OMBUDSMAN TASMANIA

DECISION

Right to Information Act Review **Case Reference:** R2507-002

Names of Parties: Kelvin Derksen-Luelf and Department of Premier and Cabinet

Reasons for decision: s48(3)

Provisions considered: s35, s36

Background

1 Mr Kelvin Derksen-Luelf (the Applicant) is an entrepreneur involved with the New Norfolk Distillery, a business within the Derwent Valley local government area.

2 On 7 February 2025, Mr Derksen-Luelf applied for assessed disclosure to Derwent Valley Council (Council) under s13 of the *Right to Information Act 2009* (Tas) (the Act) in the following terms:

> *I would like the stat dec* [sic] *written by* [a Council officer] *for the investigation into the leaking of confidential information that was done by the Office of Local Government.*

3 On 25 February 2025, the application was transferred to the Department of Premier and Cabinet (the Department) pursuant to s14 of the Act because the subject matter of the request was more closely connected with the functions of the Department.

4 On 12 March 2025, Ms Gemma Smith, a delegate under the Act for the Department, released a decision. Ms Smith identified one two-page document as being relevant to the application and applied s35 (internal deliberative information), s36 (personal information) and s39 (information obtained in confidence) to exempt all but the non-substantive information, such as dates and headings.

5 On 21 March 2025, Mr Derksen-Luelf requested an internal review and, on 23 June 2025, Ms Ella Bray, another delegate under the Act for the Department, released the internal review decision. Ms Bray no longer relied on s39 and released some further information under s35 after determining it was purely factual.

6 On 2 July 2025, after further email correspondence with the Department, Mr Derksen-Luelf sought external review and his application was accepted under s44 of the Act.

Issues for Determination

7 I must determine whether the information not released is eligible for exemption under ss35, 36 or any other relevant section of the Act. As these sections are contained in Division 2 of Part 3 of the Act, my assessment of these exemptions is subject to the public interest test in s33.

8 This means that, should I determine the requested information is prima facie exempt from disclosure, I must then determine whether it would be contrary to the public interest to release it. In making this determination I must have regard to all relevant matters, including those contained in Schedule 1 of the Act.

Relevant legislation

9 I include copies of ss35 and 36 as well as Schedule 1 of the Act at Attachment 1.

Submissions

Applicant

10 Mr Derksen-Luelf provided my office with a copy of his correspondence with the Department after he received the internal review decision. For this decision, I will treat this correspondence as his submissions in relation to the external review.

11 On 24 June 2025, Mr Derksen-Luelf emailed the Department regarding the internal review. Relevant extracts of that email include:

> *I believe that the public interest test, as outlined in Section 33 of the Act, was not adequately balanced in favour of disclosure. I wish to present additional considerations that underscore the necessity for transparency in this matter.*
>
> *1. Community and Business Concerns: It is pertinent to note that fifteen local businesses have called for the Derwent Valley Council to be placed into administration. This reflects a profound lack of confidence in the Council's leadership and governance. According to Section 3 of the Act, one of the primary objectives is to increase the transparency of governmental decisions, which is crucial for restoring public trust.*

> 2. *…The [Independent Review – Derwent Valley Council] … was a direct result of the 15 businesses calling for the council to be placed in Administration. The severity of these findings necessitates a higher degree of scrutiny and transparency. The public interest in understanding the conduct of their elected officials is a fundamental aspect of democratic accountability, as emphasized in the objects of the Act…*
>
> 3. *Integrity and Public Trust… Section 3(a) of the Act highlights the importance of openness in governmental processes to ensure that the activities of public officials are subject to public scrutiny.*
>
> 4. *Application of the Public Interest Test: in applying the public interest test, greater weight should be given to the factors favouring disclosure. Specifically, the need to inform the public about the reasons for governmental decisions (Schedule 1, matter (c)) and to enhance the scrutiny of government decision-making processes (Schedule 1, matter (f) are of paramount importance.*
>
> 5. *Value and Truthfulness of Future information: The concern about obtaining similar information in the future must also consider the value and truthfulness of that information. If the information provided is potentially false or misleading, the importance of protecting its confidentiality diminishes. The public interest is better served by transparency and the opportunity to scrutinize the truthfulness of statements made by public officials.*
>
> *…*
>
> *Given these considerations, I respectfully submit that the public interest in disclosing the requested information significantly outweighs the reasons for maintaining its exemption. I urge you to reconsider the weight given to the public interest factors in your decision.*

