

## Notice of Decision and Reasons for Decision

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Applicant:	'AC9'
Agency:	Victoria Police
Decision Date:	10 May 2019
Exemption considered:	Section 33(1)
Citation:	'AC9' and Victoria Police ( <i>Freedom of Information</i> ) [2019] VICmr 27 (10 May 2019)

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FREEDOM OF INFORMATION – Police records – Motor vehicle accident – Electronic Patrol Duty Return – notes of attending police members – Penalty Infringement Notices – Traffic Incident System database notes.

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 release one document in full and two 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  
10 May 2019

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency for access to documentation, records and visual recordings regarding a transport accident. The Applicant limited the scope of the request to documents not previously provided by the Victoria Police Accident Records Office.
2. In its decision, the Agency identified four documents falling within the terms of the Applicant's request. It decided to grant access to two of those documents in part, and release two documents in full.

### Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. The Applicant requested a review of the decision.
5. I have examined copies of the documents subject to review.
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; and
  - (b) the Applicant's submissions dated 18 March and 9 April 2019 and information provided with the Applicant's review application.
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.

### Review of exemptions

9. The Agency relied on section 33(1) to refuse access to parts of the documents. The Agency's decision letter sets out the reasons for its decision.

### Section 33(1)

10. 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'.
11. 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.<sup>2</sup>

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

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

12. 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. The following matters are particularly relevant, in the circumstances of this matter:
    - (a) the nature of the personal affairs information (for example, whether it is sensitive or its current relevance);
    - (b) the circumstances in which the information was obtained (for example, whether it was obtained involuntarily or in confidence);
    - (c) the Applicant's interest in the information (including their purpose for seeking the access to the documents);
    - (d) whether any public interest would be promoted by the release of the information;
    - (e) whether the individuals to whom the information relates object, or would be likely to object to the release of the information;
    - (f) the extent to which the information is available to the public; and
    - (g) the likelihood of further disclosure of the information, if released.
  13. The Agency advised it consulted with third parties named in the documents to seek their views on the disclosure of their personal affairs information prior to making its decision. However, the third parties did not respond to the Agency.
  14. I am satisfied the documents contain personal affairs information about persons other than the Applicant.
  15. Personal affairs information redacted from the Electronic Patrol Duty Return (**ePDR**) Form includes the telephone number and address of a third party.
  16. Personal affairs information redacted from the notes of the attending Police member includes the names, date of births, phone numbers and vehicle registration of third parties who witnessed the incident.
  17. I have determined disclosure of the personal affairs information contained in the requested documents would be unreasonable for the following reasons.
    - (a) The Applicant is seeking this information to find out more information about the incident because it caused [them] a serious injury. I acknowledge the Applicant's personal interest in the documents, however, the interest of the Applicant needs to be balanced against the public interest in protecting the personal privacy of third parties, and the ability of the Agency to fulfil its public functions.
    - (b) The personal affairs information was provided in a specific context involving the investigation of a motor vehicle accident. There is a strong public interest in maintaining the Agency's ability to obtain information voluntarily from members of the community in relation to such incidents. If personal affairs information of witnesses were released, this ability to collect information may be impaired, as people may be less likely to provide frank information on a voluntary basis and jeopardise the ability of the Agency to carry out its functions.
    - (c) I have no information about whether the third parties would object to the release of their personal affairs information. However, I consider that there is an expectation of privacy in the communication of this information to this Agency in light on its law enforcement functions.
    - (d) I can see no countervailing public interest in the disclosure of this information.
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### ***Deletion of exempt or irrelevant information***

18. 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.
19. 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>
20. I have considered the information the Agency deleted from the documents as irrelevant. I agree it falls outside the scope of the Applicant's request because it relates to matters or people other than those specified in the request.
21. I have considered the effect of deleting irrelevant and exempt information from the documents. In my view, it is practicable for the Agency to delete the irrelevant and exempt information, because it would not require substantial time and effort, and the edited documents would retain meaning.

### ***Conclusion***

22. On the information available, I am satisfied the exemption in section 33(1) applies to some of the documents. Accordingly, I have decided to grant access to one document in full and two documents in part. Document 3 was not subject to review as it was released to the applicant in full.

### ***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>

### ***When this decision takes effect***

28. 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>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].

<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).

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]	Electronic Patrol Duty Return (ePDR) Form	15	Released in part  Sections 33(1), 25	Release in part  Sections 33(1), 25	<p><b>Section 33(1):</b> I am satisfied it would be unreasonable to release the personal affairs information in the document for the reasons set out above.</p> <p><b>Section 25:</b> I am satisfied information deleted by the agency is irrelevant to the Applicant's FOI request as it relates to other matters attended to by the Agency not related to the incident subject of this request.</p>
2.	Not available	Notes of attending member	2	Released in part  Sections 33(1), 25	Release in part  Sections 33(1), 25	<p><b>Section 33(1):</b> I am satisfied it would be unreasonable to release the personal affairs information in the document for the reasons set out above.</p> <p><b>Section 25:</b> I am satisfied information deleted by the agency is irrelevant to the Applicant's FOI request for the reasons set out in Document 1.</p>
3.	[Date]	Infringement Notice	1	Release in full	Not subject to review	

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
4.	[Date]	Traffic Incident System Notes	1	Release in full	Release in full Section 25	Section 25: I am satisfied information deleted by the agency is irrelevant to the Applicant's FOI request.