

## Notice of Decision and Reasons for Decision

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Applicant:	'A13'
Agency:	Victoria Police
Decision Date:	7 August 2019
Exemptions considered:	Section 33(1)
Citation:	'A13' and Victoria Police ( <i>Freedom of Information</i> ) [2019] VICmr 75 (7 August 2019)

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FREEDOM OF INFORMATION – police notes – handwritten notes of attending police members - personal affairs information – unreasonableness

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 the document 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 the document in full.

My reasons for decision follow.

Sven Bluemmel  
**Information Commissioner**

7 August 2019

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency for access to documentation, correspondence records and notes taken by three specified sworn members of the Agency regarding a deceased estate.
2. In its decision, the Agency identified one document falling within the terms of the Applicant's request, consisting of three separate entries made by the Agency's members. It decided to deny access to the document in full, and release one document in full outside of the FOI Act.

### 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; and
  - (b) the Applicant's submissions dated 22 March 2019 and information provided with the Applicant's review application.
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 section 33(1) to refuse access to the document. The Agency's decision letter sets out the reasons for its decision.

### **Section 33(1)**

9. 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; and
  - (a) such disclosure would be 'unreasonable'.

### *Does the document contain personal affairs information?*

10. 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.<sup>1</sup>

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<sup>1</sup> Section 33(9).

11. The information the Agency exempted under section 33(1) includes the names, dates of birth, phone numbers and contents of statements of third parties in relation to a complaint. I am satisfied this information is the personal affairs information of individuals other than the Applicant.

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

12. 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. In determining whether the release of personal affairs information would be unreasonable in the circumstances of this matter, I have had regard to the following factors:
- (a) the nature of the personal affairs information: The document contains personal affairs information of persons other than the Applicant, including third party names, dates of birth, contact details and statements made to the Agency. The content of the document concerns allegations of theft reported to the Agency. Accordingly, while noting the Applicant provided some of the information in the document to the Agency, the nature of the information is inherently sensitive. This weighs against disclosure.
  - (b) the circumstances in which the information was obtained: The Applicant seeks access to a copy of any notes, correspondence and documents made in relation to a complaint they made to the Agency. The Agency recorded information provided by the Applicant and third parties as part of its functions in the detection, investigation and prevention of past and future criminal matters. However, from the face of the document, the allegations do not appear to have been tested in open court. This weighs against disclosure.
  - (c) the extent to which the information is available to the public: The sensitive information contained in the document is not available in the public domain. As stated above, from the face of the document, the allegations do not appear to have been tested in open court. This weighs against disclosure.
  - (d) the Applicant's interest in the information being disclosed: The Applicant submits they seek an unredacted copy of the document to commence civil litigation relating to a deceased estate. I accept this represents a genuine and personal reason for seeking access to the information. This supports disclosure.
  - (e) whether any public interest would be promoted by the release of the information: The Applicant's interest in obtaining the information is private, and there are no other particular public interest factors in favour of disclosure.
  - (f) whether the individuals to whom the information relates object, or would be likely to object, to the release of the information: Given the circumstances in which the Agency obtained the information, I am satisfied the third parties would be reasonably likely to object to its release. This weighs against disclosure.
  - (g) the likelihood of further disclosure of the information, if released.
13. The Agency indicated that it did not consult with any relevant third parties as to their views on release of their personal affairs information.
14. I have determined disclosure of the personal affairs information contained in the requested document would be unreasonable for the following reasons.
- (a) The Applicant is seeking this information to commence civil action. I acknowledge the Applicant's personal interest in the document, however, the interest of the Applicant needs to

be balanced against the public interest in protecting the personal privacy of third parties, and the ability of the Agency to fulfil its public functions.

- (b) The personal affairs information was provided in a specific context involving an investigation. There is a strong public interest in maintaining the Agency's ability to obtain information voluntarily from members of the community in relation to investigations. I am satisfied, in the particular circumstances of this case, that if personal affairs information of witnesses were to be released, this ability to collect information may be impaired, as people may be less likely to provide frank information on a voluntary basis and this could jeopardise the ability of the Agency to carry out its functions.
  - (c) I have no information about whether the third parties would object to the release of their personal affairs information. However, I consider that there is an expectation of privacy in the communication of this information to the Agency in light of its law enforcement functions.
  - (d) I can see no pervasive countervailing public interest in the disclosure of this information.
15. Upon balancing the above considerations, I am satisfied the exemption in section 33(1) applies to the document. I have decided to uphold the decision of the Agency to refuse access to the document.

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

16. 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.
17. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>2</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>3</sup>
18. I have considered the effect of deleting irrelevant and exempt information from the document. I am satisfied that any deletions would render the document meaningless, and for this reason it is exempt in full.

#### ***Conclusion***

19. On the information available, I am satisfied the exemption in section 33(1) applies to the document. Accordingly, I have decided to refuse access to the document in full.

#### ***Review rights***

20. If either party to this review is not satisfied with my decision, they are entitled to apply to the VCAT for it to be reviewed.<sup>4</sup>
21. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>5</sup>
22. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>6</sup>

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<sup>2</sup> *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].

<sup>3</sup> *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].

<sup>4</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

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

<sup>6</sup> Section 52(9).

23. 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.
24. 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>7</sup>

***When this decision takes effect***

25. 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.

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<sup>7</sup> Sections 50(3F) and (3FA).