

Notice of Decision and Reasons for Decision

Applicant:	'AP6'
Agency:	VicRoads
Decision Date:	11 October 2019
Provisions and exemptions considered:	Sections 25A(5) and 38 of the <i>Freedom of Information Act 1982</i> (Vic) and section 7B of the <i>Road Safety Act 1986</i> (Vic)
Citation:	'AP6' and <i>VicRoads (Freedom of Information)</i> [2019] VICmr 141 (11 October 2019)

FREEDOM OF INFORMATION – registration certificates – documents relating to third parties' vehicle registration – secrecy provisions

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 *Freedom of Information Act 1982* (Vic) (**FOI Act**).

My decision on the Applicant's request is the same as the Agency's decision in that I have decided to refuse to grant access to documents in accordance with the Applicant's request under section 25A(5) of the FOI Act.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

11 October 2019

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to the following documents regarding [their] deceased [relative's] car including:
 - (a) the name of the current registered owner of the vehicle;
 - (b) the garaged address of the registered owner; and
 - (c) any transfer of registration documentation or other related documents.
2. During the handling of the FOI request, the Agency sought the following information from the Applicant:
 - (a) a will naming the Applicant as beneficiary of [the relative's] estate; and
 - (b) a Letter of Administration or Probate letter naming the Applicant as executor of [the relative's] estate.
3. The Applicant was unable to provide the Agency with this documentation.
4. By letter dated 19 June 2019, the Agency notified the Applicant of its decision to refuse to process the request in accordance with section 25A(5) of the FOI Act.
5. In denying access to the documents under the provision of section 25A(5) of the FOI Act, the Agency claimed documents would be exempt under section 38 of the FOI Act in conjunction with Part 7B of the *Road Safety Act 1986* (Vic) (**RSA**).

Review

6. Under section 49A(1) of the FOI Act, the Applicant sought review by the Information Commissioner of the Agency's decision to refuse to process the request.
7. The Applicant and the Agency were invited to make a written submission under section 49H(2) of the FOI Act in relation to 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 dated 22 August 2019, outlining the reasons the Applicant seeks access to the documents; and
 - (c) the Agency's submission dated 5 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 application of section 25A(5) to refuse to grant access to documents

10. The Agency determined documents falling within the terms of the Applicant's request would be exempt from release under section 38. Accordingly, the Agency refused to grant access to documents under section 25A(5). The reasons for the Agency's decision are set out in its decision letter.

11. Section 25A(5) of the FOI Act provides that an agency may refuse to grant access to a request for documents, without having identified any or all of the documents, if it is apparent from the nature of the request the documents would be exempt under the FOI Act and where removal of the exempt material would not facilitate the release of the documents, or where it is clear the Applicant does not seek an edited copy of the documents.
12. The power in section 25A(5) of the FOI Act is carefully circumscribed. A decision maker must be satisfied of three elements, which limit its application to a limited category of cases:
 - (a) First, the exempt nature of the documents must be objectively apparent from the face of the request. Namely, the terms of the request as described by the applicant. The 'nature' of the documents refers to its inherent or essential quality or character.
 - (b) Second, it must be apparent that all of the documents in the request are exempt.
 - (c) Third, it must be apparent from:
 - (i) the nature of the documents, as described in the request, that no obligation would arise under section 25 for the agency to grant access to an edited copy of a document; or
 - (ii) the request or through consultation with the applicant that the person would not wish to have access to an edited copy of the document.¹

What is the essential quality or nature of the documents requested?

13. On the information before me, I am satisfied the essential quality or character of the documents as described by the Applicant is apparent from the request. The nature of the documents is information regarding a third party's vehicle registration information obtained by the Agency.

Would the documents requested, as described by the Applicant, be exempt?

14. In refusing to grant access to the documents requested under section 25A(5) of the FOI Act, the Agency submitted all documents would be exempt under section 38 of the FOI Act.

Application of section 38

15. A document is exempt under section 38 if:
 - (a) there is an enactment in force;
 - (b) that applies specifically to the kind of information contained in the documents; 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).
16. The Agency relied on section 38 in conjunction with Part 7B of the RSA, which prohibits the disclosure of 'relevant information' except in accordance with that Act.
17. Part 7B of the RSA applies to 'relevant information'. Section 90I of that Act defines 'relevant information' as information to which section 90J of the RSA applies. Section 90J provides:

90J Information to which this Part applies

- (1) This Part applies to information—
 - (a) that is collected or received by the Corporation in relation to its registration or licensing functions and activities; and

¹ *Knight v Corrections Victoria* [2010] VSC 338.

- (b) that identifies an individual or from which an individual's identity can be reasonably ascertained.

...

- (3) For the purposes of subsection (1), information collected or received by the Corporation in relation to its registration or licensing functions and activities includes, but is not limited to, information relating to—

- (a) granting, renewing, suspending or cancelling registration of vehicles;
- (b) entering or removing vehicles from the written-off vehicles register;
- (c) exempting vehicles from registration;
- (d) granting, renewing, suspending or cancelling driver licences or learner permits and recording demerit points—

whether that information relates to a registered or unregistered vehicle or a licensed or unlicensed driver.

- 18. Section 90Q of the RSA provides:

90Q Offences

- (1) The Corporation or a relevant person or a person who has been a relevant person must not use or disclose relevant information other than as authorised by this Part—
 - (a) knowing that the use or disclosure is not so authorised; or
 - (b) being reckless as to whether the use or disclosure is so authorised.

Penalty: 120 penalty units or imprisonment for 12 months.

- 19. Section 90I of the RSA defines 'relevant person'. The definition includes Agency officers.
- 20. Section 90K of the RSA authorises disclosure of relevant information for certain purposes or circumstances. For example, the Agency or a relevant person may use or disclose relevant information with the consent of the individual to whom the information relates.
- 21. The RSA is an enactment in force.
- 22. I am also satisfied that, the nature of the information the Applicant seeks is 'relevant information' for the purposes of section 90J of the RSA because:
 - (a) the information was collected by the Agency in relation to its registration functions;
 - (b) the information identifies a third party, or the identity of a third party can be reasonably ascertained; and
 - (c) I am satisfied the RSA prohibits persons from disclosing that specific kind of information (either absolutely or subject to exceptions or qualifications) sought by the Applicant and that there is no information before me that demonstrates that section 90K would allow for disclosure in this matter.

Are all of the documents in the request exempt?

- 23. Further, I am satisfied that all of the documents sought, as described by the Applicant above, would be exempt under section 38.

Is there scope to provide an edited copy of the documents requested?

24. Section 25 requires an agency to grant access to an edited copy of a document containing exempt or irrelevant information if it is practicable for the agency to delete that information, and if the applicant is agreeable 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. On the information before me, I am satisfied it is not practicable to delete exempt material from the documents.
27. While I note the Applicant has not advised whether [they] would accept edited versions of the document, I do not consider [they] would be satisfied with such deletions of exempt information as it would remove the very information [the Applicant] is seeking.
28. Accordingly, I am satisfied there is no scope for the Agency to provide the Applicant an edited copy of the documents requested.

Conclusion

29. On the information available, I have decided to refuse to grant access to the documents in accordance with the Applicant's request under section 25A(5).

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.

² *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 [82].

³ *Honeywood v Department of Human Services* [2006] VCAT 2048 [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 [140], [155].

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).