



Victoria Government Gazette

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Freedom of Information Act 1982

STATEMENT OF REASONS FOR SEEKING LEAVE TO APPEAL

Introduction

1. This notice sets out a brief statement of reasons for seeking leave to appeal in the Court of Appeal and is provided in accordance with section 65AB(2) of the **Freedom of Information Act 1982** ('FOI Act').
2. On 26 July 2024, the Victorian Civil and Administrative Tribunal ('VCAT'), constituted by Vice President Judge English, ordered the release of one document in respect of which exemption had been claimed under sections 30(1) and 28(1)(d) of the FOI Act ('Order'). All 14 remaining documents were found to be exempt¹.
3. Section 30(1) relevantly exempts a document from disclosure if it would disclose matter in the nature of opinion, advice or recommendation prepared by an officer in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency, and disclosure would be contrary to the public interest.
4. Section 28(1)(d) relevantly exempts a document from disclosure if its disclosure would involve the disclosure of any deliberation or decision of Cabinet or a Cabinet committee.
5. As the Order was made by a Vice President of the VCAT, section 148 of the **Victorian Civil and Administrative Tribunal Act 1998** limits any appeal to questions of law and requires that any application for leave to appeal and appeal may be made to the Court of Appeal of the Supreme Court of Victoria.
6. On 6 September 2024 the Department lodged with the Court of Appeal an application seeking leave to appeal the VCAT Order.

Statement of reasons for seeking leave to appeal

7. The Department sought leave to appeal the Order on the basis that the Tribunal made errors of law and denied procedural fairness in the VCAT review with respect to the proper construction and application of sections 28(1)(d) and 30(1) of the FOI Act to the document in question.
8. That document is an email chain dated 2 August 2024, between Public Health Commander Dr Finn Romanes and Chief Health Officer Professor Brett Sutton discussing the internal Cabinet consultations regarding the decision to implement a direction imposing a curfew.
9. The Department's application for leave to appeal highlights that the document remains subject to the exemptions as below:
 - a) Cabinet in confidence – the document outlines the decision-making process Cabinet undertook in considering the imposition of a curfew; and
 - b) Disclosure of matters contained in the document formed an internal working document and/or preliminary advice and opinion, being a deliberative process between officers and release would be contrary to public interest.
10. The public interest is served by judicial consideration of the matters of law raised by the Order. Determination of the questions of law raised would clarify the proper construction and application of sections 28(1)(d) and 30(1) of the FOI Act. It would also protect the candour and frankness of cabinet decision-making in the future, in the event such deliberations are no longer captured in writing due to risk of exposure to the public.

Dated 12 September 2024

HON. MARY-ANNE THOMAS MP
Minister for Health

¹ *The Hon. David Davis MLC versus Department of Health [2024] VCAT 707*

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