

Notice of Decision and Reasons for Decision

Applicant:	'AN4'
Agency:	Victoria Police
Decision Date:	26 September 2019
Exemption considered:	Section 33(1)
Citation:	'AN4' and Victoria Police (<i>Freedom of Information</i>) [2019] VICmr 121 (26 September 2019)

FREEDOM OF INFORMATION – incident report – traffic incident – address of third party – names of attendees

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 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

26 September 2019

Reasons for Decision

Background to review

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

...the police report written on the morning of the accident [location] [named person] DOB [date] drove [their] vehicle into our [specific site of accident] at approx. [time] on [date]. I am trying to recover my costs for the damage to my property on the [specific site of accident].
2. In its decision, the Agency identified one document falling within the terms of the Applicant's request. It decided to grant access to the Document in part.
3. I note the correct date of the incident was [date].

Review

4. The Applicant, through their representative, sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
5. In their review request, the Applicant advised they are seeking access to the full police report, and noted they are particularly seeking the address of the person to recover costs for the damage to their property.
6. I have examined a copy of the Document.
7. The Applicant and the Agency were invited to make a written submission under section 49H(2) 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; and
 - (b) information provided with the Applicant's review application;
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 an incident report. It contains personal affairs information, including names, addresses, dates of birth and other personal affairs information about people 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 disclosure of official information is outweighed by the personal interest in privacy.
17. 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 in the Document is:

- (i) certain information about the 'offender' and agency members;
- (ii) the name, date of birth and address of the offender;
- (iii) the names of other people who attended the location of the incident.

The information was obtained by the Agency in the context of undertaking an investigation into a traffic accident. 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.⁴

The Applicant states they seek access to the information to pursue costs against the offender.

While I note information the Applicant is specifically seeking is contained in the Document, I do not consider it is appropriate for it to be released under the FOI Act. Rather, if the Applicant is intending to pursue legal action, then they could seek legal advice and pursue the information via other means.

- (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.

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].

I do not consider the public interest would be promoted by release of the personal affairs information in the Document to the Applicant. I am of the view the greater public interest lies in the Agency preserving its ability to conduct investigations and obtain the cooperation of alleged offenders, witnesses and other parties during their investigations. If this information were to be released, this would jeopardise the ability of the Agency to meet its obligations to investigate crimes and maintain public safety. 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 as the Agency determined it was unreasonable to consult with them.

Having regard to the circumstances in which the Document was created, that is, a police investigation of an incident, I am of the view the individuals concerned would be reasonably likely to object to the release of their personal affairs information. Information provided in these circumstances is given with the expectation that it will only be used for the purposes for which it is being gathered. 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 a person. The matter was finalised by the Agency issuing an infringement notice and it therefore has not been presented in court.

While I note the Applicant appears to be aware of the name and date of birth of the person subject of the incident, a formal document holding this information carries considerable additional weight and, in the circumstances of an incident report prepared by Victoria Police, I do not consider it is reasonable to release this information in this context.

Given the matter has been determined by the Agency, 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.

18. Having weighed up the above factors, I am satisfied disclosure of the residential address and the other personal affairs information in the Document would be unreasonable in the circumstances. Accordingly, this information is exempt under section 33(1).

19. However, I am satisfied disclosure of the individual's full name is not unreasonable in the circumstances and should be released to the Applicant.

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.

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].

22. Where deletions would render the document meaningless they are not 'practicable', and release of the document is not required under section 25.⁷
23. I have considered the effect of deleting exempt and irrelevant information from the Document. I am satisfied it is practicable 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 information exempted by the Agency in the Document. In line with the Agency's decision, 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.

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].

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
1	[Date]	Incident report	3	Release in part Section 33(1)	<p>Release in part Sections 33(1), 25</p> <p>The document is to be released in part, with the following information, which is exempt under section 33(1), deleted in accordance with section 25:</p> <ul style="list-style-type: none"> • the second sentence of the sixth line of the 'circumstances' paragraph; • the last sentence of the 'circumstances' paragraph; • the full name, date of birth and address of the offender; • the surnames referred to against the entry 'noted'. 	<p>Section 33(1): The information is exempt from release for the reasons set out above.</p> <p>Section 25: I am satisfied it is practicable to delete such information as in doing so, I am satisfied the edited document would retain sufficient meaning.</p>