

Notice of Decision and Reasons for Decision

Applicant:	'AL5'
Our Reference:	C/19/00728
Decision Date:	12 September 2019
Exemptions considered:	Sections 30(1), 34(1)(b) and 34(4)(c)
Citation:	'AL5' and Victoria Police (<i>Freedom of Information</i>) [2019] VICmr 104 (12 September 2019)

FREEDOM OF INFORMATION – employment assessment – police recruitment process – internal working documents

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 some documents in part and to refuse access to some 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
12 September 2019

Reasons for Decision

Background to review

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

I would like to access my personal file held by Victoria Police Recruitment Services. I want access to 'all details and information held' inclusive of medical records/results, video interview and all notes and reports on my file/record pertaining to my application for employment with Victoria Police.
2. The Agency identified seven documents falling within the terms of the Applicant's request. It decided to partially release some documents and refuse access to other 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 also made a complaint in relation to a missing document. The complaint was resolved through the Applicant agreeing to make a fresh FOI request for the missing document.
5. On [date], the Applicant wrote to OVIC advising [they did] not seek:

... the names of any officers, admin personnel or people involved in or as part of my record held by the agency, or even any so called victims, most important is the information relating to my application for employment.
6. Accordingly, this review relates to information relating to the employment and recruitment process.
7. I have examined copies of the documents subject to review.
8. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
9. 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; and
 - (c) communications between the Agency, the Applicant and OVIC staff.
10. 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

11. The Agency relied on the exemptions under sections 30(1), 31(1)(d), 33(1), 34(1)(b) and 34(4)(c) to refuse access to parts of the documents. The Agency's decision letter sets out the reasons for its decision.

Section 30(1)

12. 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.

13. The exemption does not apply to purely factual material in a document.¹

Do the documents contain information in the nature of opinion, advice, recommendation, consultation or deliberation prepared by an officer?

14. The term 'officer of an Agency' is defined in section 5(1). It includes a member of the agency, a member of the agency's staff, and any person employed by or for the agency, whether that person is one to whom the provisions of the *Public Administration Act 2004* (Vic) apply or not.
15. For the purpose of this review, I am satisfied the external psychologist employed by the Agency is an 'officer' of the Agency.
16. Having reviewed the documents, I am also satisfied they contain information in the nature of opinion, advice and recommendations that were prepared by an officer.

Were the communications made in the course of the Agency's deliberative processes?

17. I am satisfied the communications were made in the course of the Agency's deliberations related to its recruitment processes.

Would it be contrary to the public interest for this information to be released?

18. The Agency's decision letter stated disclosing the exempt information would provide future applicants with an insight into the Agency's testing processes and this would undermine the Agency's overall recruitment processes.
19. Having reviewed the documents, I agree with the Agency's decision for the following reasons:
- (a) Disclosure of the officer's conclusions and recommendations with respect to the Applicant's application and overall suitability would be contrary to the public interest, as I accept it would be likely to inhibit the detailed recording and openness with which Agency officers evaluate the various aspects of employment, recruitment and applications received.
 - (b) The nature of release of documents under the FOI Act is unconditional and unrestricted. Dissemination of the documents could provide future candidates with an unfair advantage because the documents reveal the specific assessment questions and processes employed during the recruitment process, as well as provide insight into the factors or interview responses that were viewed favourably.

¹ Section 30(3).

- (c) Disclosure of the documents would be contrary to the public interest because a potential future candidate could use this information to manipulate the Agency's recruitment process through adjusting their responses or behaviour to achieve a positive result. I am satisfied this would pose a reasonable risk of undermining the integrity of the Agency's recruitment process, particularly in circumstances where that process involves identifying suitable candidates for recruitment to the police force.

