39 of the RTIA."

Therefore, an exemption pursuant to Section 39(1) of the Act has been applied to that information, as I am satisfied that it would be contrary to the public interest to disclose that classification of information without consent of the person supplying it.

The exemption at Section 39(1) of the Act is subject to the public interest test at Schedule 1.

22 The Department then conducted a joint public interest test assessment across ss35, 36 and 39:

I consider the following matter [sic] in Schedule 1 of the Act (the public interest test) to favour disclosure of the exempt information:

(a) the general public need for government information to be accessible.

The object of the Act is to disclose information where possible and to give members of the public the right to obtain information about the operations of Government and increase the accountability of the executive to the people of Tasmania.

Generally, disclosure is to be favoured over non-disclosure unless there are valid reasons for deciding that disclosure would be contrary to the public interest.

(c) Whether the disclosure would inform a person about the reasons for a decision.

Disclosure of information in reports held by Tasmania Police would promote your clients [sic] individual interests and inform them of the investigative process including the reasons for decisions made by Tasmania Police.

Conversely, I consider the following matters in Schedule 1 of the Act to favour non-disclosure of the exempt information:

(m) whether the disclosure would promote or harm the interest of an individual or group of individuals;

I am satisfied that it would be contrary to the public interest to disclose third parties' personal information that is private and provided for the purpose of Police investigations.

This information would not be expected to be disclosed for another purpose, without consent. The release of this information would be reasonably likely to harm the interest of the individuals named and increase the risk of reprisal, harassment or discrimination.

(n) whether the disclosure would prejudice the ability to obtain similar information in the future.

I am satisfied that it would be contrary to the public interest to disclose the aforementioned information that is private and provided in confidence to Tasmania Police. There is a reasonable public expectation that this information would not be disclosed, without consent and its release would be likely to harm the ability to obtain similar information in the future and therefore hinder the investigation process.

(u) whether the information is wrong or inaccurate.

Information contained within the OR [Offence Report] includes investigating officer's personal opinions, advice and recommendations made at a time when the investigation was not yet complete, and all facts not known. I am satisfied that it would be contrary to the public interest to disclose the aforementioned information as its absolute accuracy cannot be substantiated and may be misinterpreted.

I consider the remaining matters in Schedule 1 of the Act to be non-relevant to your application.

On balance, I am satisfied that it would be contrary to the public interest to disclose the exempt information.

Analysis

- 23 The only documents relevant to this review are the Tasmania Police Offence Report and associated material. The report records allegations made to police, statements provided by individuals, investigative steps undertaken and a conclusion that the matter was “unfounded”. The Department contends that information on four pages of the material is exempt in part under ss30(1)(d), 35(1), 36(1) and 39(1) of the Act. The applicants seek access to the information to understand the investigation and to obtain material relevant to a legal dispute.

Section 36 – Personal Information of person

- 24 Section 36(1) of the Act provides that information is exempt if it consists of the personal information of a person other than the applicant and disclosure would be contrary to the public interest.
- 25 Both applicants’ submissions focus on obtaining access to police statements and reports and disputing the accuracy of information recorded by police. While framed as a challenge to the investigation, I consider those submissions raise the question of whether the requested information includes personal information of persons other than the applicants.
- 26 For information to be exempt under s36, I must be satisfied that disclosure would involve the disclosure of personal information, including where a person’s identity would be reasonably ascertainable.
- 27 The report contains names, identifying details and accounts of events provided by multiple individuals. While some individuals are not named in all instances, I am satisfied their identity would be reasonably ascertainable from the context, including their relationships to other persons and the circumstances described.
- 28 I am therefore satisfied the relevant redacted information is *prima facie* exempt under s36. The exception to this is the headings in the redacted information on page 5 (including Offence No, Name, Age, DOB, Sex), which do not reveal any personal information about any person.

Section 33 – Is it Contrary to the Public Interest?