12 Mr Derksen-Luelf made several other submissions regarding Council. While I acknowledge his strong feelings on this matter, I will not quote these submissions as they do not relate to the determination I must make in this external review.

Department

13 The Department was not required to provide submissions to this external review as it had provided its reasoning in its decisions, relevant extracts of which are set out below.

14 In relation to the application of s35, the Department set out:

> *You submitted a complaint to the Office of Local Government under section 339E of the* Local Government Act 1993*…*
>
> *…*
>
> *Generally, the official business of the Office of Local Government is administering and ensuring the local government sector's compliance with relevant legislative and regulatory provisions, among other things*
>
> *More specifically, determining the procedure for handling any complaint received is the official business of the Office of Local Government as required by section 339E of the* Local Government Act 1993*.*
>
> *…*
>
> *In fulfilling that official business, the Office of Local Government saw fit to provide* [the Council officer] *with the allegations that were made against* [them] *as well as other evidence obtained in handling the complaint and invited* [them] *to comment.*
>
> *In response to this invitation,* [the Council officer] *freely provided a statutory declaration to the Office of Local Government for the purpose of assisting the Office's deliberative process of determining whether the complaint could be substantiated to the relevant burden of proof, or whether it should instead be dismissed.*
>
> *…*
>
> *I consider the statutory declaration forms part of the Office of Local Government's thinking process of how to handle the complaint by contributing to their assessment of whether the allegation has been substantiated or not.*

15 The Department largely maintained this line of reasoning in its internal review:

> *…*
>
> *While undertaking the deliberative process of investigation your complaints, OLG* [Office of Local Government] *sought*

> [the Council officer's] *input on your allegations.* [The Council officer] *provided comment in the form of a statutory declaration (the declaration). In the declaration,* [the Council officer] *refutes both of your allegations. As your allegations differ from* [the Council officer's] *recollection of events, there is a strong argument that the information in the declaration is* [their] *opinion. It is my view that the majority of the information in the declaration is not purely factual…*
>
> *Where the information is purely factual in the declaration, I have determined it be released to you.*

16 Before considering the public interest test under s33 of the Act, the Department's original decision considered the possible application of s39 (footnote omitted):

> *It is inconceivable to me that a person would contribute to an investigation into allegations against themselves by providing comment to the investigator without an expectation of complete confidentiality.*
>
> *The finding of the investigation could have had significant consequences for* [the Council officer]*, including the imposition of a fine or* [their] *dismissal. Given this, I think it is entirely reasonable that there would have been an expectation of confidentiality applied to any communications* [the Council officer] *provided to the investigator.*
>
> *While I acknowledge that it is conceivable that a person may wish to publicly defend themselves against harmful accusations which they refute, this was not the case in this instance.*
>
> *The complaint, as I understand, was not public. The only people that were aware of the allegations against* [the Council officer] *were yourself as the complainant, the Office of Local Government, and any other people that had been informed about the allegation during the course of the Office of Local Government's investigation. Accordingly, I think it is entirely appropriate to determine that the communication was provided in confidence.*
>
> …
>
> *Confidentiality is important for the effective investigation of allegations. If people were not confident that what they say to an investigator during an investigation would remain*

confidential, this would have a chilling effect on the ability of people to engage fully with an investigation.

Accordingly, I do consider that the release of evidence obtained in an investigation would impair the ability of the Office of Local Government to obtain similar information in future.

