

Notice of Decision and Reasons for Decision

Applicant:	'AL8'
Agency:	Victoria Police
Decision Date:	17 September 2019
Exemption considered:	Section 33(1)
Citation:	'AL8' and Victoria Police (<i>Freedom of Information</i>) [2019] VICmr 107 (18 September 2019)

FREEDOM OF INFORMATION – police member statement – police interview – unreasonable disclosure – personal affairs information

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 with exempt and irrelevant information deleted in accordance with section 25.

The Schedule of Documents in **Annexure 1** sets out my decision in relation to the document.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
17 September 2019

Reasons for Decision

Background to review

1. The Applicant, through their representative, made a request to the Agency for access to certain documents relating to a [redacted] collision.
2. In its decision, the Agency identified seven documents falling within the terms of the Applicant's request. It decided to grant access to six documents in part and refuse access to one document in full.

Review

3. The Applicant, through their representative, sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. The Applicant limited the scope of their review to 'the Statement of Interview that the police conducted with the driver', identified as Document 5 in the Agency's decision letter (the **Document**).
5. I have examined a copy of the Document.
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. The Applicant's representative advised during the review that the Applicant does not seek names or addresses in the Document as part of the review.
8. 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;
 - (c) information provided by the Agency on 23 August 2019;
 - (d) the Applicant's submission dated 3 July 2019; and
 - (e) correspondence received from the Applicant on 6 September 2019.
9. 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

10. 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

Does the document contain personal affairs information?

11. 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.¹

¹ Section 33(9).

12. It has also been held information relates to an individual's personal affairs if it 'concerns or affects that person as an individual'.²
13. The Victorian Civil and Administrative Tribunal (**VCAT**) has 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.
14. Further, as the nature of disclosure under the FOI Act is unrestricted and unconditional, this is to be interpreted by the capacity of any member of the public to potentially identify a third party.³
15. The Document is a statement prepared by a sworn officer of the Agency. The Document includes a record of interview between the sworn officer and a person other than the Applicant (the **individual**).
16. The Document includes the full name and residential address of the individual. It also includes the individual's version of events with respect to the allegation made against them by the Agency.

Would release of the personal affairs information be unreasonable?

17. The concept of 'unreasonable disclosure' involves determining whether the public interest in disclosure of official information is outweighed by the personal interest in privacy.
18. In determining whether disclosure of the personal affairs 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, residential address and version of events of the individual. The information was obtained by the Agency in the context of undertaking an investigation into the individual's involvement in a [redacted] collision. This factor weighs against disclosure.

The Applicant is already aware of the individual's full name [which is] [redacted] already in the public domain in connection with the collision. This weighs in favour of 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 to a document is a relevant consideration in determining whether disclosure would be unreasonable.⁴

[Redacted] The Applicant states they seek access to the information in order to evaluate the adequacy of the investigation conducted by the Agency. The Applicant also states they believe the Document will provide answers to several questions they hold in relation to the collision.

The individual was charged and sentenced in relation to their involvement in the collision. [Redacted].

I do not consider the Applicant's purpose for seeking the information is likely to be achieved by granting access to the Document. This factor weighs against disclosure.

² *Hanson v Department of Education and Training* [2007] VCAT 123 at [9].

³ *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].

⁴ *Victoria Police v Marke* [2008] VSCA 218 at [104].

(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 individual's 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 individual 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, I am of the view the individual would be reasonably likely to object to the release of their personal affairs information other than their name. This factor weighs against disclosure.

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

The Document relates to allegations made against the individual. The individual subsequently plead guilty to an offence relating to the collision and was convicted by a court for that offence.

Given the matter has been heard and determined by a court, I consider release of the information would be reasonably likely to cause stress and anxiety to the individual. This factor weighs against disclosure.

(f) Whether the disclosure of the information would, or would be reasonably likely to endanger the life or physical safety of any person⁵

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

19. Having weighed up the above factors, I have determined disclosure of the residential address and version of events of the individual in the document would be unreasonable in the circumstances. However, I am satisfied disclosure of the individual's full name is not unreasonable in the circumstances.

Deletion of exempt or irrelevant information

20. 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.
21. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁶ and the effectiveness of the deletions.
22. Where deletions would render the document meaningless they are not 'practicable', and release of the document is not required under section 25.⁷

⁵ Section 33(2A).

⁶ *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].

⁷ *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].

23. I have considered the effect of deleting exempt and irrelevant information from the document. In my view, it is practicable for the Agency to delete such information as in doing so, I am satisfied the edited document would retain sufficient meaning.

Conclusion

24. I am satisfied the exemption in section 33(1) applies to the relevant information exempted by the Agency in the document. In line with the Agency's decision and noting the Applicant does not seek access to names (including signatures) and addresses in the Document, I have decided to release the document in part with exempt and irrelevant information deleted in accordance with section 25.

Review rights

25. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.⁸
26. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁹
27. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁰
28. 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.
29. 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.¹¹

When this decision takes effect

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

⁹ Section 52(5).

¹⁰ Section 52(9).

¹¹ 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	OVIC Comments
5.	[Date]	Statement	3	Release in part Section 33(1)	<p>Release in part Sections 33(1), 25</p> <p>The following information is to be deleted from the document in accordance with section 25:</p> <p>(a) Irrelevant information being all names (including signatures) and addresses in the document as they are not subject to review.</p> <p>(b) Exempt information immediately following paragraph 4 on page 1 to the first two paragraphs on page 3 (inclusive).</p>	<p>Section 25: The Applicant's representative advised during the review that the Applicant does not seek access to names (including signatures) or addresses in the Document as part of the review. Accordingly, this information is irrelevant and is to be deleted in accordance with section 25.</p> <p>Section 33(1): I am satisfied the exemption in section 33(1) applies to the relevant information exempted by the Agency in the Document.</p>