

Notice of Decision and Reasons for Decision

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| Applicant: | 'AF6' |
| Agency: | Victoria Police |
| Decision Date: | 7 June 2019 |
| Exemption considered: | Section 33(1) |
| Citation: | 'AF6' and Victoria Police (<i>Freedom of Information</i>) [2019] VICmr 51 (6 June 2019) |

FREEDOM OF INFORMATION – Victoria Police – Electronic Patrol Duty Return (ePDR) form – documents affecting personal privacy

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 document in full.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

7 June 2019

Reasons for Decision

Background to review

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

Documents on two Victoria Police [members] attending to a dog that was in car that was parked near [address] on [date] between [times].
2. The Agency consulted with the Applicant, seeking further information about the incident in question, including which Victoria Police branch may have attended the incident, the names of persons involved and details of the vehicle.
3. Following a response from the Applicant, the Agency amended the request to be for access to the following documents:

Documents in relation to a matter involving a vehicle parked on [street, suburb] on [date] resulting in members from the [suburb] Police Station attending the meeting of [community group] as part of their investigation into the matter.
4. In its decision, the Agency identified one document comprising 15 pages as falling within the terms of the Applicant's request. It decided to refuse access to the document in full.

Review

5. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
6. During a telephone call with OVIC staff on 27 May 2019, the Applicant was informed his details do not appear within the document and the document relates to an entire police shift. The Applicant advised he did not wish to withdraw or narrow the scope of the review. He indicated he was seeking the document in full. Accordingly, this review relates to the 15 page document to which the Agency refused access in full.
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 and submissions received from the parties, including:
 - (a) the Agency's decision on the FOI request;
 - (b) the Applicant's submission dated 3 May 2019 and information provided with the Applicant's review application; and
 - (c) discussions between OVIC staff, the Applicant and the Agency.
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 33(1) to refuse access to the document.

Section 33(1)

12. 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'.
13. The Agency determined it was impractical to consult with third parties about the release of their personal affairs information.

Does the document contain personal affairs information?

14. 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.²
15. The document contains the personal affairs information of approximately 35 third parties. The personal affairs information includes the names, residential addresses, phone numbers, dates of birth and registration numbers of the third parties. There is also other information from which the identity of the third parties could be ascertained such as physical descriptions and the location in which the Victoria Police members had contact with the individuals.
16. I am satisfied this information is the personal affairs information of individuals other than the Applicant.

Would the disclosure of the personal affairs information be unreasonable?

17. 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.
18. I have considered the following factors in determining whether the release of personal affairs information would be unreasonable in the circumstance of this matter:
- (a) The nature of the personal affairs information – The document contains personal affairs information of persons other than the Applicant who had contact with certain police officers on the date in question. I consider those officers would not want details of their contact with a law enforcement agency disseminated to the wider public as such the nature of the information in the document is sensitive. This factor weighs against disclosure.
 - (b) The circumstances in which the information was obtained – The Agency recorded the information of third parties as part of its functions in the detection, investigation and prevention of potential criminal matters. The Agency has advised that there was no further police action following the police attending the incident in question. It advised that no criminal charges were laid and thus the personal affairs information has not been aired in an open court. This factor weighs against disclosure.

¹ Sections 33(1) and (2).

² Section 33(9).

- (c) The extent to which the information is available to the public – The sensitive information contained in the document is not available in the public domain. As stated above, no information regarding the incident the Applicant is referring to has been aired in open court. Further, I consider it would be impractical for the Agency to advise of the status of each police interaction or job undertaken on the particular shift in question. This factor weighs against disclosure.
- (d) The Applicant's interest in the information being disclosed – The Applicant stated he is seeking the information as police attended a [community group] meeting he was involved in as part of their enquiries regarding the dog in the vehicle. The Applicant believes he may be named or referenced in the documents. The Agency's decision letter advised the Applicant he was not directly involved in the matter, aside from being present at the [community group] meeting where the relevant third parties were present. I can confirm from reviewing the documents that no information in the document relates directly, or indirectly to the Applicant. This factor weighs against disclosure.
- (e) Whether the Applicant's purpose for seeking access to the information is likely to be achieved by granting him access to that information – As noted above, the Applicant advised in his submission he was seeking access to the document to request an amendment of the record under section 39. Given the Applicant is not the subject of or referred to in the document, it would be unlikely he would have cause under section 39 to seek a correction or amendment. As such, the release of the document will not assist his purpose. This factor weighs against disclosure.
- (f) Whether the release of the information could lead to the person to whom it relates suffering stress and anxiety – As disclosure under the Act is unrestricted and unconditional, this is to be interpreted by the capacity of any member of the public to potentially identify a third party. The Applicant, or other members of the community may be able to identify third parties from information contained within the document. I consider it likely third parties would suffer stress and anxiety from the release of information relating to their interactions with police. This factor weighs against disclosure.

19. Having considered the above factors, I have determined it is unreasonable to release the third party information.

Deletion of exempt or irrelevant information

- 20. 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.
- 21. 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

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].

22. I have considered the effect of deleting irrelevant and exempt information from the documents. In my view, it is not practicable for the Agency to delete the irrelevant and exempt information, because the deletion of so much information would render the document meaningless.

Conclusion

23. On the information available, I am satisfied the document is exempt in full under section 33(1).

Review rights

24. 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
25. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁶
26. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁷
27. 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.
28. 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

When this decision takes effect

29. 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.

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).