

Notice of Decision and Reasons for Decision

Applicant:	'AO1'
Agency:	VicRoads
Decision Date:	30 September 2019
Exemption and provision considered:	Section 38 of the <i>Freedom of Information Act 1982</i> (Vic) in conjunction with section 90J of the <i>Road Safety Act 1986</i> (Vic)
Citation:	'AO1' and <i>VicRoads (Freedom of Information)</i> [2019] VICmr 127 (30 September 2019)

FREEDOM OF INFORMATION – application for transfer of registration form – vehicle registration identification system – certification of roadworthiness – secrecy provision

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 documents in part.

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

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner
30 September 2019

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to the following documents in relation to a [vehicle make][licence plate]:
 - previous certificate of registration and current certificate of registration
 - transfer confirmation, copy of transfer papers ([date])
 - registration history
 - date transferred out of the Applicant's name
 - notice of disposal
 - number plate disposal
 - roadworthy certificate
 - current history of motor vehicle trading
 - odometer of vehicle 'current to previous'
2. In its decision, the Agency identified 13 documents falling within the terms of the Applicant's request. It decided to grant access to the documents in part.

Review

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. I have examined copies of the documents subject to review.
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; and
 - (b) the Applicant's review application and subsequent communications with this office.
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 Section 38 to deny access to some of the documents.

Section 38

9. Section 38 provides:

A document is an exempt document if there is in force an enactment applying specifically to information of a kind contained in the document and prohibiting persons referred to in the enactment from disclosing information of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications.

10. Accordingly, for a document to be exempt under section 38, three conditions must be satisfied:
- (a) there must be an enactment in force;
 - (b) the enactment must apply specifically to the kind of information contained 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).
11. The Agency relied on section 38 in conjunction with Part 7B of the *Road Safety Act 1986* (Vic) (**Road Safety Act**), which prohibits the disclosure of 'relevant information' except in accordance with that Act.
12. Part 7B of the Road Safety Act applies to 'relevant information'. Section 90I of that Act defines 'relevant information' as information to which section 90J of the Road Safety Act 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
 - (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.

13. Section 90Q of the Road Safety Act 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.

14. Section 90I of the Road Safety Act defines 'relevant person'. The definition includes Agency officers.

15. Section 90K of the Road Safety Act 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.
16. The information the Agency decided was exempt under this provision is:
 - a) an application for transfer of registration; and
 - b) print outs from the Agency's 'vehicle registration and identification system'.
17. The Road Safety Act is an enactment in force, therefore, the first condition of section 38 is satisfied.
18. Further, I am satisfied the information subject to the request is 'relevant information' for the purposes of section 90J of the Road Safety Act, being information collected or received by the Agency in relation to its registration or licensing functions and activities, and that identifies an individual or from which an individual's identity can be reasonably ascertained. Therefore, the Road Safety Act applies specifically to the kind of information contained in the documents subject to the review.
19. On the information before me, it does not appear that any of the exceptions to the prohibition in section 90Q of the Road Safety Act apply in the circumstances.
20. Therefore, I am satisfied section 90Q of the Road Safety Act prohibits the Agency from disclosing the information in the document. Accordingly, the third condition of section 38 is met and I am satisfied the information sought by the Applicant in the documents is exempt from release.

Deletion of exempt or irrelevant information

21. 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.
22. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'¹ 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 25.²
23. I have considered the effect of deleting exempt information from the documents. In my view, it is not practicable to delete the exempt information in document 2 because to do so would render the document meaningless. However, I am satisfied it is practicable to remove such information from the remaining documents.

Conclusion

24. On the information available, I am satisfied section 38 of the *Freedom of Information Act 1982* (Vic) and section 90J of the Road Safety Act applies to the documents in full and in part.

¹ *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].

² *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].

Review rights

25. 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.³
26. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.⁴
27. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁵
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.⁶

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.

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

⁴ Section 52(5).

⁵ Section 52(9).

⁶ 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]	Application for transfer of registration	1	Released in full	Not subject to review	
2.	[Date]	Application for transfer of registration	1	Refused in full Section 38	Refuse in full Section 38, 25	<p>Section 38: The document is exempt for the reasons set out above.</p> <p>Section 25: In my view, it is not practicable to delete the exempt information in Document 2 because to do so would render the document meaningless.</p>
3.	[Date]	Print-out of Agency 'Vehicle Registration and Identification System'	1	Released in part Section 38	<p>Release in part Sections 38, 25</p> <p>The document is to be released to the applicant, with the following information removed as it is exempt under section 38:</p> <ul style="list-style-type: none"> • the client ID; • the 'licence no'; • the name and address. 	<p>Section 38: The document is exempt for the reasons set out above.</p> <p>Section 25: In my view, it is practicable to delete the exempt information in Document 3 because to do so would not render the document meaningless.</p>

