

Notice of Decision and Reasons for Decision

Applicant:	AE6
Agency:	Victoria Police
Decision Date:	30 May 2019
Exemptions considered:	Sections 30(1), 33(1)
Citation:	<i>AE6 and Victoria Police (Freedom of Information)</i> [2019] VICmr 42 (30 May 2019)

FREEDOM OF INFORMATION – police records – LEAP records – investigation full response report – THASM (threats against serving members) – handwritten diary notes – statements – CAD event report – incident report – preliminary brief – informant statement – internal working documents – personal affairs information

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 to the Applicant.

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
30 May 2019

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to documents relating to an incident involving the Applicant on [date] at a [location].
2. In its decision, the Agency identified 34 documents totalling 127 pages. The Agency decided to release the documents to the Applicant in part.

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 narrowed [their] request for review to:
 - (a) certain passages that appear across 35 pages that were released in part. The Agency determined this information exempt from release under either section 30(1) or 33(1); and
 - (b) two statements.
5. I note also the Applicant advised [they] are not seeking personal affairs information.
6. I have examined copies 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 and submissions received from the parties, including:
 - (a) the Agency's decision on the FOI request; and
 - (b) the Applicant's review application dated 31 January 2019 and submission received 1 March 2019.
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 30(1) and 33(1) to refuse access to parts of the documents. The Agency's decision letter sets out the reasons for its decision.

Section 30(1)

11. Section 30(1) has three requirements:
 - (a) the document must disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister; and
 - (b) such matter must be made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government; and
 - (c) disclosure of the matter would be contrary to the public interest.

12. The exemption does not apply to purely factual material in a document.¹
13. I must also be satisfied releasing this information is not contrary to the public interest. This requires a 'process of the weighing against each other conflicting merits and demerits'.²
14. In deciding if release is contrary to the public interest, I must consider all relevant facts and circumstances remaining mindful the object of the FOI Act is to facilitate and promote the disclosure of information.
15. In deciding whether disclosure of the matter would be contrary to the public interest, I have taken the following into consideration³:
 - (a) the right of every person to gain access to documents under the FOI Act;
 - (b) the degree of sensitivity of the issues involved;
 - (c) the state of the policy development process at which the communication was made;
 - (d) whether the disclosure would be likely to inhibit frankness and candour in the making of communications;
 - (e) whether disclosure would lead to confusion or unnecessary debate having regard to the possibilities discussed;
 - (f) whether the disclosure will give merely a part explanation rather than a complete explanation for the taking of a particular decision;
 - (g) the likelihood disclosure of the documents would inhibit the independence of officers or the making of proper and detailed research and submissions by them;
 - (h) the likelihood disclosure would create mischief in one way or another such as a risk of mischievous interpretation; and
 - (i) the significance of the document, for example whether it is or is not merely a draft document.
16. In [their] submission, the Applicant advised:
 - (a) [they] are a current police member;
 - (b) the provision of any investigative opinion or technique is not a risk in [their] possession;
 - (c) due to [their] extensive policing knowledge, it is reasonable that the Applicant is provided with the opinions of the police members and to judge those opinions;
 - (d) the Applicant is bound by the oath of office and the Agency can sanction the Applicant should [they] misuse the information received under the FOI Act;
 - (e) some of the information removed by the Agency relates to the Applicant's welfare or directly to the Applicant;
 - (f) some of the information removed by the Agency is information provided by the Applicant to the Agency; and
 - (g) some of the information removed by the Agency relates to actions and events that concern the Applicant and, therefore, it is only reasonable it is released to the Applicant.

¹ Section 30(3).

² *Sinclair v Maryborough Mining Warden* [1975] HCA 17; (1975) 132 CLR 473 at 485, adopted in *Department of Premier and Cabinet v Hulls* [1999] VSCA 117 at [30].

³ *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

17. I also note the Applicant's interest in the documents is as the victim of offences, and that [they] are seeking the information as [they] believe the threat level assessment the Agency conducted was inadequate, and the Applicant is seeking compensation for additional security measures [they] have taken at [their] residence to ensure the Applicant's personal safety.

