

Notice of Decision and Reasons for Decision

Applicant:	'AJ5'
Agency:	Victoria Police
Decision Date:	22 August 2019
Exemption considered:	Section 30(1)
Citation:	'AJ5' and Victoria Police (<i>Freedom of Information</i>) [2019] VICmr 86 (22 August 2019)

FREEDOM OF INFORMATION – application for registration – recruitment – internal working documents – public interest considerations

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 parts of a document requested by the Applicant under the FOI Act.

My decision on the Applicant's request is different from the Agency's decision in that I have decided to grant access to the document in full.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
22 August 2019

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to the following documents:
 1. A copy of my full and complete Personnel File for former employee [employee reference number], for employment between [date range].
 2. Copies of all correspondence, documents, emails, reports between Vicpol (sic) PAEU [Police Alternate Employment Unit] with PRSB [Police Registration and Services Board].
2. The Applicant subsequently limited the scope of their request to a document 'sent from the Police Alternate Employment Unit to the Police Registration and Services Board (**PRSB**) around [specified date]'.
3. In its decision, 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

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access to part of the document.
5. Section 49M(1) permits an agency to make a fresh decision on an FOI request during a review. On 2 July 2019, the Agency made a fresh decision to release further information in the document.
6. 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.
7. I have examined a copy of the document subject to review following the Agency's fresh decision.
8. The document is a letter from an employee of the Agency's Recruitment and Promotion Services Department to the PRSB. It relates to the Applicant's suitability for registration.
9. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
10. I have considered all communications and submissions received from the parties, including:
 - (a) the Agency's original and fresh decision on the FOI request;
 - (b) information provided with the Applicant's review application; and
 - (c) the Applicant's correspondence dated 25 July 2019.
11. 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

12. The Agency relied on the exemption under section 30(1) to refuse access to two paragraphs of the document. The Agency's decision letter sets out the reasons for its decision.

Section 30(1) – Internal working documents

13. Section 30(1) has three requirements:
- (a) the document must disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister;
 - (b) such matter must be made in the course of, or for the purpose of, the deliberative processes involved in the functions of the agency or Minister or of the government; and
 - (c) disclosure of the matter would be contrary to the public interest.
14. The exemption does not apply to purely factual material.¹

Does the document disclose matter in the nature of opinion, advice or recommendation, or consultation or deliberation?

15. The document contains:
- (a) contextual information regarding the Applicant's application for registration on the Police Profession Register (**PPR**), and
 - (b) the author's views as to the suitability of the Applicant for registration on the PPR.
16. In *Halliday v Office of Fair Trading*,² the former Administrative Appeals Tribunal of Victoria held the words 'opinion, advice or recommendation' convey a meaning of matters in the nature of 'a personal view', 'an opinion recommended or offered' or 'a presentation worthy of acceptance'.
17. I am satisfied two paragraphs of the document subject to review disclose matters in the nature of opinion and recommendation.

Was the opinion, advice, recommendation, consultation or deliberation disclosed in the document provided in the course of, or for the purpose of, the deliberative process of the Agency?

18. In *Re Waterford and Department of Treasury (No. 2)*,³ the Commonwealth Administrative Appeals Tribunal held:
- ... "deliberative process" [is] wide enough to include any of the processes of deliberation or consideration involved in the functions of an agency... In short, ... its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.
19. I am satisfied the opinions and recommendations expressed in the document were provided in the course of, and for the purpose of, the Agency's deliberative process regarding the recruitment of sworn officers.

¹ Section 30(3).

² (unreported, AAT of Vic, Coghlan PM, 20 July 1995).

³ (1984) 5 ALD 588; 1 AAR 1 at [606].

Would disclosure of the documents be contrary to the public interest?

20. In deciding whether disclosure of the information would be contrary to the public interest, it is necessary to balance relevant considerations, remaining mindful the object of the FOI Act is to facilitate and promote disclosure of information.
21. I have considered the following matters in determining release of the information would not be contrary to the public interest:
- (a) I have considered the nature of the document.

