

Notice of Decision and Reasons for Decision

Applicant:	'AD5'
Agency:	Emergency Services Telecommunications Agency
Decision Date:	16 May 2019
Exemptions considered:	Section 38 of the <i>Freedom of Information Act 1982</i> (Vic) in conjunction with section 33 of the <i>Emergency Services Telecommunications Authority Act 2004</i> (Vic)
Citation:	'AD5' and <i>Emergency Services Telecommunications Authority (Freedom of Information)</i> [2019] VICmr 32 (16 May 2019)

FREEDOM OF INFORMATION – Triple zero call – 000 – secrecy provision – confidential information – *Emergency Services Telecommunications Authority Act 2004* (Vic) – ESTA Act

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 in full.

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

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 phone number and name (if available) of the person who called 000 [redacted] after a fall at a part [sic] which resulted from [injured person] being knocked over by the caller's dog... date of incident was[date].

...

2. By letter dated 18 February 2019, the Agency notified the Applicant it had identified three documents falling within the terms of the Applicant's request. The Agency refused access to all documents in full.
3. In refusing access, the Agency relied on sections 33(1) and 38.

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 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 and submissions received from the parties, including:
 - (a) the Agency's decision on the FOI request;
 - (b) the Applicant's request for review dated 26 February 2019; and
 - (c) the Agency's submissions dated 28 March 2019.
7. The Agency advised in its submission that the original decision letter erroneously referenced radio transmissions. The Agency submits no such document exists. Accordingly, this review relates to the remaining two documents identified by the Agency.
8. I have listened to '000 Call [date] – 3.12mins – Waveform Audio File Format' (**Document 1**).
9. I have examined a copy of 'Event ID: [identification number] - CAD Chronology' (**Document 2**).
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 exemptions in sections 33(1) and 38. The Agency's decision letter sets out the reasons for its decision.

Section 38 – Document to which secrecy provisions of enactments apply

12. Section 38 provides:

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. 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 applied section 38 in conjunction with section 33 of the *Emergency Services Telecommunication Authority Act 2004* (Vic) (**ESTA Act**).

15. I am satisfied the ESTA Act is an enactment in force for the purposes of section 38.

16. Section 33 of the ESTA Act prohibits the recording, disclosure, communication or use of confidential information received in the course of carrying out duties under the ESTA Act, except to the extent necessary to perform duties under that Act. Unauthorised disclosure of such information is an offence.

17. The financial penalty associated with unauthorised disclosure highlights the legislature's intention that such information should remain protected.

18. Section 33(1) of the ESTA Act defines 'confidential information' as

... any information relating to calls received or messages communicated by the Authority in the course of providing a service to an emergency services and other related services organisation.

19. I accept the Agency's submission the confidentiality required in relation to emergency calls assists ESTA to act in a manner that promotes trust and open communication, in accordance with its legislative obligations.¹

20. The documents comprise information relating to a triple-0 call. I am satisfied a triple-0 call constitutes a call received by ESTA in the course of providing a service to an emergency service.

21. I do not consider the exceptions in section 33(3) of the ESTA Act applicable in this instance.

22. Therefore, I am satisfied the telephone number and name of the triple-0 caller is confidential information for the purposes of section 33 of the ESTA Act and is exempt from disclosure under section 38 of the FOI Act.

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.

¹ Section 28(2)(a) of the ESTA Act provides the Authority and all persons, to whom any emergency telecommunications and other communications services are provided, must ensure that, in the course of the provision of any such services, they act in a manner that promotes trust and open communication.

25. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'² 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 25.³
26. 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 deletion would render the documents meaningless.

Conclusion

27. On the information available, I am satisfied the telephone number and name of the triple-0 caller is confidential information for the purposes of section 33 of the ESTA Act and is exempt from disclosure under section 38 of the FOI Act.
28. As it is not practicable to provide an edited copy of the documents with exempt information deleted, I have determined to refuse access to the documents in full.

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.⁴
30. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁵
31. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁶
32. 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.
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.⁷

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.

² *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].

³ *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], [155].

⁴ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁵ Section 52(5).

⁶ Section 52(9).

⁷ 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
1.	[Date]	000 Call [date] – 3.12mins – Waveform Audio File Format	N/A	Refused in full Sections 33(1), 38	Refuse in full Section 38
2.	[Date]	Event ID: [identification number] CAD Chronology	4	Refused in full Sections 33(1), 38	Refuse in full Section 38
3.	N/A	Radio Transmissions	N/A	Refused in full Sections 33(1), 38	Not subject to review. Document does not exist.