

## Notice of Decision and Reasons for Decision

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Applicant:	'AQ2'
Agency:	Victoria Police
Decision Date:	24 October 2019
Exemptions considered:	Section 31(1)(a), 33(1), 35(1)(b), and 38 of the <i>Freedom of Information Act 1982</i> (Vic) in conjunction with sections 41, 191 and 209 of the <i>Children, Youth and Families Act 2005</i> (Vic)
Citation:	'AQ2' and Victoria Police ( <i>Freedom of Information</i> ) [2019] VICmr 146 (24 October 2019)

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FREEDOM OF INFORMATION – law enforcement documents – prejudice the enforcement or proper administration of the law in a particular instance – arrest warrant – open police investigation – documents containing material obtained in confidence – witness statements – secrecy provision – personal affairs information

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 parts of the documents.

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

My reasons for decision follow.

**Joanne Kummrow**  
Public Access Deputy Commissioner  
24 October 2019

## Reasons for Decision

### Background to review

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

Any outstanding or former bench warrants or other warrants in my name. All records held by Victoria Police in relation to an event at my property [address] in relation to child services (DHS) on [date] including any records after that date.
2. In its decision, the Agency identified 16 documents falling within the terms of the Applicant's request. It decided to grant access to four documents in part and refuse access to 12 documents in full. The Agency also determined to impose access charges under section 22, which I understand the Applicant is yet to pay. Accordingly, the Applicant is yet to receive access to the documents the Agency decided to release.

### 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 been briefed by OVIC staff who inspected the parts of the documents claimed to be exempt under section 31(1).<sup>1</sup>
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) information provided by the Agency on 17 July 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 under sections 31(1)(a), 33(1) and 35(1)(b) to refuse access to the documents. The Agency's decision letter sets out the reasons for its decision.

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

9. Section 31(1)(a) provides a document is an exempt document if its disclosure under the FOI Act would, or would be reasonably likely to prejudice the investigation of a breach or possible breach of the law, or prejudice the enforcement or proper administration of the law in a particular instance.

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<sup>1</sup> 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.

*Enforcement or proper administration of the law in a particular instance*

10. Section 31(1)(a) may apply in relation to either a particular investigation, or the enforcement or proper administration of the law more generally.
11. The meaning of 'enforcement' in section 31(1)(a) was considered in *Re O'Sullivan and Police Force of Victoria*:<sup>2</sup>

The concept of 'enforcement ... of the law in a particular instance' may be similar to that of an investigation: ... It seems to contemplate that an offence has already been committed, following which investigations are conducted and proceedings brought.

12. The Agency's decision letter states:

The denied information contains details of the incident and the evidence gathered by police during the course of the investigation... the investigation is current and ongoing. In the circumstances I consider the release of the denied information at this time would be reasonably likely to prejudice the police investigation...

13. In *Sobh v Police Force of Victoria*,<sup>3</sup> the Supreme Court of Victoria found in many cases a police file may be exempt under section 31(1)(a) because of the apprehended prejudice to the investigation of a breach, or possible breach, of the law.
14. 'In a particular instance' does not require a specific investigation. This phrase can encompass specific, identified aspects of the law, administration of the law or investigations into breaches, or potential breaches, of the law.<sup>4</sup>
15. I consider the investigation and prosecution of certain alleged offences by the Applicant to be 'a particular instance' for the purposes of section 31(1)(a).
16. On the information before me, I am satisfied the documents relate to the enforcement and proper administration of the law in a particular instance.

*Reasonably likely to prejudice the enforcement and proper administration of the law*

17. As I am satisfied the documents relate to the enforcement and proper administration of the law in a particular instance, it is necessary for me to also consider whether disclosure of the documents would, or would be reasonably likely to, prejudice the Agency's enforcement and proper administration of the law.
18. The phrase 'reasonably likely' means there is a real chance of an event occurring and it is not fanciful or remote.<sup>5</sup>
19. 'Prejudice' means to impede or derogate from. Its content is governed by the matters which may be impeded or derogated from.<sup>6</sup>
20. I accept the Agency's investigation is current and ongoing.

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<sup>2</sup> 1 VAR 171 at [175].