Section 33(1)

18. 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;⁴ and
 - (b) such disclosure would be 'unreasonable'.
19. 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.⁵
20. 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.
21. The proper application of section 33(1) involves consideration of 'all matters relevant, logical and probative to the existence of conditions upon which the section is made to depend'.⁶
22. In this case, I have considered the following factors⁷ when determining if the release of the personal affairs information in the documents would be unreasonable in the circumstances:
- (a) the nature of the personal affairs information that would be disclosed;
 - (b) the circumstances in which the information was obtained;
 - (c) the Applicant's interest in the information;
 - (d) the likelihood of further disclosure of the information, if released;
 - (e) whether the individuals to whom the information relates object, or would be likely to object to the release of the information;
 - (f) whether disclosure would cause the individuals stress, anxiety or embarrassment;
 - (g) whether the information has any current relevance; or
 - (h) whether disclosure would, or would be reasonably likely to, endanger the life or physical safety of any person.
23. The nature of disclosure of a document under the FOI Act is unconditional and unrestricted, which means an applicant is free to disseminate widely or use a document as they choose.⁸

⁴ Sections 33(1) and (2).

⁵ Section 33(9).

⁶ [2008] VSCA 218 at [104].

⁷ A number of these factors were identified in *Page v Metropolitan Transit Authority* (1988) 2 VAR 243.

⁸ [2008] VSCA 218 at [68].

24. Section 33(2B) requires that, in deciding whether the disclosure of a document under the FOI Act would involve the unreasonable disclosure of information relating to the personal affairs of any person, the agency must:
- (a) notify the person who is the subject of that information (or if that person is deceased, that person's next of kin), that the agency has received a request for access to the document;
 - (b) seek that person's view as to whether disclosure of the document should occur; and
 - (c) state that if the person consents to disclosure of the document, or disclosure subject to deletion of information relating to the personal affairs of the person, the person is not entitled to apply to the Tribunal for review of a decision to grant access to that document.
25. However, compliance with the consultation requirements under section 33(2B) is not required in certain circumstances. This includes if the notification would be reasonably likely to cause that person undue distress or is otherwise unreasonable or it is not practicable to do so in the circumstances.⁹
26. The Agency did not advise whether or not it consulted with third parties whose personal affairs information was exempted in the documents to obtain their views on disclosure.
27. While the Applicant advised [they] are not seeking the personal affairs of other people, [they have] advised [they] are seeking access to a number of passages the Agency exempted under section 33(1).
28. In summary, the Applicant states:
- (a) the record of the offence relates to the Applicant as the victim; there are no requirements for this information to remain private;
 - (b) some of the information relates to words spoken to the Applicant;
 - (c) some of the information relates to the Applicant;
 - (d) [they] believe the observations of third parties about [their] behaviour is not exempt from release [to them].
29. I note the Applicant advised [they seek] two 'statements' [they] believe the Agency exempted under section 33(1). For clarity, having reviewed the documents, I note there are no formal witness statements among the documents, however, there are other notes that include information provided by third parties to the Agency.

Deletion of exempt or irrelevant information

30. 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.
31. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹⁰ and the effectiveness of the deletions. Where

⁹ Section 33(2C).

¹⁰ *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 [82].

deletions would render the document meaningless they are not 'practicable' and release of the document is not required under section 25.¹¹

32. I have considered the effect of deleting exempt information from the documents. In my view, it is practicable for the Agency to delete the exempt information, because it would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

33. On the information available, I am satisfied the exemptions in sections 30(1) and 33(1) apply to some of the documents. However, I have decided to grant access to certain documents in part.

Review rights

34. 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.¹²
35. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹³
36. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁴
37. 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.
38. 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.¹⁵

When this decision takes effect

39. 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.

¹¹ *Honeywood v Department of Human Services* [2006] VCAT 2048 [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 [140], [155].

¹² The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹³ Section 52(5).

¹⁴ Section 52(9).

¹⁵ Sections 50(3F) and (3FA).

