

Notice of Decision and Reasons for Decision

Applicant:	'AH6'
Agency:	Victoria Police
Decision Date:	25 July 2019
Exemptions considered:	Section 33(1)
Citation:	'AH6' and Victoria Police (<i>Freedom of Information</i>) [2019] VICmr 69 (25 July 2019)

FREEDOM OF INFORMATION – Law Enforcement Assistance Program (LEAP) – LEAP Incident Report – police investigation – personal affairs information of third parties

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 release the documents in part.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

25 July 2019

Reasons for Decision

Background to review

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

... i apply for document[s] , that are listed in police leap data base , under me [Applicant's name] ,' make threat to kill" ,[specific date].
2. In its decision, the Agency identified a document falling within the terms of the Applicant's request and 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. I have examined a copy of the document subject to review.
5. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
6. I have considered all communications and submissions received from the parties, including:
 - (a) the Agency's decision on the FOI request dated 20 March 2019;
 - (b) the Applicant's review request dated 28 March 2019;
 - (c) the Applicant's submission dated 12 April 2019; and
 - (d) information provided by the Agency during the handling of this review.
7. 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

8. The Agency relied on the exemption in section 33(1) to refuse access to parts of the document.
9. The Agency also deleted the employee number of the staff member who printed the LEAP Incident Report in accordance with section 25 on grounds it was not relevant to the Applicant.
10. The Agency's decision letter sets out the reasons for its decision.
11. The Applicant submits 'the [LEAP] document / notes and files have affected my life, my income and future life and income' and disagrees with the information contained in the LEAP Incident Report.

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. 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
14. 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.
15. Section 33(2A) requires that, in deciding whether the disclosure of a document would involve the unreasonable disclosure of information relating to the personal affairs of any person, I must take into account whether the disclosure of the information would, or would be reasonably likely to, endanger the life or physical safety of any person.
16. In deciding whether disclosure of a document would involve the unreasonable disclosure of a third party’s personal affairs information, an agency must notify that person (or their next of kin, if deceased) an FOI request has been received for documents containing their personal information and seek their view as to whether disclosure of the document should occur.³ However, this obligation does not arise if:
 - (a) the notification would be reasonably likely to endanger the life or physical safety of a person, or cause them undue distress, or is otherwise unreasonable in the circumstances;
 - (b) the notification would be reasonably likely to increase the risk to the safety of a person experiencing family violence; or
 - (c) it is not practicable to do so.⁴
17. The Agency determined it was not practicable to consult with the third party whose information is contained the documents and provided sufficient reasons to support this decision.
18. The following matters are particularly relevant, in the circumstances of this case:
 - (a) the nature of the personal affairs information (for example, whether it is sensitive or its current relevance);
 - (b) the extent to which the information is publicly available;
 - (c) the circumstances in which the information was obtained;
 - (d) the Applicant’s interest in the information, including [their] purpose or motive for seeking access to the documents;

¹ Sections 33(1) and (2).

² Section 33(9).

³ Section 33(2B).

⁴ Section 33(2C).

- (e) whether any public interest would be promoted by disclosure of the information;
 - (f) the likelihood of further disclosure of the information if it is released; and
 - (g) whether the individual to whom the information relates consents or objects to its disclosure.
19. I am satisfied the document contains personal affairs information, being the address and other identifying information concerning a third party.
20. In the circumstances, I have decided disclosure of the personal affairs information of the third party in the document would be unreasonable for the following reasons:
- (a) the nature of the information is particularly sensitive, given it was provided in the context of reporting an alleged crime and subsequent investigation;
 - (b) I acknowledge the Applicant has a legitimate personal interest in the information, which [they] provided to the Agency. However, the information was not recorded by the Agency officer verbatim. Rather, the document contains notes recorded by the Agency officer based on information provided by the Applicant during the investigation of the alleged incident;
 - (c) I do not consider release of the information would promote the public interest;
 - (d) the information in the document is not publicly available;
 - (e) given the context in which the Agency obtained the information, I am satisfied the third party to whom the personal affairs information relates would be reasonably likely to object to the release of their personal affairs information;
 - (f) given the passage of time since the documents were created, the address of the third party may have changed. Therefore, release of this information may involve the release of personal affairs information of individuals unrelated to the alleged incident;
 - (g) the nature of disclosure of a document under the FOI Act is unconditional and unrestricted, which means an applicant is free to disseminate widely or use a document as they choose;⁵ and
 - (h) given the matters to which the documents refer, I consider there may be a risk that disclosure of some of the information contained in the documents could endanger the physical safety of a person.
21. Having considered the relevant exemption, I have determined that the document is exempt in part under section 33(1).
22. I also consider the User ID of the Agency officer who printed the LEAP Incident Report is irrelevant information as it falls outside the scope of the Applicant's request.

Deletion of exempt or irrelevant information

23. 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.

⁵ *Victoria Police v Marke* [2008] VSCA 218 at [68].

24. Determining what is 'practicable' requires consideration of the effort in making the deletions or editing a document 'from a resources point of view'⁶ and the effectiveness of any deletions. Where deletions would render a document meaningless they are not 'practicable' and release of the document is not required in accordance with section 25.⁷
25. I have considered the effect of deleting exempt and irrelevant information from the documents. In my view, it is practicable for the Agency to delete the exempt information as to do so it would not in my view require substantial time and effort, and the edited documents would retain meaning.

Conclusion

26. On the information available, I am satisfied the exemption in section 33(1) applies to the information exempted by the Agency in the document. I also consider the User ID of the Agency officer who printed the LEAP Incident Report is irrelevant information and is to remain redacted in accordance with section 25.
27. As it is practicable to delete exempt and irrelevant information from the document, I have determined to grant access to the document in part.

Review rights

28. 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.⁸
29. The Applicant may apply to VCAT for a review up to 60 days from the date [they are] given this Notice of Decision.⁹
30. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁰
31. 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.
32. 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.¹¹

When this decision takes effect

33. 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.

⁶ *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].

⁷ *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].

⁸ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

⁹ Section 52(5).

¹⁰ Section 52(9).

¹¹ Sections 50(3F) and (3FA).