<sup>3</sup> (1994) 1 VR 41.

<sup>4</sup> *Ibid*, *Bergman* at [66], referring to *Sobh v Police Force of Victoria* [1994] VicRp 2; [1994] 1 VR 41 (Nathan J) at [55].

<sup>5</sup> *Bergman v Department of Justice Freedom of Information Officer* [2012] VCAT 363 at [65] quoting *Binnie v Department of Agriculture and Rural Affairs* [1989] VR 836.

<sup>6</sup> *Sobh v Police Force of Victoria* (1994) 1 VR 41 at [55].

21. In the matter of *RFJ v Victoria Police FOI Division*,<sup>7</sup> the Victorian Civil and Administrative Tribunal (VCAT) accepted the evidence of a sworn member with respect to prejudice in the context of disclosure of information where there is an open police investigation:

... The identified prejudice includes:

- If the documents became known to a person who was responsible for the offence, that person would know the information that the police have obtained. It would make clear what was known to the police and also what evidence, if any, has not yet been uncovered. A person or persons could use that information to avoid being connected with the crime;
- Even seemingly innocuous information could be extremely useful to an offender as that person could modify his or her behaviour or prepare an explanation or alibi in the event they were ever asked about their involvement;
- If an offender or any member of the community had access to information collected during an investigation, the offender would know what evidence a witness could give before a formal interview has been conducted;
- Release of documents could reveal evidence that could be used in laying charges and subsequent prosecutions, prior to the offender being interviewed and charged; and
- The safety of a witness or potential witness could be placed at risk if a person came to know their identity, where they lived or information which would lead to the person having an idea where they lived.

22. I accept disclosure of the documents would be reasonably likely to prejudice the Agency's enforcement and proper administration of the law with respect to its open investigation and any future prosecution.

23. Accordingly, I am satisfied the exemption under section 31(1)(a) applies to Documents 1 to 14.

### ***Section 33(1) – Documents containing personal affairs information***

24. 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;<sup>8</sup> and
- (b) such disclosure would be 'unreasonable'.

*Do the documents contain personal affairs information?*

25. Information relates to the 'personal affairs' of a person if it is reasonably capable of identifying them, or of disclosing their address or location.<sup>9</sup>

26. It has also been held information relates to an individual's personal affairs if it 'concerns or affects that person as an individual'.<sup>10</sup>

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<sup>7</sup> (Review and Regulation) [2013] VCAT 1267 at [134].

<sup>8</sup> Sections 33(1) and (2).

<sup>9</sup> Section 33(9).

<sup>10</sup> *Hanson v Department of Education & Training* [2007] VCAT 123 at [9].

27. 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.<sup>11</sup>
28. The Agency exempted Documents 1 to 4 under section 33(1).
29. The Documents contain the following personal affairs information:
  - (a) names;
  - (b) position titles/ranks;
  - (c) dates of birth;
  - (d) registered numbers;
  - (e) residential addresses;
  - (f) telephone numbers;
  - (g) signatures; and
  - (h) other contextual information which is reasonably capable of identifying third parties, including Agency officers.
30. Accordingly, I am satisfied the documents contain the personal affairs information of individuals other than the Applicant.

*Would release of the personal affairs information be unreasonable?*

31. The concept of 'unreasonable disclosure' involves determining whether the public interest in disclosure of official information is outweighed by the personal interest in privacy.
32. I adopt the view expressed by the Supreme Court of Victoria Court of Appeal in *Victoria Police v Marke*,<sup>12</sup> in which it was held there is 'no absolute bar to providing access to documents which relate to the personal affairs of others', and the exemption under section 33(1) 'arises only in cases of unreasonable disclosure' and '[w]hat amounts to an unreasonable disclosure of someone's personal affairs will necessarily vary from case to case'.
33. As also stated in *Victoria Police v Marke*, '[t]he protection of privacy, which lies at the heart of section 33(1), is an important right that the FOI Act properly protects. However, an individual's privacy can be invaded to a lesser or greater degree'.<sup>13</sup>
34. I acknowledge the Applicant may already know some of the third party individuals named in the documents. However, even where an applicant claims to know the identity of a third party, disclosure of that person's personal affairs information may still be unreasonable in the circumstances.<sup>14</sup>

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<sup>11</sup> *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].

