



Office of the Victorian
Information Commissioner

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Notice of Decision and Reasons for Decision

Applicant:	AE4
Agency:	Victoria Police
Decision Date:	28 May 2019
Exemption considered:	Section 33(1)
Citation:	'AE4' and Victoria Police (<i>Freedom of Information</i>) [2019] VICmr 40 (28 May 2019)

FREEDOM OF INFORMATION – Electronic Patrol Duty Return Form – ePDR – irrelevant information – personal affairs information – unreasonable disclosure

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 the document in part.

My reasons for decision follow.

Joanne Kummrow

Public Access Deputy Commissioner

28 May 2019

Reasons for Decision

Background to review

1. On 31 January 2019, the Applicant made a request to the Agency for access to a running sheet of police attendance at their residence in relation to a noise complaint made by [named person].
2. In its decision letter dated 27 February 2019, 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

3. On 15 March 2019, the Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. I have examined a copy of the document subject to review.
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 received from the parties, including:
 - (a) the Agency's decision on the FOI request, dated 27 February 2019, and
 - (b) the Applicant's review application, dated 15 March 2019.
7. 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

8. The Agency relied on the exemption under section 33(1) to refuse access to parts of the document.

Section 33(1) – Documents containing personal affairs information

9. 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;¹ and
 - (b) such disclosure would be 'unreasonable'.

Do the documents contain personal affairs information?

10. Information will relate to the 'personal affairs' of a person if it is reasonably capable of identifying them, or of disclosing their address or location.² It has also been held that information will relate to someone's personal affairs if it 'concerns or affects that person as an individual'.³
11. The Victorian Civil and Administrative Tribunal (**VCAT**) has accepted a document will disclose personal affairs information if it is capable, either directly or indirectly, of identifying a particular individual whose personal affairs are disclosed. As disclosure under the FOI Act is not subject to

¹ Sections 33(1) and (2).

² Section 33(9).

³ *Hanson v Department of Education and Training* [2007] VCAT 123 at [9].

restriction or condition, this is to be interpreted by the capacity of any member of the public to potentially identify a third party.⁴

12. The Document contains information that is capable of identifying a third party.
13. I am satisfied the information contained in the Document relates to the personal affairs of an individual other than the Applicant.

Would release of the personal affairs information be unreasonable?

14. The concept of 'unreasonable disclosure' involves determining whether the public interest in disclosure of official information is outweighed by the personal interest in privacy.
15. I have determined disclosure of the personal affairs information contained in the Document would be unreasonable for the following reasons:
 - (a) The nature of the personal affairs information – The personal affairs information is capable of identifying a third party.
 - (b) The circumstances in which the information was obtained – The information was obtained by the Agency in the context of investigating a noise complaint. I consider the information contained in the Document would have been provided to the Agency confidentially, with the understanding it would be used for the Agency's investigation and any subsequent prosecution only.
 - (c) The Applicant's interest in the information, including their purpose for seeking access to the Document – The Applicant resides at the property that attracted the noise complaint. I acknowledge the interest the Applicant holds in seeking to obtain the identity of the complainant. However, the interest of the Applicant needs to be balanced against the greater public interest in the Agency preserving the confidentiality of its investigative processes, including the ability to conduct investigations and obtain the cooperation of witnesses during such investigations.
 - (d) Whether the individuals to whom the information relates object, or would be likely to object to the release of the information – The Agency considered it unreasonable to consult with the individual to whom the information relates. Having regard to the nature of the information and the circumstances in which it was obtained, I am of the view the third party whose personal affairs information is contained in the Document would likely object to the release of the information.

Deletion of exempt or irrelevant information

16. 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.
17. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁵ and the effectiveness of the deletions. Where

⁴ *O'Sullivan v Department of Health and Community Services (No 2)* [1995] 9 VAR 1 at [14]; *Beauchamp v Department of Education* [2006] VCAT 1653 at [42].

⁵ *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].

deletions would render the document meaningless they are not 'practicable' and release of the document is not required under section 25.⁶

18. I have considered the information the Agency deleted from the document as irrelevant. I agree the information falls outside the scope of the Applicant's request.
19. The Agency deleted exempt information from the Document. I agree with the Agency's deletions.

Conclusion

20. My decision is the same as the Agency's decision. On the information available, I am satisfied the exemption in section 33(1) applies to the Document.
21. As it is practicable to edit the Document to delete irrelevant and exempt information, I have determined to grant access to the Document in part.

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.⁷
23. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁸
24. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁹
25. 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.
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.¹⁰

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.

⁶ *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].

⁷ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁸ Section 52(5).

⁹ Section 52(9).

¹⁰ Sections 50(3F) and (3FA).