- 29 The Department identified Schedule 1 matter (a) – *the general public need for government information being accessible* – as relevant. I agree that this weighs in favour of disclosure.
- 30 I also consider Schedule 1 matters (c) – *whether the disclosure would inform a persona about the reasons for a decision*, (d) – *whether the disclosure would provide contextual information to aid in the*

understanding of government decisions, and (g) – whether the disclosure would enhance scrutiny of government administrative processes, to be relevant. Disclosure would provide insight into how Tasmania Police dealt with the complaint, would assist in understanding the outcome of the investigation and would enhance scrutiny of those processes. I consider these factors weigh in favour of disclosure.

- 31 In relation to Schedule 1 matter (h) – *whether the disclosure would promote or hinder equity and fair treatment of persons or corporations in their dealings with government*, the applicants have raised concerns regarding the accuracy of the information recorded by police. I accept that disclosure may promote fair treatment by enabling the applicants to understand and respond to the material and assess its accuracy. This factor weighs in favour of disclosure.
- 32 In relation to matters which weigh against disclosure, I agree with the Department that Schedule 1 matter (m) – *whether the disclosure would promote or harm the interests of an individual or group of individuals*, is of particular significance. Disclosure of the report in its current form would disclose personal information of third parties and has the potential to adversely affect their interests. However, I accept the interests of the applicants would be promoted by the receipt of further information about the investigation of their allegations. I consider this factor weighs against disclosure.
- 33 Schedule 1 matter (n) – *whether the disclosure would prejudice the ability to obtain similar information in the future*, is also highly relevant. The information was provided to police in the context of an investigation of allegations which did not result in any prosecution. Encouraging cooperation with police investigations is of significant public interest and I accept the Department's submission that routine disclosure may prejudice the ability of police to obtain similar information in the future. This factor weighs strongly against disclosure.
- 34 On balance, I am satisfied disclosure of the majority of the redacted parts of the report would be contrary to the public interest. This information is exempt under s36 and is not required to be released to O and P.
- 35 The following parts are not exempt, however, and should be released:
- The first sentence under the heading *Summary and MO* on page 1;
 - The redacted information in the final dot point under '25/03/2024 15:00...'; and
 - The second last dot point on page 3, except for the sixth word.

Alternative exemptions under sections 30 and 39

- 36 The Department has also relied on s30(1)(d) and s39 to exempt the same information it claimed as exempt under s36. Section 30(1)(d) provides that information is exempt if disclosure would, or would be reasonably likely to, endanger the safety of a person or increase the likelihood of harassment. Section s39 provides that information is exempt if its disclosure would divulge information communicated in confidence.
- 37 I have found the majority of this information exempt under s36 and am not satisfied that assessment under these other provisions is necessary. The additional information to be released does not meet the threshold for s30(1)(d) and would not be contrary to the public interest to release under s39, as the considerations would be the same as in relation to s36.

Section 35 – Internal deliberative information

- 38 The Department submits the report contains *personal opinions and internal deliberations* that are exempt pursuant to s35 of the Act. For information to be exempt from disclosure under s 35, I must be satisfied that it consists of:
- an opinion, advice, or recommendation prepared by an officer of a public authority (s 35(1)(a)); or
 - a record of consultations or deliberations between officers of public authorities (s 35(1)(b)); or
 - a record of consultations or deliberations between officers of public authorities and Ministers (s 35(1)(c)).
- 39 Once the requirements of one of those subsections is met, I must then be satisfied the information was prepared or recorded in the course of, or for the purpose of, the deliberative processes related to the official business of the Department.
- 40 Section 35(1) of the Act does not apply to the following:
- purely factual information (s 35(2)); or
 - a final decision, order or ruling given in the exercise of an adjudicative function, or a reason which explains such a decision, order or ruling (s 35(3)); or
 - information which is older than 10 years (s 35(4)).
- 41 As to the meaning of ‘purely factual information’ in s 35(2), I refer to *Re Waterford and Treasurer of the Commonwealth of Australia (No 1)*¹ where the Commonwealth Administrative Appeals Tribunal (AAT)

¹ [1984] AATA 518 at [14].

observed that the word ‘purely’ in this context has the sense of ‘simply’ or ‘merely’ and that the material must be ‘factual’ in quite unambiguous terms.

