

## Notice of Decision and Reasons for Decision

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Applicant:	'AD4'
Agency:	Victoria Police
Decision Date:	16 May 2019
Exemptions considered:	Section 33(1)
Citation:	'AD4' and Victoria Police ( <i>Freedom of Information</i> ) [2019] VICmr 31 (16 May 2019)

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FREEDOM OF INFORMATION – police report – family violence report – documents required for immigration visa

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 differs from the Agency's decision in that I have decided to release additional information in the document.

The Schedule of Documents in **Annexure 1** sets out my decision.

My reasons for decision follow.

Joanne Kummrow  
**Public Access Deputy Commissioner**

16 May 2019

## Reasons for Decision

### Background to review

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

I need a copy of a full report that I made to [the Agency] on [date]. It details an incident that occurred with [third party] around 1.5 years ago.
2. The Applicant was granted a Partner visa and seeks a full copy of a family violence report made to the Agency that the Applicant is required to submit to the Department of Immigration as part of an application for permanent residency in Australia.
3. In its decision, the Agency identified one document falling within the terms of the Applicant's request. It decided to grant access to the document in part.

### Review

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. On 10 April 2019, the Applicant confirmed they seek a copy of the document with the personal affairs information of third parties released and does not require information exempt under section 31(1)(d). Accordingly, this review relates to information exempted by the Agency under section 33(1).
6. I have examined a copy of the documents subject to review.
7. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
8. I have considered all communications received from the parties, including:
  - (a) the Agency's decision on the FOI request;
  - (b) information provided with the Applicant's review application;
  - (c) the Applicant's submission dated 1 March 2019; and
  - (d) communications between OVIC staff, the Applicant and the Agency.
9. 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

10. The Agency relied on the exemptions under sections 31(1)(d) and 33(1) to refuse access to parts the document. The Agency's decision letter sets out the reasons for its decision.

### Section 33(1)

11. 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'.
12. In the circumstances, the Agency determined not to consult with a third party about the release of their personal affairs information.

*Does the document contain personal affairs information?*

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 their identity may be reasonably determined.<sup>2</sup>
14. The information the Agency exempted under section 33(1) consists of the name, address, contact number, date of birth and relationship descriptors of a third party.
15. I am satisfied this information is the personal affairs information of individuals other than the Applicant. However, I am not satisfied information concerning the Applicant's visa type and living situation are the personal affairs information of persons other than the Applicant.

*Would the disclosure of the personal affairs information be unreasonable?*

16. 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 circumstance of a matter. In determining whether the release of personal affairs information would be unreasonable in the circumstances of this matter, I have had regard to the following factors:
- (a) The nature of the personal affairs information: The document contains personal affairs information of persons other than the Applicant, including a third party's name, date of birth, address and contact details. The content of the document concerns allegations of family violence reported to the Agency. Accordingly, while noting the Applicant provided the information in the document to the Agency, the nature of the information is inherently sensitive. This weighs against disclosure.
  - (b) The circumstances in which the information was obtained: The Applicant seeks a copy of a family violence report they made to the Agency against a third party. The Agency recorded information provided by the Applicant as part of its functions in the detection, investigation and prevention of past and future criminal matters. However, from the face of the document, the allegations do not appear to have been put to the accused perpetrator or tested in open court. This weighs against disclosure.
  - (c) The extent to which the information is available to the public: The sensitive information contained in the document is not available in the public domain. As stated above, from the face of the document, the allegations do not appear to have been put to the accused perpetrator and have not been tested in open court. This weighs against disclosure.
  - (d) The Applicant's interest in the information being disclosed: The Applicant submits they seek an unredacted copy of the document to submit to the Department of Immigration as part of an application for permanent residency in Australia. I accept this represents a genuine and personal reason for seeking access to the information. This supports disclosure.