17 The Department did not fully pursue this line of reasoning in the internal review (footnote omitted) and adopted the following approach:

> *As Ms Smith outlined in her letter, Ombudsman decisions … demonstrate that section 39 is an appropriate section to apply to communications relating to an investigation into alleged improper conduct by a public officer where the matter has concluded…*
>
> *However, as Ms Smith outlined, the Ombudsman has also determined that '*generally section 39 only applies to information communicated from an external source'.
>
> *In my view, the declaration is provided in confidence between officers of two public authorities, and for this reason, I am hesitant to rely on section 39 in this instance. I believe assessing* [the Council officer's] *declaration under section 35 of the Act is more appropriate.*

18 Finally, the internal review decision considered s36:

> *…the document sought contains the personal information of a third party that is not you and consider that this information is outside the scope of your request,*
>
> *In the alternative, I have determined that the name and signature of the individual that witnessed the declaration is exempt under section 36 of the Act.*
>
> …
>
> *In my view, the disclosure of the information would harm the interests of the individual concerned … and would not further the general public need for government information to be accessible … in any material way.*

Analysis

Section 35 – Internal deliberative information

19 For information to be exempt from disclosure under s35 of the Act, I must first be satisfied it consists of:

- an opinion, advice or recommendation prepared by an officer of a public authority (s35(1)(a)); or

- a record of consultations or deliberations between officers of public authorities (s35(1)(b)); or
- a record of consultations or deliberations between officers of public authorities and Ministers (s35(1)(c)).

20 Once the requirements of one of those subsections are met, I must then be satisfied the information was prepared or recorded in the course of, or for the purpose of, the deliberative process related to the official business of the Department.

21 Section 35(1) of the Act does not apply to the following:

- purely factual information (s35(2));
- 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 (s35(3)); or
- information which is older than 10 years (s35(4)).

22 As to the meaning of 'purely factual information' in s35(2), I refer to *Re Waterford and Treasurer of the Commonwealth of Australia (No 1)*[1] where the Commonwealth Administrative Appeals Tribunal (AAT) observed the word 'purely' in this context has the sense of 'simply' or 'merely' and that the material must be factual in quite unambiguous terms.

23 The phrase was considered again in *Re Secretary, Department of Prime Minister and Cabinet and Secretary, Department of Infrastructure and Regional Development and Sanderson*[2] where the AAT considered:

> *… the material must be "…*wholly*… [or]* entirely*…" comprised of factual material and cannot incorporate any material that is not factual material… It does not contain material that can be described as opinion, advice, recommendation or even conjecture*.

24 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)*[3], 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.

25 The Department assessed the document in question under s35(1)(a), as being an opinion prepared by an officer of Council for the purpose of the deliberative process of the Department, at first exempting all substantive

[1] [1984] AATA 518 at [14]
[2] [2015] AATA 361 at [106]
[3] [1984] AATA 67 at [58]

information before on internal review releasing some information deemed to be purely factual. I disagree with this approach.

26 I do not consider the statutory declaration is an opinion, advice or recommendation which was created in the course of, or for the purpose of, the internal deliberative processes of the Department. Although the information within the document may have been subsequently used by investigators to inform their deliberations, those deliberations do not form part of this external review. I consider that the document was created by the Council officer to respond to allegations which had been made against them. While the statutory declaration may contain some opinion information, it is not an opinion in the sense contemplated by s35(1)(a). Such an opinion would be a view expressed regarding an internal deliberative process, akin to the provision of advice or a recommendation in the other parts of that subsection.

27 The Council officer was not privy to the relevant internal thinking processes, as they were the subject of the investigation into the allegations. As such, the statutory declaration is not a document which reflects the Department's internal deliberative processes.

28 Accordingly, as the document does not come within the ambit of s35(1), it cannot be eligible for exemption under this section.