20. Accordingly, I am satisfied the documents are exempt under section 30(1).

Sections 31(1)(d) and 33(1)

21. The Agency applied this exemption to exempt information in a LEAP report relating to the methods and procedures used by the Agency in the course of a criminal investigation.
22. On [date], the Applicant informed OVIC they only sought information relating to their Victoria Police recruitment process and do not seek access to information relating to third parties, including victims.
23. Accordingly, I have determined information in the LEAP report and National Police Reference System documents, to which the Agency refused access under sections 31(1)(d) and 33(1), do not fall within the scope of this review.

Deletion of exempt or irrelevant information

24. 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.
25. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'² 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 25.³
26. As noted above, on [date] the Applicant advised OVIC they only seek information relating to their employment and recruitment process. The Applicant excluded other information from the review, such as staff and victim's names. Therefore, I consider such information to be irrelevant to the scope of the review.
27. I have considered the effect of deleting irrelevant and exempt information from the documents subject to review. In my view, it is practicable to delete such information, because it would not require substantial time and effort, and the edited documents would retain meaning.

Conclusion

28. On the information available, I am satisfied the exemption in section 30(1) applies to some of the documents either in full or in part. I have decided to grant access to some documents in part and to refuse access to some documents in full.
29. In light of my decision, it is not necessary for me to consider the additional exemptions relied on by the Agency under sections 34(1)(b) and 34(4)(c).

² *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].

³ *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].

Review rights

30. 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.⁴
31. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁵
32. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁶
33. 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.
34. 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.⁷

When this decision takes effect

35. 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.

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

⁵ Section 52(5).

⁶ Section 52(9).

⁷ Sections 50(3F) and (3FA).

Annexure 1 – Schedule of Documents

Doc No.	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1	Screening report	20	<p>Refused in full Sections 30(1), 33(1), 34(4)(c)</p>	<p>Refuse in full Section 30(1)</p>	<p>Section 30(1): I am satisfied disclosure of this document would be contrary to the public interest because its release has the likely outcome of:</p> <ul style="list-style-type: none"> - stifling the openness of Agency officers in recording detailed conclusions and recommendations made during recruitment assessments; and - providing future candidates with an insight into the Agency's recruitment processes.
2	Internal memorandum	1	<p>Released in part Section 30(1), 33(1)</p>	<p>Release in part Sections 30(1), 25</p> <p>The document is to be released in part with –</p> <ul style="list-style-type: none"> • the information exempted by the Agency under section 30(1) to remain deleted; and • personal affairs information to be deleted as irrelevant under section 25. 	<p>Section 30(1): See comment for Document 1.</p> <p>Section 25: On [date], the Applicant advised they only sought information relating to the employment and recruitment process. The Applicant did not seek the personal affairs information of the Agency's staff and victims. I consider this information to be irrelevant.</p>

Annexure 1 – Schedule of Documents

Doc No.	Document Description	No. of Pages	Agency's Decision	OVIC Decision	OVIC Comments
3	Applicant checklist	3	Refused in full Sections 30(1), 33(1)	Release with information removed as irrelevant under section 25 The document is to be released to the Applicant with exception to the names of the Agency staff which are to be deleted as irrelevant under section 25.	On [date], the Agency advised OVIC that it was of the view that the document could be released with the names of the VPS administrative officers to be deleted. Section 25: See comment for Document 2 in relation to the names of Agency staff.
4	Screening assessment tool	6	Refused in full Sections 30(1), 33(1)	Refuse in full Section 30(1)	Section 30(1): See comment for Document 1.
5	National Police Reference System (NPRS)	5	Released in part Section 33(1)	Not subject to review	Section 25: See comment for Document 2. This information does not relate to the Agency's recruitment processes. I consider this information to be irrelevant.
6	LEAP records	26	Released in part Section 31(1)(d), 33(1)	Not subject to review	Section 25: See comment for Document 5.
7	NEO Five-Factor Inventory-3 Interpretive Report	35	Refused in full Sections 30(1), 33(1) and 34(1)(b)	Refuse in full Section 30(1)	Section 30(1): See comment for Document 1.