<sup>12</sup> [2008] VSCA 218 at [76].

<sup>13</sup> [2008] VSCA 218 at [79].

<sup>14</sup> *AB v Department of Education and Early Childhood Development* [2011] VCAT 1263 at [58]; *Akers v Victoria Police* [2003] VCAT 397.

35. The proper application of section 33(1) involves consideration of 'all matters relevant, logical and probative to the existence of conditions upon which the section is made to depend'.<sup>15</sup>

36. In determining whether disclosure of the personal 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 nature of the personal affairs information is outlined above, at paragraph 29.

In relation to the Agency practitioner's name[s], VCAT has generally accepted there is nothing particularly sensitive about matters occurring or arising out of the course of one's official duties.<sup>16</sup>

However, I have considered the information was obtained by the Agency in the context of undertaking an investigation into allegations of criminal behaviour made against the Applicant, and the Agency's investigation remains open.

I have also considered the Applicant was provided with the name and contact details of the Agency officer who can assist with their enquiries via their FOI request. I consider release of this personal affairs information to be reasonable in the circumstances.

I consider all other personal affairs information in the documents is entwined with other information relating to the open investigation.

These factors weigh 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 a document is a relevant consideration in determining whether disclosure would be unreasonable in the circumstances.<sup>17</sup>

The Applicant provided the following information with respect to their purpose for seeking the information:

I require the documents in order to seek legal advice regarding an alleged warrant to arrest for charges against me which has allegedly been around since [date]...

Victoria Police is obstructing justice as I have not been able to appropriately deal with the alleged matter at hand through the agency or through a court proceeding. I have been trying to deal with this matter over time, but Victoria Police don't seem to want to deal with me.

I am advised Victoria Police has notified the Applicant of the outstanding warrant on numerous occasions, the most recent of which was in the Agency's decision on the Applicant's FOI request.

I do not consider the Applicant's purpose for seeking the information is likely to be achieved by granting access to the personal affairs information of third parties.

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<sup>15</sup> [2008] VSCA 218 at [104].

<sup>16</sup> *Milthorpe v Mt Alexander Shire Council* (1997) 12.

<sup>17</sup> *Victoria Police v Marke* [2008] VSCA 218 at [104].

(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 third parties' personal affairs information to the Applicant.

Rather, there is a public interest in the Agency preserving its ability to continue to conduct an investigation and, once the investigation is completed, disclose relevant documents to an accused person at the appropriate time, as governed by relevant criminal procedure law. 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 persons to whom the information relates. The Agency consulted with 14 Agency officers, 13 of whom did not respond.

The Agency considered it would not be practicable to consult with three Agency officers named in the documents, as they are no longer employed by the Agency.

Having considered the nature of the information and the circumstances in which it was obtained, I am of the view the individuals, whose personal affairs information is in the documents, would be likely to object to the release of that information to the Applicant. This factor weighs against disclosure.

(e) Whether the disclosure of the information would, or would be reasonably likely to endanger the life or physical safety of any person<sup>18</sup>

I have considered section 33(2A) in determining if release of the personal affairs information of third parties would be unreasonable. This provision requires that I consider whether disclosure of information in the documents would, or would be reasonably likely, to endanger the life or physical safety of any person.

Given the details of the investigation in Document 4, I am of the view there are reasonable grounds to consider concerns exist in relation to the effect of disclosure of the documents to the Applicant on the safety of third parties.

37. Having weighed up the above factors, I have determined disclosure of the personal affairs information in Documents 1 to 4 is unreasonable in the circumstances.

***Section 35(1)(b) – Documents containing material obtained in confidence***

38. A document is exempt under section 35(1)(b) if two conditions are satisfied:
- (a) disclosure would divulge information or matter communicated in confidence by or on behalf of a person or a government to an agency or a Minister; and
  - (b) disclosure would be contrary to the public interest as it would be reasonably likely to impair the ability of an agency or a Minister to obtain similar information in the future.

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<sup>18</sup> Section 33(2A).

