

## Notice of Decision and Reasons for Decision

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Applicant:	'AE9'
Agency:	VicRoads
Decision Date:	30 May 2019
Exemptions considered:	Section 38
Citation:	'AE9' and VicRoads ( <i>Freedom of Information</i> ) [2019] VICmr 45 (30 May 2019)

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FREEDOM OF INFORMATION – car registration information – transfer of registration form – Vehicle Registration and Identification System (VRIS) – 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 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**

30 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] for the time period [date] to [date].
2. In its decision, the Agency identified four documents, totalling four pages, within the scope of the request. It initially decided to refuse access to all four documents in full; however, on 23 May 2019 the Agency advised that Document 4 only could be released 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 indicated he believed he was named in the documents and he wished to request an amendment to the record under section 39 of the Act.
5. Accordingly, this review relates to the three documents (Documents 1-3) to which the Agency refused access in full.
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;
  - (b) the Applicant's submission dated 17 April 2019 and information provided with the Applicant's review application;
  - (c) the Agency's submission dated 17 April 2019; and
  - (d) communications between OVIC staff, the Agency and the Applicant.
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 exemption under section 38 to refuse access to the document in full. The Agency's decision letter sets out the reasons for its decision.
11. The documents are screenshots of the Agency's Vehicle Registration and Identification System. I am constrained from describing the content of the document in any further detail as to do so may inadvertently convey exempt information.

## **Section 38**

12. Section 38 provides:

### **38 Documents to which secrecy provisions of enactments apply**

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

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

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

17. 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 (VicRoads) 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.

18. I am satisfied that the information in the documents is 'relevant information' for the purposes of section 90J of the Road Safety Act, being information 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 second condition of section 38 is satisfied.

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 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 in certain circumstances and for particular purposes. Having reviewed section 90K and 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.

22. Therefore, I am satisfied that section 90Q prohibits the Agency from disclosing the information in the documents. Accordingly, the third condition of section 38 is met.

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

23. 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.

24. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>1</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>2</sup>

25. 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 deleting the exempt information would render the documents meaningless.

#### **Conclusion**

26. Having considered the relevant exemption, I have determined that the three documents are exempt under section 38 of the Act in conjunction with Part 7B of the Road Safety Act. I have decided to uphold the Agency's decision and refuse access to documents one to three in full.

27. The Agency has indicated in the course of this Review that the fourth document may be released to the Applicant. It noted that the document would have been meaningless and unlikely to assist the Applicant if released to him as part of his initial FOI request. The Agency has offered that was the registration of the vehicle in question transferred to or from the Applicant, his name would appear under the columns of 'Acquirer' or 'Disposer', I note there are no individuals named within the document.

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<sup>1</sup> *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].

<sup>2</sup> *Honeywood v Department of Human Services* [2006] VCAT 2048 [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 [140], [155].

## **Review rights**

28. 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>3</sup>
29. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>4</sup>
30. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>5</sup>
31. 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.
32. 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>6</sup>

## **When this decision takes effect**

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

<sup>4</sup> Section 52(5).

<sup>5</sup> Section 52(9).

<sup>6</sup> Sections 50(3F) and (3FA).

## Annexure 1

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1.	[Date]	Vehicle Registration and Identification System screenshot  'Full Enquiry Response – Car'	1	Refused in full  Section 38	Refused in full  Section 38	<b>Section 38:</b>  The information contained within the document is considered 'relevant information' which is prohibited from being released under Part 7B of the Road Safety Act 1986.
2.	[Date]	Vehicle Registration and Identification System screenshot  'Status Details'	1	Refused in full  Section 38	Refused in full  Section 38	<b>Section 38:</b>  As per comments for document 1.
3.	[Date]	Vehicle Registration and Identification System screenshot  'Status Details'	1	Refused in full  Section 38	Refused in full  Section 38	<b>Section 38:</b>  As per comments for document 1.
4.	[Date]	Vehicle Registration Transfers – Transfer History	1	Release in full	Not subject to Review.	Not applicable.