

Notice of Decision and Reasons for Decision

Applicant:	'AL6'
Agency:	Victoria Police
Decision Date:	13 September 2019
Exemption considered:	Section 33(1)
Citation:	'AL6' and Victoria Police (<i>Freedom of Information</i>) [2019] VICmr 105 (13 September 2019)

FREEDOM OF INFORMATION – personal affairs information – unreasonable disclosure – information obtained by agency in relation to police inquiries

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 the document in part to the Applicant.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
13 September 2019

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to the following documents:

The full and correct address of [named person]... as recorded by [named police officer] at [named police station] on [date] and any notes or other records of conversations between [named police officer] and the said [named person] on or around that date.

Other names of [named person] may include [name] and the contact number provided was [mobile number].

2. In its decision, the Agency identified one document falling within the terms of the Applicant's request. It decided to grant access to that document in part.

Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access. In particular, the Applicant advised they seek access to the name and address of the individual referenced in their original request to the Agency.
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 received from the parties, including:
 - (a) the Agency's decision on the FOI request; and
 - (b) 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 the exemption under section 33(1) to refuse access to parts of the document. The Agency's decision letter sets out the reasons for its decision.

Section 33(1) – Document containing personal affairs information

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;¹ and
 - (b) such disclosure would be 'unreasonable'.

Does the document contain personal affairs information?

¹ Section 33(1) and (2).

10. Information will relate to the 'personal affairs' of a person if it is reasonably capable of identifying them, or of disclosing their address or location.² It has also been held information relates to a person's personal affairs if it 'concerns or affects that person as an individual'.³
11. The Victorian Civil and Administrative Tribunal (**VCAT**) held a document will disclose personal affairs information if it is capable, either directly or indirectly, of identifying a particular individual whose personal affairs are disclosed. Further, as disclosure under the FOI Act is not subject to restriction or condition, this is to be interpreted by the capacity of any member of the public to potentially identify a third party.⁴
12. The document subject to review is one page of handwritten notes by a sworn officer of the Agency.
13. The document contains the full name, telephone number, email addresses, residential address, bank account details and Master Names Index number (**MNI**) of an individual other than the Applicant. It also includes the individual's version of events with respect to the allegation made against them by the Applicant.
14. I am satisfied the document contains the personal affairs information of an individual other than the Applicant.

Would release of the personal affairs information be unreasonable?

15. The concept of 'unreasonable disclosure' involves determining whether the public interest in disclosure of official information is outweighed by the personal interest in privacy.
16. In determining whether disclosure of the personal information in the document would be unreasonable, I have considered the following factors:

(a) The nature of the personal affairs information and the circumstances in which the information was obtained

The personal affairs information is the full name, telephone number, email addresses, residential address, bank account details, MNI and version of events of the named person.

The information was obtained by the Agency in the context of undertaking an investigation into allegations of criminal behaviour made against the named person by the Applicant. The Agency advised no offence was detected. These factors weigh against disclosure.

(b) The Applicant's interest in the information, and whether their purpose for seeking the information is likely to be achieved

The FOI Act provides a general right of access that can be exercised by any person, regardless of their motive or purpose for seeking access to a document. However, the reasons why an applicant seeks access a document is a relevant consideration in determining whether disclosure would be unreasonable.⁵

In their request for review, the Applicant states they are seeking the information to commence a civil claim for outstanding payment of a service provided. I acknowledge the Applicant's interest in the document.

² Section 33(9).

³ *Hanson v Department of Education and Training* [2007] VCAT 123 at [9].

⁴ *O'Sullivan v Department of Health and Community Services (No 2)* [1995] 9 VAR 1 at [14]; *Beauchamp v Department of Education* [2006] VCAT 1653 at [42].

⁵ *Victoria Police v Marke* [2008] VSCA 218 at [104].

I consider the Applicant's purpose for seeking the information is likely to be achieved by granting access to the document. This factor weighs in favour of disclosure.

(c) Whether any public interest would be promoted by release of the information

The Applicant's interest in obtaining the information is a matter of private interest.

I do not consider the public interest would be promoted by release of the third parties' personal affairs information to the Applicant. I am of the view the greater public interest lies in the Agency preserving the ability of the police to conduct investigations and obtain the cooperation of alleged offenders during their investigations. This factor weighs against disclosure.

(d) Whether the individuals to whom the information relates object, or would be likely to object, to the release of the information

I do not have any information before me as to the views of the named person to whom the information relates as the Agency determined it was unreasonable to consult.

Having regard to the circumstances in which the document was created and the sensitive nature of the content, I am of the view the named person, whose personal information is captured in the document, would be reasonably likely to object to the release of their personal affairs information. This factor weighs against disclosure.

(a) Whether release of the information could lead the person to whom it relates suffering stress and anxiety

The document relates to allegations made against the named person. The nature of the allegations are sensitive and personal in nature, in that they relate to the procurement of sexual services. I consider release of the information would be reasonably likely to cause stress and anxiety to the person to whom the information relates. This factor weighs against disclosure.

(b) Whether the disclosure of the information would, or would be reasonably likely to endanger the life or physical safety of any person⁶

There is no specific information before me to suggest this is a relevant factor in this case.

17. Having weighed up the above factors, I have determined disclosure of the personal affairs information in the document would be unreasonable in the circumstances.

Deletion of exempt or irrelevant information

18. 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.
19. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁷ and the effectiveness of the deletions.

⁶ Section 33(2A).

⁷ *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].

20. Where deletions would render the document meaningless, they are not 'practicable', and release of the document is not required under section 25.⁸
21. I have considered the information the Agency deleted from the document as irrelevant. I agree it falls outside the scope of the Applicant's request because it relates to matters or people other than those specified in the request.
22. I have considered the effect of deleting exempt information from the document. In my view, it is practicable for the Agency to delete the exempt information as it has done because the edited document retains meaning.

Conclusion

23. I am satisfied the exemption in section 33(1) applies to the information contained in the document. In line with the Agency's decision, I have decided to release the document in part with the exempt information deleted.

Review rights

24. If either party to this review is not satisfied with my decision, they are entitled to apply to 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 (international callers dial +61 3 8685 1462).
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.

⁸ *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], [155].

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).