

Notice of Decision and Reasons for Decision

Applicant:	'AP1'
Agency:	Victoria Police
Decision Date:	4 October 2019
Exemption considered:	Sections 33(1)
Citation:	'AP1' and Victoria Police (<i>Freedom of Information</i>) [2019] VICmr 136 (4 October 2019)

FREEDOM OF INFORMATION – personal affairs information – bank statement – statutory declaration – allegations of criminal offending

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.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
4 October 2019

Reasons for Decision

Background to review

1. The Applicant, through their legal representative, made a request to the Agency for access to the following documents:

...I request from the file, 1. [banking institution] ([acronym] Statement) for [month, year] Account BSB [number] Account Number [number], 2. Swarn [sic] affidavit from account holders.

2. In its decision, the Agency identified two documents falling within the terms of the Applicant's request. It decided to refuse access to both documents in full.

Review

3. The Applicant, through their legal representative, sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. I have been briefed by OVIC staff who inspected the documents claimed to be exempt under section 31(1).¹
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) information provided with the Applicant's review application; and
 - (c) correspondence received from the Agency on 30 August and 20 September 2019.
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 in sections 31(1)(a) and 33(1) to refuse access to the documents. The Agency's decision letter sets out the reasons for its decision.

Section 33(1) – 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;² and
 - (b) such disclosure would be 'unreasonable'.

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.

² Sections 33(1) and (2).

Does the document contain personal affairs information?

10. Information relates to the 'personal affairs' of a person if it is reasonably capable of identifying them, or of disclosing their address or location.³
11. It has also been held information relates to an individual's personal affairs if it 'concerns or affects that person as an individual'.⁴
12. 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 identify a third party.⁵
13. Document 1 is a statutory declaration. It includes the full name, date of birth and address of one person (**first named person**) and the full name of a second person (**second named person**).
14. Document 2 is a bank statement. It includes the full names of the first and second named person, and the BSB and account number of the bank account.
15. Accordingly, I am satisfied both documents contain the personal affairs information of individuals other than the Applicant.

Would release of the personal affairs information be unreasonable?

16. The concept of 'unreasonable disclosure' involves determining whether the public interest in the disclosure of official information is outweighed by the personal interest in privacy.
17. In determining whether disclosure of the personal affairs information in the documents 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 name, date of birth, address and banking details of the first named person, and the name and banking details of the second named person.

The information was obtained by the Agency in the context of it undertaking an investigation into the individuals' alleged involvement in criminal offending. This factor weighs 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 to a document is a relevant consideration in determining whether disclosure would be unreasonable.⁶

The Applicant states they seek access to the documents to commence a civil claim against the alleged offenders. I acknowledge the Applicant's personal interest in obtaining access to the documents.

³ Section 33(9).

⁴ *Hanson v Department of Education & Training* [2007] VCAT 123 at [9].

⁵ *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].

⁶ *Victoria Police v Marke* [2008] VSCA 218 at [104].

I consider the Applicant's purpose for seeking the information is unlikely to be achieved by granting access to the Documents. This factor weighs against 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 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 criminal investigations and obtain the cooperation of alleged offenders during an investigation. 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 individuals to whom the information relates. The individuals did not respond to consultation conducted by the Agency.

Having regard to the circumstances in which the documents were created and the context in which the information was obtained by the Agency, I am of the view the individuals would be reasonably likely to object to the release of their personal affairs information. This factor weighs against disclosure.

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

The documents relate to allegations named against the named persons. To date, the named persons have not been charged for the alleged offences.

In light of the circumstances in which the information was obtained and the named persons have not been charged with or found guilty of the alleged offences, I consider release of the information under the FOI Act would be reasonably likely to cause stress and anxiety to the individuals to whom the information relates. 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 person⁷

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

18. Having weighed up the above factors, I am satisfied disclosure of the personal affairs information in the documents would be unreasonable in the circumstances.

Section 31(1)(a) – Law enforcement documents

19. In light of my decision the documents are exempt in full under section 33(1), it is not necessary for me to consider the application of section 31(1)(a) to the documents.

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.

⁷ Section 33(2A).

21. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'⁸ 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 25.⁹
22. I have considered the effect of deleting exempt information from the documents. In my view, it is not practicable to delete the exempt information, because doing so would render the documents meaningless and devoid of context.

Conclusion

23. On the information before me, I am satisfied the exemption in section 33(1) applies to the documents.
24. As it is not practicable to edit the documents to delete exempt information, I have decided to refuse access to both documents in full.

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.¹⁰
26. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.¹¹
27. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.¹²
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.¹³

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 *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].

⁹ *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].

¹⁰ The Applicant in section 50(1)(b) and the Agency in section 50(3D).

¹¹ Section 52(5).

¹² Section 52(9).

¹³ Sections 50(3F) and (3FA).