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

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

- (e) Whether the Applicant's purpose for seeking access to the information is likely to be achieved by granting her access to that information: The Applicant supplied supporting evidence from the Department of Immigration that confirms the release of the third party's personal affairs information may serve the Applicant's purpose. This supports disclosure of information in the document that concerns the Applicant's visa status and relationship with a third party.
- (f) Whether any public or important interest would be promoted by the release of the information: The Applicant's interest in obtaining the information is private, yet of significant importance. It appears that, in the absence of information sharing arrangements between the relevant agencies, the Applicant has the onus of seeking and supplying documentation to support her application for permanent residency in Australia. I consider the Applicant's access to the document is a matter of natural justice so as the Applicant is not disadvantaged in submitting relevant documentation to support her application for permanent residency. This supports disclosure.
- (g) Whether the individual whose personal affairs information is included in the document would be likely to object to the release of that information: Given the circumstances in which the Agency obtained the information, I am satisfied the third party would be reasonably likely to object to its release. This weighs against disclosure given the allegations do not appear to have been put to the accused perpetrator and have not been tested in open court.
- (h) Whether the disclosure of the personal affairs information would, or would be reasonably likely to, endanger the life or physical safety of any person: Whilst there is no specific information before me to suggest this is a relevant factor in this case, I am mindful of the nature of the family violence allegations in the document and that instances of family violence have the propensity to eventuate into circumstances that may endanger the life and physical safety of the parties involved. This weighs against disclosure.
17. Upon balancing the above considerations, I am satisfied the name, address, contact number and date of birth of a third party are exempt under section 33(1). However, I am not satisfied information concerning the Applicant's visa type and living situation are the personal affairs information of persons other than the Applicant. Further, whilst the relationship descriptors on page 2 are the personal affairs information of the Applicant and third party I have determined it is reasonable to release them in the circumstances of this matter.
18. The Schedule of Documents in **Annexure 1** contains a brief summary of my decision with respect to the document.

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

19. 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.
20. 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 under section 25.<sup>4</sup>

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<sup>3</sup> *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 at [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 at [140] and [155].

21. In my view, it is practicable for the Agency to delete the exempt and irrelevant information in the document as it would not require substantial time and effort, and the edited document would retain meaning.
22. I have considered certain information in the document the Agency deleted on grounds it is irrelevant to the terms of the Applicant's FOI request. I agree it falls outside the scope of the Applicant's request as it is the user identification number of the Agency staff member who processed the FOI request. This features at the top of each page next to 'User ID:' and is to remain deleted.

### **Review rights**

23. 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>
24. 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>
25. 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>
26. 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.
27. 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>

### **Other matters**

28. Section 49P(5) states that if I decide to disclose a document claimed to be exempt under section 33(1) I must, if practicable, notify any person who has a right to apply to VCAT for a review of my decision of their right to do so.
29. In considering the meaning of 'practicable' in relation to other sections of the FOI Act, VCAT has stated the following:

The use of the word 'practicable' in the legislation to my mind connotes a legislative intention to apply common sense principles. 'Practicable' is not a term of art or a term of precise meaning.

.... The use of the word indicates there should be imported into the process the exercise of judgment by the agency concerned. It does not allow for the conclusion that because a task is possible, it must, ergo, be undertaken.<sup>9</sup>

30. VCAT also considers the possibility of an unnecessary intrusion into the lives of third parties is relevant when assessing the practicability of notifying them.<sup>10</sup>
31. On balance, I am satisfied it would not be practicable to notify the third party about release of certain personal affairs information in the document as it would be an unnecessary intrusion into the life of the third party for the following reasons:

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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).

<sup>9</sup> *Re Schubert and Department of Premier and Cabinet* (2001) 19 VAR 35 at [45].

<sup>10</sup> *Coulston v Office of Public Prosecutions Victoria* [2010] VCAT 1234 at [42].

- (a) the inherently sensitive nature of the information;
- (b) the context in which the information was provided, in that the information was provided to the Agency by the Applicant; and
- (c) the third party is, to my knowledge, still unaware of the existence of the document.

***When this decision takes effect***

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

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1.	[Date] (Printed [Date])	LEAP Incident Report Number [xxx]	3	Released in part  Sections 33(1), 31(1)(d) <i>(outside scope of review), 25</i>	<p>Release in part  Sections 33(1), 25</p> <p>The information exempted by the Agency on pages 1 to 3 next to "User ID" is irrelevant and is to remain deleted in accordance with section 25.</p> <p>The personal affairs information of a third party on page 1 is exempt under section 33(1) and is to remain deleted in accordance with section 25.</p> <p>The text underneath the "Case Progress Narrative – Additional Information" heading on page 2 is not exempt under section 33(1) and is to be released in accordance with section 25.</p> <p>No information on page 3 is exempt under section 33(1), this page can be re-released to the Applicant.</p>	<p>Section 25: As outlined above, I consider the user identification number of the Agency officer who processed the Applicant's FOI request to be irrelevant to the Applicant's request.</p> <p><b>Section 33(1):</b> The document contains personal affairs information (name, address, contact number, date of birth and relationship descriptors) of a third party other than the Applicant.</p> <p>I have determined it is reasonable in this circumstance to release the relationship descriptor on page 2.</p> <p>However, I am not satisfied information concerning the Applicant's visa type and living situation are the personal affairs information of persons other than the Applicant.</p>