

## Notice of Decision and Reasons for Decision

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Applicant:	'AE3'
Agency:	VicRoads
Decision Date:	27 May 2019
Exemptions considered:	Section 38 of the <i>Freedom of Information Act 1982</i> (Vic) and section 90J of <i>Road Safety Act 1986</i> (Vic)
Citation:	'AE3' and <i>VicRoads (Freedom of Information)</i> [2019] VICmr 39 (23 May 2019)

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FREEDOM OF INFORMATION – car registration information – previous owner details – vehicle registration and identification system (VRIS) – dealer online vehicle registration form – authority to register a vehicle, certificate of roadworthiness – transfer of registration form – documents to which secrecy provisions apply – *Road Safety Act 1986* (Vic)

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 some of the information in the 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 information in the documents.

My reasons for decision follow.

**Joanne Kummrow**  
Public Access Deputy Commissioner  
27 May 2019

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency for access to documents in relation to a specific motor vehicle with registration [number plate], [year, make and model], [VIN number], formerly registered to [company name] (or as incorrectly spelt as [company name] on its former registration).
2. The Applicant requested all transfer and disposal forms, along with any requisite authority letters, roadworthy certificates, disclosing the transferee, and market value, for the last twelve months. The Applicant also requested any records relating to the transfer, change or disposal of the motor vehicle from any party to any other party in the last twelve months.
3. On 21 January 2019, the Applicant advised the Agency [they did not] seek access to personal affairs information that relates to Agency employees or third parties involved in conducting roadworthy tests.
4. In its decision, the Agency identified eight pages of documents within the scope of the request and decided to release four pages in full and four pages in part.

### Review

5. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
6. The Applicant submitted that, as they are a party to the documents subject to the request, secrecy should not apply to the documents.
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 decision on the FOI request; and
  - (b) the Applicant's review application.
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 exemption in section 38 to refuse access to certain information in the documents. The Agency's decision letter sets out the reasons for its decision.

## **Section 38**

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. In order for a document to be exempt under section 38, three conditions must be satisfied:

- (a) there must be an enactment in force;
- (b) the enactment must apply specifically to the kind of information contained in the document; and
- (c) the enactment must prohibit persons referred to in the enactment from disclosing that specific kind of information (either absolutely or subject to exceptions or qualifications).

14. The Agency relied upon section 38 in conjunction with Part 7B of the *Road Safety Act 1986* (Vic) (**Road Safety Act**), which prohibits the disclosure of 'relevant information' except in accordance with that Act.

15. Part 7B of the Road Safety Act applies to 'relevant information'. Section 90I of that Act defines 'relevant information' as information to which s 90J of the Road Safety Act applies.

16. Section 90J provides:

### **90J Information to which this Part applies**

(1) This Part applies to information—

- (a) that is collected or received by the Corporation in relation to its registration or licensing functions and activities; and
- (b) that identifies an individual or from which an individual's identity can be reasonably ascertained.

...

(3) For the purposes of subsection (1), information collected or received by the Corporation in relation to its registration or licensing functions and activities includes, but is not limited to, information relating to—

- (a) granting, renewing, suspending or cancelling registration of vehicles;
- (b) entering or removing vehicles from the written-off vehicles register;
- (c) exempting vehicles from registration;
- (d) granting, renewing, suspending or cancelling driver licences or learner permits and recording demerit points—

whether that information relates to a registered or unregistered vehicle or a licensed or unlicensed driver.

17. I am satisfied information in the document meets the definition of 'relevant information' under section 90J of the Road Safety Act. In its decision letter, the Agency advised it uses such information to regulate vehicle licensing and registration in Victoria.

18. The information in the document was collected by the Agency in relation to its registration or licensing functions and activities, and it identifies 'relevant information'. Therefore, the second condition of section 38 is met.

19. Section 90Q of the Road Safety Act provides:

**90Q Offences**

- (1) The Corporation or a relevant person or a person who has been a relevant person must not use or disclose relevant information other than as authorised by this Part—
- (a) knowing that the use or disclosure is not so authorised; or
  - (b) being reckless as to whether the use or disclosure is so authorised.

Penalty: 120 penalty units or imprisonment for 12 months.

20. Section 90I of the Road Safety Act defines 'relevant person'. The definition includes Agency officers.

21. Section 90K of the Road Safety Act authorises disclosure of relevant information for certain purposes or circumstances. For example, the Agency or a relevant person may use or disclose relevant information with the consent of the individual to whom the information relates.<sup>1</sup>

22. The information the Agency decided was exempt under this provision is:

- (a) the client ID, licence number, name and address of a third party that appears on a VicRoads database;
- (b) the names and postcodes of third parties, as they appear under the headings 'acquirer' and 'disposer' on a VicRoads database;
- (c) the name, address and phone number of a third party that appear on a 'certificate of roadworthiness'; and
- (d) the names, addresses, licence numbers, dates of birth, phone numbers and email addresses of third parties that appear as a seller and buyer on an 'application for transfer of registration form'.

23. The Road Safety Act is an enactment in force, therefore, the first condition of section 38 is satisfied.

24. Further, I am satisfied the information is 'relevant information' for the purposes of section 90J of the Road Safety Act, being information collected or received by the Agency in relation to its registration or licensing functions and activities, and that identifies an individual or from which an individual's identity can be reasonably ascertained. Therefore, the Road Safety Act applies specifically to the kind of information contained in the documents subject to the review.

25. On the information before me, it does not appear that any of the exceptions to the prohibition in section 90Q of the Road Safety Act apply in the circumstances.

26. I note the Applicant's view, that as it is a party to the documents then secrecy provisions should not apply. However, as set out above in the provisions of the Road Safety Act and the FOI Act, this is not a relevant factor in this matter.

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<sup>1</sup> Section 90K(d) of the Road Safety Act.

27. Therefore, I am satisfied section 90Q of the Road Safety Act prohibits the Agency from disclosing the information in the document. Accordingly, the third condition of section 38 is met and I am satisfied the information sought by the Applicant in the documents is exempt from release.

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

28. Section 25 requires an agency to grant access to an edited copy of a document containing exempt or irrelevant information if it is practicable for the agency or Minister to delete that information, and if the applicant is agreeable to receiving such a copy.
29. The document contains some personal affairs information the Applicant is not seeking, which the Agency deleted in the documents as irrelevant information and marked 'not relevant'. I agree with the Agency's decision this information is not relevant to the request.

***Conclusion***

30. On the information available, I am satisfied the exemption in section 38 applies to parts of the documents and therefore my decision is the same as the Agency's.

***Review rights***

31. 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>2</sup>
32. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>3</sup>
33. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>4</sup>
34. 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.
35. 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>5</sup>

***When this decision takes effect***

36. 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>2</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>3</sup> Section 52(5).

<sup>4</sup> Section 52(9).

<sup>5</sup> Sections 50(3F) and (3FA).