29 As part of its reasoning, the Department referred to two previous external review decisions[4] of my office which concerned ss35 and 39. It is appropriate to make brief comments regarding these decisions as they appear to have been misinterpreted.

30 In *Rebecca White and Department of Premier and Cabinet* (February 2025) it was noted that in general s39 only applies to information communicated to a public authority from an external source. This was differentiating from information shared between public officers undertaking their usual duties. The information in that instance concerned discussions between the Chief Executive Officer of the Integrity Commission and the Secretary of the Department. It was noted that discussions of this nature are an important facet of decision-making and a function of the Integrity Commission. The information contained early opinion and tentative information which, although given with an expectation of confidentiality, actually occurred as part of a deliberative process and was therefore more appropriately assessed under s35 than s39.

31 This should be differentiated between information provided by a public officer under investigation to another public officer who is conducting the investigation. The public officer providing the information is not acting in relation to their regular duties but responding to allegations of

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[4] Both available at www.ombudsman.tas.gov.au/right-to-information/reasons-for-decisions

wrongdoing. They are not part of the internal deliberative process but providing information to inform it.

32 This situation occurred in the past external review decision of *Simon Cameron and Department of Natural Resources and Environment Tasmania* (January 2022). Statements made by public officers under investigation were found to be exempt under s39 in that decision. While this line of reasoning was followed (in the alternative) in the original decision of the Department in this matter, the internal review hesitated to do so due to confusion regarding whether there was an external source of information. As previously discussed, this is not a requirement of s39 when the information is not being provided as part of the usual government thinking processes.

Section 36 – Personal information of person

33 For information to be exempt under s36 of the Act, I must be satisfied that its release would reveal the identity of a person other than the person seeking the information, or that the information would lead to that person's identity being reasonably ascertainable.

34 Section 5 of the Act defines personal information as:

> *Any information or opinion in any recorded format about an individual –*
>
> *(a) whose identity is apparent or is reasonably ascertainable from the information or opinion; and*
>
> *(b) who is alive or who has not been dead for more than 25 years.*

35 The Department has applied s36 to exempt the name and signature of the person who witnessed the statutory declaration. It is clear this information falls within the definition of personal information in s5 of the Act and I am satisfied it is prima facie exempt under s36.

36 I also consider, consistent with the decision of my office in *Andrew McCullagh and Northern Midlands Council*[5], that s36 is the most appropriate provision under which to assess the statutory declaration. It was provided to the Department by the Council officer nominated in the application, not an external party to any public authority and clearly contains the personal information of that Council officer. The statutory declaration is therefore prima facia exempt under this section.

Section 33 – Public interest test

37 That the information may be considered personal information and prima facie exempt does not preclude it from release if doing so would not be contrary to the public interest.

[5] (February 2025) available at www.ombudsman.tas.gov.au/right-to-information/reasons-for-decisions

38 The Department, originally and on internal review, assessed the statutory declaration under s35. Had the document been correctly assessed under s36 the Department would have been required to consult with the Council officer as to whether the information should have been provided to Mr Derksen-Luelf. As it is, there is nothing before me to indicate the Council officer's view on this question.

39 Schedule 1 matter (a) – *the general public need for information to be accessible* - was identified by the Department as relevant and strongly weighing in favour of disclosure. I agree with this assessment as matter (a) essentially restates to the object of the Act.

40 Schedule 1 matter (b) – *whether the disclosure would contribute to or hinder debate on a matter of public interest* – was not considered by the Department. I consider it to be relevant, as the regulation of local government officers is a matter of public interest and the relationship between New Norfolk Distillery and Derwent Valley Council has been the subject of media reporting and public scrutiny[6]. I consider this matter weighs in favour of disclosure although, given the nature of the document, not significantly.

