

## Notice of Decision and Reasons for Decision

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Applicant:	'AL4'
Agency:	Victoria Police
Decision Date:	12 September 2019
Exemptions considered:	Sections 30(1), 31(1)(d), 33(1)
Citation:	'AL4' and Victoria Police ( <i>Freedom of Information</i> ) [2019] VICmr 103 (12 September 2019)

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FREEDOM OF INFORMATION – Professional Standards Command investigation – police investigation methodology – personal affairs information – employment history – preliminary observations and concluding recommendations

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 decided to release additional information in the documents.

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  
12 September 2019

## Reasons for Decision

### Background to review

1. The Applicant made the following FOI request to the Agency:

I want all the investigating officer's evidence notes, reports and interview records for the following complaints I made in [specified year]: [Reference numbers of four complaints].
2. In its decision, the Agency identified 13 documents falling within the terms of the Applicant's request. It decided to:
  - (a) release 10 documents in part; and
  - (b) refuse access to 3 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. I have examined copies of the documents subject to review and I have also been briefed by OVIC staff who inspected the documents claimed to be exempt under sections 31(1)(d).<sup>1</sup>
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 received from the parties, including:
  - (a) the Agency's decision on the FOI request;
  - (b) the Applicant's submission [on specified date] and information provided with the Applicant's review application; and
  - (c) communications between OVIC staff, the Applicant and the Agency.
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 under sections 30(1), 31(1)(d) and 33(1) to refuse access to parts of the documents. The Agency's decision letter sets out the reasons for its decision.

### **Section 31(1)(d)**

9. Section 31(1)(d) provides a document is exempt if its disclosure would, or would be reasonably likely to, 'disclose methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures'.

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<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.

10. The Agency's decision letter states:

The denied information in the documents refers to details of the methods and procedures used by police during the course of police investigations ... the release of this information would be reasonably likely to prejudice the future effective use of those methods and procedures.

11. Having reviewed the exempted information, I am satisfied it relates to procedures employed by Agency officers when responding to requests for police assistance and relevant police investigations.

12. The exemption in section 31(1)(d) does not apply to widespread and well-known investigation methods and procedures.<sup>2</sup> Having reviewed the content of the documents, I am satisfied the exempted information is not well-known amongst the public.

13. I have considered the likely effect of disclosing the exempted information and I am satisfied the release of this information would be reasonably likely to undermine the Agency's ability to use the relevant investigation methods and procedures and would prejudice their effectiveness.

14. I am constrained in providing any further description of the deleted information as to do so would likely disclose the very matter that is the subject of the exemption.

15. Accordingly, I am satisfied the relevant information is exempt under section 31(1)(d).

16. The Schedule of Documents in **Annexure 1** contains my decision with respect to section 31(1)(d) in relation to the relevant documents.

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

17. 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;<sup>3</sup> and

(b) such disclosure would be 'unreasonable'.

18. 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>4</sup>

*Do the documents contain the personal affairs information of individuals other than the Applicant?*

19. The documents subject to review contain information relating to the names, position titles, employee numbers, signatures, contact details, employment history, statements made to the Agency's Professional Standards Command (PSC) investigators and other personal information relating to third parties.

20. I am satisfied the above information constitutes the personal affairs information of individuals other than the Applicant.

*Would the release of this personal affairs information be unreasonable?*

21. In deciding whether the exemption applies, it is necessary to determine whether disclosure of the personal affairs information would be unreasonable in the circumstances. Consideration of whether disclosure would be unreasonable involves balancing the public interest in the disclosure of official information with the personal interest in privacy in the circumstances of a particular matter.

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<sup>2</sup> *XYZ v Victoria Police* [2010] VCAT 255 at [177].

<sup>3</sup> Sections 33(1) and (2).

<sup>4</sup> Section 33(9).