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1	[date]	LEAP – incident report and case progress	2	Release in part Section 33(1) Not relevant	Release in part Sections 33(1), 25 Not relevant	<p>The Applicant is seeking information the Agency redacted against the term 'offence' that describes an offence by a third party.</p> <p>Section 33(1): The information is personal affairs information relating to a third party. It would be unreasonable to release this information because:</p> <ul style="list-style-type: none"> • it is sensitive information, as it relates to an alleged criminal offence; • it is not information available to the public; • the information concerning the alleged offender has not been heard or tested in court; • while the Agency did not consult with the third party to obtain their views on disclosure, from the nature of the information and the circumstances in which it was obtained (by a law enforcement agency), I consider it likely the third party would reasonably object to its release; and • I can see no countervailing public interest in the release of the information in the circumstances.
2	[date]	LEAP – person history report	4	Release in part Section 31(1)(d) Not relevant	Not subject to review	Applicant does not seek review of this document.

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3	[date]	LEAP – person history report	4	Release in part Section 31(1)(d) Not relevant	Not subject to review	Applicant is not seeking review of this document.
4	[date]	Investigation – full response report	4	Release in part Section 33(1) Not relevant	<p>Release in part Sections 33(1), 25</p> <p>The third, fourth and eighth redactions on page 1 are to be released to the Applicant.</p> <p>The seventh redaction is exempt under section 33(1) and is to remain deleted.</p>	<p>The Applicant is seeking the third, fourth, seventh and eighth section of information the Agency redacted from the document on page 1.</p> <p>Section 33(1): The third, fourth and eighth redactions appear to be information provided by the Applicant to the Agency. As it is [their] personal affairs information it is not subject to section 33(1).</p> <p>Section 33(1): In relation to the seventh redaction, it relates to information provided to the Agency by a third party.</p> <p>This information is personal affairs information. I have taken the following into consideration when deciding whether it would be unreasonable to disclose this information to the Applicant:</p> <ul style="list-style-type: none"> the information was obtained by the Agency from a third party in the conduct of the Agency officer's attendance at an incident; while the Agency did not consult with the third party, I consider the circumstances in which it was obtained (during the investigation of an incident) mean there

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						<p>would be an expectation of confidentiality by the third party;</p> <ul style="list-style-type: none"> the Agency relies on receiving such information from members of the public; the disclosure of such information could mean that some members of the public would be less likely to voluntarily provide information to the Agency; this would clearly be contrary to the public interest as it would inhibit the ability of the Agency to perform its law enforcement functions; it would therefore be unreasonable to disclose this personal affairs information.
5	[date]	THASM (Threats Against Serving Members) Threat Assessment	15	Release in part Sections 30(1), 33(1)	<p>Release in part Sections 30(1), 33(1), 25</p> <p>The information the Agency decided was exempt under the heading 'intent' and 'personal/family welfare' of the document is to be released to the Applicant as it is not exempt under section 33(1).</p>	<p>The Applicant is seeking information redacted on page 2 and 3.</p> <p>Section 30(1): Information the Agency redacted under the heading 'intent (does the suspect have the desire to carry out the threat and the expectance to achieve this)' is an assessment by an Agency officer.</p> <p>The information is matter in the nature of opinion prepared by an Agency officer in the course of the deliberative processes of the Agency. Therefore, it meets the first limb of section 30(1).</p>

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Document No.	Date of Document	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p>I have decided it would not be contrary to the public interest to release this information as:</p> <ul style="list-style-type: none"> the information appears in a completed report; that is, it is not preliminary, rather it represents the considered opinion of the Agency officer; the majority of the report was released to the Applicant. Therefore, this redaction supports the information set out in the information already known to the Applicant; and I do not consider release of this information in these circumstances would inhibit Agency officers from providing such views in the future. <p>Section 33(1): In relation to the information removed under the heading 'capability', I consider this information is the personal affairs of a third party. I have decided it would be unreasonable to release this information for the same reasons set out in Document 1.</p> <p>In relation to the information removed under 'personal/family welfare', I consider this information relates only to the applicant and therefore is [their] personal affairs information and section 33(1) does not apply.</p> <p>Note on the document: In [their] review request, the Applicant queried whether</p>