41 Schedule 1 matter (c) – *whether the disclosure would inform a person about the reasons for a decision* – was identified by Mr Derksen-Luelf as being of 'paramount importance'. I do not fully accept this submission. I note the Department's advice that Mr Derksen-Luelf has been provided with a letter from the Office of Local Government which explains the reasoning behind its decision and a further letter which contained additional information. Disclosure of information within the statutory declaration would not add significantly to the reasons for the decision. I consider it weighs slightly in favour of disclosure.

42 Schedule 1 matter (f) – *whether the disclosure would enhance scrutiny of government decision-making processes and thereby improve accountability and participation* – was also identified by Mr Derksen-Luelf as of paramount importance. I accept that scrutiny of government decision-making is important for accountability and that disclosure of the entire statutory declaration may enable Mr Derksen-Luelf to better appreciate the reasoning behind the decision. However, this must be balanced with other relevant matters in the public interest test. I consider this matter weighs in favour of disclosure but, given the information which has already been released, not strongly.

43 Schedule 1 matter (j) – *whether the disclosure would promote or harm the administration of justice, including affording procedural fairness and the enforcement of the law* – was identified by the Department as

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[6] For example, Holmes, A., *Liberal-linked New Norfolk Distillery to be evicted from old asylum site over unpaid rent*, (30 September 2023), ABC News online, https://www.abc.net.au/news/2023-09-30/tas-new-norfolk-council-evicts-distillery-liberal-grant/102916236 accessed 30 March 2026.

weighing against disclosure. I agree with this assessment. As was set out in the original decision, the relevant complaint to the Office of Local Government was not public and correspondence in relation to the assessment of the complaint has already been provided to Mr Derksen-Luelf. I consider that the administration of justice in relation to the investigation of complaints under s339E of the *Local Government Act 1993* may be adversely affected if full statutory declarations can be routinely accessed through the right to information process. This is particularly so when the probative value of the evidence in those statutory declarations is unknown or not considered determinative by the decision-makers.

44 Schedule 1 matter (m) – *whether the disclosure would promote or harm the interests of an individual or group of individuals* – was identified by the Department as relevant to the name and signature of the person who witnessed the statutory declaration and weighed against the disclosure of that information. I agree with assessment, as this person has no material involvement in the issues subject to the complaint and their professional qualifications have already been released by the Department. I consider there is no utility in releasing the name and signature and doing so may potentially cause harm to their interests.

45 I consider matter (m) to also have a wider application and to include the information within the statutory declaration. To release the entirety of the Council officer's response to a complaint may harm their interests. This is particularly so where the parties involved live or conduct business in the same regional area, or where relations between those parties have deteriorated. The Department indicated the Office of Local Government sent Mr Derksen-Luelf two letters setting out details of the evidence obtained and assessed in making its determination and I am not convinced further information within the statutory declaration will add to his understanding of its deliberations. On balance, and without the benefit of the Council officer's view, I consider this matter weighs against further disclosure. I do note that the Department has already advised Mr Derksen-Luelf in the internal review that his allegations were refuted by the Council officer in their statutory declaration.

46 Schedule 1 matter (n) – *whether the disclosure would prejudice the ability to obtain similar information in the future* – was identified by the Department as weighing against disclosure. I agree with this assessment. Members of the community, even council officers accused of misconduct, may be less prepared to cooperate completely if they are not reassured that confidentiality of their statements will be maintained. This could result in a consequent reduction in the quantity and quality of evidence available to future investigations, leading to poorer quality decisions.

47 Having considered all relevant matters, including that the Department has already released some information, I have determined the following additional information is not exempt and should be released to Mr Derksen-Luelf:

- the words *dated 4 July 2024* in the second line of the third paragraph;
- the sixth paragraph (commencing *I absolutely deny…*); and
- the ninth paragraph (commencing *I deny…*).

48 The remainder of the information not released by the Department is exempt under s36 and is not required to be disclosed to Mr Derksen-Luelf.

Preliminary Conclusion

49 In accordance with the reasons given above:

- exemptions claimed pursuant to s35 are not made out; and
- information is exempt under s36.