*Was the information or matter communicated in confidence?*

39. When determining whether the information was communicated in confidence, it is necessary to consider the position from the perspective of the communicator, noting confidentiality can be expressed or implied from the circumstances of a matter.<sup>19</sup>
40. Documents 15 and 16 are statements made by persons other than the Applicant. The information in the statements was obtained in the course of the Agency's investigation into criminal offences.
41. There is nothing on the face of the statements to indicate the information was provided in confidence. However, a document need not be marked 'confidential' for the content to be considered information communicated in confidence.<sup>20</sup>
42. In its decision letter, the Agency stated:
- ... release of the statements would constitute a breach of confidentiality and would be likely to inhibit other people from providing statements to police in the future. This would clearly be contrary to the public interest.
43. I have considered and accept evidence given by the Agency in *Akers v Victoria Police*,<sup>21</sup> in which VCAT accepted in relation to witness statements provided during a police investigation:
- ... persons who provide statements or other information to the police do so with the expectation that these will only be disclosed to the extent necessary to conduct investigations and deal with criminal charges.
44. I have carefully considered the content of Documents 15 and 16 and the potential views of the third parties who made the statements. I accept when each third party gave their statement, they did so with the expectation the information would only be used for the purpose of the Agency's investigation and any subsequent court process. I consider it unlikely the third parties would have expected their statements to be disclosed under FOI.
45. I am satisfied the third parties, who made the statements, did so in circumstances in which confidentiality can reasonably be implied based on the nature and context of the information in the statements. Disclosure of the information in the documents would therefore divulge information communicated in confidence.

*Would disclosure be contrary to the public interest?*

46. Section 35(1)(b) also requires consideration of whether the Agency would be impaired from obtaining similar information in the future if the documents were to be disclosed under the FOI Act. This means I must be satisfied that, if the information were to be disclosed, others in the position of the communicator would be reasonably likely not to provide similar information to the Agency in the future.
47. I note the VCAT decision of *Williams v Victoria Police*,<sup>22</sup> which was subsequently adopted in *RFJ v Victoria Police FOI Division*:<sup>23</sup>

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<sup>19</sup> *XYZ v Victoria Police* [2010] VCAT 255 at [265].

<sup>20</sup> *Williams v Victoria Police* [2007] VCAT 1194 at [75].

<sup>21</sup> [2003] VCAT 397 at [35].

<sup>22</sup> [2007] VCAT 1194 at [73].

<sup>23</sup> [2013] VCAT 1267 at 170.



... persons would be less likely to make statements to the police if they were of the view that the making of such statements was not confidential.

48. Given the nature of the information in Documents 15 and 16, and the context in which the information was provided, I am satisfied the public interest lies in the Agency preserving the confidentiality of witness statements for the purpose of carrying out its law enforcement functions. It would be contrary to the public interest if witnesses declined to make statements in police investigations out of concern their statement would be disclosed under FOI. To the maximum extent possible, this preserves the Agency's ability to obtain witness cooperation during an investigation.
49. Accordingly, I am satisfied disclosure of Documents 15 and 16 would be contrary to the public interest, and Documents 15 and 16 are exempt under section 35(1)(b).

**Section 38 – Documents to which secrecy provisions of enactments apply**

50. I consider section 38 of the FOI Act in conjunction with sections 41, 191 and 209 of the *Children, Youth and Families Act 2005* (Vic) (**CYF Act**) are also relevant.

51. 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.

*Is there an enactment in force?*

52. I am satisfied the CYF Act is an enactment in force for the purposes of section 38.

*Does the enactment apply specifically to the kind of information in the documents?*

53. In order for section 38 to apply, the enactment must be formulated with such precision that it specifies the actual information sought to be withheld.

54. Section 41 of the CYF Act provides:

**41 Identity of reporter or referrer confidential**

(1) If a report is made to the Secretary under section 28 or 29, a person (other than the person who made it) must not disclose to any person other than the Secretary or a community-based child and family service to which the matter is referred under section 30—

- (a) the name of the person who made the report; and
- (b) any information that is likely to lead to the identification of the person who made the report.