- 42 The meaning of the phrase ‘in the course of, or for the purpose of, the deliberative processes’ has also been considered by the AAT. *In Re Waterford and Department of Treasury (No 2)*,² it adopted the view that these are an agency’s thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.
- 43 The Department relied on s35(1) to exempt information on pages 2 and 3 under the date headings 12/06/2024 and 13/03/2024.
- 44 I note the information is restricted to the opinions of one Tasmania Police Officer in respect of the relevant theft investigation. On this basis and, having reviewed the unredacted information, I am satisfied it is prima facie exempt under s35(1)(a) of the Act as an opinion prepared by an officer of the Department in the course of the deliberative process related to the Department’s official business. I am also satisfied ss35(2), 35(3), and 35(4) do not apply.

Section 33 - Public Interest Test

- 45 In assessing the public interest, I again consider Schedule 1 matter (a) weighs in favour of disclosure.
- 46 I also consider Schedule 1 matters (c), (d), (g) and (m) weigh in favour of disclosure to the extent that release would promote transparency and understanding of police processes and advance O and P’s interests.
- 47 The only matter weighing against disclosure is the inherent reason for the inclusion of s35, regarding the need for early thinking processes to be proceed effectively to ensure investigations and new proposals are explored and developed appropriately. This is particularly important in relation to criminal investigations, as effective investigation of crime is of high public interest and early theories are explored. However, this must be balanced with the explicit intention in the Act that the maximum amount of official information be released.
- 48 In this matter, the two relevant sentences are similar to other information which has been released in other parts of the offence report and it is not contrary to the public interest to disclose the majority of it. There are six words which are exempt under s35(1), however, and should not be released to O and P.

² [1984] AATA 67 at [58].

49 The following information is not exempt and should be released to O and P:

- On page 2, all of the fifth dot point under '12/06/2024 09:22 Young, Connor, Bellerive CIB (x):' except for the twelfth word; and
- On page 3, all of the final sentence except for the last five words.

Preliminary Conclusion

50 Accordingly, for the reasons set out above, I determine that:

- exemptions claimed under ss 35 and 36 are varied; and
- exemptions claimed under ss30 and 39 are not necessary to review beyond the assessment that they do not apply to the information found not to be exempt.

Response to the Preliminary Conclusion

51 As the above preliminary decision was adverse to the Department, it was made available to it on 19 May 2026 pursuant to s48(1)(a) of the Act to seek its input before finalisation.

52 On 1 June 2026, Sergeant Rob Jones of the Department made a number of submissions regarding ss36 and 39 of the Act. Relevant extracts are set out below.

53 In relation to the application of s39, Sergeant Jones submitted:

At dot point three you indicate that 'the final sentence of the first redacted paragraph commencing 18/0402024 11:07 Young, Connor, Bellerive CIB (x)' is not exempt.

You note that information in this section was found exempt by Sergeant Taylor based on ss36, 30 and 39, however you have found that the information is not exempt under s36 and have not considered at length those other potential exemptions. I submit that this information should be determined as prima facie exempt under s39. This private financial information was divulged to Tasmania Police by a potential suspect and was provided by them in confidence. It is imperative that Tasmania Police is able to gain such information from witnesses and suspects without fear that such information will be released to others under RTI applications from others. I consider schedule 1 factors (n), (m), (j) and (h) weigh heavily against release.

54 In relation to the application of s36, the submissions continued:

It is the position of DPFEM that all statements made by individuals are their personal information. Accordingly, people are entitled to full, unredacted copies of their own reports and

statements. Importantly, when this information is entered into police systems as part of an offence report or intelligence holding, the information is not necessarily fact but based on the information received to that time.

Whilst some of the matters in [O's] statement are reproduced within the Offence Report, once in that format they essentially become intelligence. The information is not necessarily factual or proven. It is important to DPFEM that information, shown to be on a Tasmania Police letterhead, is not released to 'the world at large' which may misinterpret this information as fact. For example, assertions related to... [cognitive capacity] are based on the advice of the family, not the factual assessment of a medical practitioner. DPFEM has sought to protect this unproven personal information from 'the world at large'.

