

## Notice of Decision and Reasons for Decision

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Applicant: AC4  
Agency: Victoria Police  
Decision Date: 18 April 2019  
Provisions considered: Section 14(1)(b)

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FREEDOM OF INFORMATION – Section 14 - documents not subject to FOI Act – access subject to fee – available for purchase by public – traffic incident report – accident records office

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 a document 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 the requested document is not of a kind to which the FOI Act applies.

My reasons for decision follow.

Joanne Kummrow  
**Acting Public Access Deputy Commissioner**

18 April 2019

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency for access to a transport accident report.
2. In its decision, the Agency identified a document falling within the terms of the Applicant's request. It decided to refuse access to the document, stating it is not subject to the FOI Act in accordance with section 14(1)(b).
3. The Agency advised in its decision letter that the information is available for purchase through the Victoria Police Accident Records Office. The Agency provides this service to individuals wishing to obtain information about vehicle accidents that occur in Victoria and are reported to the Agency.

### Review

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. The Applicant indicated he was not satisfied with the Agency's decision letter. Accordingly, this review relates to the refusal of access to documents that are available for purchase.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered all communications and submissions received from the parties, including:
  - (a) the Agency's decision on the FOI request;
  - (b) the Applicant's review application dated 4 January 2019 and information provided with the application; and
  - (c) information provided by the Agency regarding what documents are provided as part of their arrangement to have the documents available for purchase.
8. 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.
9. On 8 March 2019, I note OVIC staff provided the Applicant with a Preliminary View letter (**the Preliminary View**) in relation to the merits of the review application and the likely decision that would be made based on the Preliminary View.
10. The Preliminary View stated I was of the view the Applicant is not entitled to obtain access under the FOI Act due to the information sought being available for purchase in accordance with arrangements made by the Agency.
11. The Applicant was invited to provide a response to the Preliminary View or, if he accepted the preliminary view, consider withdrawing the review application.
12. To date, the Applicant has not responded to the Preliminary View or provided a response.

## Review of provision

13. The Agency relied on section 14(1)(b) to refuse access to the document. The Agency's decision letter sets out the reasons for its decision.

## Right of access under the FOI Act

14. Section 13 provides every person with a legally enforceable right to obtain access to a document of an agency or official document of a Minister, other than an exempt document.

## Section 14(1)(b)

15. Section 14(1)(b) provides:

### 14 Part not to apply to certain documents

- (1) A person is not entitled to obtain access under this Part to—

...

- (b) a document which contains information that is available for purchase by the public in accordance with arrangements made by an agency...

16. If the document is any of the kind referred to in the various categories set out in section 14, there is no entitlement to access.<sup>1</sup>

17. In the Victorian Civil and Administrative Tribunal (**VCAT**) decision of *Smeaton v Transport Accident Commission*,<sup>2</sup> VCAT held:

The intention of this provision is to deny access under the FOI Act where a person is able to otherwise source documents from the public records. This is not a matter of the documents being exempt under the FOI Act. Rather they are simply not able to be disclosed under the FOI Act.<sup>3</sup>

18. The *Victoria Police (Fees and Charges) Regulations 2014* (Vic) prescribe a search fee is to be charged to conduct a search of relevant records to provide a copy of an accident report.<sup>4</sup>

19. Accordingly, I am of the view any person has access to this Agency document for a fee or charge.

## Conclusion

20. On the information available, I am satisfied the document is subject to the provision in section 14(1)(b) in that it is not a document to which the FOI Act applies.

21. I have decided that the Applicant is not entitled to obtain access under the FOI Act because the document contains information that is available for purchase by the public in accordance with arrangements made by an agency.

## Review rights

22. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.<sup>5</sup>

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<sup>1</sup> *Rizza v Boroondarra CC* [2000] VCAT 2062 at [17] and [19].

<sup>2</sup> [2017] VCAT 1486 at [42].

<sup>3</sup> *Smeaton v Transport Accident Commission (Review and Regulation)* [2017] VCAT 1486 at [42].

<sup>4</sup> *Victoria Police (Fees and Charges) Regulations 2014* (Vic) Reg. 6, Sch. 3.

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

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.
28. For that reason, my decision does not take effect until that 60-day period expires, or if an application to VCAT is made, until the VCAT proceeding is concluded.

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

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

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