

Notice of Decision and Reasons for Decision

Applicant:	'AF4'
Agency:	Victoria Police
Decision Date:	6 June 2019
Exemptions considered:	Section 31(1)(d)
Citation:	'AF4' and Victoria Police (<i>Freedom of Information</i>) [2019] VICmr 49 (6 June 2019)

FREEDOM OF INFORMATION – police investigation into possible offences – police records – LEAP records – investigation report – child abuse allegations – law enforcement documents

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 documents to the Applicant in part.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

6 June 2019

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to the following documents:

Documentation held by [named location] [redacted] unit – [named Agency officer], which conclusively gives me the name or names of parties who made child abuse accusations against me in order that I can protect myself and my family. I would also like a copy of the statements made by this person or agency...
2. In its decision, the Agency identified three documents amounting to 13 pages falling within the terms of the request. The Agency decided to grant access to the documents 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. I have examined copies of the documents subject to review and been briefed by OVIC staff who inspected the documents claimed to be exempt under section 31(1)(d).¹
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 and submissions received from the parties, including:
 - (a) the Agency's decision on the FOI request;
 - (b) the information the Applicant provided to the Agency with his FOI request, including a detailed document setting out the reasons for seeking access to the requested documents; and
 - (c) the Applicant's review request.
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 exemptions in sections 31(1)(d) and 33(1) to refuse access to some of the documents in part and one of the documents in full. The Agency's decision letter sets out the reasons for its decision.
9. The Applicant submitted that police attended [their] residence early one morning with a search warrant to search [the] premises for child abuse material. The Applicant's computer equipment and other devices were seized by police and taken away to be examined as part of a police investigation.
10. Approximately six weeks later, police returned the Applicant's equipment and [the Applicant] was advised in a subsequent letter from police that 'on the information available, police are not intending to prosecute you or investigate you further'.

¹ Section 63D provides such documents may only be inspected at an agency's premises and the Information Commissioner is not entitled to take possession of them.

11. The Applicant submits [they] and [their] family have been ‘profoundly impacted by this incident, the time this has taken and the way we have been left with no understanding of how we have been accused of this and then left hanging with no explanation’. The Applicant is concerned that ‘this accusation and subsequent raid has come from a person or other party and is a malicious, vindictive and criminal act against me and my family’. Therefore, [the Applicant] seeks the identity of any person ‘who was behind the accusations made against me’.

Section 31(1)(d)

12. The exemption in section 31(1)(d) applies to documents described broadly as ‘law enforcement documents’ if disclosure of the document would, or would be reasonably likely to, ‘disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures’.
13. The exemption in section 31(1)(d) does not apply to widespread and well known investigation methods and procedures.²
14. The Agency exempted parts of a LEAP record, investigation report (entitled ‘Full Response Report’) and an affidavit taken from a police officer that was used to obtain the search warrant executed on the Applicant’s residence.
15. I note all information provided by the Applicant in [their] review application, as summarised above, and acknowledge [their] concern about the investigation and desire to obtain further information about who, if anyone, made the allegations against [the Applicant], given their serious nature.
16. While I am unable to describe the information exempted in the documents by the Agency in detail, as to do so would reveal information that is exempt, I confirm the relevant information concerns the police investigation and discloses intelligence gathering techniques. From my review of the information, I am satisfied the information would disclose police investigation methods and techniques that are not publicly known, or at least widely-known.
17. While I note the Applicant’s personal concerns, section 31(1)(d) is directed more broadly towards protecting the ability of the Agency to undertake its law enforcement functions through maintaining confidentiality over its methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches, or possible breaches of the criminal law.
18. Accordingly, I am satisfied disclosure of the information would be reasonably likely to disclose methods or procedures for preventing or dealing with matters arising out of breaches or possible breaches of the criminal law and the information is exempt under section 31(1)(d).
19. I have decided that a small section of text on page two of the investigation report that the Agency exempted under section 33(1), is more appropriately exempted under section 31(1)(d). In my view, it reveals the methods or considerations of the Agency in conducting investigations.
20. As this is the only material exempted under section 33(1) and I am satisfied all other information exempted by the Agency is exempt under section 31(1)(d), there is no need for me to consider the application of this exemption to the documents.
21. Finally, I note information provided by the Agency in its decision letter that the Agency’s FOI decision maker was ‘unable to identify a document containing the “name or names of person who made Child Abuse accusations”’. I confirm this information is correct and the documents do not name or identify a particular person who, in the Applicant’s words, ‘was behind the accusations made against [the

² XYZ v Victoria Police [2010] VCAT 255 at [177].

Applicant]'. As stated above, I am unable to describe the information exempted in the documents by the Agency in detail, as to do so would reveal information that would disclose police investigation methods and techniques that are not publicly known, or at least widely-known.

Deletion of exempt or irrelevant information

22. 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.
23. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'³ 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 25.⁴
24. 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 refers to the user ID of the Agency officer who created the report, and not an officer related to the subject matter of the documents.
25. I note the Agency has provided the Applicant with an edited copy of the document which has retained meaning despite the deletion of exempt and irrelevant information. As such, I consider it is practicable for the Agency to provide an edited copy of the document in accordance with section 25.

Conclusion

26. On the information available, I am satisfied the exemption in section 31(1)(d) applies to the information exempted by the Agency in the documents.
27. As it is practicable for the Agency to provide the Applicant with an edited copy of the documents, I have decided to grant access to the documents in part.

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.⁵
29. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁶
30. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁷
31. 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.
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.⁸

³ *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].

⁴ *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].

⁵ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁶ Section 52(5).

⁷ Section 52(9).

⁸ Sections 50(3F) and (3FA).

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.