- 55 Sergeant Jones further referred to paragraph 35 of my preliminary decision, which proposes to release further information. Sergeant Jones submitted that the information contains sensitive personal information relating to an individual's health and personal circumstances. While acknowledging that the information appears to have been provided by a family member and may be known to other immediate family members, Sergeant Jones contended the information remains inherently private and sensitive in nature. Accordingly, Sergeant Jones submitted the information should remain exempt under section 36 of the Act to avoid the disclosure of sensitive personal information to the world at large.
- 56 Sergeant Jones referred to paragraph 27 of my preliminary decision, where I observed that certain individuals, although not expressly named, may nevertheless be reasonably identifiable from the surrounding context, including their relationships to other persons and the circumstances described. Sergeant Jones submitted further information proposed to be released in paragraph 35, when considered in conjunction with other information proposed for release, would render the identity of the relevant individual being investigated reasonably ascertainable. Accordingly, Sergeant Jones maintained the information should remain exempt from disclosure under s36. Sergeant Jones further indicated DPFEM's agreement with my assessment of the relevant public interest factors.
- 57 On 12 June 2026, the preliminary decision was also sent to O and P pursuant to s48(1)(b) of the Act to seek their input prior to finalisation. On 26 June and 30 June 2026, this Office received further submissions from both applicants, which have been considered in determining this review.
- 58 P indicated that they were *looking forward to the decision* and neither applicant made submissions in relation to the proposed determinations in my preliminary decision. The remainder of O and P's submissions

related to the alleged theft of property and surrounding circumstances. While I carefully considered these submissions, they did not directly relate to the matters I am required to determine in this decision and I will not quote them here.

Further analysis

- 59 I have carefully considered the entirety of Sergeant Jones' submissions, together with the further submissions received from both applicants on 26 June 2026 and 30 June 2026. While I acknowledge the Department's concerns regarding the disclosure of sensitive personal and investigative information, I do not accept all of the submissions advanced in support of exemption under ss36 and 39 of the Act. Accordingly, I have altered some, but not all, of the findings set out in the preliminary decision, for the following reasons.
- 60 In relation to the Department's submissions concerning s39, I accept that certain financial information provided to Tasmania Police during the course of a criminal investigation was communicated confidentially. I further accept that the effective administration of policing functions depends significantly on members of the public, witnesses and suspects being willing to provide sensitive information voluntarily and candidly. In that regard, I accept that disclosure of private financial information of the kind identified by Sergeant Jones could reasonably be expected to prejudice the future supply of similar information to Tasmania Police. However, I consider the relevant information is exempt under s36 and it is not necessary to assess it fully under s39.
- 61 In relation to the Department's submissions concerning the unverified nature of certain information in the Offence Report, I acknowledge these concerns. Nevertheless, I do not accept the proposition that information recorded within an offence report should attract exemption under s36 solely because it is intelligence-based, unproven, or recorded on Tasmania Police systems. Matters which are irrelevant to the assessment of the public interest, set out in Schedule 2 of the Act, state that whether *disclosure would confuse the public or that there is a possibility that the public might not readily understand any tentative quality of the information* must not be considered. Rather, the question for determination is whether disclosure of the particular information would not be contrary to the public interest having regard to relevant matters.
- 62 I acknowledge the Department's submissions regarding references to cognitive capacity. However, I am not satisfied the disclosure of the information identified in the preliminary decision would constitute an unreasonable disclosure of personal information in the circumstances of this matter. In reaching that conclusion, I have had regard to the contextual nature of the information, the relationship between the

applicants and other relevant parties and the limited manner in which the information appears within the documents.

- 63 I accept the Department's submission that a reference to a relationship constitutes exempt personal information in the circumstances of this matter. While the information is limited in nature, I am satisfied the individual concerned is reasonably identifiable from the surrounding context. In those circumstances, I am satisfied disclosure would be contrary to the public interest.

Conclusion

- 64 For the reasons set out above, I determine:

- exemptions claimed under ss 35 and 36 are varied; and
- exemptions claimed under ss30 and 39 are not necessary to review beyond the assessment that they do not apply to the information found not to be exempt.

- 65 I apologise to the parties for the delay in finalising this external review.