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						'Appendix B' referred to in the document was provided to [them]. The Agency advised Document 15, which is a briefing note, contains that report.
6	[date]	Handwritten notes	4	Release in part Section 33(1) Not relevant	Release in part Sections 33(1), 25 Not relevant	The Applicant is seeking information the Agency exempted in two sections at the end of the first page, two sections at the end of the second page and two sections in the centre of the third page. Section 33(1): The information in the document is personal affairs information obtained by the Agency from third parties. It is unreasonable to release it for the reasons set out in Document 4.
7	[date]	Crime scene log	3	Release in part Section 33(1) Not relevant	Release in part Sections 33(1), 25 Not relevant	The Applicant is seeking information redacted from the end of page one, two sections from page two, and the redactions from page three. Section 33(1): The information in the document is personal affairs information obtained by the Agency from third parties. It is unreasonable to release it for the reasons set out in Document 4.
8	[date]	Handwritten notes	2	Release in part Section 33(1) Not relevant	Not subject to review	Applicant is not seeking review of this document.
9	[date]	Handwritten notes	5	Release in part Section 33(1)	Release in part Sections 33(1), 25	The Applicant is seeking the information redacted from pages 1 and 2.

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				Not relevant	Not relevant	Section 33(1): The information in the document is personal affairs information obtained by the Agency from third parties. It is unreasonable to release it for the reasons set out in Document 4.
10	[date]	Handwritten notes	4	Release in part Section 33(1) Not relevant	Release in part Sections 33(1), 25 Not relevant	The Applicant is seeking the information redacted from pages 1, 2, 3 and 4. Section 33(1): The information in the document is personal affairs information obtained by the Agency from third parties. It is unreasonable to release it for the reasons set out in Document 4.
11	undated	Handwritten notes	1	Release in part Not relevant	Not subject to review	Applicant is not seeking review of this document.
12	[date]	Handwritten notes	2	Release in part Not relevant	Not subject to review	Applicant is not seeking review of this document.
13	[date]	Handwritten notes	5	Release in part Sections 30(1), 33(1) Not relevant	Release in part Sections 30(1), 33(1), 25 Not relevant	The Applicant is seeking the information redacted from pages 1, 2, and 3. Section 30(1): The information on page 3 the Agency redacted is in the nature of opinion prepared by an Agency officer for the purpose of the deliberative processes involved in the functions of the Agency. I have decided it would be contrary to the public interest to release this information as: <ul style="list-style-type: none">the notes were taken at the time of the

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						<p>events as they unfolded; Agency officers are entitled to record their initial thoughts on matters as they occur, despite the fact their views may change following subsequent events;</p> <ul style="list-style-type: none"> while the disclosure of the deliberative processes of agencies is not contrary to the public interest in every instance, in this instance, it relates to the deliberation of an officer in relation to the investigation of potential offences; this gives it added sensitivity; and in the circumstances of this matter therefore the disclosure of such preliminary views could have significant affects, where those opinions then form the basis for further action by the agency. <p>Section 33(1): The information in the document is personal affairs information obtained by the Agency from third parties. It is unreasonable to release it for the reasons set out in Document 4.</p>
14	[date]	Handwritten notes	6	<p>Release in part Sections 30(1), 33(1) Not relevant</p>	<p>Release in part Sections 30(1), 33(1), 25 Not relevant</p>	<p>The Applicant is seeking the information redacted from pages 1, 2, 4, 5 and 6.</p> <p>Section 30(1): The information the Agency redacted under section 30(1) is in the nature of opinion prepared by an Agency officer for the purpose of the deliberative processes involved in the functions of the Agency. I have decided it</p>

