

Notice of Decision and Reasons for Decision

Applicant: AB2
Agency: Victoria Police
Decision Date: 22 March 2019
Exemptions considered: Sections 33(1) and 38

FREEDOM OF INFORMATION – police records – traffic incident system notes – handwritten notes of interview with third party – electronic patrol duty report – brief head – preliminary brief – statement made by informant – charge sheet and summons – VIFM toxicology certificate of approved analyst – VP form 811 – certificate under *Road Safety Act 1986* (Vic) – record of interview – documents affecting personal privacy – documents to which secrecy provisions apply

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 in that I have decided to release the documents in part.

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

22 March 2019

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to all police records in relation to the investigation of a motor vehicle accident involving the Applicant. The accident occurred on [date].
2. In its decision, the Agency identified 12 documents, comprising 37 pages and one disc. The Agency released the documents in part.

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 copies of the documents subject to review and the description of the disc the Agency decided is exempt under section 38.
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 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 exemptions in sections 33(1) and 38 to refuse access to parts of the documents. 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. The Agency did not consult with any relevant third parties as to their views on release of their personal affairs information.

Section 38

13. Section 38 provides:

38 Documents to which secrecy provisions of enactments apply

A document is an exempt document if there is in force an enactment applying specifically to information of a kind contained in the document and prohibiting persons referred to in the enactment from disclosing information of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.

14. In order for section 38 to apply to an enactment, the enactment must be formulated with such precision that it specifies the actual information sought to be withheld.

15. The Agency applied section 38 in conjunction with section 464JA(4) of the *Crimes Act 1958* (Vic), which states:

- (4) A person must not supply or offer to supply an audio recording or an audiovisual recording to another person other than—
 - (a) the suspect in relation to whom the recording was made;
 - (b) a legal practitioner representing the suspect;
 - (c) an authorised person acting in the performance of his or her duties;
 - (d) a person engaged by a person referred to in paragraph (a), (b) or (c) to transport the recording.

16. My decision in relation to each document is set out in the schedule below.

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'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 in accordance with section 25.²

19. I have considered whether the documents released in part or denied in full could be released with further redactions of exempt information. In my view it would not be practicable to do so, as the removal of exempt information would render the documents meaningless.

Conclusion

20. On the information available, I am satisfied the exemptions in sections 33(1) and 38 applies to the documents. My decision is the same as the Agency's and the Applicant is granted access to the documents in part.

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].

Review rights

21. 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
22. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁴
23. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁵
24. 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.
25. 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

26. 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.

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).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1	[Date range]	Traffic incident system notes	2	Released in part Sections 33(1), 25	Release in part Sections 33(1), 25	<p>Section 33(1): Information removed from this document due to section 33(1) is the name of a third party.</p> <p>This information is personal affairs information.</p> <p>I have decided it would be unreasonable to release this information because:</p> <ul style="list-style-type: none"> the information relates to a person not involved in the incident and therefore only indirectly related to the Applicant's request; and I therefore consider the person's privacy to outweigh disclosure in this instance. <p>Section 25: I agree the information removed by the agency is irrelevant to the request.</p>
2	[Date]	Handwritten notes	2	Released in part Section 33(1)	Release in part Section 33(1)	<p>Section 33(1): The information removed from this document due to section 33(1) includes phone numbers, names, dates of birth and other personal affairs information of people other than the Applicant. Notes of what appears to be a discussion between a person and the Agency have also been removed from the document.</p> <p>I agree that this information is personal affairs information.</p>

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p>I also agree that it would be unreasonable to release this information because:</p> <ul style="list-style-type: none"> the information is personal information that is not generally publicly available; the information was obtained by the Agency in the context of an investigation of a potential crime; I therefore consider that the people who provided that information did so with the expectation of privacy; and I therefore consider that their personal privacy outweighs disclosure in this instance. <p>Section 25: I agree the information removed by the agency is irrelevant to the request.</p>
3	[Date]	Electronic Patrol Duty Report (ePDR)	16	Released in part Sections 33(1), 25	Release in part Sections 33(1), 25	<p>Section 33(1): The information removed from this document due to section 33(1) includes information about third parties, a phone number and a date of birth.</p> <p>This information is personal affairs information.</p> <p>I have decided it would be unreasonable to release this information because:</p>