Penalty: 60 penalty units.

(1A) If a referral is made to a community-based child and family service under section 31 or 32, a person (other than the person who made it) must not disclose to any person other than the Secretary or that community-based child and family service— (a) the name of the person who made the referral; and

- (b) any information that is likely to lead to the identification of the person who made the referral.

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply if the person who made the report or referral—
  - (a) gives written consent to the Secretary; or
  - (b) gives written or oral consent to the community-based child and family service.

55. Section 191 of the CYF Act provides:

**191 Confidentiality**

- (1) If a report referred to in section 190(1) is made, a person (other than the person who made it or a person acting with the written consent of the person who made it) must not disclose to any person other than a protective intervener or a community-based child and family service in accordance with subsection (4)—
  - (a) the name of the person who made the report; or
  - (b) any information that is likely to lead to the identification of the person who made the report.

Penalty: 10 penalty units.

- (2) Subsection (1) does not apply to a disclosure made to a court or tribunal in accordance with section 190.
- (3) Subsection (1) does not apply to a disclosure to the Therapeutic Treatment Board of the name or information leading to the identification of a police officer who made a report under section 185.
- (4) If a report is made to the Secretary under section 183 or 184, the information referred to in subsection (1) may be disclosed to a community-based child and family service if—
  - (a) the Secretary has made a determination under section 187(1)(c) in respect of the report; and
  - (b) the matter is referred to the community based child and family service under section 30.
- (5) A community-based child and family service to which information referred to in subsection (1) is disclosed must not disclose that information to any other person except in accordance with this Part.

Penalty: 60 penalty units

56. Section 190(1) of the CYF Act refers to reports made under section 183 (a report to a 'protective intervener' on reasonable grounds that a child is in need of protection), section 184 (a mandatory report to the Secretary on reasonable grounds that a child is in need of protection made by a person in the course of practising his or her profession or carrying out the duties of his or her office, position or employment), reports determined to be a protective intervention report under section 34, and reports under section 185 that a child is in need of therapeutic treatment.

57. 'Protective intervener' is defined in section 181 of the CYF Act as 'the Secretary' [of the Agency] and 'all police officers'.

58. Section 209 of the CYF Act provides:

**209 Confidentiality**

- (1) A protective intervener must not disclose to any person, other than to another protective intervener or to a person in connection with a court proceeding or to a person in connection with a review by VCAT—

- (a) the name of a person who gave information in confidence to a protective intervener during the course of the investigation of the subject-matter of a protective intervention report; or
- (b) any information that is likely to lead to the identification of a person referred to in paragraph (a)—  
  
without the written consent of the person referred to in paragraph (a) or authorisation by the Secretary.

Penalty: 10 penalty units.

- (2) The Secretary may only authorise the disclosure of information to a person under subsection (1) if the Secretary believes on reasonable grounds that the disclosure is necessary to ensure the safety and wellbeing of the child.
- (3) In this section court proceeding includes a proceeding in the Family Court of Australia.

59. In summary, sections 41, 191 and 209 of the CYF Act prohibit the disclosure of the names of a person who provided Child Protection information to the Agency, as well as any information likely to lead to their identification, except in certain authorised circumstances. Unauthorised disclosure of such information is an offence subject to penalties under the CYF Act, as set out above.
60. The financial penalties associated with these confidentiality provisions highlight Parliament's intention this information be protected and should not be disclosed, except in limited circumstances.
61. I am satisfied information contained in Documents 1 to 3, 8, [and] 10 to 14 are exempt under section 38 for the following reasons:
- (a) the CYF Act is an enactment in force;
  - (b) the documents contain the specific information which is prohibited from disclosure by sections 41, 191 and 209 of the CYF Act;
  - (c) Agency officers are prohibited from disclosing information that would fall within the terms of the Applicant's request; and
  - (d) none of the authorised exceptions for disclosure referred to in sections 41, 191 and 209 of the CYF Act apply to the Applicant's request.

***Deletion of exempt or irrelevant information***

62. 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.
63. Determining what is 'practicable' requires consideration of the effort and editing involved in making the deletions 'from a resources point of view'<sup>24</sup> 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.<sup>25</sup>

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<sup>24</sup> *Mickelburgh 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].