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						<p>would be contrary to the public interest to release this information for the same reasons set out in Document 13.</p> <p>Section 33(1): The information in the document is personal affairs information obtained by the Agency from third parties. It is unreasonable to release it for the reasons set out in Document 4.</p>
15	[date]	Briefing note	2	Release in part Sections 30(1), 33(1)	<p>Release in part Sections 30(1), 33(1), 25</p> <p>The information identified by the Applicant, being the redaction at the end of page 1 and the redaction on the third line of page 2, is not exempt under section 33(1) and is to be released to the Applicant.</p>	<p>The Applicant is seeking the information redacted from pages 1 and 2.</p> <p>Section 30(1): The information the Agency redacted under section 30(1) is in the nature of opinion prepared by an Agency officer for the purpose of the deliberative processes involved in the functions of the Agency. I have decided it would be contrary to the public interest to release this information because:</p> <ul style="list-style-type: none"> the information is sensitive as it relates to the consideration of the conduct of an Agency officer; and I consider officers must be able to provide frank views about such matters and that disclosure in this instance may inhibit the communication of such views in the future. <p>Section 33(1): From my review of the documents I cannot see that this amounts to sensitive personal affairs of a person other than the Applicant. It is therefore not exempt under section 33(1).</p>

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16	[date]	Notes by a third party	9	Release in part Section 33(1)	Not subject to review	Applicant is not seeking review of this document.
17	[date]	CAD event report	1	Release in part Section 33(1) Not relevant	Release in part Sections 33(1), 25 Not relevant	Section 33(1): The information in the document is personal affairs information obtained by the Agency from third parties. It is unreasonable to release it for the reasons set out in Document 4.
18	[date]	Memo	5	Release in part Sections 30(1), 33(1) Not relevant	Release in part Sections 30(1), 33(1), 25 Not relevant	<p>The Applicant is seeking information the Agency redacted from pages 3, 4 and 5.</p> <p>Section 30(1): The Agency redacted information from this memo that is in the nature of opinion prepared by an Agency officer for the purpose of the deliberative processes involved in the functions of the Agency. It is similar to the information in document 15 and its disclosure is contrary to the public interest for similar reasons.</p> <p>Section 33(1): The information in the document is personal affairs information obtained by the Agency from third parties. It is unreasonable to release it for the reasons set out in Document 4.</p>
19	[date]	Issue cover sheet	3	Release in part Sections 30(1), 33(1) Not relevant	Release in part Sections 30(1), 33(1), 25 Not relevant	<p>The Applicant is seeking information the Agency redacted from pages 1 and 2.</p> <p>Section 30(1): The Agency redacted information from this document that is in the nature of opinion prepared by an Agency officer for the</p>

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						<p>purpose of the deliberative processes involved in the functions of the Agency. It is similar to the information in Document 15 and its disclosure is contrary to the public interest for similar reasons.</p> <p>Section 33(1): The information in the document is personal affairs information obtained by the Agency from third parties. It is unreasonable to release it for the reasons set out in Document 4.</p>
20	[date]	Incident report	3	Release in part Section 33(1) Not relevant	Not subject to review	Applicant is not seeking review of this document.
21	[dates]	Emails regarding 'details published in IFS'	2	Release in part Section 33(1)	Not subject to review	Applicant is not seeking review of this document.
22	Undated	Preliminary brief – statement made by informant	2	Release in part Section 33(1)	Release in part Sections 33(1), 25 Not relevant	Section 33(1): The information in the document is personal affairs information obtained by the Agency from third parties. It is unreasonable to release it for the reasons set out in Document 4.
23	[date]	ePDR – electronic patrol duty return	11	Release in part Section 33(1) Not relevant	Not subject to review	Applicant is not seeking review of this document.

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24	[date]	ePDR – electronic patrol duty return	5	Release in part Section 33(1) Not relevant	Not subject to review	Applicant is not seeking review of this document.
25	[date]	ePDR – electronic patrol duty return	12	Release in part Section 33(1) Not relevant	Release in part Sections 33(1), 25 Not relevant	Section 33(1): The information in the document is personal affairs information obtained by the Agency from third parties. It is unreasonable to release it for the reasons set out in Document 4.