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						<ul style="list-style-type: none"> • some of the information is sensitive personal information; • it is not publicly available information; • while some of the details may be known to the Applicant, I do not know whether those people concerned would have provided such informant to the Applicant, or would object to its release; and • I therefore consider their personal privacy outweighs disclosure in this instance. <p>Section 25: I agree the information removed by the agency is irrelevant to the request.</p>
4	[Date]	Brief head	2	Released in part Section 33(1)	Release in part Section 33(1)	<p>Section 33(1): The information removed from this document due to section 33(1) includes information about a third party, including an address, date of birth, 'other charges' and a handwritten note.</p> <p>This information is personal affairs about a person other than the applicant.</p> <p>I have decided it would be unreasonable to release this information because:</p> <ul style="list-style-type: none"> • I consider that the Agency has, as much as possible, released information relevant to

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p>the Applicant and only made such redactions as necessary to protect the privacy of the third party;</p> <ul style="list-style-type: none"> the information that remains redacted is sensitive or records information that is not publicly available; and I therefore consider that the third party's personal privacy outweighs disclosure in this instance.
5	[Date]	Preliminary brief – statement made by informant	5	Released in part Section 33(1)	Release in part Section 33(1)	<p>Section 33(1): The information removed from this document due to section 33(1) includes a date of birth, a registration number, the names of third parties, and other information obtained from third parties by the Agency.</p> <p>This information is personal affairs about a person other than the applicant.</p> <p>I have decided it would be unreasonable to release this information due to the same reasons set out in Document 2.</p>
6	[Date]	Charge sheet and summons	4	Released in part Section 33(1)	Release in part Section 33(1)	<p>Section 33(1): The information removed from this document due to section 33(1) includes a date of birth, a registration number, the names of third parties, and other information obtained from third parties by the Agency.</p>

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p>This information is personal affairs about a person other than the applicant.</p> <p>I have decided it would be unreasonable to release this information due to the same reasons set out in Document 4.</p>
7		VIFM toxicology certificate of approved analyst		Released in part Sections 33(1), 25	Release in part Sections 33(1), 25	<p>Section 33(1): The information removed from this document due to section 33(1) includes information about a third party.</p> <p>This information is personal affairs about a person other than the applicant.</p> <p>Similar to Document 1, the information relates to a person not involved in the incident and therefore only indirectly related to the Applicant's request. I therefore consider the person's privacy to outweigh disclosure in this instance.</p> <p>Section 25: I agree that the information removed by the agency is irrelevant to the request.</p>
8	[Date], [Date]	VP Form 811		Released in part Sections 33(1), 25	Release in part Sections 33(1), 25	<p>Section 33(1): The information removed from this document due to section 33(1) includes the name and signature of a third party and an address.</p> <p>This information is personal affairs about a</p>

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p>person other than the applicant.</p> <p>In relation to the information about the third party, it is exempt for the release for similar reasons as Document 1.</p> <p>In relation to the address, it is exempt from release for similar reasons to Document 4.</p> <p>Section 25: I agree that the information removed by the agency is irrelevant to the request.</p>
9	[Date], [Date]	Certificates under Road Safety Act	2	Refused in full Section 33(1)	Refuse in full Section 33(1)	<p>Section 33(1): The information removed due to section 33(1) includes the name, address, date of birth and other information about a third party.</p> <p>It amounts to personal affairs information of a person other than the Applicant.</p> <p>I have decided it would be unreasonable to release this information because:</p> <ul style="list-style-type: none"> the information is personal information that is not generally publicly available; given the context of the document, I consider that some of the information would have been provided by the third party with the expectation of privacy;

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<ul style="list-style-type: none"> the remaining information amounts to sensitive personal information; and therefore, I consider the third party's personal privacy outweighs disclosure in this instance.
10	Date not provided	Record of interview		Refused in full Section 38	Refuse in full Section 38	<p>Section 38: The Agency has applied section 38 to a disc containing a record of interview of a third party.</p> <p>I agree with the Agency that section 38 applies to the record of interview, for the following reasons:</p> <ul style="list-style-type: none"> section 464JA of the <i>Crimes Act 1986</i> (Vic) is an enactment in force; it specifically applies to the recording subject to review; and section 464JA prohibits the disclosure of the recording.