



Office of the Victorian  
Information Commissioner

t 1300 00 6842  
e [enquiries@ovic.vic.gov.au](mailto:enquiries@ovic.vic.gov.au)  
w [ovic.vic.gov.au](http://ovic.vic.gov.au)

PO Box 24274  
Melbourne Victoria 3001

## Notice of Decision and Reasons for Decision

---

Applicant:	'AG5'
Agency:	Victoria Police
Decision Date:	5 July 2019
Exemptions considered:	Section 33(1)
Citation:	'AG5' and Victoria Police ( <i>Freedom of Information</i> ) [2019] VICmr 59 (5 July 2019)

---

FREEDOM OF INFORMATION – police records – motor vehicle accident – Electronic Patrol Duty Return – ePDR – handwritten notes of attending police members – Traffic Incident System database notes – irrelevant information – 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 is the same as the Agency's decision in that I have decided to grant access to the documents in part.

My reasons for decision follow.

Sven Bluemmel  
Information Commissioner

5 July 2019

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency for access to documents relating to a traffic incident that occurred on [specified date] involving the Applicant.
2. The Applicant is seeking the documents because they were injured as a result of the incident.
3. In its decision, the Agency identified certain documents falling within the terms of the Applicant's request. It decided to grant access to the 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. I have examined copies of the documents subject to review.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered all communications and submissions received from the parties, including:
  - (a) the Agency's decision on the FOI request; and
  - (a) the information provided with the Applicant's review application.
8. 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

9. The Agency relied on the exemption in section 33(1) to refuse access to parts of the documents. The Agency's decision letter sets out the reasons for its decision.

### Section 33(1)

10. 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;<sup>1</sup>
  - (b) such disclosure would be 'unreasonable'.
11. The concept of 'unreasonable disclosure' involves balancing the competing public interest in the disclosure of official information with the personal interest in privacy. In the particular circumstances of this matter, I have had regard to:
  - (a) the nature of the personal affairs information (for example, whether it is sensitive or its current relevance);
  - (b) the circumstances in which the information was obtained (for example, whether it was obtained involuntarily or in confidence);

---

<sup>1</sup> Section 33(1) and (2).

- (c) the Applicant's interest in the information (including their purpose for seeking the access to the documents);
- (d) whether any public interest would be promoted by the release of the information;
- (e) whether the individuals to whom the information relates object, or would be reasonably likely to object to the release of the information;
- (f) the extent to which the information is available to the public; and
- (g) the likelihood of further disclosure of the information, if released.

12. The Agency advised it consulted with third parties named in the documents to seek their views on the disclosure of their personal affairs information, however the third parties did not respond to the Agency.

*Do the documents contain the personal affairs information of individuals other than the Applicant?*

13. Information relating to the 'personal affairs' of a person includes information that identifies any person or discloses their address or location. It also includes any information from which this may be reasonably determined.<sup>2</sup>
14. The documents are the Agency's Electronic Patrol Duty Return (**ePDR**) Form (Document 1), Patrol Duty Return (Document 2), the Agency's officer's handwritten notes made in the course of investigating the incident (Document 3) and a printout of notes from the Traffic Incident System database (Document 4).
15. The following summarises the nature of the information in the documents that was exempted under section 33(1) by the Agency:
- (a) names and dates of birth of individuals such as witnesses;
  - (b) telephone and residential address contact details of third party individuals;
  - (c) vehicle registration numbers; and
  - (d) preliminary statements provided to the Agency by individuals other than the Applicant.
16. I am satisfied the information in the documents is information relating to the personal affairs of individuals other than the Applicant.

*Would disclosure involve the unreasonable disclosure of personal affairs information?*

17. I have determined disclosure of the personal affairs information contained in the requested documents would be unreasonable for the following reasons:
- (a) The personal affairs information is capable of identifying a third party.
  - (b) I acknowledge the Applicant's personal interest in the documents, however the interest of the Applicant needs to be balanced against the public interest in the Agency preserving the confidentiality of its investigative processes, including the ability to conduct investigations and obtain the cooperation of witnesses during such investigations.
  - (c) The personal affairs information was provided in a specific context involving the investigation of a motor vehicle accident. There is a strong public interest in maintaining the Agency's ability to obtain information voluntarily from members of the community in relation to such incidents. If personal affairs information of witnesses were released, this ability to collect

---

<sup>2</sup> Section 33(9).

information may be impaired, as people may be less likely to provide frank information on a voluntary basis and jeopardise the ability of the Agency to carry out its functions.

- (d) I have no information about whether the third parties would object to the release of their personal affairs information. However, I consider there is some expectation of privacy in the communication of this information to this Agency in light of its law enforcement functions.

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

18. 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.
19. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>3</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>4</sup>
20. I have considered the information the Agency deleted from the document as irrelevant. I agree the information falls outside the scope of the Applicant's request.

### **Conclusion**

21. On the information available, I am satisfied the exemption in section 33 applies to some of the documents. I have decided to uphold the decision of the Agency to grant access to some of the documents in part.

### **Review rights**

22. 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>5</sup>
23. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>6</sup>
24. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>7</sup>
25. 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.
26. 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>8</sup>

### **When this decision takes effect**

27. 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.

---

<sup>3</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>4</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].

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

<sup>6</sup> Section 52(5).

<sup>7</sup> Section 52(9).

<sup>8</sup> Sections 50(3F) and (3FA).