

Notice of Decision and Reasons for Decision

Applicant: AA6
Agency: Victoria Police
Decision Date: 14 March 2019
Exemptions considered: Section 33(1)

FREEDOM OF INFORMATION – police records – record of interview of a third party – personal affairs information

All references to legislation in this document are to the *Freedom of Information Act 1982 (Vic)* (**FOI Act**) unless otherwise stated.

Notice of Decision

I have conducted a review under section 49F of the Agency's decision to refuse access to documents requested by the Applicant under the FOI Act.

My decision on the Applicant's request is the same as the Agency's decision.

My reasons for decision follow.

Joanne Kummrow
Acting Public Access Deputy Commissioner

14 March 2019

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to a record of interview of a third party taken by a police officer regarding an incident involving the Applicant on [date]. The Applicant advised the name of the person subject to the interview could be removed from the document prior to release.
2. In its decision, the Agency identified a document comprising three pages falling within the terms of the Applicant's request. It decided to refuse access to the document in full.

Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. I have examined a copy of the document subject to review.
5. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
6. I have considered all communications and submissions received from the parties, including:
 - (a) the Agency's decision on the FOI request; and
 - (b) the Applicant's review application.
7. In undertaking my review, I have had regard to the object of the FOI Act, which is to create a general right of access to information in the possession of the Government or other public bodies, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.

Review of exemptions

8. The Agency relied on the exemption in section 33(1) to refuse access to the document. The Agency's decision letter sets out the reasons for its decision.

Section 33(1)

9. A document is exempt under section 33(1) if two conditions are satisfied:
 - (a) disclosure of the document under the FOI Act would 'involve' the disclosure of information relating to the 'personal affairs' of a person other than the Applicant; and
 - (b) such disclosure would be 'unreasonable'.
10. Information relating to a person's 'personal affairs' includes information that identifies any person, or discloses their address or location. It also includes any information from which this may be reasonably determined.
11. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the personal interest in privacy in the particular circumstances of a matter.

12. In deciding whether disclosure of the document is unreasonable, I must consider the following factors:
 - (a) the nature of the personal affairs information (for example, whether it is sensitive or its current relevance);
 - (b) the extent to which the information is available to the public;
 - (c) the circumstances in which the information was obtained (for example, whether it was obtained involuntarily or in confidence);
 - (d) the Applicant's interest in the information (including their purpose for seeking access to the documents);
 - (e) whether any public interest would be promoted by release of the information;
 - (f) whether the individuals to whom the information relates object, or would be likely to object to the release of the information; and
 - (g) the likelihood of further disclosure of the information, if released.
13. The Agency advised it did not consult with the person identified in the document.
14. The document subject to review is a record of interview. While I note the Applicant did not initially request the name of the person being interviewed, in her request to this office the Applicant names a person who she believes gave the interview to the Agency.
15. The record of interview contains the name, birth date and licence number of the interviewed third party. It also contains their recollection of events that relate to the incident subject to the Applicant's request.
16. This information amounts to the personal affairs information of a person other than the Applicant. Therefore, I must decide whether its disclosure is unreasonable, with reference to the factors listed above in paragraph 12.
17. In this case, I have decided it would be unreasonable to release this information for the following reasons:
 - (a) I have no information about whether the information was obtained voluntarily or whether the person concerned would object to its release. However, I consider individuals have an expectation of privacy when providing information to this Agency in light of its law enforcement functions.
 - (b) There is a strong public interest in maintaining the Agency's ability to obtain information voluntarily from members of the community in relation to suspected crime. If statements made to the Agency were released, this ability to collect information may be impaired – that is, people may be less likely to provide frank information to it on a voluntary basis.
 - (c) In the circumstances of this matter, I can see no countervailing public interest in the disclosure of the document.

Deletion of exempt or irrelevant information

18. Section 25 requires an agency to grant access to an edited copy of a document when it is practicable for the agency or Minister to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
19. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹ and the effectiveness of the deletions. Where deletions would render the document meaningless they are not 'practicable' and release of the document is not required under section 25.²
20. I have considered the effect of deleting exempt information from the documents. In my view, it is not practical to do so as removing such information would render the document meaningless.

Conclusion

21. On the information available, I am satisfied the document is exempt in full under section 33(1).

Review rights

22. If either party to this review is not satisfied with my decision, they are entitled to apply to the Victorian Civil and Administrative Tribunal (**VCAT**) for it to be reviewed.³
23. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁴
24. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁵
25. Information about how to apply to VCAT is available online at www.vcat.vic.gov.au. Alternatively, VCAT may be contacted by email at admin@vcat.vic.gov.au or by telephone on 1300 018 228.
26. The Agency is required to notify the Information Commissioner in writing as soon as practicable if either party applies to VCAT for a review of my decision.⁶

When this decision takes effect

27. My decision does not take effect until the relevant review period (stated above) expires, or if either party applies to VCAT for a review, until the VCAT proceeding is concluded.

¹ *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 [82].

² *Honeywood v Department of Human Services* [2006] VCAT 2048 [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 [140], [155].

³ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁴ Section 52(5).

⁵ Section 52(9).

⁶ Sections 50(3F) and (3FA).