

Notice of Decision and Reasons for Decision

Applicant:	'AJ6'
Agency:	Emergency Services Telecommunications Authority
Decision Date:	23 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:	'AJ6' and <i>Emergency Services Telecommunications Authority (Freedom of Information)</i> [2019] VICmr 87 (23 August 2019)

FREEDOM OF INFORMATION – triple zero call – confidential information – applicable secrecy provision

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 refuse access to the documents in full.

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
23 August 2019

Reasons for Decision

Background to review

1. On 28 May 2019, the Applicant made a request to the Agency for access to:

... all records and documents held in relation to the above-mentioned accident, including but not limited to, a record of the relevant Triple Zero call.
2. In its decision dated 24 June 2019, the Agency notified the Applicant it had identified three documents (the **Documents**) falling within the terms of the Applicant's request. The Agency refused access to the Documents in full.

Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
5. I have considered all communications and submissions received from the parties, including:
 - (a) the Agency's decision on the FOI request;
 - (b) information provided with the Applicant's review application on 28 June 2019; and
 - (c) the Agency's correspondence dated 10 July 2019 and submission dated 18 July 2019.
6. I have listened to the triple zero call audio '[specified audio record]: 000 Call [date] – 5.04 mins' (**Document 1**) and the radio transmissions (**Document 3**) and examined a copy of 'CAD Chronology Report Event ID: [specified number]' (**Document 2**).
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 exemptions in sections 33(1) and 38 to refuse access to the documents. The Agency relies upon section 38 of the FOI Act in conjunction with section 33 of the *Emergency Services Telecommunication Authority Act 2004* (Vic) (**ESTA Act**).
9. The Agency's decision letter sets out the reasons for its decision.

Section 38

10. 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.

11. 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.
12. Section 33(1) of the ESTA Act defines 'confidential information' as:

... any information relating to calls received or messages communicated by the Authority in the course of providing a service to an emergency services and other related services organisation.
13. 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. The penalty associated with unauthorised disclosure highlights Parliament's intention that such information should remain protected.
14. The documents constitute information relating to a triple zero call.
15. I am satisfied a triple zero call is received by ESTA in the course of it providing a service to an emergency service and the documents constitute 'confidential information' for the purposes of section 33(1) of the ESTA Act. I am also satisfied a prohibition applies to disclosure of such information under section 33(2) and that none of the exceptions in section 33(3) of the ESTA Act displace the prohibition in section 33(2).

Conclusion

16. I am satisfied the requirements of section 38 of the FOI Act are met and documents are exempt in full under this provision in conjunction with section 33 of the ESTA Act.
17. Having determined the information is exempt under section 38 of the FOI Act, it is not necessary for me to consider the Agency's application of section 33(1) of the FOI Act to the documents.
18. Finally, I have determined the documents are exempt under section 38 in full as I am satisfied it is not practicable for an edited copy of the documents to be provided to the Applicant in accordance with section 25 as any such edited copy would be rendered meaningless.¹

Review rights

19. 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.²
20. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.³
21. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁴
22. 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.
23. 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.⁵

¹ 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 any exempt or irrelevant information and the applicant agrees to receiving such a copy.

² The Applicant in section 50(1)(b) and the Agency in section 50(3D).

³ Section 52(5).

⁴ Section 52(9).

When this decision takes effect

24. 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.

⁵ 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
1.	[Date]	[specified audio record]: 000 Call [Date], 5.04 mins	N/A	Refused in full Sections 33(1), 38	Refuse in full Section 38 in conjunction with section 33 of the ESTA Act
2.	[Date]	CAD Chronology – Event ID: [specified number]	4	Refused in full Sections 33(1), 38	Refuse in full Section 38 in conjunction with section 33 of the ESTA Act
3.	[Date]	Radio Transmissions	N/A	Refused in full Sections 33(1), 38	Refuse in full Section 38 in conjunction with section 33 of the ESTA Act