



Office of the Victorian
Information Commissioner

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Notice of Decision and Reasons for Decision

Applicant:	'AF7'
Agency:	VicRoads
Decision Date:	13 June 2019
Exemptions considered:	Section 38
Citation:	'AF7' and VicRoads (<i>Freedom of Information</i>) [2019] VICmr 52 (13 June 2019)

FREEDOM OF INFORMATION – car registration information – vehicle registration and identification system (VRIS) – dealer online vehicle registration form – documents to which a secrecy provision applies - *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 some of the information in the documents.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

13 June 2019

Reasons for Decision

Background to review

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

The first registration document lodged after [date] for the following Vehicle Identification Numbers (VINs):

[VIN 1]
[VIN 2]
[VIN 3]
[VIN 4]

Where there has been no registration document lodged for the above VINs after [date], I require the most recent registration document lodged prior to [date] and documentation confirming change of registration number.

2. Following consultation with the Agency, the Applicant clarified the request confirming original or 'old' registration numbers for the vehicles and their new registration numbers.
3. In its decision, the Agency identified 10 documents falling within the terms of the Applicant's request. It decided to release three documents in full and release seven documents in part.

Review

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. The Applicant's representative advised that, as a company liquidator, it is seeking more information about the vehicles' change of registration as it had come to the Applicant's attention that the vehicles, which were once registered to a company in liquidation, are now registered to third parties.
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) information provided with the Applicant's review application.
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 in section 38 of the FOI Act in conjunction with Part 7B of the *Road Safety Act 1986* (Vic) (**Road Safety Act**) to refuse access to certain information in the documents. The Agency's decision letter sets out the reasons for its decision.

Section 38

11. 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.

12. 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).

13. The Agency applied section 38 in conjunction with Part 7B of the Road Safety Act, which prohibits the disclosure of 'relevant information' except in accordance with that Act.

14. The Road Safety Act is an enactment in force. Therefore, I am satisfied the first condition of section 38 is met.

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

16. 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.

17. I am satisfied information in the documents is 'relevant information' for the purposes of section 90J of the Road Safety Act. Information exempted by the Agency relates to its registration and licensing functions and that an individual's identity can be reasonably ascertained from the deleted information. Therefore, I am satisfied the second condition of section 38 is met.

18. 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.

19. Section 90I of the Road Safety Act defines 'relevant person'. The definition includes Agency officers.

20. The information exempted by the Agency is:

(a) the name, drivers licence number, concession card number, address, mobile telephone number and signature of third parties on the vehicle registration forms; and

(b) the name, drivers licence number, client ID current and previous addresses of third parties on the Vehicle Registration and Identification System print outs.

21. Section 90K of the Road Safety Act authorises disclosure of relevant information in certain circumstances.

22. The Applicant submitted it should be granted access to the information under section 90K of the Road Safety Act, which authorises disclosure of relevant information where providing the information is of community interest or benefit.¹

23. The Applicant submitted the insolvency process (in accordance with the *Corporations Act 2001* (Cth)) has significant social and economic benefits to the community. I have considered this submission. However, in my view the only parties who may benefit from the release of the relevant information would be the creditors of the company in liquidation referred to above in paragraph 5. I consider this represents a private or commercial interest, rather than a public or community benefit.

24. The Victorian Civil and Administrative Tribunal (**VCAT**) has previously determined that licence holders would not expect their details to be revealed to potential creditors.²

25. On the information before me, it does not appear any of the exemptions to the prohibition in section 90Q of the Road Safety Act apply in the circumstances.

26. Therefore, I am satisfied section 90Q of the Road Safety Act prohibits the Agency from disclosing the information in the documents and the third condition of section 38 is met.

27. Accordingly, I am satisfied the information sought by the Applicant in the documents is exempt from release under section 38 of the FOI Act.

¹ Section 90K(a)(i)(C) of the *Road Safety Act*.

² *Telstra Corp v VicRoads* [2001] VCAT 1699 at [20]-[21].

Deletion of exempt or irrelevant information

28. 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.
29. The Applicant does not seek access to the personal affairs information of Agency officers. The Applicant deleted this irrelevant information in the documents in accordance with section 25. I have reviewed the documents and am satisfied the personal affairs information deleted by the Agency is irrelevant information.

Conclusion

30. On the information available, I am satisfied information in the documents is exempt under section 38 in conjunction with Part 7B of the Road Safety Act. Accordingly, my decision is the same as the Agency's decision.

Review rights

31. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.³
32. The Applicant may apply to VCAT for a review up to 60 days from the date it is given this Notice of Decision.⁴
33. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁵
34. 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.
35. 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.⁶

When this decision takes effect

36. 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.

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

⁴ Section 52(5).

⁵ Section 52(9).

⁶ Sections 50(3F) and (3FA).