Dated: 30 June 2026



Dr Grant Davies
OMBUDSMAN

Attachment 1

Relevant Legislation

30. Information relating to enforcement of the law

- (1) Information is exempt information if its disclosure under this Act would, or would be reasonably likely to –
 - (a) prejudice –
 - (i) the investigation of a breach or possible breach of the law; or
 - (ii) the enforcement or proper administration of the law in a particular instance; or
 - (iii) the fair trial of a person; or
 - (iv) the impartial adjudication of a particular case; or
 - (b) disclose, or enable a person to ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law; or
 - (c) disclose methods or procedures for preventing, detecting or investigating, or dealing with matters arising out of, breaches or evasions of the law, the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or
 - (d) endanger the life or physical, emotional or psychological safety of a person, or increase the likelihood of harassment or discrimination of a person; or
 - (e) disclose information gathered, collated or created for intelligence, including but not limited to databases of criminal intelligence, forensic testing or anonymous information from the public; or
 - (f) hinder, delay or prejudice an investigation of a breach or possible breach of the law which is not yet complete.
- (2) Subsection (1) includes information that –
 - (a) reveals that the scope of a law enforcement investigation has exceeded a limit imposed by law; or
 - (b) reveals the use of an illegal method or procedure for preventing, detecting or investigating, or dealing with a matter arising out of, a breach or evasion of the law; or

- (c) contains a general outline of the structure of a program adopted by a public authority for investigating breaches of or enforcing or administering the law; or
- (d) is a report on the degree of success achieved in a program adopted by a public authority for investigating breaches of or enforcing or administering the law; or
- (e) is a report prepared in the course of a routine law enforcement inspection or investigation by a public authority with the function of enforcing and regulating compliance with a particular law other than the criminal law if the inspection or investigation is complete; or
- (f) is a report on a law enforcement investigation, if the substance of the report has been disclosed to the person or the body that is the subject of the investigation –

if it is contrary to the public interest that the information should be given under this Act.

- (3) The matters which must be considered in deciding if the disclosure of information under subsection (2) is contrary to the public interest are specified in Schedule 1 but are not limited to those matters.
- (4) The matters specified in Schedule 2 are matters that are irrelevant in deciding if the disclosure of information under subsection (2) is contrary to the public interest.

35. Internal deliberative information

- (1) Information is exempt information if it consists of –
 - (a) an opinion, advice or recommendation prepared by an officer of a public authority; or
 - (b) a record of consultations or deliberations between officers of public authorities; or
 - (c) a record of consultations or deliberations between officers of public authorities and Ministers –

in the course of, or for the purpose of, the deliberative processes related to the official business of a public authority, of a Minister or of the Government.

- (2) Subsection (1) does not include purely factual information.
- (3) Subsection (1) does not include –
 - (a) a final decision, order or ruling given in the exercise of an adjudicative function; or
 - (b) a reason which explains such a decision, order or ruling.

- (4) Subsection (1) ceases to apply after 10 years from the date of the creation of the information referred to in that subsection.

36. Personal information of person

- (1) Information is exempt information if its disclosure under this Act would involve the disclosure of the personal information of a person other than the person making an application under section 13.
- (2) If –
- (a) an application is made for information under this Act; and
 - (b) the information was provided to a public authority or Minister by a third party; and
 - (c) the principal officer or Minister decides that disclosure of the information concerned may be reasonably expected to be of concern to the third party –
- the principal officer or Minister is to, if practicable and before deciding whether the disclosure of the information under this Act should occur, by notice in writing to the third party –
- (d) notify that person that the public authority or Minister has received an application for the information; and
 - (e) state the nature of the information that has been applied for; and
 - (f) request that, within 15 working days from the date of the notice, the person provide his or her view as to whether the information should be provided.
- (3) If a public authority or Minister, after receipt of a person's view referred to in subsection (2)(f), decides to provide the information, the public authority or Minister must, by notice in writing given to that person, notify that person of the decision.
- (4) A notice under subsection (3) is to –
- (a) state the nature of the information to be provided; and
 - (b) if the decision was made on behalf of a public authority or Minister, state the name and designation of the person who made the decision; and
 - (c) inform the person to whom the notice is addressed of –
 - (i) that person's right to apply for a review of the decision; and
 - (ii) the authority to which the application for review can be made; and
 - (iii) the time within which the application must be made.

