

Notice of Decision and Reasons for Decision

Applicant:	'AG7'
Agency:	Victoria Police
Decision Date:	11 July 2019
Exemptions considered:	Section 33(1)
Citation:	'AG7' and Victoria Police (<i>Freedom of Information</i>) [2019] VICmr 61 (11 July 2019)

FREEDOM OF INFORMATION – LEAP – Law Enforcement Assistance Program – 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 fresh decision to refuse access to documents requested by the Applicant under the FOI Act.

My decision on the Applicant's request differs from the Agency's decision in that I have decided to release additional information in the document.

The Schedule of Documents in **Annexure 1** sets out my decision in relation to the document.

My reasons for decision follow.

Sven Bluemmel
Information Commissioner

11 July 2019

Reasons for Decision

Background to review

1. On 30 August 2018, the Applicant made a request to the Agency for access to the following documents:

I would like to know what police officers have access (sic) my records on the LEAP [Law Enforcement Assistance Program] database between the days [date range]...

2. In its decision letter dated 31 January 2019, the Agency identified one document falling within the terms of the Applicant's request. It decided to grant access to the document 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. Section 49M(1) permits an agency to make a fresh decision on an FOI request during a review. On 14 May 2019, the Agency made a fresh decision to release further information. This is within the required 28 days under section 49M(2).
5. The Applicant did not agree with the Agency's fresh decision and, as required by section 49MA(2), I proceeded with my review on the basis of the fresh decision.
6. I have examined a copy of the document subject to review (**the Document**).
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 fresh decision on the FOI request, dated 14 May 2019;
 - (b) the Applicant's review application; and
 - (c) the Agency's submissions dated 27 June 2019, 1 July 2019, and 2 July 2019.
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 33(1). The Agency's decision letter sets out the reasons for its decision.

Section 33(1) – Documents containing personal affairs information

11. 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'.
12. Information relates to the 'personal affairs' of a person if it is reasonably capable of identifying them, or of disclosing their address or location.² It has also been held information relates to a person's personal affairs if it 'concerns or affects that person as an individual'.³
13. The Victorian Civil and Administrative Tribunal (**VCAT**) has held a document will disclose personal affairs information if the document is capable of, either directly or indirectly, identifying a particular individual whose personal affairs are disclosed. As the nature of disclosure under the FOI 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.

Does the document contain the 'personal affairs information' of individuals other than the Applicant?

14. The Document contains the surnames and employee numbers of an Agency officer and two external agency officers.
15. I am satisfied section 33(1) does not apply to the personal affairs information of the external agency officers, as this is irrelevant information under section 25 of the FOI Act. I provide further information about this at the end of my reasons for decision.
16. Accordingly, I will only consider the application of section 33(1) to the name of the Agency officer.

Would release of the personal affairs information be unreasonable?

17. The concept of 'unreasonable disclosure' involves determining whether the public interest in disclosure of official information is outweighed by the personal interest in privacy.
18. I have determined disclosure of the personal affairs information contained in the Document is not unreasonable for the following reasons:

(a) Nature of the personal affairs information and the circumstances in which it was obtained –

The personal affairs information comprises the surname and employee number of an Agency officer.

VCAT has generally accepted there is nothing particularly sensitive about matters occurring or arising out of the course of one's official duties.⁴

I do not consider there to be anything particularly sensitive or confidential about the name and employee number of the individual contained in the Document. The individual was carrying out their usual employment duties.

(b) Whether the individuals to whom the information relates object, or would be likely to object to the release of the information –

¹ Section 33(1) and (2).

² Section 33(9).

³ *Hanson v Department of Education and Training* [2007] VCAT 123 at [9].

⁴ *Milthorpe v Mt Alexander Shire Council* (1997) 12.

The Agency submits consultation with the Agency officer was unreasonable and impracticable due to the Agency officer being on extended leave.

- (c) The Applicant's interest in the information, and whether their purpose for seeking the information is likely to be achieved –

The FOI Act provides a general right of access that can be exercised by any person regardless of their motive or purpose for seeking access to a document. However, the reasons why an applicant seeks to access a document is a relevant consideration in determining whether disclosure would be unreasonable.

In their FOI request, the Applicant states their motive for seeking the information is to address a suspicion that:

a police officer may have accessed my records on the LEAP database at my employer's request, after my employer started questioning me about [the nature of] convictions, shortly before he told me he didn't have any more work for me. This happened about a week after my employer stated that he was catching up with an old friend who was a member of Victoria Police.

I acknowledge the Applicant's strong personal interest in the Document. I consider the Applicant's purpose for seeking the information may be achieved by granting access to that information.

- (d) Whether any public or important interest would be promoted by release of the information

I consider there to be a public interest in ensuring Agency officers access the sensitive information contained in the LEAP database lawfully.

19. I have determined that the personal affairs information of the Agency officer be released to the Applicant.

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'⁵ 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 25.⁶
22. During the review process, the Agency advised it had incorrectly stated in its decision letter that irrelevant information had been deleted.
23. The Agency submits external agency staff conducted searches on the Applicant as a result of queries from police members. The Agency provided the following example of when such an enquiry may be made:

... to conduct licence checks while the members are out on the road and have pulled over a driver for a variety of reasons.

⁵ *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].

⁶ *Honeywood v Department of Human Services* [2006] VCAT 2048 [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 [140], [155].

24. The Agency further submits the searches conducted by external agency staff could be considered irrelevant, as the Applicant 'was only seeking data in regard to police members accessing [their] LEAP records'.
25. I consider a police member accessing the Applicant's LEAP records via an intermediary falls within the scope of the Applicant's request. I therefore do not consider the searches conducted by external agency staff to be irrelevant information.
26. However, I consider the names and employee numbers of the external agency staff to be irrelevant to the Applicant's request.
27. I have considered the effect of deleting irrelevant information from the Document. In my view, it is practicable for the Agency to delete irrelevant information, because it would not require substantial time and effort, and the edited document would retain meaning.

Conclusion

28. On the information available, I am satisfied the exemption in section 33(1) does not apply to the Document.
29. Accordingly, I have decided to grant access to additional information contained in the Document to the Applicant.
30. The Schedule of Documents in **Annexure 1** contains details of my decision.

Review rights

31. 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.⁷
32. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁸
33. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁹
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.¹⁰

When this decision takes effect

36. I have decided to release a document that contains information relating to the personal affairs of a third party.
37. The relevant third party will be notified of my decision and is entitled to apply to VCAT for a review within 60 days from the date they are given notice.

⁷ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁸ Section 52(5).

⁹ Section 52(9).

¹⁰ Sections 50(3F) and (3FA).

38. For that reason, my decision does not take effect until the relevant review period (stated above) expires. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1.	Various	Law Enforcement Assistance Program (LEAP) audit report	2	Release in part Sections 33(1), 25	Release in part Section 25	<p>In its decision letter, the Agency stated section 25 had been applied. However, in subsequent submissions to OVIC, the Agency advised the reference to section 25 was in error, and no irrelevant information was deleted.</p> <p>On review, I have determined that the surnames and employee numbers of external agency staff are irrelevant and are to remain deleted.</p> <p>All other information is to be released.</p>