22. Having reviewed the documents, I have given consideration to the following factors:
- (a) The nature of the personal affairs information – The Agency officer’s employment history reports and information relating to the investigations conducted by the PSC are inherently confidential and personal in nature. This weighs against disclosure.
  - (b) The circumstances in which the information was obtained – I am of the view the information provided in the course of the PSC investigation is ordinarily communicated to the Agency on the understanding it will remain confidential unless required for a subsequent prosecution or a determination following the PSC investigation. This weighs against disclosure.
  - (c) Whether there is a public interest in disclosure – In the circumstances of this case, the Agency released a majority of information relating to the PSC investigations. Given the completion of the investigations and the allegations being unfounded, I am of the view there is no public interest that would be promoted by the further release of the personal affairs information of the officers who were subject of the Applicant’s complaints. Additionally, the Applicant could appeal to the Independent Broad-Based Anti-Corruption Commission in order to dispute the outcome of the PSC investigation. I also am of the view that no public interest would be served in the release of the police officers’ employment histories.  
  
On the other hand, I consider there is a strong public interest in the Agency maintaining the confidentiality of information provided by these various individuals. To the maximum extent possible, this preserves the ability of the Agency to obtain cooperation from witnesses and other relevant individuals in the course of a PSC investigation. These factors weigh against disclosure.
  - (d) Whether the individuals to whom the information relates object, or would be likely to object, to the release of the information – While the Agency has not consulted with the relevant individuals, I am of the view that these individuals would be likely to object to the further release of their personal affairs information. This weighs against disclosure.
  - (e) Whether disclosure of the information would, or would be reasonably likely to, endanger the life of physical safety of any person – There is no information before me to suggest this is a relevant factor for my consideration.
23. In light of the above, I am of the view it would be unreasonable to release the personal affairs information contained in the document. Accordingly, I have determined the relevant information is exempt under section 33(1).
24. The Schedule of Documents in **Annexure 1** contains my decision with respect to section 33(1) in relation to the relevant documents.

### **Section 30(1)**

25. 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; and
  - (b) such matter must be made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the Government; and
  - (c) disclosure of the matter would be contrary to the public interest.

*Do the documents contain information in the nature of opinion, advice, recommendation, consultation or deliberation?*

26. I am satisfied the exempted information is in the nature of the opinion or recommendations of the officers conducting the PSC investigations.

*Was this information communicated in the course of the Agency's deliberations?*

27. I am satisfied the information was prepared in the course of, or for the purpose of, the Agency's deliberative processes relating to the PSC investigations.

*Would the release of this information be contrary to the public interest?*

28. In deciding if release is contrary to the public interest, I must consider all relevant facts and circumstances remaining mindful that the object of the FOI Act is to facilitate and promote the disclosure of information.

29. In its decision letter, the Agency stated:

... there is [a] very strong public interest that officers of an agency have the opportunity to give opinion, advice and recommendation in a frank and candid manner to ensure that the public interest in having proper Professional Standards Command (PSC) investigations is not impaired.

30. Having reviewed the exempted information, I accept the Agency's reasons. I consider the release of such information would have the unintended impact of stifling open debate, discussion and detailed recording of observations by the Agency's officers. This would be contrary to the public interest as it could have an adverse impact on the Agency's ability to conduct PSC investigations. Accordingly, I have determined such information is exempt under section 30(1).

31. However, I am not satisfied it would be contrary to the public interest for the officers' final recommendations to be disclosed as I do not consider this would be likely to stifle the officers' communications in the concluding stages of the PSC investigations. Additionally, I note similar concluding recommendations were released to the Applicant in other documents. Accordingly, I have determined the relevant information is not exempt under section 30(1).

32. The Schedule of Documents in **Annexure 1** contains my decision with respect to section 30(1) in relation to the relevant documents.

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

33. 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.

34. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>5</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>6</sup>

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<sup>5</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>6</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].

35. I have considered the effect of deleting exempt information from the documents. In my view, it is practicable to delete this information, because it would not require substantial time and effort, and the edited documents would retain meaning.

### **Conclusion**

36. Having considered the relevant exemptions, I have determined certain information in the documents is exempt under sections 30(1), 31(1)(d) and 33(1).
37. The Schedule of Documents in **Annexure 1** contains a brief summary of my decision with respect to each document.

### **Review rights**

38. 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>7</sup>
39. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>8</sup>
40. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>9</sup>
41. 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.
42. 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>10</sup>

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

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

<sup>8</sup> Section 52(5).

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

<sup>10</sup> Sections 50(3F) and (3FA).