- (5) A public authority or Minister must not provide the information referred to in a notice given to a person under subsection (3) –
 - (a) until 10 working days have elapsed after the date of notification of that person; or
 - (b) if during those 10 working days the person applies under section 43 for a review of the decision, until that review determines that the information should be provided; or
 - (c) until 20 working days after notification of an adverse decision under section 43; or
 - (d) if during those 20 working days the person applies for a review of the decision under section 44 , until that review determines that the information should be provided; or
 - (e) if the information is information to which a decision referred to in section 45(1A) relates –
 - (i) during 20 working days after the notification of the decision; or
 - (ii) where the person applies for a review of the decision under section 45(1A) – until that review determines the information should be provided.

39. Information obtained in confidence

- (1) Information is exempt information if its disclosure under this Act would divulge information communicated in confidence by or on behalf of a person or government to a public authority or Minister, and –
 - (a) the information would be exempt information if it were generated by a public authority or Minister; or
 - (b) the disclosure of the information would be reasonably likely to impair the ability of a public authority or Minister to obtain similar information in the future.
- (2) Subsection (1) does not include information that –
 - (a) was acquired by a public authority or a Minister from a business, commercial or financial undertaking; and
 - (b) relates to trade secrets or other matters of a business, commercial or financial nature; and
 - (c) was provided to a public authority or Minister pursuant to a requirement of any law.

33. Public interest test

- (1) In this Division, information is exempt information if the principal officer of the public authority or Minister considers, after taking into account all relevant matters, that it is contrary to the public interest to disclose the information.
- (2) The matters which must be considered in deciding if the disclosure of the information is contrary to the public interest are specified in Schedule 1 but are not limited to those matters.
- (3) The matters specified in Schedule 2 are matters that are irrelevant in deciding if the disclosure of the information is contrary to the public interest.

SCHEDULE 1 - Matters Relevant to Assessment of Public Interest

1. The following matters are the matters to be considered when assessing if disclosure of particular information would be contrary to the public interest:
 - (a) the general public need for government information to be accessible;
 - (b) whether the disclosure would contribute to or hinder debate on a matter of public interest;
 - (c) whether the disclosure would inform a person about the reasons for a decision;
 - (d) whether the disclosure would provide the contextual information to aid in the understanding of government decisions;
 - (e) whether the disclosure would inform the public about the rules and practices of government in dealing with the public;
 - (f) whether the disclosure would enhance scrutiny of government decision-making processes and thereby improve accountability and participation;
 - (g) whether the disclosure would enhance scrutiny of government administrative processes;
 - (h) whether the disclosure would promote or hinder equity and fair treatment of persons or corporations in their dealings with government;
 - (i) whether the disclosure would promote or harm public health or safety or both public health and safety;
 - (j) whether the disclosure would promote or harm the administration of justice, including affording procedural fairness and the enforcement of the law;

- (k) whether the disclosure would promote or harm the economic development of the State;
- (l) whether the disclosure would promote or harm the environment and or ecology of the State;
- (m) whether the disclosure would promote or harm the interests of an individual or group of individuals;
- (n) whether the disclosure would prejudice the ability to obtain similar information in the future;
- (o) whether the disclosure would prejudice the objects of, or effectiveness of a method or procedure of, tests, examinations, assessments or audits conducted by or for a public authority;
- (p) whether the disclosure would have a substantial adverse effect on the management or performance assessment by a public authority of the public authority's staff;
- (q) whether the disclosure would have a substantial adverse effect on the industrial relations of a public authority;
- (r) whether the disclosure would be contrary to the security or good order of a prison or detention facility;
- (s) whether the disclosure would harm the business or financial interests of a public authority or any other person or organisation;
- (t) whether the applicant is resident in Australia;
- (u) whether the information is wrong or inaccurate;
- (v) whether the information is extraneous or additional information provided by an external party that was not required to be provided;
- (w) whether the information is information related to the business affairs of a person which if released would cause harm to the competitive position of that person;
- (x) whether the information is information related to the business affairs of a person which is generally available to the competitors of that person;
- (y) whether the information is information related to the business affairs of a person, other than a public authority, which if it were information of a public authority would be exempt information.