

Notice of Decision and Reasons for Decision

Applicant:	'AO6'
Agency:	Department of Justice and Community Safety
Decision Date:	3 October 2019
Exemptions considered:	Section 38 of the <i>Freedom of Information Act 1982</i> (Vic) in conjunction with section 104ZZA of the <i>Corrections Act 1986</i> (Vic)
Citation:	'AO6' and Department of Justice and Community Safety (<i>Freedom of Information</i>) [2019] VICmr 132 (3 October 2019)

FREEDOM OF INFORMATION – prison intelligence documents – prisoners – prison staff – Accident and Investigation Report Services (AIRS) report – Corrections Victoria Intelligence Unit (CVIU) database – secrecy provision – offence to disclose personal or confidential information – information concerning security and management of prisons

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 refuse access to the documents in full.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
3 October 2019

Reasons for Decision

Background to review

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

I am seeking information reports submitted by prison staff about an alleged threat against a staff member at [correctional facility] in [year]. The information report/s were submitted between [date range] in relation to allegations a number of prisoners were planning to assault a [gender] officer on or around [date], at [correctional facility].

The report/s I am seeking access to were submitted to Corrections Victoria's [sic] Intelligence Unit.

I also seek a copy of the Accident and Injury report made by the [gender] staff member in relation to this incident. This report was submitted in [month, year].

2. In its decision, the Agency identified two documents comprising five pages that fall within the terms of the Applicant's request.
3. The Agency decided to refuse access to both documents in full.

Review

4. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. I have been briefed by OVIC staff who inspected the documents claimed to be exempt under section 31(1).¹
6. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
7. I have considered all communications and submissions received from the parties, including:
 - (a) the Agency's decision on the FOI request;
 - (b) the Agency's submission dated 10 September 2019; and
 - (c) the Applicant's submission dated 25 September 2019 and information provided with the Applicant's review application.
8. 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

9. The Agency relied on the exemptions under sections 31(1)(a), 33(1) and 38 of the FOI Act in conjunction with section 104ZZA of the *Corrections Act 1986* (Vic) (**Corrections Act**) to refuse access to the documents.

¹ 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.

Section 38 – Documents to which secrecy provisions apply

10. A document is exempt under section 38 if:
- (a) there is an enactment in force;
 - (b) that applies specifically to the kind of information in the document; and
 - (c) the enactment must prohibit persons, referred to in the enactment, from disclosing that specific kind of information (either absolutely or subject to exceptions or qualifications).

Is there an enactment in force?

11. I am satisfied the Corrections Act is an enactment in force for the purposes of section 38.

Does the enactment apply specifically to the kind of information in the documents?

12. In order for section 38 to apply, the enactment must be formulated with such precision that it specifies the actual information sought to be withheld.
13. As indicated above, the Agency applied section 38 of the FOI Act in conjunction with section 104ZZA of the Corrections Act, which provides:

104ZZA Offence to use or disclose personal or confidential information unless authorised

A person who is or has been a relevant person must not use or disclose personal or confidential information unless that use or disclosure is authorised under section 104ZY or 104ZZ.

Penalty: 120 penalty units.

14. Section 104ZX of the Corrections Act defines ‘relevant person’ to mean a person specified in an item of Schedule 5 of that Act.
15. Section 104ZX of the Corrections Act defines ‘personal or confidential’:

personal or confidential information includes the following—

- (a) information relating to the personal affairs of a person who is or has been an offender or a prisoner;
- ...
- (g) information concerning the investigation of a contravention or possible contravention of the law by—
 - (i) an offender; or
 - (ii) a prisoner; or
 - ...
- (i) information concerning the management of prisons;
- (j) information concerning—
 - (i) security systems and security measures in, or in relation to, a prison; or
 - (ii) security measures taken to protect the community from offenders;
 - ...

16. Document 1 is an intelligence report held on the Corrections Victoria Intelligence Unit database, known as ‘Centurion’ (**intelligence report**).

