

## Notice of Decision and Reasons for Decision

---

Applicant:	'A12'
Agency:	Victoria Police
Decision Date:	2 August 2019
Exemptions considered:	Section 38 of the <i>Freedom of Information Act 1982</i> (Vic) in conjunction with section 33 of the <i>Emergency Services Telecommunications Authority Act 2004</i> (Vic)
Citation:	'A12' and Victoria Police ( <i>Freedom of Information</i> ) [2019] VICmr 74 (2 August 2019)

---

FREEDOM OF INFORMATION – Triple zero call – 000 – welfare check – Electronic Patrol Duty Return (ePDR) form – event chronology – confidential information – secrecy provision – *Emergency Services Telecommunications Authority Act 2004* (Vic) – ESTA Act

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 differs from the Agency's decision in that I have determined that parts of the document are exempt under a different exemption.

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

My reasons for decision follow.

**Joanne Kummrow**  
Public Access Deputy Commissioner

2 August 2019

## Reasons for Decision

### Background to review

1. On 24 February 2019, the Applicant made a request to the Agency for access to:
  1. Copy of the transcript/recording of the (anonymous) triple 000 call requesting a Welfare Check to be undertaken by Victoria Police
  2. On whose authority was the Welfare Check initiated
  3. On what basis/grounds was the decision made by the Victoria Police to undertake a Welfare Check
  4. Copy of documentation highlighting the audit train ensuring adherence to Whistleblowing protection had been adhered to
  5. Copy of relevant communications between [named person] and/or her representatives and the Victoria Police requesting that the said Welfare Check to be undertaken
  6. Copy of relevant communications between [named person] and/or her representatives and the Victoria Police requesting the said Welfare Check to be undertaken
  7. Name of the person initiating the anonymous 000 call that resulted in the Victoria Police undertaking the said Welfare Check
  8. Copy of the attending Police Notes
  9. Copy of conclusions made by the attending Victoria Police officers.
2. By letter dated 19 March 2019, the Agency notified the Applicant it had identified three documents falling within the terms of the request.
3. The Agency decided to grant access to two documents in part and refuse access to one document in full.

### Review

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. On 8 July 2019, the Applicant limited the scope of the review to the name of the person who initiated the welfare check only.
6. I have examined copies of the documents subject to review. I have been briefed by OVIC staff who inspected the parts of the documents exempted by the Agency under section 31(1).<sup>1</sup>
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 received from the parties, including:
  - (a) the Agency's decision on the FOI request;
  - (b) information provided with the Applicant's review application, dated 4 April 2019; and
  - (c) the Applicant's email correspondence, dated 6 May and 8 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

---

<sup>1</sup> 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.

only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.

### Review of exemptions

10. The Agency relied on the exemptions under sections 30(1)(d), 31(1)(d), 33(1) and 35(1)(b) to refuse access to parts of the documents. The Agency's decision letter sets out the reasons for its decision.

### ***Section 38 – Document to which secrecy provisions of enactments apply***

11. Section 38 provides:

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 section 38 to apply to an enactment, the enactment must be formulated with such precision that it specifies the actual information sought to be withheld.
13. I am satisfied the *Emergency Services Telecommunications Authority Act 2004* (Vic) (the **ESTA Act**) is an enactment for the purposes of section 38.
14. Section 33(2) of the ESTA Act prohibits the recording, disclosure, communication or use of confidential information received in the course of carrying out duties under the ESTA Act, except to the extent necessary to perform duties under that Act. Unauthorised disclosure of such information is an offence.
15. The penalty associated with unauthorised disclosure highlights Parliament's intention that such information should remain protected.
16. Section 33(1) of the ESTA Act defines 'confidential information' as  

...any information relating to calls received or messages communicated by the Authority [the Emergency Services Telecommunications Authority] in the course of providing a service to an emergency services and other related services organisation.
17. The confidentiality required in relation to emergency calls assists the Authority to act in a manner that promotes trust and open communication in accordance with its legislative obligations.<sup>2</sup>
18. The Agency is an emergency services organisation.
19. Document 1 is an Electronic Patrol Duty Return Form. I am satisfied part of the information in Document 1 is confidential information relating to calls received from the Authority in the course of providing a service to the Agency.
20. Document 2 is an Event Chronology. I am satisfied part of the information in Document 2 is confidential information relating to calls received from the Authority in the course of providing a service to the Agency.

---

<sup>2</sup> Section 28(2)(a) of the ESTA Act provides the Authority and all persons, to whom any emergency telecommunications and other communications services are provided, must ensure that, in the course of the provision of any such services, they act in a manner that promotes trust and open communication.

21. Document 3 is an audio record of a triple zero call. I am satisfied the triple zero call constitutes confidential information relating to calls received and messages communicated by the Authority in the course of providing a service to the Agency.
22. I do not consider the exceptions in section 33(3) of the ESTA Act applicable in this instance.
23. Therefore, I am satisfied the information the Applicant seeks, as contained in Documents 1 to 3, is confidential information for the purposes of section 33 of the ESTA Act and is exempt from disclosure under section 38 of the FOI Act.

### ***Conclusion***

24. In light of my decision and the narrowed scope of this review, it is not necessary for me to consider the additional exemptions under sections 30(1)(d), 31(1)(d), 33(1) and 35(1)(b) which were relied on by the Agency.

### **Review rights**

25. 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>3</sup>
26. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>4</sup>
27. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>5</sup>
28. 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.
29. 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>6</sup>

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

30. 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.

---

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

<sup>4</sup> Section 52(5).

<sup>5</sup> Section 52(9).

<sup>6</sup> Sections 50(3F) and (3FA).

Annexure 1 –Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1.	[Date]	Electronic Patrol Duty Return (ePDR)	15	Release in part Sections 30, 31(1)(d), 33 and 35(1)(b), 25	Release in part Section 38	Section 38 applies to the following information contained in the 'details' column on page 7:  <ul style="list-style-type: none"> <li>all information following the word 'REASON' and ending at the word preceding 'NFD'.</li> </ul> All other redactions applied by the Agency not subject to review.
2.	[Date]	Event Chronology	1	Release in part Sections 30, 31(1)(d), 33 and 35(1)(b), 25	Release in part Section 38	Section 38 applies to the information redacted by the Agency under the 'Action' column, corresponding to the following 'Times':  <ul style="list-style-type: none"> <li>[redacted]</li> </ul> All other redactions applied by the Agency not subject to review.
3.	[Date]	000 Call [Date] – [duration] mins – Waveform Audio File format	N/A	Refuse in full Sections 33, 35(1)(b)	Refused in full Section 38	Section 38 applies to the 000 call in its entirety.