Response to the Preliminary Conclusion

50 As the above preliminary decision was averse to the Department, it was made available to it on 25 June 2026 pursuant to s48(1)(a) of the Act to seek its input before finalisation.

51 On 10 July 2026, Ms Gemma King, Program Manager – Executive Government Services with the Department, made a submission. Ms King agreed with the findings in relation to ss35 and 36, indicating that the guidance provided would be *of great assistance to delegates*. However, she noted that s35 had been used to be consistent with previous Ombudsman decisions.

52 In relation to s39, Ms King drew attention to my previous decision of *Adam Holmes and Department of Premier and Cabinet*.[7] In this decision, I determined banking details were more appropriately exempt under s39 as information obtained in confidence, despite the details also constituting personal information.

53 Ms King submitted:

> *To be clear, the Department does not object to exempting the statutory declaration under s 36. It considers this to be a perfectly applicable exemption for this information…*
>
> *…*

[7] (June 2026) available at https://www.ombudsman.tas.gov.au/right-to-information/reasons-for-decisions

The previous decision from your office seems to make clear that s 36 is not the preferred section simply because the information is personal. You must also consider whether there is other context which would make another exemption more appropriate, such as the information being provided in confidence, for example. This statutory declaration was provided in confidence as part of a confidential investigation. The Department submits that this would seem to, as a result, most appropriately attract exemption from s 39.

54 On 17 July 2026, the preliminary decision was also made available to Mr Derksen-Luelf pursuant to s48(1)(b) of the Act to seek his input prior to finalisation, however he did not respond or make any submissions.

Further analysis

55 I note Ms King's comments that the Department does not object to the use of s36. I also acknowledge that, in some instances, information may be exempt under more than one section of the Act. While the applicant is likely to be most concerned with whether the information may be released, which exemption has most relevance is important to public authorities and my office in relation to the making of correct decisions.

56 I further acknowledge that the Department appears to have genuinely attempted to follow guidance in my past decisions in reaching its conclusions in this matter. However, Ms King indicated that this approach was taken even when another exemption seemed more obvious to the decision-maker. While the intention was laudable, I discourage this approach. I instead encourage the decision-maker to seek advice from my office to clarify the meaning of the relevant past decision, if attempting to follow it leads to a result which does not align with what is obvious or sensible to the decision-maker.

57 In relation to s39 in the present matter, the relevant Council officer was named in the original application. Therefore, the mere fact of the statutory declaration's existence allows the Council officer to be identified as the author.

58 While the Council officer may have expected the document to be confidential, there is no express mention of this in the contents. Additionally, considering the information I have determined to not be exempt, it is less certain that officers in the future would be reluctant to provide a strong denial of wrongdoing in similar circumstances, which is a relevant factor set out in s39(1)(b) of the Act.

59 It is also the case that the application of s36 enlivens the consultation provision in s36(2), allowing the author of a document the opportunity to provide their view on whether the information should be released. This may be of great assistance to a decision-maker who is considering the

public interest test. It also permits the author to seek review themselves if they hold concerns about the proposed release of the document.

60 I do not agree that this decision is inconsistent with the previous decision in *Adam Holmes and the Department of Premier and Cabinet*. In that decision, names and signatures were assessed under s36, however bank account details of law firms were assessed under s39. This was because these bank details had a greater connection to the law firms' business activity and whether all the details were necessarily personal information was less clear. However, the bank details were unquestionably information provided in confidence.

61 Accordingly, while I have carefully considered the Department's submissions, I do not consider that any change to my proposed findings is warranted and I maintain them.

Conclusion

62 For the reasons set out above, I determine:

- exemptions claimed pursuant to s35 are not made out; and
- information is exempt under s36.

Dated: 11 August 2026

Dr Grant Davies
OMBUDSMAN

Attachment 1 – Relevant Legislation

Section 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.

Section 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.

Section 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 workings 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.

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.