<sup>25</sup> *Honeywood v Department of Human Services* [2006] VCAT 2048 [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140] and [155].

64. The Agency deleted the employee number of an Agency officer, who conducted the administrative task of printing Documents 1 to 4 as irrelevant. The Agency also deleted information in Document 3 as irrelevant, because it relates to people or matters other than those specified in the Applicant's request. I agree with the deletions made by the Agency.
65. I have considered the effect of deleting exempt and irrelevant information from the documents. I am satisfied it is practicable for the Agency to delete this information and for the documents to retain meaning.

### **Conclusion**

66. On the information available, I am satisfied the exemptions in sections 31(1)(a), 33(1), 35(1)(b) and 38 apply to the documents.
67. As I am satisfied it is practicable for the Agency to delete this information from the documents, I have decided to grant access to certain documents in part.
68. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each of the documents.

### **Review rights**

69. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.<sup>26</sup>
70. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>27</sup>
71. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>28</sup>
72. Information about how to apply to VCAT is available online at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au). Alternatively, VCAT may be contacted by email at [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au) or by telephone on 1300 018 228.
73. 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.<sup>29</sup>

### **When this decision takes effect**

74. My decision does not take effect until the relevant review period (stated above) expires, or if either party applies to VCAT for a review, until the VCAT proceeding is concluded.

### **Other – access charges**

75. From the Agency's decision letter, I note it determined to impose access charges under section 22. I understand the Applicant is yet to pay these charges. Accordingly, the Applicant is yet to receive access to the documents the Agency decided to release and will need to pay any outstanding access charges, unless waived by the Agency, before obtaining access to the documents.

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<sup>26</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>27</sup> Section 52(5).

<sup>28</sup> Section 52(9).

<sup>29</sup> Sections 50(3F) and (3FA).

Annexure – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
1.	[Date]	LEAP Incident Report and Case Progress	3	<p>Release in part</p> <p>Sections 33(1), 31(1)(a), 25</p>	<p>Release in part</p> <p>Sections 31(1)(a), 33(1), 38, 25</p>	<p><b>Section 31(1)(a):</b> I am satisfied disclosure of this document would be reasonably likely to prejudice the enforcement and proper administration of the law. Accordingly, it is exempt under section 31(1)(a).</p> <p><b>Section 33(1):</b> I am satisfied disclosure of the personal affairs information contained in this document is unreasonable in the circumstances. Accordingly, it is exempt under section 33(1).</p> <p><b>Section 38:</b> I am satisfied information in this document is exempt because:</p> <ul style="list-style-type: none"> <li>- it contains the specific information which is prohibited from disclosure under sections 41, 191 and 209 of the CYF Act;</li> <li>- Agency officers are prohibited from disclosing that information; and</li> <li>- none of the authorised exceptions for disclosure under sections 41, 191 and 209 of the CYF Act apply.</li> </ul> <p>Accordingly, it is exempt under section 38 in conjunction with sections 41, 191 and 209 of the CYF Act.</p>

Annexure – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						Section 25: I am satisfied it is practicable to provide an edited copy of the document in accordance with section 25. I agree with the deletions made by the Agency.
2.	[Date]	Incident Report	3	Release in part Sections 33(1), 31(1)(a), 25	Release in part Sections 31(1)(a), 33(1), 38, 25	See comments for Document 1.
3.	[Date]	Notes of attending members	3	Release in part Sections 33(1), 31(1)(a), 25	Release in part Sections 31(1)(a), 33(1), 38, 25	See comments for Document 1.
4.	Various	Investigation – Full Response Report	8	Release in part Sections 31(1)(a), 33(1), 25	Release in part Sections 31(1)(a), 33(1), 25	Section 31(1)(a): I am satisfied disclosure of this document would be reasonably likely to prejudice the enforcement and proper administration of the law. Accordingly, it is exempt under section 31(1)(a).  Section 33(1): I am satisfied disclosure of the personal affairs information contained in this document is unreasonable in the circumstances. Accordingly, it is exempt under section 33(1).  Section 25: I am satisfied it is practicable to provide an edited copy of the document in