The *Guide to Registration Application and Assessment*⁴ (the **Guide**) indicates former members seeking to return to employment as a sworn officer with the Agency must first obtain registration and be listed on the PPR. The PPR is not a public document. Once a registrant's name is placed on the PPR, they are eligible to apply for re-employment with the Agency.

The opinion and recommendation in the document occurred at an early stage of the registration process. The ultimate decision with respect to the Applicant's suitability for registration lies with the PRSB.⁵

Accordingly, the document only gives a part explanation, rather than a complete explanation for the decision made by the PRSB as to the Applicant's suitability for registration. This factor weighs against disclosure.

- (b) I have considered the nature of the information.

The document is a final copy (as opposed to a draft document) of a letter prepared by an Agency officer and comprises largely factual information.

In light of the information in the document already released to the Applicant, I consider the opinion and recommendation offered is not sensitive and general in nature.

I do not consider disclosure would have an adverse effect on the integrity or effectiveness of future decision-making or would create a risk of misinterpretation or confusion.

This factor weighs in favour of disclosure.

- (c) I have considered whether releasing the Agency officer's opinion and recommendation would inhibit the frankness and candour of information provided to the PRSB in relation to the suitability of future candidates.

As Agency officers are obliged to provide frank advice when considering suitability for registration, I am not satisfied release of the opinion and recommendation, as recorded in this particular document, would inhibit Agency officers in the future. This is particularly in the context of other information the Agency has released to the Applicant following its original and fresh decision. Namely, the opinion and recommendation provided appears to reflect information before the Agency officer and that has already been released to the Applicant.

This factor weighs in favour of disclosure.

⁴ Police Registration and Services Board, *Guide to Registration Application and Assessment*, Version 1.0 Published February 2019 < <https://www.prsb.vic.gov.au/guide-to-assessment-for-registration>>.

⁵ The Agency – specifically the Police Alternative Employment Unit – manages the re-employment process once an individual is registered.

- (d) The Applicant's interest in the information.

In their request for review, the Applicant states they are concerned about the way their personal character was presented to the PRSB.

It may be in the public interest to release documents containing information relating to systemic issues within an agency's recruitment processes. I also consider there is a strong public interest in the recruitment processes of government agencies being as transparent as possible, to ensure compliance with its own processes and procedures, as well as any relevant legislation.

The importance of transparency in the registration process is acknowledged by the PRSB in the Guide,⁶ which states:

The reliability and transparency of the PRSB registration process is vital to building trust in its decision making, especially where an applicant seeks registration at a higher rank than previously held or is refused.

I note the framework for registration as provided in the *Victoria Police Act 2013 (Vic)*⁷ requires assessment of an individual's character, reputation, qualifications, experience and capabilities required to perform their duties as a police officer.

I am not satisfied there is information in the document that demonstrates the Agency officer did not follow the appropriate protocols or otherwise did not act fairly and appropriately in the assessment of the Applicant's suitability for registration.

This factor weighs in favour of disclosure.

- (e) 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.⁸

Having considered the nature of the document and the information contained within it, I consider this factor weighs neither in favour nor against disclosure. In the circumstances, I consider it reasonably likely the Applicant would not broadly disseminate the document if disclosed to [them] in full.

22. In light of the above, I am not satisfied information contained in the document is exempt under section 30(1).

Conclusion

23. On the information available, I am not satisfied the exemption in section 30(1) applies to information in the document. Accordingly, I have decided to grant access to the document in full.

Review rights

⁶ Ibid, page 1.

⁷ Section 103.

⁸ [2008] VSCA 218 at [68].

24. 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.⁹
25. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹⁰
26. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹¹
27. 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.
28. 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.¹²

When this decision takes effect

29. 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.

⁹ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹⁰ Section 52(5).

¹¹ Section 52(9).

¹² Sections 50(3F) and (3FA).