Annexure 1 – Schedule of Documents

Doc	Date	Description	Pages	Agency's Decision	OVIC Decision	OVIC Comments
1	-	Interpose investigation report [reference number]	6	Released in part Section 33(1)	Release in part Section 33(1), 25	<b>Section 33(1):</b> I note the Agency released the majority of the document to the Applicant. I consider it would be unreasonable to further release the personal affairs information of the Agency officers who were subject of the Applicant's complaint in the circumstances. I also consider it would be unreasonable to release the personal affairs information of the police officers who merely assisted with or provided information in the course of the PSC investigation. Accordingly, I am satisfied the personal affairs information exempted by the Agency in this document is exempt under section 33(1).
2	-	Interpose investigation report [reference number]	6	Released in part Section 33(1)	Release in part Sections 33(1), 25	<b>Section 33(1):</b> See comments for Document 1.
3	-	Issue cover sheet	3	Released in part Sections 31(1)(d), 30(1) and 33(1)	Release in part Sections 31(1)(d), 33(1), 25	<b>Section 31(1)(d):</b> I am satisfied the release of this information would be reasonably likely to undermine the Agency's ability to use the relevant methods and procedures and would prejudice its effectiveness of police investigations. Accordingly, I am satisfied the relevant information exempted by the Agency in this document is exempt under section 31(1)(d). <b>Section 33(1):</b> See comments for

Annexure 1 – Schedule of Documents

Doc	Date	Description	Pages	Agency's Decision	OVIC Decision	OVIC Comments
						Document 1.
4	[Date]	Final investigation report	2	Released in part Section 33(1)	Release in part Sections 33(1), 25	Section 33(1): See comments for Document 1.
5	[Date]	Issue cover sheet	2	Released in part Sections 31(1)(d), 33(1)	Release in part Sections 31(1)(d), 33(1), 25	Section 31(1)(d): See comments for Document 3. Section 33(1): See comment for Document 1.
6	[Date]	Employment history	15	Refused in full Section 33(1)	Refuse in full Section 33(1)	Section 33(1): See comment for Document 1.
7	[Date]	Issue coversheet	2	Released in part Sections 33(1)	Release in part Sections 33(1), 25	Section 33(1): See comment for Document 1.
8	[Date]	ROCSID file report	10	Refused in full Section 33(1)	Refuse in full Sections 33(1), 25	Section 33(1): See comment for Document 1.
9	-	Interpose investigation report [reference number]	5	Released in part Sections 30(1), 33(1)	Release in part Sections 30(1), 33(1), 25	Section 33(1): See comment for Document 1. Section 30(1): I am satisfied it would be contrary to the public interest to disclose the officer's preliminary opinions and observations because it would stifle open debate and discussion in the preliminary stages of an investigation. Accordingly, I am satisfied the relevant information exempted by the Agency in this document is exempt under section 30(1).



Annexure 1 – Schedule of Documents

Doc	Date	Description	Pages	Agency's Decision	OVIC Decision	OVIC Comments
10	-	Handwritten notes	1	Released in part Section 33(1)	Release in part Sections 33(1), 25	Section 33(1): See comment for Document 1.
11	[Date]	Issue cover sheet	3	Released in part Sections 33(1), 30(1)	Release in part Sections 33(1), 25  The following information on Page 3 is not exempt under section 30(1) and it is to be released to the Applicant:  - paragraph 3, last 8 words; and  - last dot point.	Section 33(1): See comment for Document 1.  Section 30(1): I am not satisfied it would be contrary to the public interest to disclose the officer's concluding opinions and recommendations. Accordingly, I am not satisfied the relevant information exempted by the Agency in this document is exempt under section 30(1).
12	[Date]	Issue cover sheet	2	Released in part Sections 30(1), 33(1)	Release in part Section 30(1), 33(1)  The second dot point on Page 2 is not exempt under section 30(1) and it is to be released to the Applicant with exception to any identifying personal affairs information that is exempt under section 33(1).	Section 33(1): See comment for Document 1.  Section 30(1): See comments for Documents 9 and 11.
13	[Date]	Employment history	16	Refused in full Section 33(1)	Refuse in full Section 33(1)	Section 33(1): See comment for Document 1.