

## Notice of Decision and Reasons for Decision

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Applicant: AC2  
Agency: Department of Justice and Community Safety  
(formerly Department of Justice and Regulation)  
Decision Date: 4 April 2019  
Exemption considered: Section 38

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FREEDOM OF INFORMATION – Correction documents – secrecy provision – *Corrections Act 1986* – section 104ZZA – a person who is a relevant person must not disclose personal or confidential 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 fresh 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 some of 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**

4 April 2019

## **Reasons for Decision**

### **Background to review**

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

Prison Individual Management File between [specified dates].
2. In its decision, the Agency identified 12 Documents, comprising 74 pages, falling within the terms of the Applicant's request. It decided to grant access to one document in full and 11 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. Section 49M(1) permits an agency to make a fresh decision on an FOI request during a review.
5. In making a fresh decision on 13 February 2019, the Agency identified an additional document relevant to the terms of the Applicant's request. It decided to grant access to this document in part and maintained its original decision in relation to the other 12 documents.
6. The Applicant did not agree with the Agency's fresh decision and, as required by section 49MA(2), I proceeded with my review on the basis of the fresh decision.
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 received from the parties, including:
  - (a) the Agency's fresh decision on the FOI request;
  - (b) information provided with the Applicant's review application; and
  - (c) all communications between this Office and the Applicant and the Agency.
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 sections 33(1) and 38 to refuse access to the documents in part. The Agency's decision letter sets out the reasons for its decision.

### **Section 38**

12. 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.

13. 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.
14. The Agency relies on section 38 in conjunction with section 104ZZA of the *Corrections Act 1986* (Vic) (**Corrections Act**) to exempt a small portion of information in the documents.
15. Section 104ZZA of the Corrections Act provides:

A person who is or has been a relevant person must not use or disclose personal or confidential information unless that use or disclosure is authorised under section 104ZY and 104ZZ.

Penalty: 120 penalty units.

16. 'Personal or confidential' information is defined to include:<sup>1</sup>
  - (a) information relating to the personal affairs of a person who is or has been an offender or a prisoner;
  - ...
  - (c) information—
    - (i) that identifies any person or discloses his or her address or location or a journey made by the person or;
    - (ii) from which any person's identity, address or location can reasonably be determined; (emphasis added)
17. This type of information cannot be disclosed by a 'relevant person' unless they are authorised to do so. A 'relevant person' is an employee of the Agency.<sup>2</sup>
18. Section 104ZZA operates to protect the personal privacy of individuals who are identified in documents granted in connection with the management and administration of the corrections system. The section imposes strict confidentiality requirements on a relevant person which apply in all but limited circumstances.
19. In this case, the Agency applied the secrecy provision in section 38 to:
  - (a) names, position titles and the signatures of correction staff;
  - (b) information that identifies the Applicant's family members or discloses their address; and
  - (c) information relating to the personal affairs of other prisoners.
20. I am satisfied the information exempted by the Agency is information from which the identity of individuals other than the Applicant can be reasonably determined and is therefore of a kind to which section 104ZZA refers.
21. Sections 104ZY and 104ZZ of the Corrections Act set out exceptions to the prohibition on relevant persons disclosing personal or confidential information. Having reviewed these exceptions, I consider there is no information before me to suggest any of the exceptions authorise disclosure of the documents to the Applicant in this instance.

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<sup>1</sup> Section 104ZX of the Corrections Act.

<sup>2</sup> Ibid.

22. In summary, I am satisfied section 104ZZA of the Corrections Act prohibits employees of the Agency from disclosing the personal information contained in the documents. As a consequence, I am satisfied section 38 of the FOI Act applies to the names and position titles of medical staff and is, therefore, information that is exempt from release.
23. Having determined the information is exempt under section 38, it is not necessary for me to consider the Agency's application of section 33(1) to the same information.

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

24. 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.
25. 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>
26. I have considered the effect of deleting exempt information from the documents. In my view, it is practicable for the Agency to delete the exempt information, because it would not require substantial time and effort, and the edited documents would retain meaning.

#### ***Conclusion***

27. On the information available, and in light of the secrecy provisions in the Corrections Act, my decision on the Applicant's request is the same as the Agency's fresh decision in that I have determined the information subject to review is exempt under section 38.
28. As it is practicable for the Agency to edit the documents to delete irrelevant and exempt information, I have determined to grant access to the documents in part.

#### ***Review rights***

29. 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>
30. 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>
31. 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>
32. 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.
33. 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>

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<sup>3</sup> *Mickelburgh 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 at [82].

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

<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).

***When this decision takes effect***

34. 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>8</sup> 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.	Undated	Letter from Applicant to Agency	2	Released in full	Not subject to review	
2.	[Date]	Day of Arrival checklist, Reception Assessment and other carious records	9	Released in part Sections 33(1) and 38	Release in part Sections 38, 25	<p><b>Section 38:</b> Section 104ZZA of the Corrections Act applies to 'personal or confidential information' and the definition of this phrase applies to the personal and identifying information captured in the documents subject to review.</p> <p>I am also satisfied section 104ZZA prohibits Agency officers from disclosing personal information in the documents. Therefore, I am satisfied the personal and identifying information in the document is exempt under section 38.</p>
3.	[Specified dates]	Schedule 1.17(1) Authority to separate prisoner	5	Released in part Sections 33(1) and 38	Release in part Sections 38, 25	For the reasons provided in Document 2 above.
4.	[Specified dates]	Risk Management Plans	17	Released in part Sections 33(1) and 38	Release in part Sections 38, 25	For the reasons provided in Document 2 above.
5.	[Specified dates]	Local Plan File Notes	16	Released in part Sections 33(1) and 38	Release in part Section 38	For the reasons provided in Document 2 above.

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
6.	[Specified dates]	Corrections Victoria Sentence Management Unit 2 Sheet B	13	Released in part Sections 33(1) and 38	Release in part Sections 38, 25	For the reasons provided in Document 2 above.
7.	[Date]	Day of Arrival Checklist and Reception Triage	5	Released in part Sections 33(1) and 38	Release in part Sections 38, 25	For the reasons provided in Document 2 above.
8.	[Date]	Corrections Care Australasia- Prisoner Health Information management form	3	Released in part Sections 33(1) and 38	Release in part Sections 38, 25	For the reasons provided in Document 2 above.
9.	[Date]	The GEO Group Australia Pty Ltd Release of Information	3	Released in part Sections 33(1) and 38	Release in part Sections 38, 25	For the reasons provided in Document 2 above.
10.	[Date]	Ravenhall CMRC Agenda final	1	Released in part Sections 33(1) and 38	Release in part Sections 38, 25	For the reasons provided in Document 2 above.
11.	[Date]	The GEO Group Health related complaints form	1	Released in part Sections 33(1) and	Release in part Sections 38, 25	For the reasons provided in Document 2 above.

## Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
				38		
12.	[Date]	Day of Arrival Checklist	1	Released in part Sections 33(1) and 38	Release in part Sections 38, 25	For the reasons provided in Document 2 above.
13.	[Specified dates]	Local Plan File Notes	19	Released in part Sections 33(1) and 38	Release in part Sections 38, 25	For the reasons provided in Document 2 above.