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
4.	[Date]	Print-out of Agency 'Vehicle Registration and Identification System'	1	Released in part Section 38	<p>Release in part Sections 38, 25</p> <p>The document is to be released to the applicant, with the following information removed as it is exempt under section 38:</p> <ul style="list-style-type: none"> • the client ID; • the 'licence no'; • the name and address; • the information in rows 2-4 (inclusive) that appears under the heading 'Operator'. 	<p>Section 38: The document is exempt for the reasons set out above.</p> <p>Section 25: Refer to my comments for Document 2 above.</p>
5.	[Date]	Print-out of Agency 'Vehicle Registration and Identification System'	1	Released in part Section 38	<p>Release in part Sections 38, 25</p> <p>The document is to be released to the applicant, with the following information removed as it is exempt under section 38:</p> <ul style="list-style-type: none"> • the client ID; • the 'licence no'; • the name and address; • the information in rows 3-4 (inclusive) that appears under the heading 'Operator'. 	<p>Section 38: The document is exempt for the reasons set out above.</p> <p>Section 25: Refer to my comments for Document 2 above.</p>

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
6.	[Date]	Print-out of Agency 'Vehicle Registration and Identification System'	1	Released in part Section 38	<p>Release in part</p> <p>Sections 38, 25</p> <p>The document is to be released to the applicant, with the following information removed as it is exempt under section 38:</p> <ul style="list-style-type: none"> • the client ID; • the 'licence no'; • the name and address; • the information in rows 2-3 (inclusive) that appears under the heading 'Operator'. 	<p>Section 38: The document is exempt for the reasons set out above.</p> <p>Section 25: Refer to my comments for Document 2 above.</p>
7.	[Date]	Print-out of Agency 'Vehicle Registration and Identification System'	1	Released in part Section 38	<p>Release in part</p> <p>Sections 38, 25</p> <p>The document is to be released to the applicant, with the following information removed as it is exempt under section 38:</p> <ul style="list-style-type: none"> • the client ID; • the 'licence no'; • the name and address. 	<p>Section 38: The document is exempt for the reasons set out above.</p> <p>Section 25: Refer to my comments for Document 2 above.</p>

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
8.	[Date]	Print-out of Agency 'Vehicle Registration and Identification System'	1	Released in part Section 38	<p>Release in part Sections 38, 25</p> <p>The document is to be released to the applicant, with the following information removed as it is exempt under section 38:</p> <ul style="list-style-type: none"> • the client ID; • the 'licence no'; • the names, addresses and telephone number; • the operator codes. 	<p>Section 38: The document is exempt for the reasons set out above.</p> <p>Section 25: Refer to my comments for Document 2 above.</p>
9.	[Date]	Print-out of Agency 'Vehicle Registration and Identification System'	1	Released in part Section 38	<p>Release in part Sections 38, 25</p> <p>The document is to be released to the applicant, with the following information removed as it is exempt under section 38:</p> <ul style="list-style-type: none"> • the client ID; • the 'licence no'; • the name and address; • the information dated [date] after the word 'by'; • the information dated [date] after the word 'by'. 	<p>Section 38: The document is exempt for the reasons set out above.</p> <p>Section 25: Refer to my comments for Document 2 above.</p>

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Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
10.	[Date]	Print-out of Agency 'Vehicle Registration and Identification System'	1	Released in part Section 38	Release in part Sections 38, 25 The document is to be released to the applicant, with the following information removed as it is exempt under section 38: <ul style="list-style-type: none"> the client ID; the 'licence no'; the name and address. 	Section 38: I note this document is dated differently, but it duplicates the information in Document 3. The same decision therefore applies.
11.	[Date]	Print-out of Agency 'Vehicle Registration and Identification System'	1	Released in part Section 38	Release in part Sections 38, 25 The document is to be released to the applicant, with the following information removed as it is exempt under section 38: <ul style="list-style-type: none"> the client ID; the 'licence no'; the name and address; the information in rows 2-4 (inclusive) that appears under the heading 'Operator'. 	Section 38: I note this document is dated differently, but it duplicates the information in Document 4. Therefore, refer to my decision for Document 4 above.

Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
12.	[Date]	Print out of Agency's 'Vehicle Registration Transfers;	1	Release in full	Not subject to review	
13.	[Date]	Certificate of roadworthiness	1	Released in part Section 38	Release in part Sections 38, 25 The document is to be released to the applicant, with the following information removed as it is exempt under section 38: <ul style="list-style-type: none"> • the tester's licence number ex that appears twice; • the three signatures; • the names, addresses and phone numbers; • the driver licence number. 	Section 38: The document is exempt for the reasons set out above. Section 25: Refer to my comments for Document 2 above.