

Notice of Decision and Reasons for Decision

Applicant:	'AM2'
Agency:	State Revenue Office
Decision Date:	19 September 2019
Exemptions considered:	Sections 33(1) and 38 of the <i>Freedom of Information Act 1982</i> (Vic) in conjunction with section 76 of the <i>Unclaimed Money Act 2008</i> (Vic)
Citation	'AM2' and State Revenue Office (<i>Freedom of Information</i>) [2019] VICmr 110 (19 September 2019)

FREEDOM OF INFORMATION – records of unclaimed monies – Unclaimed Money Register – secrecy provisions – unclaimed monies – state revenue

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 document in full.

My reasons for decision follow.

Joanne Kummrow
Public Access Deputy Commissioner

19 September 2019

Reasons for Decision

Background to review

1. The Applicant made a request to the Agency for access to the following documents:
 - ... a copy of the unpaid unclaimed moneys of [amount] or more lodged with the SRO since [specified date].
2. In its decision, the Agency identified more than 1.87 million records falling within the terms of the Applicant's request.
3. The Agency produced a document, or 'extract', of the records in accordance with section 19.
4. Due to the size of the document created, the Agency saved the document as four separate files, totalling 79,713 pages.
5. The Agency refused access to the document in full.

Review

6. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
7. I have examined the document subject to this review. The document is a table that lists the name, address, net amount and reference number of unclaimed monies between [specified dates]. There are 1,871,499 records listed in the table.
8. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
9. 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; and
 - (c) information provided by the Applicant and the Agency during this review.
10. 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

11. The Agency relied on the exemptions in section 33(1) and 38 of the FOI Act in conjunction with section 76 of the *Unclaimed Money Act 2008* (Vic) (**Unclaimed Money Act**) to refuse access to the document in full.

Section 38

12. Section 38 provides:

38 Documents to which secrecy provisions of enactments apply

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.

13. For section 38 to apply to an enactment, the enactment must be formulated with such precision that it specifies the actual information sought to be withheld.
14. As stated above, the Agency relies on section 38 of the FOI Act in conjunction with section 76 of the Unclaimed Money Act to refuse access to the document.
15. Section 76 of the Unclaimed Money Act provides:

76 Prohibition on certain disclosures of information by authorised persons

- (1) A person who is or was an authorised person must not disclose any information obtained under, or in relation to the administration of, this Act, except as permitted by this Part.

Penalty: 60 penalty units.

- (2) For the purposes of the **Freedom of Information Act 1982**, information referred to in subsection (1) is information of a kind to which section 38 of that Act applies.

16. In the Agency's decision letter, it explained that while the 'Unclaimed Money Register' (the **Register**) is published under the Unclaimed Money Act, it should not be assumed the information sought through the FOI request is the same as what appears on the Register.
17. The Register lists amounts of unclaimed money arising from an owner's entitlements to share dividends, salaries and wages, rents and bonds, debentures and interest and proceeds from a sale. The Register can be searched online by entering specific information into a Register search function.¹
18. I accept the Agency's view that information about unclaimed money is obtained under and in accordance with the Unclaimed Money Act. Section 11 of the Unclaimed Money Act and Regulations 4 and 5 of the *Unclaimed Money Regulations 2009* (Vic) outline the form in which a company must keep a register of unclaimed money and when this information is to be provided to the Register.
19. While I acknowledge the Applicant's interest in obtaining the information, and they state in the information provided with their review application that records of unclaimed money are published in other Australian jurisdictions, there is a clear and legislated process through which information about unclaimed money is made available to those seeking such information in Victoria. As noted by the Agency, the Unclaimed Money Act does not expressly permit disclosure for commercial purposes.
20. I am satisfied:
 - (a) there is in force an enactment for the purposes of section 38 of the FOI Act, namely the Unclaimed Money Act;
 - (b) section 76 of the Unclaimed Money Act applies specifically to information of a kind contained in the document; and
 - (c) disclosure of the information sought by the Applicant would constitute a breach the secrecy provision under section 76 of the Unclaimed Money Act.
21. Accordingly, I am satisfied the document is exempt under section 38 of the FOI Act in conjunction with section 76 of the Unclaimed Money Act.

¹ 'Search for your unclaimed money' *State Revenue Office Victoria* <<https://www.sro.vic.gov.au/unclaimedmoneysearch>>.

Section 33(1)

22. As I have already determined the information exempted by the Agency in the document under section 38 is exempt, it is not necessary for me to consider the application of section 33(1) to the same information.

Conclusion

23. On the information available, I have determined the document is exempt under section 38 of the FOI Act in conjunction with section 76 of the Unclaimed Money Act.
24. In my view, it is not practicable to edit the document to delete the exempt information in accordance with section 25 as to do so would render the document meaningless.

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.²
26. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.³
27. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.⁴
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.⁵

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.

² The Applicant in section 50(1)(b) and the Agency in section 50(3D).

³ Section 52(5).

⁴ Section 52(9).

⁵ Sections 50(3F) and (3FA).