

## Notice of Decision and Reasons for Decision

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Applicant: AA8  
Agency: Victoria Police  
Decision Date: 21 March 2019  
Exemption considered: Section 33(1)

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FREEDOM OF INFORMATION – police records – request for information from an investigator – bond summary advice from Residential Tenancies Bond Authority – emails from councils relating to property interests – results of title search – land data Victoria – owners corporation search – plan of subdivision – 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 in that I have decided to refuse access to the documents.

The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document.

My reasons for decision follow.

**Joanne Kummrow**  
Acting Public Access Deputy Commissioner

21 March 2019

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency for access to the following documents:

The forensic accountant's report prepared on behalf of Victorian police.

Any other document or report prepared on or behalf of Victorian police, or received by Victorian police, in relation to the prosecution of a [named person] which relates or identifies the assets owned by [the named person] or in respect of which he has a pecuniary interest.

2. Following consultation with the Agency, the Applicant amended the initial request.

3. The amended request was for access to the following documents:

Documents relating to a property at [specified address].

Any records of a civil hold on the property at [specified address] or encumbrance relating to an elderly resident at the property.

Any documents relating to other properties owned by [a named person].

4. In its decision, the Agency identified eleven documents in response to the request and denied access to those documents in full.

### Review

5. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
6. The Applicant indicated they do not seek the personal affairs information of persons other than the person named in the request. Accordingly, this review relates to the information that relates to [that person] only.
7. I have examined copies of the documents subject to review.
8. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
9. 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 and submission dated 6 February 2019.
10. 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

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

### **Section 33(1)**

12. 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;<sup>1</sup> and
  - (b) such disclosure would be 'unreasonable'.
13. 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.<sup>2</sup>
14. 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.
15. The Agency advised it did not consult with the third party in this matter.
16. The following matters are particularly relevant, in the circumstances of this review:
  - (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.

### **Deletion of exempt or irrelevant information**

17. 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.
18. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>3</sup> 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 in accordance with section 25.<sup>4</sup>

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<sup>1</sup> Sections 33(1) and (2).

<sup>2</sup> Section 33(9).

<sup>3</sup> *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].

<sup>4</sup> *Honeywood v Department of Human Services* [2006] VCAT 2048 [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 [140], [155].

## **Conclusion**

19. On the information available, I am satisfied the exemption in section 33(1) applies to the documents. Accordingly, I have decided to refuse access to the documents in full.
20. I note the Applicant's submission in this matter in reference to section 25. The Applicant advised they do not seek the personal information of third parties other than the named person and agreed the documents could be redacted to remove this information. The Applicant also noted the purpose for seeking the documents was to identify whether a named person had any interest in a property.
21. I have considered the effect of deleting exempt information from the documents. In my view, it is not practicable for the Agency to delete the exempt information, because the edited documents would not retain meaning, and because the specific information sought is the information I have determined is exempt 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.<sup>5</sup>
23. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>6</sup>
24. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>7</sup>
25. Information about how to apply to VCAT is available online at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au). Alternatively, VCAT may be contacted by email at [admin@vcat.vic.gov.au](mailto: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.<sup>8</sup>

## **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.

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<sup>5</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>6</sup> Section 52(5).

<sup>7</sup> Section 52(9).

<sup>8</sup> Sections 50(3F) and (3FA).

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1.	[Date]	Emails between Agency and [a named third party]	2	Denied in full Section 33(1)	Deny in full Section 33(1)	<p><b>Section 33(1):</b> The document is a request from the Agency for information relating to a named person's property ownership.</p> <p>The name, address and contact details of the named person, as well as details regarding [their] property ownership is personal affairs information.</p> <p>I have decided it would be unreasonable to release this information for the following reasons:</p> <ul style="list-style-type: none"> <li>• I consider such information would have been provided to [the named third party] by the named person with the expectation it would remain confidential;</li> <li>• it is likely the person concerned would object to the release of the information; and</li> <li>• I can see no public interest in the disclosure of this information – rather, it relates to a civil matter.</li> </ul>
2.	[Date]	Fax request from Agency to Residential	1	Denied in full	Deny in full	<p><b>Section 33(1):</b> The document is a request from the Agency to the</p>

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
		Tenancies Bond Authority		Section 33(1)	Section 33(1)	<p>Residential Tenancies Board. The document notes the request is being made for law enforcement purposes and will be secured against unauthorised use and disclosure.</p> <p>The personal affairs information subject to the review is the address of one or more properties that relate to the FOI request.</p> <p>I have decided in would be unreasonable to release this information for the following reasons:</p> <ul style="list-style-type: none"> <li>• I do not know how the agency came to be in possession of the information or its context within its investigation;</li> <li>• it is difficult for me to determine, therefore, the sensitivity of such information;</li> <li>• it is likely the named person would object to release of the personal affairs information; and</li> <li>• I can see no public interest in disclosure of the information, as described above, this relates to a</li> </ul>

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						civil matter.
3.	[Date]	Bond summary advice from Residential Tenancies Bond Authority	2	Denied in full Section 33(1)	Deny in full Section 33(1)	Section 33(1): The document contains information given by the Residential Tenancies Bond Authority to the Agency regarding one or more properties.  As set out above, the address or addresses relate to a named person and this amounts to personal affairs information. It is exempt from release for the reasons set out in document 2.
4.	[Date]	Emails between Agency and [a named third party]	2	Denied in full Section 33(1)	Deny in full Section 33(1)	Section 33(1): This document is similar to Document 1 above and is exempt for similar reasons.
5.	[Date]	Emails between Agency and [a named third party]	2	Denied in full Section 33(1)	Deny in full Section 33(1)	Section 33(1): This document is similar to Document 1 above and is exempt for similar reasons.
6.	[Date]	Emails between Agency and [a named third party]	2	Denied in full Section 33(1)	Deny in full Section 33(1)	Section 33(1): This document is similar to Document 1 above and is exempt for similar reasons.
7.	[Date]	Current title search	1	Denied in full Section 33(1)	Deny in full Section 33(1)	Section 33(1): The document is a print out from a database relating to a named person, a property and a mortgage.

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p>As with Document 2 above, it is not clear to me how the agency obtained the property details relating to the named person.</p> <p>I note it may be that, if a person knew those property details, that some of the information may be available to any member of the public for a fee.</p> <p>Based on the information before me, however, I consider this amounts to personal affairs information and is exempt from release for similar reasons set out at document 2.</p>
8.	[Date]	Land data Victoria document	1	Denied in full Section 33(1)	Deny in full Section 33(1)	Section 33(1): This document is similar to Document 7 above and is exempt for similar reasons.
9.	[Date]	Owners corporation search report	12	Denied in full Section 33(1)	Deny in full Section 33(1)	Section 33(1): This document is similar to Document 7 above and is exempt for similar reasons.
10.	[Date]	Land data Victoria document	1	Denied in full Section 33(1)	Deny in full Section 33(1)	Section 33(1): This document is similar to Document 7 above and is exempt for similar reasons.



Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
11.	[Date]	Plan of subdivision	3	Denied in full Section 33(1)	Deny in full Section 33(1)	Section 33(1): This document is an attachment to Document 10 above and contains a plan of a subdivision. It is exempt from release for the same reasons as Document 7.