17. Document 2 is an Accident and Incident Report Services report (**AIRS report**). The AIRS report explicitly refers to information contained in the intelligence report.
18. The Agency submits prison intelligence information, including information held on Centurion, is exempt from disclosure.
19. In making its submissions, the Agency highlighted previous decisions of the Victorian Civil and Administrative Tribunal (**VCAT**) that have affirmed that prison intelligence information held in systems, such as Centurion, is exempt from disclosure.
20. Of particular relevance is the decision of *Knight v Department of Justice*² (**Knight decision**). This decision concerns an access request for prison intelligence information held on 'Protel', which was the predecessor of Centurion.
21. Centurion is a restricted database used by authorised Agency officers to gather and assess intelligence and information about the activities of prisoners. The sources of prison intelligence include prisoners, prison visitors, prison officers, members of the police force, other Australian prisoners and members of the public.³
22. The Knight decision held information gathering about prisoners is essential to the proper management of the prison system, including and the security of prisons, prisoners and staff:⁴

Information gathering about prisoners is essential to the proper management of the prison system and the security of individual prisons. Such information and intelligence is essential for a number of purposes. One is ensuring the security and integrity of the prison system by early identification of planning for escapes or attempts to traffic drugs or other contraband into prisons or other prisoner activity which may threaten the security or good order of a prison. Another is to assist in making risk assessments about particular prisoners (whether they pose risks to themselves, to other prisoners, to prison officers or members of the public). A third purpose is to identify developments which may indicate problems developing between groups of prisoners. A fourth purpose is to gather information relating to the proposed commission of offences.

If PROTEL information were unavailable, the ability to manage the security of the prison, prisoners and prison officers would be severely impaired.

The disclosure of PROTEL information to prisoners would disclose the methodology used by intelligence staff to collect information, and this would enable prisoners to exploit that knowledge and to conceal any planned unlawful or harmful activity. From his experience, if a prisoner obtained information from PROTEL he or she would be likely to communicate it to other prisoners.

23. Information held in Centurion, as it was in Protel, is used by prison management to make informed decisions about prison security and the management of prisons.
24. Accordingly, I am satisfied the enactment applies specifically to the kind of information contained in the documents, namely personal or confidential information.

Does the enactment prohibit persons from disclosing the information in the document?

25. Having reviewed the circumstances in which disclosure is authorised under sections 104ZY and 104ZZ of the Corrections Act, I am satisfied the Agency is prohibited from disclosing the information in both documents to the Applicant.

² [2011] VCAT 1276.

³ *Knight v Department of Justice* [2011] VCAT 1276 at [26].

⁴ *Ibid*, at [28]-[30] at [92].

26. Disclosure of information in breach of section 104ZZA of the Corrections Act attracts a financial penalty, which highlights the legislature's intention that such information should remain confidential.
27. Accordingly, I am satisfied disclosure of the documents is exempt under section 38 of the FOI Act in conjunction with section 104ZZA of the Corrections Act.

Sections 31(1)(a) and 33(1)

28. In light of my decision, it is not necessary for me to consider the additional exemptions relied on by the Agency.

Deletion of exempt or irrelevant information

29. 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.
30. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁵ 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 25.⁶
31. The Applicant submits they are 'more than happy to accept the document with redactions of identities'.
32. I have considered the effect of deleting exempt information from the documents. In my view, it is not practicable to delete the exempt information for the following reasons:
 - (a) the Knight decision, in which it was accepted 'removing an informant's name or other identifying information will not necessarily prevent an informant from being identified because it may be that the prisoner only told one person the information';⁷ and
 - (b) having reviewed the documents, I am satisfied providing a sufficiently edited copy of the documents would render them meaningless.

Conclusion

33. On the information available, I am satisfied the documents are exempt under section 38 in conjunction with section 104ZZA of the Corrections Act.
34. As I have determined it is not practicable to delete the exempt information from the documents in order to provide access to an edited copy of the documents in accordance with section 25, I have decided to refuse access to both documents in full.

Review rights

35. 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

⁵ *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].

⁶ *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].

⁷ *Knight v Department of Justice* [2011] VCAT 1276 at [46].

⁸ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

36. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁹
37. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹⁰
38. 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.
39. 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

40. 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 Section 52(5).

¹⁰ Section 52(9).

¹¹ Sections 50(3F) and (3FA).