Annexure – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						accordance with section 25. I agree with the deletions made by the Agency.
5.	[Year]	Brief Head	2	Refuse in full Section 31(1)(a)	Refuse in full Section 31(1)(a)	<p><b>Section 31(1)(a):</b> I am satisfied disclosure of this document would be reasonably likely to prejudice the enforcement and proper administration of the law. Accordingly, it is exempt under section 31(1)(a).</p> <p><b>Section 25:</b> I am not satisfied it is practicable to provide an edited copy of the document in accordance with section 25. Accordingly, the document is exempt in full.</p>
6.	[Date]	Charge Sheet and Warrant to Arrest	2	Refuse in full Section 31(1)(a)	Refuse in full Section 31(1)(a)	See comments for Document 5.
7.	Undated	Warrant coversheet	2	Refuse in full Section 31(1)(a)	Refuse in full Section 31(1)(a)	See comments for Document 5.
8.	[Date]	Preliminary Brief - Statement made by Informant	5	Refuse in full Section 31(1)(a)	Refuse in full Sections 31(1)(a), 38	<p><b>Section 31(1)(a):</b> I am satisfied disclosure of this document would be reasonably likely to prejudice the enforcement and proper administration of the law. Accordingly, it is exempt under section 31(1)(a).</p>

Annexure – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
						<p><b>Section 38:</b> I am satisfied information contained in this document is exempt because:</p> <ul style="list-style-type: none"> <li>- it contains the specific information which is prohibited from disclosure under sections 41, 191 and 209 of the CYF Act;</li> <li>- Agency officers are prohibited from disclosing that information; and</li> <li>- none of the authorised exceptions for disclosure referred to in sections 41, 191 and 209 of the CYF Act apply.</li> </ul> <p>Accordingly, it is exempt under section 38 in conjunction with sections 41, 191 and 209 of the CYF Act.</p> <p><b>Section 25:</b> I am not satisfied it is practicable to provide an edited copy of the document in accordance with section 25. Accordingly, the document is exempt in full.</p>
9.	[Date]	Charge Report	1	Refuse in full Section 31(1)(a)	Refuse in full Section 31(1)(a)	See comments for Document 5.
10.	[Date]	Member Statement	6	Refuse in full	Refuse in full	See comments for Document 8.



Annexure – Schedule of Documents

Document No.	Date of Document	Document Description	Number of Pages	Agency's Decision	OVIC Decision	OVIC Comments
				Section 31(1)(a)	Sections 31(1)(a), 38	
11.	[Date]	Member Statement	3	Refuse in full Section 31(1)(a)	Refuse in full Sections 31(1)(a), 38	See comments for Document 8.
12.	[Date]	Member Statement	5	Refuse in full Section 31(1)(a)	Refuse in full Sections 31(1)(a), 38	See comments for Document 8.
13.	Undated	Member Statement	2	Refuse in full Section 31(1)(a)	Refuse in full Sections 31(1)(a), 38	See comments for Document 8.
14.	[Date]	Member Statement	4	Refuse in full Section 31(1)(a)	Refuse in full Sections 31(1)(a), 38	See comments for Document 8.
15.	Undated	Witness Statement	2	Refuse in full Section 35(1)(b)	Refuse in full Section 35(1)(b)	<p><b>Section 35(1)(b):</b> I am satisfied disclosure of this document would divulge information or matter communicated in confidence by a person to an agency, and disclosure would be contrary to the public interest. Accordingly, it is exempt under section 35(1)(b).</p> <p><b>Section 25:</b> I am not satisfied it is practicable to provide an edited copy of the document</p>

**Annexure – Schedule of Documents**

<b>Document No.</b>	<b>Date of Document</b>	<b>Document Description</b>	<b>Number of Pages</b>	<b>Agency's Decision</b>	<b>OVIC Decision</b>	<b>OVIC Comments</b>
						in accordance with section 25. Accordingly, the document is exempt in full.
16.	Undated	Witness Statement	2	<b>Refuse in full</b> Section 35(1)(b)	<b>Refuse in full</b> Section 35(1)(b)	See comments for Document 15.